

### C. Statutory and Executive Order Reviews

This final authorization revises Ohio's authorized hazardous waste management program pursuant to Section 3006 of RCRA and imposes no requirements other than those currently imposed by State law. For further information on how this authorization complies with applicable executive orders and statutory provisions, please see the proposed rule published in the June 11, 2019, **Federal Register** at 84 FR 27057. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This final action will be effective September 26, 2019.

#### List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: September 4, 2019.

**Cheryl L. Newton,**

*Acting Regional Administrator, Region 5.*  
[FR Doc. 2019-20553 Filed 9-25-19; 8:45 am]

**BILLING CODE 6560-50-P**

### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Parts 1 and 52

[AU Docket No. 19-101; WC Docket No. 17-192; CC Docket No. 95-155; FCC 19-75]

#### Auction of Toll Free Numbers in the 833 Code; Notice and Filing Requirements, Upfront Payments, and Other Procedures for the 833 Auction; Bidding Scheduled To Occur on December 17, 2019

**AGENCY:** Federal Communications Commission.

**ACTION:** Final action; requirements and procedures.

**SUMMARY:** This document summarizes procedures for the upcoming auction of certain toll free numbers in the 833 code (833 Auction). The *833 Auction Procedures Public Notice* summarized here is intended to familiarize applicants with the procedures and other requirements governing participation in the 833 Auction and provides overview of the post-auction payment and toll free number reservation processes and secondary market transaction disclosures.

**DATES:** Application to participate in the 833 Auction must be submitted prior to 6:00 p.m. ET on October 18, 2019. Upfront payments for the 833 Auction must be received by 6:00 p.m. ET on November 27, 2019. Bidding in Auction 103 is scheduled to occur on December 17, 2019.

**FOR FURTHER INFORMATION CONTACT:** For auction legal questions, Scott Mackoul in the Auctions Division of the Office of Economics and Analytics at (202) 418-0660. For toll free number questions, Matthew Collins in the Wireline Competition Bureau's Competition Policy Division at (202) 418-7141.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Public Notice (*833 Auction Procedures Public Notice*), AU Docket No. 19-101; WC Docket No. 17-192; CC Docket No. 95-155, FCC 19-75, adopted on August 1, 2019 and released on August 2, 2019. The complete text of the *833 Auction Procedures Public Notice* is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW, Room CY-A257, Washington, DC 20554. The complete text is also available on the Commission's website at <https://www.fcc.gov/wireline-competition/competition-policy-division/numbering-resources/833-toll-free-number-auction>

or by using the search function for AU Docket No. 19-101, WC Docket No. 17-192, or CC Docket No. 95-155 on the Commission's ECFS web page at [www.fcc.gov/ecfs/](http://www.fcc.gov/ecfs/). Alternative formats are available to persons with disabilities by sending an email to [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or by calling the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

### I. General Information

#### A. Introduction

1. With the *833 Auction Procedures Public Notice*, the Commission establishes procedures for the upcoming auction of certain toll free numbers in the 833 code (833 Auction). The 833 Auction, which will serve as an experiment in using competitive bidding as a way to assign toll free numbers, will make available 17,638 numbers in the 833 code. Bidding in the 833 Auction will occur on December 17, 2019. The *833 Auction Procedures Public Notice* provides details regarding the procedures, terms, and conditions, as well as dates and deadlines, governing participation in the 833 Auction, and an overview of post-auction payments and requirements, including disclosure requirements for post-auction secondary market transactions.

#### B. Background and Relevant Authority

2. In 2018, the Commission modified its toll free assignment rule in the *Toll Free Assignment Modernization Order*, 83 FR 53377, October 23, 2018, to provide greater flexibility and permit alternative approaches to assigning numbers. Specifically, the Commission added competitive bidding as a method to assign toll free numbers and, as an experiment in using this approach, established the 833 Auction to assign numbers that were requested by two or more Responsible Organizations ("RespOrgs") during the 833 pre-code opening process.

3. The Commission set out the general framework for the 833 Auction in the *Toll Free Assignment Modernization Order* and designated Somos, Inc., the Toll Free Numbering Administrator, as the auctioneer. The Commission opened participation in the 833 Auction to not only RespOrgs but also potential subscribers who may wish to participate directly. The Commission also called for a pre-bidding process during which it would seek comment on detailed auction procedures, as is typical in Commission auctions.

4. In May 2019, the Commission initiated the pre-bidding process by

releasing a public notice seeking comment on auction procedures to be used in the 833 Auction. Seven parties submitted filings in response to the *833 Auction Comment Public Notice*, 84 FR 24424, May 28, 2019.

5. Section 251(e)(1) of the Communications Act of 1934, as amended (the Act), empowers the Commission to ensure that toll free numbers are allocated in an equitable and orderly manner that serves the public interest. Pursuant to this statutory mandate, the Commission has the authority to set policy with respect to all facets of numbering administration in the United States, and must do so in an efficient, fair, and orderly manner. As in the *Toll Free Assignment Modernization Order*, the actions the Commission takes in the *833 Auction Procedures Public Notice* are designed to meet the statutory requirement that numbers be made “available on an equitable basis,” by establishing auction and secondary market procedures that are efficient, orderly, and fair.

6. In addition to the *Toll Free Assignment Modernization Order*, other Commission decisions and rules provide additional information useful to any party interested in participating in the 833 Auction. For example, many of the application and bidding requirements set forth in the *833 Auction Procedures Public Notice* are based on the Commission’s general competitive bidding rules. Thus, prospective applicants should familiarize themselves with those rules, including recent amendments and clarifications, as well as Commission decisions in proceedings regarding competitive bidding procedures and application requirements.

7. Moreover, as part of their due diligence responsibilities, applicants must be thoroughly familiar with the procedures, terms, and conditions contained in *833 Auction Procedures Public Notice* and any future public notices that may be released in the 833 Auction proceeding (AU Docket No. 19–101, WC Docket No. 17–192, CC Docket No. 95–155). The terms contained in the Commission’s rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time and will issue public notices to convey 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 the 833 Auction. Copies of most auctions-related Commission documents, including public notices,

can be retrieved at [www.fcc.gov/auctions](http://www.fcc.gov/auctions), and copies of documents related to the 833 Auction can be retrieved at <https://www.fcc.gov/wireline-competition/competition-policy-division/numbering-resources/833-auction>. Additionally, documents are available through Somos at <http://auction.somos.com/> and at the Commission’s headquarters, located at 445 12th Street SW, Washington, DC 20554, during normal business hours.

### C. Toll Free Numbers Offered in 833 Auction

8. In the 833 pre-code opening process, the Commission’s Wireline Competition Bureau authorized RespOrgs to identify up to 2,000 desired numbers in the 833 code and submit a request for those numbers to Somos. Somos identified 17,638 toll free numbers as requested by two or more RespOrgs and placed those numbers in unavailable status. In the *Toll Free Assignment Modernization Order*, the Commission announced that the rights to use these 17,638 toll free numbers in the 833 code would be offered in the 833 Auction.

9. The Commission, in the *Toll Free Assignment Modernization Order*, provided one exception to making these numbers available in the 833 Auction by allowing government entities and non-profit health and safety organizations to file petitions to set aside numbers from the auction for use for public health and safety purposes. On April 16, 2019, the Wireline Competition Bureau released a Public Notice seeking petitions to set aside toll free numbers pursuant to this exception. No petitions were submitted. Consequently, all 17,638 numbers previously identified as having multiple requests will be offered in the 833 Auction. 833 Auction applicants must select the toll free numbers (from the available list) for which they may bid on their auction applications. If a particular available toll free number is not selected on any auction application, it will not be available in the auction. A complete list of these 17,638 numbers is available in electronic format only at <http://auction.somos.com/>.

### D. Auction Specifics

#### 1. Auctioneer

10. In the *Toll Free Assignment Modernization Order*, the Commission designated Somos as the auctioneer for the 833 Auction. As such, Somos will be required to implement the procedures established in the *833 Auction Procedures Public Notice* to conduct the auction, including: Accepting applications to participate in the

bidding (auction applications); reviewing the applications for sufficiency; accepting upfront payments; announcing which applicants are qualified to bid (qualified bidders); accepting and processing the bids; announcing the winning bidders; and accepting final payments. To accomplish these tasks, Somos must provide an online system(s) for the 833 Auction that will accept auction applications and bids (collectively Somos Auction System) and Somos must provide procedures to accept both upfront and final payments.

#### 2. Auction Dates and Deadlines

11. The following dates and deadlines apply to the 833 Auction:

Auction Registration, Application, and Bidding Tutorials Available (via internet)—No later than September 11, 2019  
Auction Application (FCC Form 833) Filing Window Opens—October 7, 2019; 12:00 noon Eastern Time (ET)  
Auction Application (FCC Form 833) Filing Window Deadline—October 18, 2019; 6:00 p.m. ET  
Upfront Payments—November 27, 2019; 6:00 p.m. ET  
Mock Auction—December 13, 2019  
Bidding in the 833 Auction—December 17, 2019

#### 3. Requirements for Participation

12. Those wishing to participate in the 833 Auction must:

- Register for an Auction ID online through the Somos Auction System;
- Submit an auction application (FCC Form 833) electronically through the Somos Auction System prior to 6:00 p.m. ET on October 18, 2019, following filing procedures set forth in the *833 Auction Procedures Public Notice* and any FCC Form 833 instructions provided by Somos;
- Submit a sufficient upfront payment to Somos by 6:00 p.m. ET on November 27, 2019, following the procedures set forth in the *833 Auction Procedures Public Notice*; and
- Comply with all provisions outlined in the *833 Auction Procedures Public Notice* and applicable Commission rules and orders.

### II. Implementation of 833 Auction Principles

13. In the *Toll Free Assignment Modernization Order*, the Commission established certain principles to promote the transparency and efficiency of the 833 Auction, and reduce the potential for conflicts of interest and anticompetitive strategic behavior by participants. The Commission sought comment in the *833 Auction Comment*

*Public Notice* on specific procedures to implement these principles, and in the *833 Auction Procedures Public Notice*, the Commission describes how these principles will be implemented for the 833 Auction.

#### A. Participation Through Single Applicant and Application

14. The Commission adopts the proposal in the *833 Auction Comment Public Notice* to allow a potential subscriber to participate in the 833 Auction either (1) through a RespOrg that will bid on all the numbers in which the subscriber is interested in acquiring, or (2) by submitting its own application and bidding for all the numbers in which it is interested. Thus, a potential subscriber cannot selectively choose to be represented by a RespOrg to bid on its behalf for some numbers and submit an application on its own to bid for other numbers.

15. In the *Toll Free Assignment Modernization Order*, the Commission required that potential subscribers participate in the 833 Auction through only a single auction applicant. In the *833 Auction Comment Public Notice*, the Commission proposed to implement this principle by requiring that a potential subscriber may participate either through a RespOrg that will bid on all the numbers that the subscriber is interested in acquiring, or by submitting its own application and bidding for all of the numbers in which it is interested. The Commission received one comment on this issue. CenturyLink agrees with the Commission's proposal, asserting that this "bright line on participation" will help parties clarify their roles and promote the integrity of the auction process. The Commission agrees with CenturyLink's assessment and also believes the proposed application procedure is consistent with the requirement that a potential subscriber may participate through only a single auction applicant, which is necessary to implement the prohibition on certain communications, and with the decision to prohibit certain agreements among auction applicants. Thus, the Commission adopts the application procedure as proposed. If a potential subscriber is represented on applications submitted by multiple RespOrgs, or files its own application and is also represented on a RespOrg application, only one of the applications on which it is represented may become qualified to bid (*i.e.*, any additional subscriber application(s) will be dismissed and/or any additional RespOrg applications will not be found qualified to bid for the potential

subscriber's selected toll free number(s)).

16. In the *833 Auction Comment Public Notice*, the Commission proposed two certifications in the auction application related to the single applicant/application mandate. First, it proposed that the auction application require that each applicant certify that (i) if it is bidding on its own behalf, it is also not participating in the auction through another entity, and/or (ii) if it is bidding on behalf of potential subscriber(s), it is not aware that the potential subscriber(s) are participating through another applicant. Second, the Commission proposed requiring each applicant to certify that it, or any commonly-controlled entity, is not submitting multiple applications in the 833 Auction. The Commission received no comments on the proposed certifications, and concludes that the certifications should aid in enforcing the single applicant/application mandate. Thus, every applicant must certify in its auction application that: (1) It is not participating in the auction through another entity; (2) it is not aware that any entity on whose behalf it is bidding is participating through another applicant; and (3) it, or any commonly-controlled entity, is not submitting multiple applications in the 833 Auction. This language clarifies language proposed in the *833 Auction Comment Public Notice* in order to emphasize that the requirement to bid only through a single applicant applies to every applicant, regardless of whether it is bidding on its own behalf, or on behalf of another entity. Moreover, by "commonly-controlled entity," the Commission means an entity that controls or is controlled by another party.

17. To identify commonly controlled entities in the 833 Auction, the *833 Auction Comment Public Notice* proposed to define a "controlling interest" as an individual or entity with positive or negative *de jure* or *de facto* control of the applicant. As noted in the *833 Auction Comment Public Notice*, the Commission's part 1 rules state that *de jure* control includes holding 50 percent or more of the voting stock of a corporation or holding a general partnership interest in a partnership. Ownership interests that are held indirectly by any party through one or more intervening corporations may be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain

meets or exceeds 50 percent or represents actual control, it may be treated as if it were a 100 percent interest. *De facto* control is determined on a case-by-case basis. Examples of *de facto* control include constituting or appointing 50 percent or more of the board of directors or management committee; having authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the entity; or playing an integral role in management decisions.

18. The *833 Auction Comment Public Notice* also sought comment on a presumption of control by spouses and immediate family members. In this context "immediate family member" would mean father, mother, husband, wife, son, daughter, brother, sister, father- or mother-in-law, son- or daughter-in-law, brother- or sister-in-law, step-father or -mother, step-brother or -sister, step-son or -daughter, half brother or sister. The Commission proposed to place the burden on applicants to sufficiently demonstrate that spouses or family members should not be treated as having an identity of interest such that it creates common control, and that where the presumption has not been adequately rebutted, such spouses and family members will be subject to the prohibition on submission of multiple auction applications by commonly controlled entities.

19. One commenter, 1-800 Contacts, opposes the Commission's proposal for defining the controlling interests of auction applicants, arguing that many toll free number subscribers are commonly owned "through large investment funds or corporate conglomerates," but "have no day-to-day involvement with each other" and therefore, should be allowed to bid separately without having to develop a coordinated bidding strategy. 1-800 Contacts advocates a more lenient approach to controlling interests that would allow commonly owned (but not commonly controlled) entities to participate separately in the auction, specifically suggesting limiting control to "de jure control combined with actual day-to-day involvement in the operational activities of the company."

20. In the *Toll Free Assignment Modernization Order*, the Commission stated that, while it would seek comment and decide how to define parties with common controlling interests in the pre-auction process, it anticipated using the Commission's definitions adopted for similar purposes in its spectrum auctions (*e.g.*, § 1.2105(a)(4)(i) of the Commission's rules). The Commission is unconvinced by the arguments of 1-800 Contacts, and

it adopts the controlling interest standard as proposed in the *833 Auction Comment Public Notice*—i.e., an individual or entity with positive or negative de jure or de facto control. Because entities that have control (either legal control or actual control) can behave in a coordinated fashion, entities with common controlling interests should not be able to participate through separate entities in the auction. Moreover, such an approach is simpler and is consistent with the Commission's approach for its spectrum auctions. As 1–800 Contacts itself notes, requiring a determination of actual day-to-day involvement (in addition to de jure control) would be subjective and may be difficult for other auction participants and Somos to definitively make. Further, unlike 1–800 Contacts, the Commission believes that the experimental nature of this auction supports consistency with the same standard that it uses in Commission auctions. If it uses the same standard applied in Commission auctions, participants in the 833 Auction can rely on any prior experience in Commission auctions and on Commission precedent for guidance. Thus, the Commission concludes that the controlling interest standard as proposed in the *833 Auction Comment Public Notice* is preferable and therefore adopts the proposal.

21. The Commission received no comments on the presumption of control by spouses and immediate family members proposed in the *833 Auction Comment Public Notice*. Therefore, it adopts the presumptions (and definitions) set forth therein, and notes that if an applicant wishes to rebut a presumption of control by a spouse or family member, it should do so in a narrative explanation to its auction application.

22. Additionally, the Commission reiterates that any 833 Auction applicants that have overlapping non-controlling interests must take steps to prevent communicating bid information with each other. Specifically, applicants with overlapping non-controlling interests must certify they have established internal controls to preclude any person acting on behalf of an applicant from possessing information about the bids or bidding strategies of more than one applicant or communicating such information to another person acting on behalf of and possessing such information regarding another applicant. The Commission will include such a certification in the auction application.

### *B. Prohibition on Certain Communications and Compliance With Antitrust Laws*

23. Each applicant in the 833 Auction is prohibited from cooperating or collaborating with any other applicant with respect to its own, or one another's, or any other competing applicant's bids or bidding strategies. Each applicant will be prohibited from communicating, with any other applicant in any manner, the substance of its own, or one another's, or any other competing applicant's bids or bidding strategies (including with respect to the post-auction market for toll free numbers). The Commission proposed this prohibition in the *833 Auction Comment Public Notice* to reinforce existing antitrust laws, facilitate detection of collusive conduct, and deter anticompetitive behavior. The Commission received no comments on this proposal and therefore, for the reasons stated in proposing it, the Commission adopts the prohibition on certain communications for the 833 Auction.

#### 1. Entities Subject to the Prohibition on Certain Communications

24. For purposes of the prohibition on certain communications, an "applicant" in the 833 Auction includes: (i) All controlling interests in the entity submitting the auction application; (ii) 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 the auction application; (iii) all officers and directors of that entity; and (iv) any entity listed as a potential subscriber on whose behalf the entity submitting the auction application will be bidding. As in the Commission's spectrum auctions, in the case of a consortium, each member of the consortium shall be considered to have a controlling interest in the consortium. The Commission proposed in the *833 Auction Comment Public Notice* to define "applicant" broadly for the purposes of the prohibition on certain communications, consistent with its spectrum license and universal service support auctions. One commenter, 1–800 Contacts, supports the proposal, stating that applying the prohibition broadly "will help ensure the integrity of the auction process." The Commission agrees with this assessment and adopts the definition of applicant for purposes of the prohibition as proposed.

#### 2. Prohibition Applies Until Final Payment With Late Fee Deadline

25. The prohibition on certain communications for the 833 Auction will begin at the deadline for submitting auction applications (i.e., 6:00 p.m. on October 18, 2019) and will end at the deadline for winning bidders to submit their final payments with a late fee (i.e., 15 business days after the winning bidders are announced).

26. In the *833 Auction Comment Public Notice*, the Commission stated that the prohibition on certain communications will begin at the auction application deadline and will end "at the post-auction deadline for winning bidders to submit their final payments (which will be announced by Somos after bidding concludes)." The Commission clarifies that, for "final payment deadline," it will use the deadline for winning bidders to submit their final payments with a late fee. In the Commission's spectrum auctions, the prohibition on certain communications runs until the down payment deadline, and in its auctions for universal service support, the prohibition runs until the post-auction deadline for winning bidders to submit applications for support. For the 833 Auction, because winning bidders have neither a down payment nor a post-auction application requirement, the most analogous point is the final payment. However, the final payment in this auction can be made up to an additional five business days after the final payment deadline so long as it is submitted with a late fee. Since the rationale to extend the prohibited communications period until after bidding applies equally during the period in which an applicant can submit the final payment with a late fee, the Commission clarifies that the prohibition will run until that last deadline (i.e., 15 business days after Somos announces the winning bidders).

#### 3. Scope of the Prohibition on Certain Communications

27. As proposed in the *833 Auction Comment Public Notice*, an applicant will be prohibited from communicating, with any other applicant in any manner, the substance of its own, or one another's, or any other competing applicant's bids or bidding strategies (including with respect to the post-auction market for toll free numbers). In addition to express statements of bids and bidding strategies, the prohibition against communicating "in any manner" includes public disclosures as well as private communications and indirect or implicit communications.

Consequently, an applicant must take care to determine whether its auction-related communications may reach another applicant. The Commission reminds applicants that they must determine whether their communications with other parties are permissible once the prohibition begins at the deadline for submitting auction applications, even before the public notice identifying applicants is released.

28. Applicants should take special care in circumstances where their officers, directors, and employees may receive information directly or indirectly relating to any applicant's bids or bidding strategies. Such information may be deemed to have been received by the applicant under certain circumstances. For example, Commission staff have found that where an individual serves as an officer and director for two or more applicants, the bids and bidding strategies of one applicant are presumed conveyed to the other applicant through the shared officer, which creates an apparent violation of the rule.

29. As noted in the *833 Auction Comment Public Notice*, the prohibition will not apply to all communications between or among applicants; it will apply only to any communications conveying, in whole or part, directly or indirectly, the applicant's or a competing applicant's bids or bidding strategy (including with respect to the post-auction market for toll free numbers). Thus, communications, including business discussions and negotiations, unrelated to the toll free numbers being offered in the 833 Auction and that do not convey information about the numbers being auctioned or bidding strategies are not prohibited. Moreover, not all auction-related information is necessarily covered by the prohibition. For example, communicating merely whether a party has or has not applied to participate in the 833 Auction should not violate the prohibition. In contrast, communicating how a party will participate, including specific numbers or bid amounts, and/or whether or not a party will place bids, would convey bid or bidding strategies and therefore is prohibited.

30. Although the restriction does not prohibit business discussions and negotiations among auction applicants that are not auction related, each applicant must remain vigilant not to communicate, directly or indirectly, information that affects, or could affect, bids or bidding strategies. Certain discussions might touch upon subject matters that could convey price or geographic information related to

bidding strategies. Such subject areas include, but are not limited to, management, sales, local marketing agreements, and other transactional agreements.

31. The Commission also cautions applicants that bids or bidding strategies may be communicated outside of situations that involve one party subject to the prohibition communicating privately and directly with another such party. For example, the Commission has warned that prohibited "communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly." Moreover, the Commission previously found a violation of the rule against prohibited communications when an applicant used the Commission's bidding system to disclose "its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate . . . in specific markets" and has placed auction participants on notice that the use of its bidding system "to disclose market information to competitors will not be tolerated and will subject bidders to sanctions."

32. Likewise, when completing an auction application, each applicant should avoid any statements or disclosures that may violate the prohibition on certain communications, particularly in light of the limited information procedures in effect for the 833 Auction. Specifically, an applicant should avoid including any information in its auction application that might convey information regarding its toll free number selections, as applicable, such as referring to certain toll free numbers in describing agreements, including any information in application attachments that will be publicly available that may otherwise disclose the applicant's toll free number selections, or using applicant names that refer to numbers being offered.

33. Applicants also should be mindful that communicating non-public application or bidding information publicly or privately to another applicant may violate the prohibition on certain communications even though that information subsequently may be made public during later periods of the application or bidding processes.

#### 4. Communicating With Third Parties

34. The 833 Auction's prohibition on certain communications does not prohibit an applicant from

communicating bids or bidding strategies to a third-party, such as a consultant or consulting firm, counsel, or lender. The applicant should take appropriate steps, however, to ensure that any third party it employs for advice pertaining to its bids or bidding strategies does not become a conduit for prohibited communications to other specified parties, as that would violate the prohibition. For example, an applicant might require a third party, such as a lender, to sign a non-disclosure agreement before the applicant communicates any information regarding bids or bidding strategy to the third party. Within third-party firms, separate individual employees, such as attorneys or auction consultants, may advise individual applicants on bids or bidding strategies, as long as such firms implement firewalls and other compliance procedures that prevent such individuals from communicating the bids or bidding strategies of one applicant to other individuals representing separate applicants. Although firewalls and/or other procedures should be used, their existence is not an absolute defense to liability if a violation has occurred.

35. As Commission staff have explained in the context of the Broadcast Incentive Auction, in the case of an individual, the objective precautionary measure of a firewall is not available. As a result, an individual that is privy to bids or bidding information of more than one applicant presents a greater risk of becoming a conduit for a prohibited communication. The Commission will take the same approach to interpreting the prohibited communications rule in the 833 Auction. Moreover, the Commission emphasizes that whether a prohibited communication has taken place in a given case will depend on all the facts pertaining to the case, including who possessed what information, what information was conveyed to whom, and the course of bidding in the auction.

36. For purposes of the 833 Auction, the Commission prohibits separate applicants from designating the same individual on their auction applications to serve as an authorized bidder. This prevents a single individual with knowledge of the bidding strategies of more than one applicant from conveying (even unintentionally) advice to any of those applicants that is influenced by his or her knowledge about another applicant's bids or bidding strategies in violation of the prohibition on certain communications among auction applicants. A violation of the

prohibition could also occur if the authorized bidders are different individuals employed by the same organization (e.g., a law firm, engineering firm, or consulting firm). In the latter case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communications between authorized bidders and that the applicant and its bidders will comply with the prohibition on certain communications.

37. The Commission reminds potential applicants that they may discuss the auction application or bids for specific toll free numbers with the counsel, consultant, or expert of their choice before the auction application deadline. Furthermore, the same third-party individual could continue to give advice regarding the application after the deadline, provided that no information pertaining to bids or bidding strategies, including toll free numbers selected on the auction application, is conveyed to that individual. To the extent potential applicants can develop bidding instructions prior to the application deadline that a third-party could implement without changes during bidding, the third-party could follow such instructions for multiple applicants provided that those applicants do not communicate with the third-party during the prohibition period.

38. Applicants also should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become conduits for the communication of prohibited bidding information. For example, even though communicating that it has applied to participate in the auction will not violate the prohibition, an applicant's statement to the press of its intent not to place bids in the auction could give rise to a finding of a prohibited communications violation.

#### 5. Certifications Related to the Prohibition on Certain Communications

39. When submitting its auction application, each applicant for the 833 Auction must certify its compliance with the prohibition on certain communications. One commenter supports this certification. As in the Commission's spectrum and universal service support auctions, the mere filing of a certifying statement as part of an application will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted. Any applicant found to have violated the

prohibition on certain communications may be subject to sanctions, including among other things, forfeiture and a prohibition from participating further in the 833 Auction and in any future Commission auctions.

#### 6. Duty To Report Prohibited Communications

40. Any applicant that makes or receives a communication that appears to violate the prohibition on certain communications must report such communication in writing to the Commission and Somos staff immediately, and in no case later than five business days after the communication occurs. The Commission proposed this requirement in the *833 Auction Comment Public Notice* and received no comments on the proposal. Each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.

#### 7. Procedures for Reporting Prohibited Communications

41. A party reporting any information or communication that appears to violate the prohibition on certain communications must take care to ensure that any report does not itself violate the prohibition. To minimize the risk of inadvertent dissemination of information in such reports, parties reporting a potential prohibited communication must submit a report directly to the following individuals: (1) Margaret W. Wiener, Chief, Auctions Division, Office of Economics and Analytics, by email to [833auction@fcc.gov](mailto:833auction@fcc.gov); and (2) Joel Bernstein, Vice President, Regulatory and Public Policy, Somos, by email to [auctionhelp@somos.com](mailto:auctionhelp@somos.com).

42. Given the potential competitive sensitivity of public disclosure of information in such a report, a party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by following the procedures specified in § 0.459 of the Commission's rules. Such parties should use the contact information provided in the *833 Auction Procedures Public Notice* to consult with Somos and Commission staff about the procedures for submitting such reports.

#### 8. Additional FCC Auction Information Concerning the Prohibition on Certain Communications

43. The Commission adopts its proposal in the *833 Auction Comment Public Notice* to rely on past precedent and guidance regarding its rules on prohibited communications in connection with Commission spectrum auctions. The Commission received no comments on this proposal. A summary listing of documents addressing the application of § 1.2105(c) of the Commission's rules (the rule on prohibited communications for Commission spectrum auctions) is available on the Commission's auction web page at <https://www.fcc.gov/summary-listing-documents-addressing-application-rule-prohibiting-certain-communications/>.

#### 9. Antitrust Laws

44. Regardless of compliance with the Commission's rules, applicants remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. Compliance with the duty to report prohibited communications will not insulate a party from enforcement of the antitrust laws. For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submits an auction application. The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws: for example, actual or potential competitors may not agree to divide territories in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another market for the other.

45. To the extent the Commission becomes aware of specific allegations that suggest that violations of the Federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to a forfeiture and may be prohibited from participating further in the 833 Auction and in future auctions, among other sanctions.

#### C. Restrictions on Agreements

46. To ensure the competitiveness of the 833 Auction, the Commission proposed certain restrictions on agreements related to the toll free

numbers being auctioned. The *833 Auction Procedures Public Notice* addresses the proposals raised in the *833 Auction Comment Public Notice* to restrict agreements among auction applicants and agreements among RespOrgs and to disclose agreements between RespOrgs and potential subscribers.

#### 1. Agreements Among Applicants

47. The Commission adopts its proposal in the *Auction 833 Comment Public Notice* to prohibit certain agreements among applicants in the 833 Auction (regardless of whether the applicants are RespOrgs or potential subscribers). The Commission received no comments on this proposal. The prohibition applies to any agreements, arrangements, or understandings of any kind to which the applicant (including any party that controls or is controlled by the applicant) is a party relating to the toll free numbers being auctioned that address or communicate directly or indirectly bids (including specific prices), bidding strategies (including the specific numbers on which to bid or not to bid), or the post-auction market for toll free numbers.

48. The Commission also adopts its proposal to define “applicant” for these purposes broadly to include: All controlling interests in the entity submitting the auction application; 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 the auction application; all officers and directors of that entity; and any entity listed as a potential subscriber on whose behalf the entity submitting the auction application will be bidding. Although the definition of “applicant” for these purposes includes any entity listed as a potential subscriber on whose behalf the entity submitting the auction application will be bidding, the restriction does not prohibit the agreement necessary to provide authorization to the RespOrg applicant.

49. This prohibition will not apply to agreements unrelated to the toll free numbers being offered in the 833 Auction. Business discussions and negotiations that are unrelated to bidding in the 833 Auction and that do not convey information about the numbers being auctioned or bidding strategies are not prohibited, and thus, agreements reached by such communications unrelated to the toll free numbers being auctioned will not be prohibited.

#### 2. Agreements Among RespOrgs

50. The Commission prohibits auction-related agreements among RespOrgs even where only one of the RespOrgs is an applicant in the 833 Auction. The Commission received no comments on the restriction proposed in the *833 Auction Comment Public Notice*. Given RespOrgs’ position in the toll free number market, the Commission adopts its proposal to prohibit any applicant RespOrg from having an agreement related to the toll free numbers being offered in the 833 Auction with a non-applicant RespOrg. Thus, any RespOrg interested in acquiring the rights to any of the toll free numbers being auctioned must participate in the auction directly.

51. Similar to the prohibition on agreements among applicants, the prohibition among RespOrgs will not apply to agreements unrelated to the toll free numbers being offered in the 833 Auction. Because business discussions and negotiations that are unrelated to bidding in the 833 Auction and that do not convey information about the numbers being auctioned or bidding strategies are not prohibited, agreements reached by such communications unrelated to the toll free numbers being auctioned will not be prohibited.

52. In addition, the prohibition on agreements among RespOrgs would not apply to RespOrgs that are commonly controlled. Commonly-controlled entities are those in which the same individual or entity either directly or indirectly holds a controlling interest (as determined by positive or negative de jure or de facto control). When RespOrgs share a common officer or director or control, the Commission presumes that bids and bid strategies will be communicated. Moreover, the Commission reiterates, since commonly controlled RespOrgs cannot submit multiple applications, if they wish to apply for the 833 Auction, they will need to choose one of the entities to be the applicant and disclose the existence of the other commonly-controlled RespOrgs in the application.

#### 3. Agreements Between RespOrgs and Potential Subscribers

53. Any applicant RespOrg that bids for a potential subscriber must acquire a letter of authorization from the potential subscriber. In the *833 Auction Comment Public Notice*, the Commission recognized the unique position of RespOrgs, in that they can participate in the auction both on their own behalf and on behalf of other entities. Thus, the Commission believes that the relationship between an

applicant RespOrg and a potential subscriber for which it is applying to bid should be formally authorized and transparent so that it can be easily verified. To that end, the Commission proposed to require any applicant RespOrg that bids for a potential subscriber to acquire a letter of authorization from the potential subscriber. No comments were received on the proposal. Based on the need to verify the relationship, the Commission will require a letter of authorization that clearly identifies the parties (both the potential subscriber and RespOrg) and toll free number(s) in which the RespOrg will bid for the potential subscriber. That letter must be dated and signed by the potential subscriber. Moreover, because an applicant RespOrg bidding on behalf of a potential subscriber is ultimately responsible for complying with all post-auction requirements, it is the responsibility of the applicant RespOrg to ensure the authorization by the potential subscriber is adequate (e.g., has been signed by a person with authority to bind the entity).

54. The *833 Auction Comment Public Notice* also sought comment on whether to require any applicant RespOrg bidding on behalf of a potential subscriber to provide the letter of authorization as part of its auction application (e.g., by uploading it as an attachment) or to allow the applicant RespOrg to certify that it is in possession of the letter and be able to produce it to the Commission if requested. The Commission received no comments on either option. Since the upload process should not be burdensome and uploading the document should help Somos verify the relationship, the Commission will require any applicant RespOrg that is bidding on behalf of a potential subscriber to upload the letter of authorization as part of its auction application. The Commission directs Somos to withhold the public disclosure of these attachments until after the bidding, since the letters of authorization will contain specific information on toll free numbers being sought by the potential subscriber.

#### D. Limited Information Procedures During the Auction Process

55. Consistent with the procedures in many recent Commission auctions, the Commission adopts its proposal that Somos conduct the 833 Auction using procedures for limited information disclosure (sometimes also referred to as anonymous bidding). The Commission received no comments on its proposal to use limited information procedures.

Thus, the Commission directs Somos to withhold, until after the close of bidding and announcement of auction results, the public release of bidders' particular 833 number selections and any information that may reveal the identities of bidders placing bids and taking other bidding-related actions. More specifically, the following information will not be made public until after bidding has closed: (1) The numbers that an applicant selects for bidding in its auction application, (2) the amount of any upfront payment made by or on behalf of an applicant for the 833 Auction, (3) any applicant's bidding eligibility, and (4) any other bidding-related information that might reveal the identity of the bidder placing a bid or the amount of the bid.

56. Because the 833 Auction will be conducted using a single round of bidding, the Commission does not anticipate that there will be the same need for release of bidding-related actions during the auction that there would be in a multiple-round auction. If such circumstances were to arise prior to the release of non-public information and auction results, however, the Commission directs Somos to avoid releasing any information that may indicate the identity of any bidders taking such actions.

57. Moreover, after receiving no comments on the proposal in the *833 Auction Comment Public Notice* to make public bidders' number selections, upfront payment amounts, bids, and any other bidding-related actions and information after the close of bidding, the Commission adopts the proposal. The Commission believes making this information available to the public, after bidding is complete, will increase auction transparency and allow the public generally to evaluate the experiment in using competitive bidding as a toll free number assignment method.

#### *E. Responsibility for Winning Bid Payment*

58. Any 833 Auction applicant, including a RespOrg participating on behalf of one or more potential subscribers, assumes a binding obligation to pay its full winning bid amount, and is responsible for complying with all post-auction requirements, regardless of whether a potential subscriber on whose behalf the RespOrg bid fulfills its financial or contractual obligation to the RespOrg. While an applicant RespOrg may seek reimbursement from the potential subscriber for which it bid, the RespOrg—as the bidder in the auction—

is ultimately responsible for full payment of any winning bid.

### **III. Applying To Participate in the 833 Auction**

#### *A. General Information Regarding the Auction Application*

59. Any party interested in obtaining an 833 number available through the auction must submit an application (FCC Form 833) to become qualified to bid in the 833 Auction. An application to participate in the 833 Auction, referred to in the *833 Auction Procedures Public Notice* as an "auction application," provides information that Somos, as the auctioneer, will use to determine whether the applicant is qualified to participate in the auction. Eligibility to participate in the 833 Auction is based on an applicant's auction application, including its certifications made under penalty of perjury, and on the applicant's submission of a sufficient upfront payment for the auction.

60. A party seeking to participate in the 833 Auction must file an FCC Form 833 electronically via the Somos Auction System prior to 6:00 p.m. ET on October 18, 2019, following the procedures prescribed in the *833 Auction Procedures Public Notice* and any FCC Form 833 instructions provided by Somos. The *833 Auction Procedures Public Notice* describes more fully the information disclosures and certifications required in the auction application. An applicant that files an application to participate in the 833 Auction will be subject to the prohibition on certain communications, beginning at the deadline for filing auction applications—6:00 p.m. ET on October 18, 2019. The prohibition will end for applicants on the post-auction final payment (with late fee) deadline. Each applicant remains subject to the prohibition until the end of the prohibition period, regardless of whether or not it becomes qualified to bid or actually submits any bids.

61. An applicant bears full responsibility for submitting an accurate, complete, and timely auction application. Each applicant must make a series of certifications under penalty of perjury on its FCC Form 833 related to the information provided in its application and its participation in the auction. If an applicant fails to make the required certifications in its FCC Form 833 by the filing deadline, its application will be deemed unacceptable for filing and cannot be corrected after the filing deadline.

62. An applicant should note that submitting an FCC Form 833 (and any

amendments thereto) constitutes a representation by the certifying official that he or she is an authorized representative of the applicant with authority to bind the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Submitting a false certification in an application may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

63. Applicants are cautioned that because the required information submitted in an FCC Form 833 bears on each applicant's qualifications, requests for confidential treatment will not be routinely granted. The Commission has held generally that it may publicly release confidential business information where the party has put that information at issue in a Commission proceeding or where the Commission has identified a compelling public interest in disclosing the information.

64. A party may not submit more than one auction application for the 833 Auction. Similarly, a party can participate in the 833 Auction only through a single bidding entity; either it can participate indirectly through a RespOrg or directly by submitting its own application. As in Commission spectrum auctions, if a party submits multiple auction applications, only one application may be the basis for that party to become qualified to bid in the auction.

65. After the initial auction application filing deadline, Somos staff will review all timely submitted applications for the 833 Auction to determine whether each application complies with the application requirements and whether it has provided all required information concerning the applicant's qualifications for bidding. After this review is completed, Somos, in its capacity as auctioneer, will release a public notice identifying the applications as complete or incomplete, and will establish an application resubmission filing window, during which an applicant may make permissible minor modifications to its application to address identified deficiencies. The public notice will include the deadline for resubmitting modified applications. To become a qualified bidder, an applicant must have a complete application (*i.e.*, have timely corrected any identified deficiencies) and make a timely and sufficient upfront payment. After review of resubmitted applications is complete,

Somos will issue a public notice identifying the applicants that are qualified to bid. Somos should release this notice at least five business days before the bidding (*i.e.*, by December 10, 2019).

66. The *833 Auction Procedures Public Notice* provides additional details regarding certain information required to be submitted in the FCC Form 833. In addition, an applicant should consult the Commission's rules, the *Toll Free Assignment Modernization Order*, and any additional releases specific to the 833 Auction (including instructions on submitting a FCC Form 833 provided by Somos) to ensure that, in addition to the materials described in the *833 Auction Procedures Public Notice*, all required information is included in its auction application. To the extent the information in the *833 Auction Procedures Public Notice* does not address a potential applicant's specific operating structure, or if the applicant needs additional information or guidance concerning the following disclosure requirements, the applicant should review the educational materials for the 833 Auction and/or use the contact information provided in the *833 Auction Procedures Public Notice* to consult with Somos and Commission staff to better understand the information it must submit in its auction application.

#### B. 833 Auction Number Selection

67. Each 833 Auction applicant must identify in its auction application any toll free number (from the list of available 833 numbers) on which it may wish to place a bid during the auction. Moreover, for each number it selects, the applicant must identify the party (either itself or another party) for which it is bidding.

68. The *833 Auction Comment Public Notice* proposed requiring applicants to select the toll free numbers for which they are interested in bidding and, for each number, identify the party for which it is bidding to allow Somos to verify that a potential subscriber is seeking to bid based on only one application and make it clear to applicants that they can represent only one entity per number, including itself. The Commission received no comments on this proposal. Therefore, based for the reasons set forth in the *833 Auction Comment Public Notice*, the Commission adopts this application requirement.

69. The Commission also adopts its proposal to consider any change made to the numbers selected on an application or the party for which an applicant is bidding to be a major

modification of the application, which will result in a dismissal of the application. Finalizing the list of potential toll free numbers and parties for which applicants may be bidding provides certainty in the application review and auction qualification process. Therefore, the Commission requires applicants to select the toll free numbers and identify the party for which it is bidding on its application by the application deadline. If qualified to bid in the auction, the entity will not be obligated to place a bid on each of the numbers selected in its application, but an entity will not be able to bid on any numbers that it does not select in its application. If a particular available toll free number is not selected on any auction application, it will not be available in the auction.

70. Moreover, the Commission directs Somos to withhold from public disclosure the 833 toll free numbers selected by an applicant on its auction application until after the bidding is complete. The Commission received no comments on its proposal in the *833 Auction Comment Public Notice* to make public the name of party (or parties) for which an applicant is bidding once Somos announces which applications are complete or incomplete. The Commission adopts the proposal because, consistent with the practice in Commission spectrum auctions, it finds that competition will be enhanced by withholding certain information, such as toll free number selections, from other applicants, while still providing bidders with information that will allow them to accurately assess the legitimacy of their auction opponents.

#### C. Ownership Disclosure Requirements

71. Any party interested in participating in the 833 Auction must provide, in its auction application, the same level of ownership disclosure required in Commission spectrum auctions under § 1.2112(a) of the Commission's rules. Thus, each applicant must disclose: (1) The real party or parties in interest of the applicant or of the application; (2) any direct interest holder of 10 percent or greater; (3) any indirect interest holder of 10 percent or greater; and (4) any FCC-regulated entity or applicant for an FCC license in which the applicant, any real party in interest, or any direct interest holder of 10 percent or greater, owns 10 percent or more stock, whether voting or non-voting. An applicant must list all parties holding indirect ownership interests in the applicant as determined by successive multiplication of the ownership percentages for each

link in the vertical ownership chain that equals 10 percent or more of the applicant, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated and reported as if it were a 100 percent interest.

72. The *833 Auction Comment Public Notice* proposed using the ownership disclosure rule used in Commission spectrum auctions. One commenter argued that the disclosure requirements of § 1.2112(a) are unnecessary for the 833 Auction. Specifically, 1-800 Contacts argues that the 10 percent disclosure threshold for direct and indirect interest holders may be relevant to commercial wireless service auctions (because of spectrum aggregation limits) or broadcast auctions (because of multiple ownership, cross ownership and foreign ownership), but not toll free number auctions because toll free numbers have no such limits. 1-800 Contacts therefore argues that the proposed disclosure requirement is "exceedingly burdensome, particularly on prospective auction participants that may be held through complex private investment funds." In lieu of such disclosure, 1-800 Contacts proposes that auction applicants certify that they and their attributable interest holders are in compliance with the Commission's auction rules, including the prohibition on certain communications.

73. While 1-800 Contacts is correct that the ownership disclosure requirements of § 1.2112 aid in the Commission's enforcement of certain restrictions, such as ownership limits, 1-800 Contacts fails to account for the fact that the 10 percent reporting requirements provide other benefits to the other auction participants. Responding to similar arguments against ownership disclosure made in the Part 1 competitive bidding proceeding, the Commission stated that the 10 percent reporting requirement "helps competing bidders accurately assess the legitimacy of their auction opponents and . . . aids bidders by providing them with information about their auction competitors and alerting them to entities subject to [the Commission's] anti-collusion rules." Such reasoning applies in the 833 Auction as well. As 1-800 Contacts itself supports the broad application of the prohibition on certain communications, other auction participants rely on the ownership disclosure in auction applications to know with which parties they are prohibited from communicating. Moreover, the Commission disagrees that such disclosure is overly

burdensome. Auction applicants have provided such information in a variety of Commission auctions for over 20 years, and such information provides transparency regarding the identity of auction participants—not only to the Commission, but also to other auction participants and the public generally. Thus, the Commission adopts its proposal in the *833 Auction Comment Public Notice* to require the same level of ownership disclosure required in § 1.2112(a) of the Commission's rules.

#### *D. Disclosure of Agreements and Bidding Arrangements*

74. To the extent that an applicant may be a party to an auction-related agreement, it must disclose the agreement on its auction application. Specifically, the *833 Auction Comment Public Notice* proposed to require an applicant to provide in its auction application a brief description of, and identify each party to, any partnerships, joint ventures, consortia or agreements, arrangements, or understandings of any kind relating to the toll free numbers being auctioned, including any agreements that address or communicate directly or indirectly bids (including specific prices), bidding strategies (including the specific licenses on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls or is controlled by the applicant, is a party. For purposes of this disclosure, a controlling interest includes all individuals or entities with positive or negative de jure or de facto control of the applicant. The Commission received no comments on this proposal. Because disclosure of these arrangements provides transparency about the auction applicants and any parties with whom they have entered into agreements regarding the toll free numbers being offered in the auction, the Commission adopts this disclosure requirement. Additionally, if an applicant in the 833 Auction is a potential subscriber but is also bidding on behalf of another potential subscriber, it would need to disclose the existence of such an agreement. In such circumstances, the applicant would need to briefly describe the agreement, but must not disclose the toll free number(s) for which it is bidding on behalf of the other potential subscriber(s).

75. In connection with the agreement disclosure requirement, the applicant must certify under penalty of perjury in its auction application that it has described, and identified each party to, any such agreements, arrangements, or understandings into which it has

entered. An applicant that enters into any agreement relating to the toll free numbers being auctioned after the auction application deadline is subject to the same disclosure obligations it would be for agreements existing at the application deadline, and it must maintain the accuracy and completeness of the information in its pending auction application.

76. For purposes of making the required agreement disclosures on the auction application, if parties agree in principle on all material terms prior to the application filing deadline, the applicant must provide a brief description of, and identify the other party or parties to, the agreement, even if the agreement has not been reduced to writing. However, if the parties have not agreed in principle by the application filing deadline, the applicant should not describe, or include the names of parties to, the discussions on its application.

77. Finally, the Commission sought comment in the *833 Auction Comment Public Notice* on the level of disclosure for auction-related agreements, noting that in its spectrum auctions, an applicant must disclose certain limited information about the agreements in their pre-auction short-form applications (e.g., the parties to the agreement and a brief summary of the agreements), while winning bidders often may be required to provide more detailed information about the agreements in their post-auction long-form applications. The Commission received no comments on this issue. It concludes that, for the 833 Auction, it is sufficient to require applicants to identify the parties and provide a brief description of the agreement because it will provide enough detail to understand the arrangement without being overly burdensome on auction applicants. When identifying the parties to any agreement, and providing a brief description of such, applicants should take care to avoid providing any details that would indicate specific toll free numbers.

#### *E. Authorized Bidders*

78. An applicant must designate at least one individual as an authorized bidder, and no more than three, in its auction application. In the Commission's spectrum auctions, the rules prohibit an individual from serving as an authorized bidder for more than one auction applicant. This restriction ensures that a single individual with knowledge of the bidding strategies of more than one applicant cannot become even an unwitting conduit of bidding

information between those applicants in violation of the Commission's prohibition on certain communications among auction applicants. The Commission finds that a similar restriction would serve the integrity of the 833 Auction, and accordingly, it prohibits an individual from serving as an authorized bidder for more than one auction applicant in the 833 Auction.

#### *F. Provisions Regarding Current Defaulters*

79. The Commission adopts its proposal in the *Auction 833 Comment Public Notice* to adhere to its practice in Commission spectrum auctions regarding current defaults and delinquencies and to require each applicant in the 833 Auction to certify that it is not currently in default or delinquent on a non-tax debt to the Federal Government. The Commission received no comments on the proposal and takes this step to preserve the integrity of the auction process and to ensure that bidders are capable of meeting their financial commitments. As is the Commission's practice in spectrum auctions, an applicant will be considered a "current defaulter" or "current delinquent" when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, is in default on any payment for any Commission construction permit or license (including a down payment) or is delinquent on any non-tax debt owed to any Federal agency.

80. Also consistent with Commission spectrum auctions, the applicant's status as a current defaulter will be determined as of the auction application deadline. After the deadline, an applicant can dispute the status of the debt, but as noted in the *833 Auction Comment Public Notice* and consistent with the Commission's practice in spectrum auctions, applicants will not be able to cure the default or delinquency after the auction application deadline to participate in the auction. Thus, prospective applicants should pay any delinquent debts prior to the auction application deadline.

81. In addition to the *833 Auction Procedures Public Notice*, applicants are encouraged to review previous guidance on default and delinquency disclosure requirements in the context of the auction application process. Parties are also encouraged to consult with the Somos staff if they have any questions about default and delinquency disclosure requirements.

82. Applicants are encouraged to check the Commission's Red Light Display System for information

regarding debts currently owed to the Commission. To access the Commission's Red Light Display System, go to: <https://apps.fcc.gov/redlight/login.cfm>. The Commission reminds each applicant, however, that its Red Light Display System may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements (e.g., an applicant may be delinquent on a non-tax debt to another Federal agency). Thus, an auction applicant's lack of current "red light" status is not necessarily determinative of its eligibility to participate in the auction. The Commission strongly encourages each applicant to carefully review all records and other available Federal agency databases and information sources to determine whether the applicant, or any of its affiliates, or any of its controlling interests, or any of the affiliates of its controlling interests, owes or was ever delinquent in the payment of non-tax debt owed to any Federal agency.

#### G. Additional Disclosures and Certifications

83. In the *833 Auction Comment Public Notice*, the Commission sought comment on whether there are other certifications that it should consider requiring auction applicants to make in order to become qualified to bid in the 833 Auction or any legal restrictions that may be relevant. The Commission received no comments and therefore concludes no further certifications are necessary.

#### H. Modifications to Auction Application

##### 1. Only Minor Modifications Allowed

84. After the initial application filing deadline, an applicant will be permitted to make only minor changes to its application consistent with the *Toll Free Assignment Modernization Order*. Examples of minor changes include the deletion or addition of authorized bidders (to a maximum of three), and the revision of addresses and telephone numbers of the applicant, its responsible party, and its contact person. Major modification to an auction application (e.g., change in toll free number selections, change in the party on whose behalf the applicant will be bidding, certain changes in ownership that would constitute an assignment or transfer of control of the applicant, change in applicant's legal classification that results in a change in control, or change in the required certifications) will not be permitted after the initial auction application filing deadline. If an amendment reporting

changes is a "major amendment," the major amendment will not be accepted and may result in the dismissal of the application.

##### 2. Duty To Maintain Accuracy and Completeness of Auction Application

85. The Commission adopts a procedure, consistent with its spectrum auctions, requiring each applicant in the 833 Auction to maintain the accuracy and completeness of information furnished in its pending auction application. For purposes maintaining the accuracy of the information in an auction application and associated attachments, the application remains pending until the release of a public notice announcing the winning bidders. 833 Auction applicants remain subject to the prohibition on certain communications until the post-auction deadline for making final payments (with a late fee) on winning bids. Also, consistent with the requirements for Commission spectrum auctions, an applicant for the 833 Auction must furnish additional or corrected information to Somos within five business days after a significant occurrence, or amend its auction application no more than five business days after the applicant becomes aware of the need for the amendment. An applicant is obligated to amend its pending application(s) even if a reported change may result in the dismissal of the application because it is subsequently determined to be a major modification.

86. An applicant's ability to modify its auction application in the Somos Auction System may be limited at certain times—e.g., between the closing of the initial filing window and the opening of the application resubmission filing window and between the closing of the resubmission filing window and the release of the public notice announcing the qualified bidders. During these periods, an applicant may be able to view its submitted application, but will be unable to make changes. If an applicant needs to make other permissible minor changes to its auction application at any time other than during the resubmission filing window, it must submit a letter briefly summarizing the changes to its auction application via email to [auctionhelp@somos.com](mailto:auctionhelp@somos.com). The email summarizing the changes must include a subject line referring to the 833 Auction and the name of the applicant, for example, "Re: Changes to 833 Auction Application of XYZ Corp." Any attachments to the email must be formatted as Adobe® Acrobat® (PDF) or Microsoft® Word documents. An applicant that submits

its changes in this manner must subsequently modify, certify, and submit its auction application(s) electronically in the Somos Auction System once it is available to applicants.

87. As with filing the auction application, any amendment(s) to the application and related statements of fact must be certified by an authorized representative of the applicant with authority to bind the applicant. Applicants should note that submission of any such amendment or related statement of fact constitutes a representation by the person certifying that he or she is an authorized representative with such authority and that the contents of the amendment or statement of fact are true and correct.

88. Questions about amendments to the auction application should be directed to Somos at [auctionhelp@somos.com](mailto:auctionhelp@somos.com) or (844) 439-7666.

#### IV. Preparing for Bidding in the 833 Auction

##### A. Due Diligence

89. Each applicant has the sole responsibility for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the toll free numbers that it is seeking in the 833 Auction. The Commission makes no representations or warranties about the use of the toll free numbers. Each applicant should be aware that the 833 Auction represents an opportunity to receive the right to use certain toll free numbers and that the Commission's statutory authority to add, modify, and eliminate rules governing numbering applies equally to all toll free numbers, whether acquired through the competitive bidding process or otherwise. In addition, the 833 Auction does not constitute an endorsement by the Commission of any particular service, technology, or product, nor does a right to use the toll free numbers constitute a guarantee of business success.

90. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. In particular, the Commission strongly encourages each potential applicant to review all underlying Commission orders, including the *Toll Free Assignment Modernization Order*. Each potential applicant should perform due diligence to assure itself that, should it become a winning bidder for the right to use one or more 833 numbers offered in the auction, it will be able to comply with all financial, technical, and legal requirements.

91. The Commission also strongly encourages each applicant for the 833 Auction to continue to conduct its own research throughout the auction in order to determine the existence of pending or future administrative or judicial proceedings that might affect its participation in the auction. Each applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on toll free numbers available in the 833 Auction. The due diligence considerations mentioned in the *833 Auction Procedures Public Notice* do not constitute an exhaustive list of steps that should be undertaken prior to participating in the 833 Auction. The burden is on the potential applicant to determine how much research to undertake, depending upon the specific facts and circumstances related to its interests.

92. 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 databases may not include all information deemed necessary or desirable by an applicant, it must obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said database.

93. 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 toll free numbers available in the 833 Auction. Each potential applicant is responsible for undertaking research to ensure that any rights to use toll free numbers won in this auction will be suitable for its business plans and needs. Each potential applicant must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

#### B. Bidder Education

94. The Commission directs Somos to provide detailed educational information to would-be participants before the opening of the auction application filing window on October 7, 2019. Specifically, Somos must provide educational materials on the pre-auction processes in advance of the opening of the application window, beginning with the release of step-by-step instructions for completing the auction application. In addition, the Commission directs Somos to provide an online tutorial covering information on application

procedures (including pre-auction preparation, completing auction applications, and the application review process) and bidding procedures. The Commission further directs Somos to provide educational materials on the bidding process and an opportunity to practice the bid upload process in advance of the bidding.

#### C. Registration for Auction ID

95. As a first step in the 833 Auction application process, an interested party must acquire an "Auction ID" from Somos, which will verify the potential applicant's identity. Any entity that cannot be verified through the Somos verification process, or is otherwise unable to participate in the auction directly, will have the option to participate in the auction through a RespOrg (*i.e.*, the RespOrg will bid on its behalf and will be responsible for making final payment on any winning bids). The Commission proposed this registration process in the *833 Auction Comment Public Notice* and received no comments on it. This registration procedure is consistent with the need to obtain an FCC Registration Number (FRN) to apply for Commission auctions. Therefore, the Commission adopts the proposal and urges interested parties to allow sufficient time prior to the application deadline to register so that, should any party encounter difficulties in the registration process, it would have time to make arrangements to alternatively participate in the auction through a RespOrg.

#### D. Auction Application

96. Once Somos verifies an interested party's identity and issues an "Auction ID" to it, the entity must then submit an auction application (FCC Form 833) electronically via the Somos Auction System. Applicants must follow the FCC Form 833 instructions that Somos will release before the application window opens. While no application fee will be required, the applicant must submit a sufficient upfront payment to become a qualified bidder.

97. The auction application will become available with the opening of the initial filing window at 12:00 noon ET on October 7, 2019 and must be submitted prior to 6:00 p.m. ET on October 18, 2019. Late applications will not be accepted. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications.

#### E. Application Processing and Minor Modifications

##### 1. Public Notice of Applicant's Initial Application Status and Opportunity for Minor Modifications

98. After the deadline for filing auction applications, Somos will process all timely submitted applications to determine whether each applicant has complied with the application requirements and provided all information concerning its qualifications for bidding. After review of all the auction applications, Somos will issue a public notice with applicants' initial application status as either complete or incomplete. The public notice will include the deadline for resubmitting corrected applications and a paper copy will be sent to the contact address listed in the auction application for each applicant by overnight delivery. In addition, each applicant with an incomplete application will be sent information on the nature of the deficiencies in its application, along with the name and phone number of a Somos staff member who can answer questions specific to the application.

99. After the initial application filing deadline on October 18, 2019, applicants can make only minor modifications to their applications. Major modifications (*e.g.*, change toll free number selections, change in the party on whose behalf the applicant will be bidding, certain changes in ownership that would constitute an assignment or transfer of control of the applicant, change in applicant's legal classification that results in a change in control, or change in the required certifications) will not be permitted. After the deadline for resubmitting corrected applications, an applicant will have no further opportunity to cure any deficiencies in its application or provide any additional information that may affect the ultimate determination of whether and to what extent the applicant is qualified to participate in the 833 Auction.

100. Somos staff will communicate only with an applicant's contact person or certifying official, as designated on the auction application, unless the applicant's certifying official or contact person notifies Somos staff in writing that another representative is authorized to speak on the applicant's behalf. Authorizations may be sent by email to [auctionhelp@somos.com](mailto:auctionhelp@somos.com).

## 2. Public Notice of Applicant's Final Application Status After Upfront Payment Deadline

101. After Somos staff review resubmitted applications, Somos will release a public notice identifying applicants that have become qualified bidders for that auction. Qualified bidders are those applicants with submitted auctions applications that are deemed timely filed and complete and who provided a sufficient upfront payment.

### F. Upfront Payments

#### 1. Amount of Upfront Payment and Bidding Eligibility

102. Each potential bidder must provide an upfront payment in a specified amount for the maximum number of toll free numbers on which it may wish to submit a bid in the 833 Auction. An upfront payment is a refundable deposit made by each auction applicant to establish its eligibility to bid in the auction. Upfront payments protect against frivolous or insincere bidding and provide a source of funds from which to collect payments owed at the close of bidding.

103. In the *833 Auction Comment Public Notice*, the Commission proposed that potential bidders provide an upfront payment of \$100 per number because it wanted to encourage only serious, qualified bidders, while at the same time, not discourage participation in the auction. The Commission received no comments on the upfront payment proposal. It concludes that the proposed upfront payment requirement and the proposed amount per toll free number will achieve the Commission's stated goals, and therefore, adopts the proposal. Moreover, since the 833 Auction will serve as an experiment in using competitive bidding for assigning toll free numbers, the values of the auctioned numbers can help inform the Commission's decisions regarding upfront payment amounts in any future toll free number auctions.

104. The Commission reiterates that, if a bidder's winning bids total less than its upfront payment, any remaining amount will be refunded to the bidder, minus any default payments that the bidder may owe. Similarly, if a bidder does not have any winning bids, it will be reimbursed the entirety of its upfront payment. Moreover, to become a qualified bidder in the 833 Auction, in addition to having a complete auction application, an interested party must submit a sufficient upfront payment. Thus, at a minimum, an applicant must submit \$100 (*i.e.*, enough to establish eligibility to bid on at least one toll free

number). Failure to deliver a sufficient upfront payment as instructed by the applicable upfront payment deadline will result in dismissal of the auction application and disqualification from participation in the auction.

#### 2. Submitting an Upfront Payment

105. In order to be eligible to bid in the 833 Auction, an applicant must submit a sufficient upfront payment to Somos before 6:00 p.m. ET on November 27, 2019. Each applicant is responsible for ensuring timely submission of its upfront payment.

106. All payments must be made in U.S. dollars.

107. The *833 Auction Comment Public Notice* proposed to require upfront payments of more than \$300 be made via wire transfer. Specifically, the Commission proposed that any upfront payment in excess of \$300 must be made through a wire transfer to Somos (or its payment designee), and any amounts under this threshold (*i.e.*, \$300 or less) can be made using an alternative payment collection process, such as Automated Clearing House (ACH). The Commission received no comments on this proposal or the threshold amount. It finds that the proposed approach will ensure prompt and assured transfer of funds for those who plan to bid on more than three toll free numbers, while the alternative payment process should make it easier for individuals or small entities that are interested in only a few toll free numbers, and therefore adopts its proposals. It also adopts the proposal to exclude payments via check or credit card, as such payment processes have increased risks associated with them, which would not be conducive to a timely auction. Thus, the Commission will require payment by wire transfer for any amount in excess of \$300 and allow payment by ACH for \$300 or less. Regardless of its payment method, each applicant is responsible for obtaining confirmation from its financial institution that its payment to Somos was successful.

108. *Wire Transfer Payment Information*. If an applicant is providing its upfront payment by wire transfer, it should coordinate with its financial institution well ahead of the due date and allow sufficient time for the transfer to be initiated and completed prior to the deadline. The Commission has repeatedly cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer. The following information will be needed for wire transfers:

*ABA Routing Number*: 021000021

*Receiving Bank*: JP Morgan Chase Bank, 270 Park Avenue, New York, NY 10017

*Beneficiary*: Somos, Inc., Two Tower Center Boulevard, 20th Floor, East Brunswick, NJ 08816

*Account Number*: 511665892

*Originating Bank Information (OBI field)*: (skip one space between each information item)

"833 AUCTIONPAY"

*Applicant Auction ID Number*: (same as FCC Form 833)

*Payer Name*: (use exact same entity or individual name as used in FCC Form 833)

109. *ACH Payment Information*. If an applicant is providing its upfront payment by ACH, the following information will be needed:

*ABA Routing Number*: 021000021

*Receiving Bank*: JP Morgan Chase Bank, 270 Park Avenue, New York, NY 10017

*Beneficiary*: Somos, Inc., Two Tower Center Boulevard, 20th Floor, East Brunswick, NJ 08816

*Account Number*: 511665892

### G. Bidding via Somos Auction System

110. Bidders will be able to participate in the 833 Auction over the internet using the Somos Auction System. Only qualified bidders are permitted to bid.

111. The Commission and Somos make no warranties whatsoever, and shall not be deemed to have made any warranties, with respect to the Somos Auction System, including any implied warranties of merchantability or fitness for a particular purpose. In no event shall the Commission, Somos, or any of their officers, employees, or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of use, revenue, or business information, or any other direct, indirect, or consequential damages) arising out of or relating to the existence, furnishing, functioning, or use of the Somos Auction System. Moreover, no obligation or liability will arise out of the technical, programming, or other advice or service provided by Somos or the Commission in connection with the Somos Auction System.

112. To the extent an issue arises with the Somos Auction System itself, the Commission directs Somos to take all appropriate measures to resolve such issues quickly and equitably. Should an issue arise that is outside the Somos Auction System or attributable to a bidder, including, but not limited to, a bidder's hardware, software, or internet

access problem that prevents the bidder from submitting a bid prior to the end of the bidding round, Somos (and the Commission) shall have no obligation to resolve or remediate such an issue on behalf of the bidder. Similarly, if an issue arises due to bidder error using the Somos Auction System, Somos (and the Commission) shall have no obligation to resolve or remediate such an issue on behalf of the bidder. Accordingly, after the close of the bidding round, the results of bid processing will not be altered absent evidence of any failure in the Somos Auction System.

#### H. Fraud Alert

113. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use the 833 Auction 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, 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.

114. Information about deceptive telemarketing investment schemes is available from the FCC as well as the FTC and SEC. Additional sources of information for potential bidders and investors may be obtained from the following sources:

- The FCC’s Consumer Call Center at (888) 225–5322 or by visiting <https://www.fcc.gov/general/frauds-scams-and-alerts-guides>
- the FTC at (877) FTC–HELP ((877) 382–4357) or by visiting <http://ftc.gov/bcp/edu/pubs/consumer/invest/inv03.shtm>
- the SEC at (202) 942–7040 or by visiting <https://www.sec.gov/investor>

115. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (202) 835–0618.

### V. Bidding in the 833 Auction

#### A. Auction Design

116. The Commission decided in the *Toll Free Assignment Modernization Order* that the 833 Auction will be conducted as a single round, sealed-bid auction. All numbers will be available simultaneously for bidding during the round, with the winning bid for each number determined solely by bids for that number, independent of the bids for any other number. Moreover, the Commission also chose to use a Vickrey auction, in which the amount paid by the winning bidder is determined by the second-highest bid. Therefore, in the 833 Auction, the winning bidder for each 833 number will be the bidder that submits the highest bid and it will pay the second-highest bid amount for that number.

117. In the event that a toll free number receives only one bid, the right to use the toll free number will be awarded to the bidder submitting the sole bid and the bidder will not be required to pay anything to acquire the rights to the toll free number because there was no second-highest bid. The Commission proposed this procedure in the *833 Auction Comment Public Notice* and received no comments on it. Because it is consistent with using a Vickrey auction, the Commission adopts the proposed procedure for any number in the 833 Auction that receives only one bid. The fact that the winning bidder in this scenario will not be required to pay anything to acquire the rights to the toll free number does not relieve the obligation to pay any other fees, including regulatory fees to the Commission.

118. To provide for the possibility of tied bids, the Commission directs Somos to assign a pseudo-random number to each bid for each toll free number submitted to the 833 Auction. In the event that a toll free number receives two or more tied bids for the highest amount, the winning bidder will be the one with the highest pseudo-random number among the bidders that submitted the tied highest bids. The Commission proposed in the *833 Auction Comment Public Notice* using the pseudo-random number to break tied bids and received no comments on it. It also received no comments on the proposal that, in the case of tied bids, the second highest bid amount to be paid by the winning bidder would be

the same amount as the winning’s placed bid (*i.e.*, the tied bid amount). The Commission finds these adopted procedures consistent with the Vickrey auction design and therefore adopts them as proposed.

#### B. Auction Structure

##### 1. Bidding Format and Period

119. The format for the 833 Auction will consist of one bidding round. As noted in the *833 Auction Comment Public Notice*, the single round will occur on one day and the Commission anticipates that the round will be open for several hours. The Commission received no comments on the bidding format or bidding period. It directs Somos, in consultation with the Commission, to announce the actual start and finish time of the bidding round at least one week before the start of the auction (*i.e.*, by December 10, 2019). This approach should provide certainty to the bidders, while providing Somos with flexibility to adjust the bidding depending on the number of qualified bidders.

120. In the *833 Auction Comment Public Notice*, the Commission recognized that, because this auction could involve large numbers of bids and the round will be open for several hours, it does not expect that telephone bidding will be available in the 833 Auction. The Commission received no comments on this procedure. In the absence of objection and for ease of auction efficiency, the Commission directs Somos to conduct bidding via the internet. While Somos should have telephonic support available to help bidders, the bids must be submitted online. Therefore, bidders are strongly encouraged to formulate back-up contingencies to make sure they can submit their bids online during the bidding round.

##### 2. Information Relating to Auction Delay, Suspension, or Cancellation

121. The Commission adopts the proposal in the *833 Auction Comment Public Notice* that, by public notice or by announcement during the auction, the Commission, or Somos in consultation with the Commission, may delay or suspend the auction in the event of a natural disaster, technical failures, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Commission directs Somos to consult with Commission staff about resuming, rescheduling, or canceling the auction

in its entirety. If the bidding is delayed or suspended, the Commission may direct Somos to resume the auction starting from the beginning of the scheduled bidding round or for a shorter period, or cancel the auction in its entirety. The Commission will exercise this authority solely at its discretion.

### C. Bidding Procedures

#### 1. Bidding Eligibility

122. To be eligible to bid in the 833 Auction, an applicant must submit a sufficient and timely upfront payment. The amount of the applicant's upfront payment will determine its bidding eligibility—*i.e.*, a qualified bidder may submit only the number of bids reflected in its upfront payment. To help illustrate this point: If an applicant were to select 50 numbers on its application but submits an upfront payment of only \$1,000, it would be able to place bids on only 10 numbers (based on an upfront payment of \$100 per number).

123. If a qualified bidder attempts to place more bids than its bidding eligibility allows, its entire bid submission will be rejected and the bidder will be given a warning and an opportunity to fix its bids and re-submit. Neither Somos nor the Commission, however, are responsible for bids submitted in which the bidder has exceeded its bidding eligibility. Thus, bidders are strongly encouraged submit their bids well before the end of the single round to account for any issues that may arise.

#### 2. Bid Amounts

124. The Commission adopts the proposal in the *833 Auction Comment Public Notice* to allow bids only in whole dollar amounts. The Commission directs Somos to provide more detailed instructions on how qualified bidders should submit bids and an opportunity to practice the bid upload process. Bidders are encouraged to become familiar with the process well in advance of the bidding round.

#### 3. Bid Removal

125. A bidder will have the ability to remove any bid(s) that it has placed before the end of the round. The Commission directs Somos to provide specific instructions on how a bidder may do this. If a bidder removes any bid that it has placed before the end of the round, it will not be considered. Once the single round of bidding closes, a bidder may no longer remove, or otherwise withdraw, any of its bids.

## VI. Post-Auction Procedures

### A. Public Notice Announcing Winning Bidders

126. In the *Toll Free Assignment Modernization Order*, the Commission stated that, once the bidding concluded, it would release a public notice identifying the winning bidders and establishing the deadline for making final payment for winning bids. The Commission also stated in the *Toll Free Assignment Modernization Order* that the public notice would also explain how unsold inventory will be assigned after the 833 Auction.

127. In the *833 Auction Comment Public Notice*, the Commission included, among the various duties that Somos, as the auctioneer, will perform, the task of announcing the winning bidders. Because Somos will be the entity that will accept and process the bids for the 833 Auction, the Commission reiterates that Somos will announce the winning bids.

128. As for any toll free number offered in the 833 Auction that (i) was not selected on any auction application, (ii) did not receive a bid, or (iii) received one or more bids but the winning bidder defaulted, the Commission will issue a decision on how it will assign such numbers once it reviews the complete results of the 833 Auction. Two commenters advocate, in the case of defaulted bids, that the Commission offer the toll free number to the second highest bidder. The Commission defers until after the auction any decision on how to handle any numbers offered in the 833 Auction with no bid or where the winning bidder defaulted. Once the Commission has all the information available on the 833 Auction experiment, it can better assess how to handle these numbers.

### B. Final Payments

129. Each winning bidder must submit the full payment for its winning bid(s) within 10 business days following release of the public notice announcing the winning bidders. Similar to the final payment procedures in Commission spectrum auctions, the Commission will allow a winning bidder to make its final payment within five additional business days after the applicable deadline, provided it also pays a late fee of 5 percent of the winning bid. The Commission also adopts the proposal in the *833 Auction Comment Public Notice* that a winning bidder will declared in default and subject to the applicable default payment if it misses the final payment deadline and also fails to remit the required payment (plus the

applicable late fee) by the end of the late payment period.

130. Like upfront payments, final payments must be made in U.S. dollars and will be submitted to Somos. Moreover, the Commission adopts the proposal in the *833 Auction Comment Public Notice* to require final payments in excess of \$300 to be made through a wire transfer to Somos (or its payment designee) and any amounts under this threshold (*i.e.*, \$300 or less) can be made using ACH. Winning bidders can also use a wire transfer to submit final payments of \$300 or less, but also have the option to use ACH. As with allowing ACH for upfront payments below a certain threshold, this alternative payment process should make it easier for individuals or small entities that are the winning bidders for only a few toll free numbers, while ensuring prompt and assured payment of funds for those who had winning bids that exceed the \$300 threshold. Moreover, as noted in the *833 Auction Comment Public Notice*, the Commission proposed to specifically exclude payments via check or credit card, as such payment processes have increased risks associated with them, which may not be conducive to a timely post-auction process. For these reasons, the Commission adopts the proposal and only allows winning bidders to use ACH as an alternative to wire transfers for their final payments.

### C. Refunds

131. The Commission directs Somos to return any refunds of upfront payments (minus any final payments and any default payments) within 10 business days after the late final payment deadline (*i.e.*, within 25 business days of the public notice announcing winning bidders). All refunds of upfront payment balances will be returned to the payer of record unless the payer submits written authorization to Somos instructing otherwise.

### D. Auction Default Payments

132. If a winning bidder fails to make full payment on its bid or otherwise defaults for any reason, it will be subject to a default payment of 35 percent of the defaulted bid. In the *Toll Free Assignment Modernization Order*, the Commission stated that it expected that the procedures for handling defaults be modeled on those used in the Commission's spectrum auctions, but would defer the decision until the pre-auction process. In the *833 Auction Comment Public Notice*, the Commission proposed basing the default payment for the 833 Auction

only on a percentage of the defaulted amount, since the Commission has not yet decided if there will be a subsequent auction of toll free numbers.

Specifically, the *833 Auction Comment Public Notice* proposed a default payment of 35 percent of the defaulted bid, noting that the default percentage is higher than in most of Commission spectrum auctions to compensate for the absence of a deficiency portion of the default payment. The Commission received no comments on the proposed default procedures or percentage. Because the proposed procedure should sufficiently discourage insincere bidding and default, the Commission adopts both the proposed default procedure and default percentage. Moreover, if a default 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 forfeiture of their upfront payment and institution of proceedings to revoke any existing FCC authorizations held by the applicant.

#### *E. Reserving Toll Free Numbers/ Declaring a RespOrg*

133. Any potential subscriber that directly participates in the 833 Auction and is a winning bidder must work with a RespOrg after the auction to reserve a number in the Toll Free Database in accordance with § 52.101 of the Commission's rules. The Commission adopts the proposal in the *833 Auction Comment Public Notice* to require such declaration within 15 business days after the public notice announcing the winning bidders. If a winning bidder experiences problems working with RespOrgs such that it would be unable through no fault of its own to meet this deadline, it could report the problems to Somos, which will hold the number while these issues are resolved, and request waiver of the 15 business day deadline, consistent with the Commission's existing waiver standard.

#### *F. Secondary Market Considerations*

134. The secondary market, allowing the sale of numbers assigned during the 833 Auction, is a key component of the auction and the Commission's overall toll free assignment modernization efforts. As the Commission explained in the *Toll Free Assignment Modernization Order*, a secondary market "promotes the efficient operation of an auction" and, consistent with its goal of promoting a market-based approach to toll free number assignment, helps ensure that numbers are assigned to

those parties who can most efficiently use them. The Commission thus adopts procedures to allow for a secondary market for those 833 toll free numbers assigned via competitive bidding.

135. To evaluate the operation of this new secondary market, and consistent with the requirement established in the *Toll Free Assignment Modernization Order*, the Commission directs Somos to collect and maintain information on the parties involved in the secondary market transactions and make that information available to the Commission. Based on the proposal in the *833 Auction Comment Public Notice*, and the comments filed in the record, the Commission determines that RespOrgs must submit the information specified below about the parties involved in post-auction secondary market transactions involving their subscribers to Somos within 60 days of the RespOrg's actual knowledge of the transaction. This requirement will be included in Somos's tariff.

136. As an initial matter, the Commission permits parties to acquire and transfer the rights to use all numbers that were assigned via the 833 Auction. Two commenters argue that only 833 numbers that receive multiple bids at auction should be able to be bought and sold in the secondary market. Only one commenter explains the rationale for this argument: CenturyLink claims that the Commission should limit the secondary market in this way because, by allowing every auctioned number to be transferred on the secondary market, the Commission would "afford[] a special status and related reporting requirements to numbers based on competitive interest that was fleeting and not demonstrated at the auction." But CenturyLink misunderstands why the Commission chose to liberalize its secondary market rules for numbers assigned at auction in the first place. The Commission created an exception to the secondary market rules for numbers assigned via competitive bidding to "promote[] the efficient operation of an auction" because it "allows subscribers to purchase or sell numbers in response to the outcome of the auction, and limits pre-auction costs associated with estimating which—and how many—numbers a bidder may win." The proposed limitation would create uncertainty for prospective bidders about whether they will be able to transfer in the secondary market a given number on which they wish to bid and therefore it would frustrate this purpose. The Commission finds no reason to limit the ability of parties to buy and sell numbers in the secondary

market beyond what was set forth in the *Toll Free Assignment Modernization Order*.

137. Consistent with the proposal in the *833 Auction Comment Public Notice*, the Commission directs Somos to collect information regarding secondary market transactions. Specifically, the Commission directs Somos to collect contact information of both parties to a transaction including (i) name, (ii) address, (iii) email address, and (iv) phone number. This information will allow the Commission to fully evaluate the operation of the secondary market and will promote certainty and combat fraud in the marketplace by keeping track of change of title, both of which are important components to this toll free number auction experiment. The Commission does not, however, require Somos to collect information on the sale date and price. After reviewing the record, the Commission is persuaded by commenters who argue that subscribers may be hesitant to share sensitive business information such as the sale price, and it is not the Commission's intent with the reporting requirement to impede the robust operation of the secondary market. One commenter contends that the *833 Auction Comment Public Notice*, as it relates to the data collection and reporting obligation, "leaves some basic definitional problems unresolved." This obligation extends to transactions which would violate the Commission's brokering rule but are allowed by the exception for numbers assigned via competitive bidding. Put differently, covered transactions are those which result in the reassignment of an 833 number from one subscriber to another, bypassing the spare pool, which would have violated the Commission's prior first-come, first-served rule.

138. The *Toll Free Assignment Modernization Order* established a requirement that RespOrgs report the required secondary market transaction information to Somos. To implement this requirement and incentivize RespOrgs to provide this information promptly, the *833 Auction Comment Public Notice* proposed that RespOrgs must submit this information to Somos within 60 days of a transaction, against the penalty of denying access to the Toll Free Database until the information is reported, which would be included in the Somos tariff. The Commission adopts this proposal, with the modification based on the record that a RespOrg has 60 days from the time it has actual knowledge of the transaction within which to report the required information. The Commission further

adopts the proposal to allow a RespOrg to withhold service from a subscriber until it receives the necessary information. Finally, the Commission clarifies that, in the case of a transfer of a number that is also accompanied by a change of RespOrg, this obligation only applies to the RespOrg providing service to the purchasing subscriber.

139. The Commission is convinced by RespOrg commenters that they may not have reason to know of a secondary market transaction by one of their subscribers in all instances. To address this concern, the Commission provides RespOrgs 60 days from the date of actual knowledge of a transaction to report the information noted above about the secondary market transaction, rather than 60 days from the date of the transaction itself. This change in when the reporting obligation is triggered will avoid a situation in which a RespOrg is denied access to the Toll Free Database for a transaction of which it is unaware. The Commission nonetheless expects RespOrgs to exercise due diligence in monitoring secondary market transactions involving their subscribers.

140. RespOrg commenters argue that this requirement places too large of a burden on RespOrgs because the penalty for non-reporting is too harsh. The Commission disagrees. The Commission believes that the actual knowledge standard adopted reasonably moderates the penalty; the penalty is not triggered until a RespOrg has actual knowledge of a secondary market transaction for 60 days yet nonetheless fails to meet its obligation to report the transaction. In such a situation, the Commission finds the penalty appropriate, given its interest in tracking and analyzing the secondary market in toll free numbers during this experiment. The Commission also concludes that the actual knowledge standard negates the need for Somos to provide RespOrgs a 30-day cure period prior to imposing the penalty; the cure period was a response to the concern that RespOrgs may not know that a secondary market transaction occurred, which is obviated by the adoption of an actual knowledge standard. Further, the penalty for non-reporting is removed when a RespOrg provides Somos with the necessary transaction information. The Commission declines to go further and place an affirmative obligation on subscribers to report secondary market transaction information to Somos, as some commenters suggest, because such an obligation was not contemplated in the *Toll Free Assignment Modernization Order*. And because the Commission does not find this obligation to be overly burdensome for RespOrgs, it declines to

adopt alternative approaches suggested in the record.

## VII. Procedural Matters

### A. Paperwork Reduction Act

141. This document implements the information collections adopted in the *Toll Free Assignment Modernization Order* and contains additional information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. The Commission is currently seeking PRA approval for information collections related to the auction application process and the secondary market. In the present document, and its related information collection, the Commission requires the following information from potential bidders: (1) Applicant contact and other details; (2) direct ownership interests; (3) indirect ownership interests; (4) real parties in interests; (5) FCC-regulated entities or applicants for a FCC license in which the applicant, any real party in interest, or any direct interest holder of 10 percent or greater owns 10 percent or more stock; (7) whether the applicant is bidding on behalf of other entities; (8) disclosure of any allowable bidding arrangements; (9) the toll free numbers on which the applicant wishes to bid; and (10) any other exhibits or documentation the applicant deems necessary to apply to bid in the auction. Without this collected information, neither the Commission nor Somos (on the Commission's behalf) can hold the 833 Auction, nor can potential bidders participate in it.

142. In addition, with respect to post auction secondary market transactions, Somos will collect contact information on the Commission's behalf from parties to secondary market transactions. This information will allow the Commission to fully evaluate the operation of the secondary market, which is an important component to this toll free number auction experiment.

### B. Congressional Review Act

143. The Commission will send a copy of the *833 Auction Procedures Public Notice*, including the Supplemental Final Regulatory Flexibility Analysis, in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

### C. Supplemental Final Regulatory Flexibility Analysis

144. As required by the Regulatory Flexibility Act of 1980 (RFA), an Initial Regulatory Flexibility Analysis was incorporated in the Notice of Proposed

Rulemaking in the *Toll Free Assignment Modernization Order*, 82 FR 47669, Oct. 13, 2017, pursuant to which the 833 Auction will be conducted. A Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) was incorporated in the *833 Auction Comment Public Notice*. The Commission sought written public comments on the Supplemental IRFA. No comments were filed addressing the Supplemental IRFA. A Final Regulatory Flexibility Analysis (FRFA) was also incorporated in the *Toll Free Assignment Modernization Order*. The Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) in the *833 Auction Procedures Public Notice* supplements the FRFA to reflect the actions taken in the *833 Auction Procedures Public Notice* and conforms to the RFA.

145. *Need for, and Objectives of, the Public Notice*. The *833 Auction Procedures Public Notice* implements the auction procedures to be used by the Commission and Somos for competitive bidding in the 833 Auction for certain toll free numbers in the 833 code. The procedures adopted for the 833 Auction seek to balance three goals: (1) Promoting competition in the auction; (2) avoiding undue burdens on the applicants; and (3) assigning the 833 toll free numbers as expeditiously as possible. Moreover, the *833 Auction Procedures Public Notice* provides an overview of the procedures, auction dates and deadlines, requirements for participants, terms and conditions governing the 833 Auction and the post-auction requirements and payment processes.

146. To promote an efficient and fair administration of the competitive bidding process that will benefit all 833 Auction participants, including small entities, the Commission adopts the following procedures:

- Allow potential subscribers to participate in the 833 Auction either through a RespOrg that will bid on all the numbers in which the subscriber is interested in acquiring, or by submitting its own application and bidding for all the numbers in which it is interested;
- require each applicant in the 833 Auction to certify that (1) if it is bidding on its own behalf, it is also not participating in the auction through another entity and/or, if it is bidding on behalf of potential subscribers that it is not aware that the potential subscriber(s) are participating through another applicant; and (2) it, or any commonly-controlled entity, is not submitting multiple applications in the 833 Auction, utilizing the Commission's definitions for control adopted for

similar purposes in its spectrum auctions;

- prohibit each applicant in the 833 Auction from cooperating or collaborating with any other applicant with respect to its own, or one another's, or any other competing applicant's bids or bidding strategies, and will be prohibited from communicating with any other applicant in any manner the substance of its own, or one another's, or any other competing applicant's bids or bidding strategies (including the post-auction market for toll free numbers);

- prohibit certain agreements between applicants (whether the applicants are RespOrgs or potential subscribers) in the 833 Auction, and certain auction-related agreements among RespOrgs even where only one of the RespOrgs is an applicant in the 833 Auction;

- require any applicant RespOrg that bids for a potential subscriber to acquire a letter of authorization from the potential subscriber;

- require applicants to first acquire an "Auction ID" from Somos, which will verify the potential applicant's identity, and if any entity cannot be verified through the Somos verification process, it must then participate through a RespOrg;

- require each applicant, on its auction application, (1) identify each number on which it wishes to be able to bid and, for each number, the party (either itself or another entity) for which it is bidding, (2) provide the same level of ownership disclosure required in Commission auctions, (3) disclose any auction-related agreement, and (4) certify that it is not currently in default or delinquent on a non-tax debt to the Federal Government;

- for determining the winning bidder on tied bids for a toll free number, use a pseudorandom number assigned to each bid, and for only one bid received for a toll free number, assign the sole bidder the number and require no payment;

- conduct the 833 Auction using procedures for limited information disclosure;

- require potential bidders provide an upfront payment of \$100 per number, and treat all funds that a RespOrg submits as an upfront payment in the auction (regardless of whether the funds came from the RespOrg or a potential subscriber for which the RespOrg is bidding) as the upfront payment of the RespOrg that will be used to offset the final payment obligation for any winning bids of the RespOrg;

- establish a default payment of 35 percent of the defaulted bid;

- require full payment within 10 business days following release of the public notice of the winning bids, or full payment plus a 5 percent late fee, within five additional business days;

- require any potential subscriber that directly participates in the 833 Auction and is a winning bidder to declare its intent to work with a specific RespOrg within 15 business days following release of the public notice of winning bids; and

- require Somos to collect additional information on secondary markets and require RespOrgs submit all required data about post-auction secondary market transactions within 60 days of the RespOrg's knowledge of a transaction.

147. *Summary of Significant Issues Raised by Public Comments in Response to Supplemental IRFA.* There were no comments filed that addressed the procedures and policies proposed in the Supplemental IRFA.

148. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.* Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comment filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) and to provide a detailed statement of any change made to the proposed procedures as a result of those comments. The Chief Counsel did not file any comments in response to the proposed procedures in the *833 Auction Comment Public Notice*.

149. *Description and Estimate of the Number of Small Entities to Which the Procedures Will Apply.* The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the procedures adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA."

150. As noted above, FRFA was incorporated in the *Toll Free Assignment Modernization Order*. In that analysis, the Commission described in detail the small entities that might be significantly affected. In the *833 Auction Procedures Public Notice*, the Commission incorporates by reference

the descriptions and estimates of the number of small entities from the previous FRFA in the *Toll Free Assignment Modernization Order* in WC Docket No. 17–192.

151. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* The Commission designed the auction application process itself to minimize reporting and compliance requirements for applicants, including small business applicants. Parties desiring to participate in the 833 Auction must file an application in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on an applicant's auction application and certifications, as well as its upfront payment. The Commission decided in the *Toll Free Assignment Modernization Order* that it will not require applicants to submit a long-form application after the conclusion of the 833 Auction, given the lack of need to verify winning bidders' qualifications in this context and to limit the administrative burden on bidders, including small business entities.

152. *The 833 Auction Procedures Public Notice* provides instructions for each 833 Auction applicant to maintain the accuracy of its respective auction application electronically using the Somos Auction System and/or by direct communication with Somos. More specifically, small entities and other 833 Auction applicants will be qualified to bid in the auction only if they comply with the following: (1) Submission of an auction application (FCC Form 833) that is timely and is found to be substantially complete; and (2) timely submission of a sufficient upfront payment. An applicant whose application is found to contain deficiencies will have a limited opportunity during a resubmission window to bring its application into compliance with procedures set forth in the *833 Auction Procedures Public Notice*.

153. In the second phase of the process, there are additional compliance requirements for winning bidders. As with other winning bidders, any small entity that is a winning bidder will be required to submit the full payment for its winning bid(s) within 10 business days following release of the public notice announcing the winning bidders, or within 15 business days following release of the public notice announcing the winning bidders provided it also pays a late fee of 5 percent of the winning bid.

154. *Steps Taken to Minimize the Significant Economic Impact on Small*

*Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”

155. The Commission believes that the steps described below to facilitate participation in 833 Auction will result in both operational and administrative cost savings for small entities and other auction participants. For example, assigning toll free numbers through competitive bidding will benefit smaller entities rather than the prior first-come first-served basis which favored larger, more sophisticated entities that had invested in obtaining enhanced connectivity to the Toll Free Database. Moreover, the Commission also elected to allow potential subscribers, many of which are smaller entities, the choice between participating directly in the auction or indirectly through a RespOrg. In addition, the Commission created an alternative payment mechanism that will be available for both upfront and final payments, in which applicants can submit payments via ACH instead of wire transfer if the payments are below a \$300 threshold. The Commission believes such measures will benefit small entities, who may be interested in only acquiring one or perhaps a few toll free numbers.

156. The procedures adopted in the *833 Auction Procedures Public Notice* to facilitate participation in the 833 Auction will result in both operational and administrative cost savings for small entities and other auction participants. In light of the numerous resources that will be available from the Commission and Somos at no cost, the processes and procedures adopted in the *833 Auction Procedures Public Notice* should result in minimal economic impact on small entities. For example, prior to the auction, small entities and other auction participants may seek clarification of or guidance on complying with application procedures, reporting requirements, and the bidding system. Small entities as well as other auction participants will be able to avail themselves of (1) a web-based,

interactive online tutorial to familiarize themselves with auction procedures, filing requirements, bidding procedures, and other matters related to the 833 Auction and (2) a telephone hotline to assist with issues such as access to or navigation within the auction application system. The Commission and Somos also make copies of Commission decisions available to the public without charge, providing a low-cost mechanism for small businesses to conduct research prior to and throughout the auction. In addition, Somos will post public notices on its website, making this information easily accessible and without charge to benefit all 833 Auction applicants, including small businesses. These steps are made available to facilitate participation in the 833 Auction by all eligible bidders and may result in significant cost savings for small business entities who utilize these alternatives. Moreover, the adoption of bidding procedures in advance of the auctions is designed to ensure that the 833 Auction will be administered predictably and fairly for all participants, including small businesses.

157. The Commission will send a copy of the *833 Auction Procedures Public Notice*, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *833 Auction Procedures Public Notice* (or summary thereof) will also be published in the **Federal Register**.

Federal Communications Commission.

**Marlene Dortch,**  
*Secretary.*

[FR Doc. 2019-20526 Filed 9-25-19; 8:45 am]

**BILLING CODE 6712-01-P**

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

**48 CFR Parts 208, 212, 213, 215, 216, 217, 234, and 237**

[Docket DARS-2018-0055]

RIN 0750-AJ74

#### **Defense Federal Acquisition Regulation Supplement: Restrictions on Use of Lowest Price Technically Acceptable Source Selection Process (DFARS Case 2018-D010)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement sections of the National Defense Authorization Acts for Fiscal Years 2017 and 2018 that establish limitations and prohibitions on the use of the lowest price technically acceptable source selection process.

**DATES:** Effective October 1, 2019.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carrie Moore, telephone 571-372-6093.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

DoD published a proposed rule in the **Federal Register** at 83 FR 62550 on December 4, 2018, to implement the limitations and prohibitions on use of the lowest price technically acceptable (LPTA) source selection process provided in sections 813, 814, and 892 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114-328) and sections 822, 832, 882, and 1002 of the NDAA for FY 2018 (Pub. L. 115-91). Sixteen respondents submitted public comments in response to the proposed rule.

##### **II. Discussion and Analysis**

DoD reviewed the public comments in the development of the final rule. A discussion of the comments is provided as follows:

##### *A. Significant Changes as a Result of Public Comments*

No changes from the proposed rule are made in the final rule as a result of the public comments received.

##### *B. Analysis of Public Comments*

###### 1. Support for the Rule

*Comment:* Several respondents express support for the rule.

*Response:* DoD acknowledges support for the rule.

###### 2. General Comments

*Comment:* A respondent expresses concern that the rule will be interpreted as a complete prohibition on the use of the LPTA source selection process. The respondent recommends revising the rule to clarify that use of the process is acceptable and expand on the circumstances in which it is or is not appropriate for use in acquisitions.

*Response:* It is not the intent of the rule to prohibit the use of the LPTA source selection process. The LPTA source selection process is a valuable part of the best value continuum and an acceptable and appropriate source selection approach for many acquisitions. Instead, the intent of the