

Federal Register. If you want to comment on EPA's proposed approval of Virginia's revisions to its state UST program, you must do so at this time.

DATES: Send written comments by April 1, 2021.

ADDRESSES: Submit any comments, identified by EPA-R03-UST-2020-0291, by one of the following methods:

1. *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. *Email:* uybarreta.thomas@epa.gov.
Instructions: Direct your comments to Docket ID No. EPA-R03-UST-2020-0291. EPA's policy is that all comments received will be included in the public docket without change and may be available online at <https://www.regulations.gov> including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <https://www.regulations.gov>, or email. The federal website <https://www.regulations.gov>, is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through <https://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment. If EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. EPA encourages electronic submittals, but if you are unable to submit electronically, please reach out to the EPA contact person listed in the notice for assistance. If you need assistance in a language other than English, or you are a person with disabilities who needs a reasonable accommodation at no cost to you, please reach out to the EPA contact person by email or phone.

FOR FURTHER INFORMATION CONTACT: Thomas UyBarreta, (215) 814-2953, uybarreta.thomas@epa.gov, RCRA Programs Branch; Land, Chemicals, and Redevelopment Division; EPA Region 3, 1650 Arch Street (Mailcode 3LD30), Philadelphia, PA 19103-2029.

SUPPLEMENTARY INFORMATION: EPA has explained the reasons for this action in the preamble to the direct final rule. For additional information, see the direct final rule published in the "Rules and Regulations" section of this issue of the **Federal Register**.

Authority: This rule is issued under the authority of section 9004 of the Solid Waste Disposal Act of 1965, as amended, 42 U.S.C. 6991c.

Diana Esher,
Acting Regional Administrator, EPA Region 3.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 27

[AU Docket No. 20-429; FCC 21-14; FRS 17455]

Auction of Flexible-Use Service Licenses in the 2.5 GHz Band for Next-Generation Wireless Services; Comment Sought on Competitive Bidding Procedures for Auction 108

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; proposed auction procedures.

SUMMARY: In this document, the Commission announces an auction of approximately 8,300 geographic overlay licenses in the 2.5 GHz band, designated as Auction 108. This document proposes and seeks comment on auction procedures to be used for Auction 108.

DATES: Comments are due on or before May 3, 2021; and reply comments are due on or before May 17, 2021.

ADDRESSES: Interested parties may file comments or reply comments in AU Docket No. 20-429. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. The Commission strongly encourages interested parties to file comments electronically.

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS at <https://www.fcc.gov/ecfs/>.

- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

- Filings in response to the Auction 108 Comment Public Notice can be sent by commercial courier or by the U.S.

Postal Service. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial deliveries (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Dr., Annapolis Junction, MD 20701.

- U.S. Postal Service first-class, Express, or Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

- Until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.

- *Email:* We also request that a copy of all comments and reply comments be submitted electronically to the following address: auction108@fcc.gov.

FOR FURTHER INFORMATION CONTACT:

Auction Legal Questions: Erik Beith, (202) 418-0660, Erik.Beith@fcc.gov, or Daniel Habif, (202) 418-0660, Daniel.Habif@fcc.gov.

General Auction Questions: (717) 338-2868.

2.5 GHz Band Licensing Questions: Madelaine Maior, (202) 418-1466, Madalaine.Maior@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Public Notice (*Auction 108 Comment Public Notice*), AU Docket No. 20-429, FCC 21-14, adopted on January 13, 2021 and released on January 13, 2021. The complete text of this document, including its attachments, is available on the Commission's website at www.fcc.gov/auction/108 or by using the search function for AU Docket No. 20-429 on the Commission's ECFS web page at www.fcc.gov/ecfs. Alternative formats are available to persons with disabilities by sending an email to FCC504@fcc.gov or by calling the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

I. Introduction

1. By the *Auction 108 Comment Public Notice*, the Commission seeks comment on the procedures to be used for Auction 108, the auction of approximately 8,300 geographic overlay licenses in the 2.5 GHz band. The Commission seeks comment on whether to use a single-round auction format with user-defined package bidding, or a simultaneous multiple-round (SMR) auction format.

II. Licenses To Be Offered in Auction 108

2. Auction 108 will offer geographic overlay licenses for unassigned spectrum in the 2.5 GHz (2496–2690 MHz) band. With overlay licenses, licensees obtain the rights to geographic area licenses “overlaid” on top of the existing incumbent licenses, *2.5 GHz Report and Order*, 84 FR 57343, October 25, 2019. As with an ordinary flexible-use license, the overlay licensee may operate anywhere within its geographic area, subject to protecting the licensed areas (*i.e.*, circular Geographic Service Areas with a 35-mile radius) of incumbent licensees. If an incumbent licensee in a county cancels or terminates its license, then the overlay licensee obtains the rights to operate in the geographic area and on the channel of the cancelled license. An overlay licensee may clear its geographic area by purchasing the incumbent licenses, but it does not have the exclusive right to negotiate with the incumbent licensee for its spectrum rights or to purchase an incumbent license in the geographic area in which it has the overlay rights. The Commission will offer up to three blocks of spectrum—49.5 megahertz, 50.5 megahertz, and 16.5 megahertz blocks, respectively—licensed on a county basis. Specifically, the first license block will include channels A1–A3, B1–B3, C1–C3 (49.5 megahertz); the second license block will include channels D1–D3, the J channels, and channels A4–G4 (50.5 megahertz); and the third license block will include channels G1–G3 and the relevant K channels (16.5 megahertz of contiguous spectrum and 1 megahertz of the K channels associated with the G channel group). New overlay licenses in the Educational Broadband Service (EBS) portion of the 2.5 GHz band will be issued for 10-year, renewable license terms. A licensee in this band may provide any services permitted under terrestrial fixed or mobile allocations, as set forth in the non-Federal Government column of the Table of Frequency Allocations in 47 CFR 2.106.

3. The specific inventory of overlay licenses available in Auction 108 will be determined by the results of the Rural Tribal Priority Window. During the Rural Tribal Priority Window, federally recognized Tribes were given the opportunity to submit applications to acquire new 2.5 GHz licenses for currently unassigned white space spectrum to provide broadband service on rural Tribal lands before the remaining unassigned spectrum is made generally available through competitive bidding. The Rural Tribal Priority

Window opened on February 2, 2020, and the original deadline was extended by 30 days to close on September 2, 2020. The Commission received over 400 applications through the Rural Tribal Priority Window and the Wireless Telecommunications Bureau (WTB) has already granted over 150 of these applications. Based on review of applications received in the Rural Tribal Priority Window, the Office of Economics and Analytics (OEA), in conjunction with WTB, will release a public notice announcing the final inventory of 2.5 GHz band overlay licenses to be offered in Auction 108. This public notice will be released in advance of the deadline for the submission of short-form applications to bid in Auction 108 so that potential applicants can make informed decisions about whether to apply in light of information as to existing incumbents and potential Tribal licensees. Commission staff aims to process all pending Rural Tribal Priority Window applications prior to announcing the final auction inventory; however, there may be Tribal applications that remain pending at the time the auction inventory is announced. Potential bidders in Auction 108 should continue to investigate all factors that may affect each license on which they seek to bid throughout the auction process, including potential encumbrances that may result from pending Tribal applications.

4. Concurrent with the release of the *Auction 108 Comment Public Notice*, OEA and WTB have made available a file listing all county and frequency block combinations potentially available for Auction 108, subject to the results of the ongoing review of applications submitted during the Rural Tribal Priority Window. This file is listed as an “Attachment A” file on the Auction 108 website at www.fcc.gov/auction/108. The file listing available county and frequency block combinations does not include blocks or counties that are fully encumbered by existing licenses.

5. OEA and WTB will also make available resources to assist applicants in conducting due diligence research regarding potential encumbrances in the band prior to the release of the public notice announcing the final auction inventory. In addition to existing incumbents in the band, the pending Rural Tribal Priority Window applications represent the maximum potential additional encumbrances that may affect the licenses available in the auction. These resources will include a mapping tool to help identify and view existing licenses and Rural Tribal Priority Window applications in the

Commission’s Universal Licensing System (ULS) database. The mapping tool will be updated to reflect changes due to the grant or dismissal of any pending Tribal applications prior to the auction. Potential applicants are reminded, however, that this tool will not represent complete licensing information; all information should be confirmed in ULS for any specific license or area. More information about Rural Tribal Priority Window applications, including a current mapping tool to help identify the location of pending, accepted for filing, and granted applications, is available at www.fcc.gov/rural-tribal-window-updates. The licensing information provided on this web page does not represent complete licensing information. All information should be confirmed in ULS for any specific license or area.

6. Notwithstanding Commission resources described in the *Auction 108 Comment Public Notice*, each potential bidder is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the potential uses of a license that it may seek in Auction 108, including the availability of unassigned white space in any particular market. In addition to the typical due diligence considerations that the Commission encourages of bidders in all auctions, the Commission calls particular attention in Auction 108 to potential encumbrances due to existing licenses and the Rural Tribal Priority Window issues described above, which may impact the licenses available in Auction 108. Each applicant should closely follow releases from the Commission concerning these issues and consider carefully the technical and economic implications for commercial use of the 2.5 GHz band. The Commission makes no representations or warranties about the use of this spectrum for particular services, or about the information in Commission databases that is furnished by outside parties. Each applicant should be aware that a Commission auction represents an opportunity to become a Commission licensee, subject to certain conditions and regulations. This includes the established authority of the Commission to alter the terms of existing licenses by rulemaking, which is equally applicable to licenses awarded by auction. A Commission auction does not constitute an endorsement by the Commission of any particular service, technology, or product, nor does a Commission license constitute a guarantee of business success.

III. Implementation of Part 1 Competitive Bidding Procedures

7. In the *2.5 GHz Report and Order*, the Commission decided to conduct any auction of new 2.5 GHz band licenses in conformity with the amended part 1 rules. The Commission's part 1 rules require each applicant seeking to bid to acquire licenses in a spectrum auction to provide certain information in a short-form application (FCC Form 175), including ownership details and numerous certifications. Part 1, subpart Q's, competitive bidding rules also contain a framework for the implementation of a competitive bidding design, application and certification procedures, reporting requirements, and the prohibition of certain communications. The rules and requirements proposed in this section would apply in either a single bidding round auction or an SMR auction, unless clearly indicated otherwise.

A. Certification of Notice of Auction 108 Requirements and Procedures

8. In addition to the certifications already required under 47 CFR 1.2105, the Commission proposes to require any applicant seeking to participate in Auction 108 to certify in its short-form application, under penalty of perjury, that it has read the public notice adopting procedures for Auction 108 that will be released in advance of the short-form deadline, and that it has familiarized itself with those procedures and the requirements for obtaining a license and operating facilities in the 2.5 GHz band. The Commission believes that this requirement would help ensure that the applicant has reviewed the procedures for participation in the auction process and has investigated and evaluated those technical and marketplace factors that may have a bearing on its potential use of any licenses won at auction. Consequently, this requirement will promote an applicant's successful participation and will minimize its risk of defaulting on its auction obligations. As with other required certifications, an auction applicant's failure to make the required certification in its short-form application by the applicable filing deadline would render its application unacceptable for filing, and its application would be dismissed with prejudice. The Commission seeks comment on this proposal. The Commission also seeks comment on whether there are additional steps it should take with respect to the filing of short-form applications to further ensure and promote auction integrity.

B. Bidding Credit Caps

9. Consistent with the Commission's decisions in the *Updating Part 1 Report and Order*, 80 FR 56764, September 18, 2015, the Commission seeks comment on establishing reasonable caps on the total bidding credit amount that an eligible small business, very small business, or rural service provider may be awarded for Auction 108. The Commission administers its bidding credit programs to promote small business and rural service provider participation in auctions and in the provision of spectrum-based services.

10. Eligibility for the small business bidding credit is determined according to a tiered schedule of small business size definitions that are based on an applicant's average annual gross revenues for the relevant preceding period, and which determine the size of the bidding credit discount. In the *2.5 GHz Report and Order*, the Commission determined that eligibility for the small business bidding credit in auctions of new licenses in the 2.5 GHz band would be defined using two of the thresholds of the standardized schedule of small business sizes. Specifically, the Commission determined that an entity with average annual gross revenues for the preceding five years not exceeding \$55 million would be designated as a "small business" eligible for a 15% bidding credit, and that an entity with average annual gross revenues for the preceding five years not exceeding \$20 million would be designated as a "very small business" eligible for a 25% bidding credit. The Commission further determined that entities providing commercial communication services to a customer base of fewer than 250,000 combined wireless, wireline, broadband, and cable subscribers in primarily rural areas would be eligible for the 15% rural service provider bidding credit. The Commission defined "rural area" as a county with a population density of 100 persons or fewer per square mile.

11. To protect the integrity of the bidding credit program and to mitigate the incentives for abuse, the Commission, in the *Updating Part 1 Report and Order*, established a process to implement a reasonable cap on the total bidding credit amount that an eligible small business or rural service provider may be awarded in any auction, based on an evaluation of the expected capital requirements presented by the particular service and inventory of licenses being auctioned. The Commission determined that bidding credit caps would be implemented on an auction-by-auction basis, but

resolved that, for any particular auction, the total amount of the bidding credit cap for small businesses would not be less than \$25 million, and the bidding credit cap for rural service providers would not be less than \$10 million. For Auctions 101–103, 105, and 107, the Commission adopted a \$25 million cap on the total bidding credit amount that may be awarded to an eligible small business in each auction and a \$10 million cap on rural service provider bidding credits in each auction.

12. The Commission proposes to adopt the same bidding credit caps for Auction 108. As the Commission did for its recent auctions of spectrum for next-generation wireless services, it believes that the range of potential use cases suitable for spectrum in the 2.5 GHz band, combined with the relatively small geographic areas for new flexible-use overlay licenses of white space, may permit deployment of smaller-scale networks with lower total costs. Moreover, past auction data suggest that the proposed caps will allow the substantial majority of eligible businesses in the auction to take advantage of the bidding credit program. The Commission therefore believes that its proposed caps will promote the statutory goals of providing meaningful opportunities for bona fide small businesses to participate in the auction and in the provision of spectrum-based services, without compromising its responsibility to prevent unjust enrichment and ensure efficient and intensive use of spectrum.

13. Similarly, the Commission proposes to adopt a \$10 million cap on the total bidding credit amount that may be awarded to an eligible rural service provider in Auction 108. An entity is not eligible for a rural service provider bidding credit if it has already claimed a small business bidding credit. Based on its experience with other spectrum auctions, the Commission anticipates that a \$10 million cap on rural service provider bidding credits will not constrain the ability of any rural service provider to participate fully and fairly in Auction 108. In addition, to create parity in Auction 108 among eligible small businesses and rural service providers competing against each other in smaller markets, the Commission proposes a \$10 million cap on the overall bidding credit amount that any winning small business bidder may apply to licenses won in counties located within any partial economic area (PEA) with a population of 500,000 or less.

14. The Commission seeks comment on these proposed caps. Specifically, do the expected capital requirements

associated with operating in the 2.5 GHz band, the potential number and value of new overlay licenses, past auction data, or any other considerations justify a higher cap for either type of bidding credit? Moreover, are there convincing reasons for not maintaining parity with the bidding credit caps adopted in previous auctions of spectrum suitable for 5G? Commenters are encouraged to identify unique circumstances and characteristics of this mid-band auction that should guide us in establishing bidding credit caps, and to provide specific, data-driven arguments in support of their proposals.

15. The Commission reminds applicants applying for designated entity bidding credits that they should take due account of the requirements of the Commission's rules and implementing orders regarding de jure and de facto control of such applicants. These rules include a prohibition, which applies to all applicants (whether or not they are seeking bidding credits) starting at the short-form application filing deadline, against changes in ownership of the applicant that would constitute an assignment or transfer of control. Under 47 CFR 1.2107(c), the winning bidder must be the entity that files the post-auction long-form application. Pursuant to 47 CFR 1.929(a)(2), any substantial change in ownership or control of an applicant is classified as a major amendment. Applicants should not expect to receive any opportunities to revise their ownership structure after the filing of their short- and long-form applications, including making revisions to their agreements or other arrangements with interest holders, lenders, or others in order to address potential concerns relating to compliance with the designated entity bidding credit requirements. This policy will help to ensure compliance with the Commission's rules applicable to the award of bidding credits prior to the start of bidding in this auction, which will involve competing bids from those who do and do not seek bidding credits, and thus preserves the integrity of the auction process. In furtherance of this policy, applicants will not be permitted to change their bidding credit type selection (*i.e.*, from small business to rural service provider, or vice versa) after the short-form deadline. The Commission also believes that this will meet its objectives in awarding licenses through the competitive bidding process.

C. Prohibition of Certain Communications

16. Section 1.2105(c)(1) of the Commission's rules, 47 CFR 1.2105(c)(1), provides that, subject to specified exceptions, after the short-form application filing deadline, all applicants are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other or any nationwide provider of communications services that is not an applicant, or, if the applicant is a nationwide provider, any non-nationwide provider that is not an applicant, in any manner the substance of their own, or each other's, or any other applicants' bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after the down payment deadline. Section 1.2105(c)(5)(i), 47 CFR 1.2105(c)(5)(i), defines "applicant" as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10% or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application.

17. *Nationwide Providers Subject to the Prohibition of Certain Communications.* The operation of the rule prohibiting certain communications requires that the Commission identify each "nationwide provider" for purposes of § 1.2105(c)(1) in connection with each auction. Accordingly, consistent with the procedures adopted for prior auctions of flexible-use licenses for advanced wireless services, the Commission proposes to identify AT&T, T-Mobile, and Verizon as "nationwide providers" for the purpose of implementing its competitive bidding rules in Auction 108, including § 1.2105(c), the rule prohibiting certain communications. This is consistent with the Commission's identification of nationwide providers in the *2020 Communications Marketplace Report*. The Commission seeks comment on this proposal.

D. Information Procedures During the Auction Process

18. As an additional safeguard to further prevent the sharing of information about applicants' bids and bidding strategies and to discourage unproductive and anti-competitive strategic behavior, the Commission proposes to limit information available in Auction 108 in order to prevent the

identification of bidders placing particular bids until after the bidding has closed. The Commission has instituted limited information procedures in most recent spectrum auctions. While the Commission generally makes available to the public information provided in each applicant's FCC Form 175 following an initial review by Commission staff, it proposes to not make public until after bidding has closed: (1) The licenses that an applicant selects for bidding in its FCC Form 175, (2) the amount of any upfront payment made by or on behalf of an applicant for Auction 108, (3) any applicant's bidding eligibility, and (4) any other bidding-related information that might reveal the identity of the bidder placing a bid.

19. As in past Commission auctions, the Commission will not make public during a bidding round any real-time information on bidding activity. Bidders would have access both during and after a round to information related to their own bidding activity and eligibility. For example, bidders would be able to view their own levels of eligibility and submitted activity through the FCC auction bidding system.

20. After the close of bidding, bidders' license selections, upfront payment amounts, bidding eligibility, bids, and other bidding-related information would be made publicly available.

21. The Commission seeks comment on the above details of its proposal for implementing limited information procedures, or anonymous bidding, in Auction 108. Commenters opposing the use of limited information procedures in Auction 108 should explain their reasoning and propose alternative information rules.

E. Upfront Payments and Bidding Eligibility

22. In keeping with the Commission's usual practice in spectrum license auctions, the Commission proposes that applicants be required to submit upfront payments as a prerequisite to becoming qualified to bid. As described below, the upfront payment is a refundable deposit made by an applicant to establish its eligibility to bid on licenses. Upfront payments protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of bidding. The Commission notes that its rules require that any auction applicant that, pursuant to 47 CFR 1.2106(a)(2)(xii), certifies that it is a former defaulter must submit an upfront payment equal to 50% more than the amount that otherwise would be required. With these considerations in

mind, the Commission proposes upfront payments based on \$0.003 per MHz-pop, with a minimum of \$500 per license. Given the uncertain total amount of available white space spectrum in each 2.5 GHz band license pending resolution of Rural Tribal Priority Window applications and other factors, the Commission proposes to base upfront payments on the total potential MHz-pops of each license offered in the auction, rather than on available white space in each block. For the 49.5 megahertz and 50.5 megahertz blocks, the Commission proposes to base the calculation on 50 megahertz. Additionally, when calculating upfront payment amounts, the Commission proposes to round the results of calculations as follows: Results below \$1,000 will be rounded down to the nearest \$100; results between \$1,000 and \$10,000 will be rounded down to the nearest \$1,000; results between \$10,000 and \$100,000 will be rounded down to the nearest \$10,000; and results above \$100,000 will be rounded down to the nearest \$100,000. The proposed rounding procedures would lessen the differences between upfront payment amounts for licenses in counties with similar population instead of reflecting relatively small differences in total potential MHz-pops that are not necessarily representative of the available white space.

23. The Commission seeks comment on these upfront payment amounts, which are specified in the Attachment A file on the Auction 108 website at www.fcc.gov/auction/108. If commenters believe that these upfront payment amounts are not reasonable amounts, they should explain their reasoning and suggest an alternative approach.

24. The Commission further proposes that the amount of the upfront payment submitted by a bidder would determine its bidding eligibility in bidding units, which are a measure of bidder eligibility and bidding activity. The upfront payment does not limit the dollar amounts of the bids that a bidder may submit. The Commission proposes to assign each license that is available to be assigned a specific number of bidding units, equal to one bidding unit per \$100 of the upfront payment listed in the Attachment A file. The number of bidding units for a given license is fixed and does not change during the auction.

25. *Calculating Upfront Payments in the Single-Round Format.* To the extent that a bidder wishes to bid on multiple licenses simultaneously, it would need to ensure that its upfront payment provides enough eligibility to cover the total bidding units associated with the

licenses that the bidder can win given the bids it intends to submit. Under the single-round approach, a bidder's upfront payment would not be attributed to specific licenses. A bidder may place bids on multiple licenses consistent with its selections in its FCC Form 175, provided that the maximum number of bidding units associated with the licenses that the bidder can win does not exceed its bidding eligibility. Thus, in calculating its upfront payment amount, and hence its bidding eligibility, an applicant must determine the maximum number of bidding units needed to cover licenses that it may wish to win in the auction and submit an upfront payment amount covering that total number of bidding units. The Commission seeks comment on these procedures.

26. *Calculating Upfront Payments in the SMR Format.* If the Commission adopts the SMR auction format discussed below, a bidder that wishes to bid on multiple licenses simultaneously would need to ensure that its upfront payment provides enough eligibility. A bidder would be able to place bids on multiple licenses, provided that the total number of bidding units associated with those licenses does not exceed its current eligibility. Thus, in calculating its upfront payment amount and hence its initial bidding eligibility under this approach, an applicant must determine the maximum number of bidding units on which it may wish to bid (or hold provisionally winning bids) in any single round, and submit an upfront payment amount covering that total number of bidding units. The Commission seeks comment on this approach to upfront payments under an SMR auction format.

F. Auction Delay, Suspension, or Cancellation

27. For Auction 108, the Commission proposes that, at any time before or during the bidding process, OEA, in conjunction with WTB, may delay, suspend, or cancel bidding in Auction 108 in the event of a natural disaster, technical obstacle, network interruption, 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 a case, OEA would notify participants of any such delay, suspension, or cancellation by public notice and/or through the FCC auction bidding system's announcement function. If the bidding is delayed or suspended, OEA, in its sole discretion, may elect to resume the auction starting

from the beginning of the round, or it may cancel the auction in its entirety (subject to the scheduling in due course of another auction for this spectrum). The Commission emphasizes that OEA and WTB would exercise the authority to delay, suspend, or cancel bidding in Auction 108 solely at their discretion. The Commission seeks comment on this proposal.

G. Additional Default Payment Percentage

28. Any winning bidder that defaults or is disqualified after the close of an auction (*i.e.*, fails to remit the required down payment by the specified deadline, fails to submit a timely long-form application, fails to make full and timely final payment, or is otherwise disqualified) is liable for a default payment under 47 CFR 1.2104(g)(2). This payment consists of a deficiency payment, equal to the difference between the amount of the bidder's winning bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

29. The Commission's rules provide that, in advance of each auction, it will establish a percentage between 3% and 20% of the applicable winning bid to be assessed as an additional default payment. The level of this additional payment in each auction will be based on the nature of the service and the licenses being offered.

30. For Auction 108, the Commission proposes to establish an additional default payment of 15%, which is consistent with that adopted for prior auctions of spectrum suitable for 5G and other advanced wireless services. As noted in the *Commercial Spectrum Enhancement Act (CSEA)/Part 1 Report and Order*, 71 FR 6214, February 7, 2006, defaults weaken the integrity of the auction process and may impede the deployment of service to the public, and an additional default payment of up to 20% will be more effective in deterring defaults than the 3% used in some earlier auctions. At the same time, the Commission does not believe the detrimental effects of any defaults in Auction 108 are likely to be unusually great. In light of these considerations, the Commission proposes for Auction 108 an additional default payment of 15% of the relevant bid. The Commission seeks comment on this proposal.

IV. Proposed Bidding Procedures

31. The Commission proposes to conduct Auction 108 using either a single bidding round, after which the auction system will process the bids to determine winning bidders, or a simultaneous multiple-round ascending (SMR) auction format. Under the single-round format, winning bidders would pay the amounts of their winning bids for the licenses they are awarded (less any applicable bidding credit discount). The SMR auction format would offer every license for bid at the same time and consist of successive bidding rounds in which bidders may place bids on individual licenses. Under this format, bidding would remain open on all licenses until bidding stops on every license.

32. The procedures the Commission proposes for the single-round format on which it seeks comment differ from FCC spectrum auctions it has held in the past because the circumstances for Auction 108 differ in many respects from more typical spectrum auction scenarios. However, the Commission also outlines and seeks comment on SMR procedures that may be more familiar to potential auction participants.

33. The Commission notes the delegated authority of OEA to develop auctions jointly with WTB and expects that OEA and WTB will release a technical guide supplementing the information in the *Auction 108 Comment Public Notice* and including the mathematical details and algorithms of the single-round auction design. The corresponding technical information for an SMR auction is contained in the *Auction 108 Comment Public Notice*.

A. Single Bidding Round Auction Design

34. The Commission seeks comment on use of a single bidding round that would remain open long enough to give bidders ample time to submit, review and potentially resubmit, and confirm their bids. Bids submitted during the round would need to meet the activity rule. After the round closes, the submitted bids would be processed by the bidding system to determine the winning bids.

35. While this format departs from the multiple-round procedures that the Commission typically has used in auctioning spectrum licenses, the inventory of licenses available in Auction 108 will be very large (approximately 8,300 licenses) and, as a result, a multiple-round auction could require a number of months to complete. Although a clock auction of generic blocks with an assignment

phase to assign frequency-specific licenses can shorten the duration of a multiple-round auction relative to the Commission's SMR auction format, a clock auction format would not be appropriate here because each overlay license being offered is unique. Within a county, each block has a different amount of bandwidth—though not all frequency blocks are available in all counties—and even where a given frequency block is available in a county, white space may not be available throughout the county due to existing incumbent licensee operations. An SMR auction could last for months, which would require participating bidders to monitor the auction consistently, a resource commitment that is demanding for all bidders, but particularly for smaller entities, many of which the Commission expects will compete in Auction 108. In addition, a longer auction entails a longer prohibited communications quiet period, in which all applicants—including but not limited to all officers and directors of the entity submitting an application and all controlling interests of that entity—are subject to the rule prohibiting certain discussions of bids or bidding strategies. Moreover, smaller entities that are seeking only a limited number of relatively low value licenses may consider such a resource commitment to be too onerous and may choose not to participate in this auction. In contrast, the Commission anticipates that, based on estimated processing time, a single bidding round giving bidders ample time to submit their bids and bid processing could be completed within a week.

36. In addition, a single-round auction format may help overcome some of the inherent advantages of incumbent rights holders in the band and increase overall competition in the auction. Specifically, the Commission seeks comment on using a single-round auction format in the context of the existing licensing and leasing landscape of the 2.5 GHz band where a single entity holds a large share of the spectrum rights. A multiple-round auction will always give a bidder an opportunity to outbid its competitors, and given that the majority license-holder in this band is a nationwide service provider and is likely to be better funded than many other entities that are potentially interested in Auction 108, these other, smaller entities may feel as though they have little chance of winning when competing against the larger license-holder. Moreover, given that the larger entity's interests are geographically broad while the smaller entities tend to

have more localized interests, the larger entity would be able to “cost-average” by paying more for some licenses than its stand-alone valuation would otherwise indicate because it would be able to leverage savings from other licenses that it wins at less than its valuation. Other bidders, recognizing these advantages, consequently are likely to be deterred from participating in an auction where they expect that they would have little opportunity to win. Absent the participation of the smaller entities, the advantages to the majority license-holding entity would be even stronger. As a result of the diminished competition in the auction, prices may likely be lower than they would have been had the smaller entities participated. Conversely, in a single-round, pay-as-bid auction, the weak bidder has a better opportunity to win, it is more likely to participate in the auction, and prices can therefore be expected to be closer to the winning bidder's valuation. The Commission asks commenters to consider whether a single-round format would encourage greater participation in this auction than would an SMR auction. Would a smaller entity be more likely to participate if other, possibly larger entities did not always have an opportunity to place a higher bid, as is the case in a multiple-round ascending auction format?

37. The Commission recognizes that a single-round auction precludes the price discovery across licenses that is possible in a multiple-round auction. Price discovery is intended to help inform a bidder's decision to shift its resources across areas as relative prices change over the course of the auction, which is particularly helpful for a bidder with multiple alternative business plans but without sufficient resources to pursue all of them. The single-round auction on which the Commission seeks comment considers the potential losses in efficiency from the price discovery process and, on balance, finds that any losses are likely to be less consequential in this auction than is generally true for spectrum auctions. Based on input in the proceeding and the characteristics of the licenses offered in Auction 108—county-based, with non-uniform and occasionally significant encumbrances across areas, making them less suitable for larger-scale operations—it is the Commission's understanding that the majority of potential bidders in Auction 108 likely will be entities with specific local or regional interests, and therefore, they will not be hampered significantly by a lack of price discovery over multiple rounds for alternative areas. To determine their bid amounts, bidders

can incorporate information from significant secondary market activity in the 2.5 GHz band, including through auction or auction-like processes that have been used by incumbents to find interested parties and set prices, as well as data in ULS, and spectrum values from recent mid-band spectrum auctions, such as the recently-concluded Commission auction of Priority Access Licenses in the 3550–3650 MHz Band. Moreover, it has been suggested that smaller operators may have better knowledge of the local landscape and may be able to price their bids more accurately than larger entities without ties to such local rural areas.

38. The bidding procedures the Commission proposes for the single-round format include several mechanisms for ensuring that many important benefits of a multiple-round auction can be accommodated under the single-round format. Importantly, the Commission seeks comment on procedures to ensure that certain potentially critical aggregations of licenses can be bid on with an either/or indicator so that a bidder can indicate that it wishes to be assigned only one of a group of substitutable licenses. This procedure offers a useful advantage that is not feasible in a multiple-round auction where a large number of items precludes flexible package bidding. With these mechanisms, the Commission is confident that bidders can simply and effectively represent their bidding interests in a single-round format.

39. The Commission seeks comment on any specific aspects of this single-round auction with which commenters agree or disagree. In particular, do potential bidders see the time savings of a single-round auction as valuable relative to the SMR auction that could last for several months? Do commenters believe that the single-round format would disproportionately favor one group of bidders or another? Is there any reason to conclude that its understanding of the type of entities likely to participate in Auction 108 is inaccurate or unsupported by the record in the Transforming the 2.5 GHz Band proceeding, WT Docket No. 18–120?

40. Prior to the start of Auction 108, the Commission would make available to bidders various educational materials.

1. Pay-As-Bid Pricing Rule

41. Under the single-round auction format, each winning bidder would pay the sum of its winning bid amounts for the licenses it is awarded, less any applicable bidding credit discount. Accordingly, a bidder with bidding

credits should bid an undiscounted (full-price) amount for the licenses it wishes to win.

42. The Commission would use a pay-as-bid payment rule to give bidders more certainty about the cost of their winning bids than would a “second price” payment rule, in which the winning bidder would pay a price corresponding to the next best bid or set of bids. In the simple case of an individual item and no package bids, the “second price” would be the second-highest bid. In the context of a combinatorial winner determination process such as the Commission proposes here, the bidding system would compare the revenue of the winning combination of bids with the highest revenue possible absent the winning bidder’s bid, and subtract the difference from the winning bidder’s bid to determine the second, or Vickrey, price. A pay-as-bid rule may also be useful in discouraging undesirable strategic behavior. In a second-price auction where the highest bidder would win but pay only the amount of the second-highest bid, a dominant entity may overbid on a large group of licenses if it anticipates that competing bids for most of those licenses would be considerably lower, so that expected gains would outweigh any losses. In contrast, with a pay-as-bid rule, each bidder would have to pay the amount of its high bid for each license it wins, discouraging such aggressive strategies by entities with interests in a large number of areas. Moreover, given the very large inventory of licenses offered in Auction 108, the computation of “second prices” (or Vickrey prices) would be exceedingly complex and potentially intractable within a reasonable amount of processing time. The determination of a single Vickrey price involves solving an additional combinatorial optimization problem, which could take a significant amount of time to solve. The Commission has computed Vickrey prices during the assignment phase of several recent spectrum clock auctions where, in each assignment phase market, the number of licenses being assigned was less by orders of magnitude and only a relatively small number of bidders were being assigned licenses.

43. Might a resource-constrained smaller bidder be more inclined to compete at auction because it has more certainty over the amount it might pay? Or might a small entity be more likely to participate because a dominant entity will have less incentive to strategically overbid than in a second-price auction? The Commission seeks comment on the use of a pay-as-bid payment rule.

2. Bidding Activity and Eligibility

44. Consistent with its proposal to determine bidding eligibility in bidding units based on the amount of a bidder’s upfront payment, the Commission proposes to determine bidding activity in terms of bidding units, as well. Each license will be assigned a certain number of bidding units. For a single round of bidding, the Commission would limit a bidder’s total bidding activity such that the maximum number of bidding units associated with the licenses that the bidder can win does not exceed its total eligibility in bidding units.

45. To implement this procedure, when a bidder uploads a set of bids via the internet to the FCC auction bidding system, the system would calculate the maximum bid amount and the maximum number of bidding units associated with the bids. If the bids do not exceed the bidder’s eligibility and otherwise are valid bids, the bidding system would accept the bid submission. If the submitted bids exceed the bidder’s eligibility, the bids would be rejected and new bids could be submitted before the close of the round. In addition, during the bidding round, the bidding system would inform the bidder of a running total of its activity in terms of bidding units and the total value of all of its submitted bids. The Commission asks for comment on these procedures.

3. Minimum Bids and Reserve Prices

46. As part of the pre-bidding process for each auction, section 309(j) of the Communications Act of 1934, as amended, mandates that the Commission prescribes methods for establishing reasonable minimum bid amounts for licenses subject to auction unless such bid amounts are not in the public interest. Accordingly, the Commission proposes to establish minimum bid amounts for Auction 108.

47. Given the potential lack of accurate information on available white space in the 2.5 GHz band, the Commission proposes to establish the minimum bid amounts in Auction 108 using the total potential MHz-pops of each license offered in the auction, rather than on available white space in each block. The Commission proposes to base these calculations on \$0.006 per MHz-pop, with a minimum of \$500 per license. For the 49.5-megahertz and 50.5-megahertz blocks, the Commission proposes to base the calculation on 50 megahertz. Additionally, when calculating minimum bid amounts, the Commission proposes to round the results of calculations as follows:

Results below \$1,000 will be rounded down to the nearest \$100; results between \$1,000 and \$10,000 will be rounded down to the nearest \$1,000; results between \$10,000 and \$100,000 will be rounded down to the nearest \$10,000; and results above \$100,000 will be rounded down to the nearest \$100,000. The proposed rounding procedures would lessen the differences between minimum bid amounts for licenses in counties with similar population instead of reflecting relatively small differences in total potential MHz-pops that are not necessarily representative of the available white space. The Commission seeks comment on these minimum bid amounts, which are specified in the Attachment A file on the Auction 108 website at www.fcc.gov/auction/108. If commenters believe that these minimum bid amounts would result in unsold licenses or are not reasonable amounts, they should explain their reasoning and propose an alternative approach. Commenters should support their claims with valuation analyses and suggested amounts or formulas for minimum bids. The Commission does not propose a separate aggregate reserve price, below which the auction would not conclude, and it seeks comment on that proposal. The Commission is not aware at this time of circumstances that require establishment of an aggregate reserve price in the public interest for this auction of overlay licenses in the 2.5 GHz band and propose only the minimum bids that it discusses here.

4. Package Bidding

48. For the single-round format, the Commission proposes a flexible form of package bidding, which would allow bidders to submit bids for packages of multiple licenses within the same county or for multiple geographic area licenses, *i.e.*, licenses covering multiple metropolitan counties within a specified geographic region.

49. *Packages of Multiple Blocks within a County.* For the single-round format, the Commission proposes to allow a bidder to submit package bids for two or three licenses in a single county, in order to give the bidder more control in this single-round auction over the number and combination of licenses that it may win. By contrast, in a multiple-round auction, a bidder has greater ability to shape the combination of licenses that it is assigned. The Commission proposes these limited package bidding procedures for the single-round format to address a bidder's need to win at least two or three blocks in a county if it wins any blocks. This would enable a bidder to

ensure that if it won any licenses in a county, it would win sufficient licenses to facilitate high-bandwidth services and applications. A package bid would consist of a group of licenses and a single price that would apply to the entire group. The bidding system would determine the winning combination of licenses taking into account that all or none of the licenses in a package bid are to be assigned to the bidder.

50. For example, if a bidder is interested in winning any two license blocks in a county, but not a single license or all three licenses, it could submit three package bids for each of the two-license block combinations in the county. The bidder would be ensured of winning two licenses if it wins any of them.

51. *Packages of Multiple Metropolitan Counties.* The Commission proposes procedures to permit certain package bids that include licenses in multiple metropolitan counties, as long as the counties in a bid are within a given geographic region or area. The Commission proposes to define "metropolitan" for this purpose as those counties that are not subject to the small-market bidding credit cap. Counties located within any PEA with a population of 500,000 or less are subject to the small-market bidding credit cap. Thus, metropolitan counties are those located within any PEA with a population greater than 500,000.

52. For the single round format, the Commission proposes to limit an individual package bid further to include licenses only in metropolitan counties that lie within the same Major Economic Area (MEA). This limitation would enable packaging across the interdependent counties in a metropolitan market, would prevent the submission of overly broad packages, and recognizes the need to maintain bidding and computational manageability. There are 51 MEAs nationwide; MEAs are intermediate in size between Economic Areas (EAs) and Regional Economic Area Groupings (REAGs). In addition, the Commission will license Guam and the Northern Mariana Islands, Puerto Rico and the U.S. Virgin Islands, and American Samoa, which have been assigned Commission-created MEA numbers 49–51, respectively. Therefore, a single package bid could include licenses in two or more metropolitan counties in a given MEA; the non-metropolitan counties in the MEA could be bid for only as single counties (but potentially as packages of two or three licenses in a single county). Finally, for computational reasons, the Commission proposes that the total number of

package and/or individual bids that a bidder may submit involving metropolitan counties in an MEA is limited to 250. If the number of individual licenses available in the metropolitan counties in a single MEA exceeds 250, an exception to the limit would permit a bidder to submit a bid for each individual license. The Commission does not propose a limit on individual county-level bids, package or otherwise, that do not involve metropolitan counties.

53. A package bid would consist of a set of licenses in a set of counties and a single price applicable to the entire set of licenses in those counties. Within the proposed limits the Commission sets forth here, a bidder could include any combination of counties in a package—*i.e.*, packages would not be pre-defined.

54. In proposing these procedures for package bidding for the single-round format, the Commission aims to balance the needs of smaller entities with very localized interests with the requirements of entities that wish to create larger networks. Permitting packages of the licenses within a county provides a simple mechanism for a bidder to guard against winning an undesirable combination or number of licenses in a single county, which is likely to be useful to all bidders. Allowing multiple-county packages of licenses only for metropolitan areas addresses the needs of entities with larger networks to ensure that they do not win an undesired patchwork of more heavily populated areas. In such areas, counties of smaller and greater competitiveness may make winning such patchworks potentially more likely. At the same time, limiting the scope of multiple-county packages to metropolitan counties within a single MEA reduces the potential for a bidder to leverage a highly-valued aggregation in one area in order to win licenses in other areas where bidders for individual counties may be the more efficient users of those licenses. Moreover, limits on package bids help reduce complexity for the bidder and enhance computational feasibility.

55. The Commission seeks comment on these procedures to allow bidding for packages of multiple licenses within a single county and for packages of bids for multiple metropolitan counties within an MEA. The Commission asks commenters to consider how changes they suggest to these procedures might impact the different needs of the wide variety of potential bidders that may be interested in Auction 108. In particular, the Commission seeks comment on the use of MEAs as the relevant "region" for limiting the metropolitan counties that

can be included in a single package bid. Would a smaller aggregation, such as EAs, be more appropriate? Alternatively, would larger areas, such as REAGs be preferable? The Commission also asks commenters to address the proposed definition of "metropolitan." Would an alternative definition of more heavily populated counties be simple to implement and consistent with other definitions used in this and other recent Commission spectrum auctions?

5. Either/Or Indicator

56. Because a single-round auction does not give a bidder an opportunity to move its bids from one area to another as prices change, or from one block to another within an area, as does a multiple-round auction, the Commission proposes to allow a bidder to indicate that two or more of its bids are to be treated as mutually exclusive by the bidding system when assigning winning bids. In other words, a bidder can indicate that it wants to win only one of the bids in a group of bids it specifies. For example, if a bidder is interested in winning one of the three licenses available in a county, it could submit separate bids for each of the three licenses and indicate that it wishes to win only one of them. A bidder's upfront payment amount and its activity and eligibility calculations would be based on the largest set of bids that the bidder can win taking into account that some bids may be mutually exclusive.

57. The Commission proposes that a bidder may indicate that it wants the bidding system to consider the bids in a specified group as mutually exclusive as long as either all the bids in the group involve the same non-metropolitan county or all the bids in the group involve only metropolitan counties in the same MEA. The Commission further seeks comment on allowing each bid to be included in at most one mutually exclusive group of bids. The Commission proposes these limits on either/or bids to ensure that the combinatorial optimization winner determination problem is feasible, given the extremely large number of potential combinations of bids that must be considered. A group of mutually exclusive bids can include individual and/or package bids.

58. The Commission asks commenters to consider whether these procedures to allow a bidder to use an either/or indicator to instruct the bidding system to assign only one of a specified group of bids would be helpful in managing the bidder's potential winnings if this single-round auction format is adopted.

6. Bid Processing and Winning Bids

59. To determine winning bids in the single-round format, the Commission proposes that after the single bidding round, the bidding system would use optimization software to determine the value-maximizing combination of (package and individual) bids, taking into account each bidder's mutually exclusive either/or bids. A bid of a bidder with a bidding credit would be considered in the optimization at its undiscounted bid price. In contrast, for payment purposes, the bidding credit discount for a bidder with a bidding credit will be subtracted from the bidder's total winning bids, applying any bidding credit caps, to determine its net winning bids.

60. The Commission also seeks comment on assigning each individual or package bid a pseudo-random number upon submission, such that, if there are ties among the value-maximizing combinations of bids, the bidding system would determine the winning bids by finding the set that maximizes the sum of pseudo-random numbers.

61. Because there is a very small but positive probability that the optimization software would be unable to provide an exact solution to the problem of determining the value-maximizing combination of bids within a reasonable amount of time, the Commission seeks comment on use of an "escape clause." Under the proposed escape clause, if the optimization software does not yield an exact solution within 48 hours, then the winning set of bids would be determined by the best solution identified to that point. Winning bidders would pay the amounts of their winning bids, consistent with the pay-as-bid pricing rule.

62. The Commission seeks comment on these proposed bid processing procedures for this novel single-round auction with package bidding, including the tie-breaking mechanism, the escape clause generally, and the proposed 48-hour computational period.

B. Simultaneous Multiple-Round Auction Design

63. The Commission also seeks comment on using its SMR auction format for this auction. This type of auction offers every license for bid at the same time and consists of successive bidding rounds in which bidders may place bids on individual licenses. The SMR procedures on which the Commission seeks comment below are consistent with those adopted in prior Commission SMR auctions. Typically,

bidding remains open on all licenses until bidding stops on every license. This format would not provide for package bidding because of the significant complexity that this would present, for both bidders and the bidding system, given that the 2.5 GHz band plan has a potential inventory of approximately 8,300 licenses.

64. The Commission has predominantly used an SMR format for spectrum auctions, and therefore this format is familiar to potential bidders that have participated in past Commission spectrum auctions. An SMR format allows price discovery, so that a bidder may observe how prices differ across areas or frequency blocks, and to modify its bidding strategies accordingly. In addition, multiple rounds of bidding may give a bidder more confidence in its bid amounts in cases where there is a significant "common" value element to the licenses being auctioned beyond the particular value to the bidder in its business plan.

65. The Commission seeks comment on whether using an auction design that is familiar to bidders is important in helping potential participants feel more comfortable with participating in Auction 108. The Commission also asks whether allowing price discovery through a multiple round auction format is particularly important in this auction, and whether such benefits would warrant the additional time required to conduct an SMR auction relative to a single-round. Would such benefits outweigh the potential advantages of a single-round format to smaller entities discussed above?

1. Bidding Rounds

66. Under the SMR format, Auction 108 would consist of sequential bidding rounds, each of which would be followed by the release of round results. The initial bidding schedule would be announced in a public notice to be released at least one week before the start of bidding. Details on viewing round results, including the location and format of downloadable results files for each round would be included in the same public notice.

67. Under this auction format, the Commission would conduct Auction 108 over the internet using the FCC auction bidding system. Bidders would have the option of placing bids online or by telephone through a dedicated auction bidder line.

68. OEA would retain the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. This would allow

OEA to change the amount of time for bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors. The large number of licenses available in the 2.5 GHz band implies that the SMR format could involve a large number of bidding rounds, potentially lasting several months. The Commission seeks comment on this approach. Commenters on this issue should address the role of the bidding schedule in managing the pace of the auction, specifically discussing the tradeoffs in managing auction pace by bidding schedule changes, by changing the activity requirements or bid amount parameters, or by using other means.

2. Stopping Rule

69. The Commission has discretion to establish stopping rules before or during multiple-round auctions in order to complete the auction within a reasonable time. Under this SMR auction format, the Commission would employ a simultaneous stopping rule approach, which means all licenses remain available for bidding until bidding stops on every license. Specifically, bidding would close on all licenses after the first round in which no bidder submits any new bids, applies a proactive waiver, or withdraws any provisionally winning bids (if bid withdrawals are permitted). Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round. Under this simultaneous stopping rule, bidding would remain open on all licenses until bidding stops on every license. Consequently, under this approach, it is not possible to determine in advance precisely how long the bidding in Auction 108 would last.

70. Further, OEA would retain the discretion to exercise any of the following stopping options during Auction 108:

Option 1. The auction would close for all licenses after the first round in which no bidder applies a waiver, no bidder withdraws a provisionally winning bid (if withdrawals are permitted in Auction 108), or no bidder places any new bid on a license for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule.

Option 2. The auction would close for all licenses after the first round in which no bidder applies a waiver, no

bidder withdraws a provisionally winning bid (if withdrawals are permitted in Auction 108), or no bidder places any new bid on a license that already has a provisionally winning bid. Thus, absent any other bidding activity, a bidder placing a new bid on an FCC-held license (a license that does not have a provisionally winning bid) would not keep the auction open under this modified stopping rule.

Option 3. The auction would close using a modified version of the simultaneous stopping rule that combines Option 1 and Option 2 above.

Option 4. The auction would close after a specified number of additional rounds (special stopping rule) to be announced by OEA. If OEA invokes this special stopping rule, it would accept bids in the specified final round(s), after which the auction would close.

Option 5. The auction would remain open even if no bidder places any new bid, applies a waiver, or withdraws any provisionally winning bids (if withdrawals are permitted in Auction 108). In this event, the effect would be the same as if a bidder had applied a waiver. The activity rule would apply as usual, and a bidder with insufficient activity would lose bidding eligibility or use a waiver.

71. Under the SMR format, OEA would exercise these options only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising these options, OEA would likely attempt to change the pace of Auction 108. For example, OEA could adjust the pace of bidding by changing the number of bidding rounds per day and/or the minimum acceptable bids. Under this approach, OEA would retain continuing discretion to exercise any of these options with or without prior announcement by OEA during the auction. The Commission seeks comment on these procedures.

3. Activity Rule

72. In order to avoid unduly prolonging the length of the auction, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. The bidding system calculates a bidder's activity in a round as the sum of the bidding units associated with any licenses upon which it places bids during the current round and the bidding units associated with any licenses for which it holds provisionally winning bids. Bidders are

required to be active on a specific percentage of their current bidding eligibility during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

73. Under an SMR auction format, the Commission would consider dividing the auction into at least two stages, each characterized by a different activity requirement. For example, in a first stage, bidders could be required to be active on 80% of their bidding units, while in a later stage, they could be required to be active on 95% of their bidding units. The Commission would also consider conducting the auction in a single stage, potentially with a 100% activity requirement. If the Commission does not conduct a single stage, the auction would start in Stage One. OEA would then have the discretion to advance the auction to another stage by announcement during the auction. In exercising this discretion, the Commission anticipates that OEA would consider a variety of measures of auction activity, including but not limited to, the length of the auction, the percentage of bidding units associated with licenses on which there are new bids, the number of new bids, and the increase in revenue. For example, when monitoring activity for determining when to change stages, OEA could consider the percentage of bidding units of the licenses receiving new provisionally winning bids, excluding any FCC-held licenses. In past auctions, OEA has generally—but not always—changed stages when this measure was approximately 20% or below for three consecutive rounds of bidding. The Commission seeks comment on these procedures for activity requirements.

4. Activity Rule Waivers and Reducing Eligibility

74. For the SMR auction format, when a bidder's activity in the current round is below the required minimum level, it could preserve its current level of eligibility through an activity rule waiver, if available. An activity rule waiver applies to an entire round of bidding, not to a particular license. Activity rule waivers can be either proactive or automatic. Activity rule waivers are primarily a mechanism for a bidder to avoid the loss of bidding eligibility in the event that exigent circumstances prevent it from bidding in a particular round.

75. Under an SMR auction format, each bidder in Auction 108 would be

provided with three activity rule waivers that could be used as set forth at the bidder's discretion during the course of the auction. The FCC auction bidding system would assume that a bidder that does not meet the activity requirement would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system would automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required unless: (1) The bidder has no activity rule waivers remaining; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the activity requirement. If a bidder has no waivers remaining and does not satisfy the required activity level, the bidder's current eligibility would be permanently reduced, possibly curtailing or eliminating the ability to place additional bids in the auction.

76. A bidder with insufficient activity might wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, then the bidder affirmatively would have to override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC auction bidding system. In this case, the bidder's eligibility would be permanently reduced to bring it into compliance with the activity rule described above. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder could not regain its lost bidding eligibility.

77. Under the simultaneous stopping rule for this auction format, a bidder would be permitted to apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively were to apply an activity rule waiver (using the proactive waiver function in the FCC auction bidding system) during a bidding round in which no bids are placed or withdrawn (if bid withdrawals are permitted in Auction 108), the auction would remain open and the bidder's eligibility would be preserved. An automatic waiver applied by the FCC auction bidding system in a round in which there is no new bid, no bid withdrawal (if bid withdrawals are permitted in Auction 108), or no proactive waiver would not keep the auction open. The Commission seeks comment on this approach.

5. Reserve Price or Minimum Opening Bids

78. If the Commission adopts an SMR auction format, then it would also establish minimum opening bid

amounts. The bidding system would not accept bids lower than these amounts.

79. The Commission would calculate minimum opening bid amounts on a license-by-license basis using the same calculations outlined for the single bidding round auction design based on \$0.006 per MHz-pop. The Commission seeks comment on these minimum opening bid amounts, which are specified in Attachment A to the *Auction 108 Comment Public Notice*. If commenters believe that these minimum opening bid amounts would result in unsold licenses or are not reasonable amounts under an SMR format, they should explain why this is so. Commenters should support their claims with valuation analyses and suggested amounts or formulas for minimum opening bids for this auction design.

80. In establishing minimum opening bid amounts under the SMR format, the Commission particularly seeks comment on factors that reasonably could have an impact on bidders' valuation of the spectrum, including the type of service offered, market size, population covered by the proposed facility, and any other relevant factors.

81. Commenters may also wish to address the general role of minimum opening bids in managing the pace of the auction. For example, commenters could compare using minimum opening bids—e.g., by setting higher minimum opening bids to reduce the number of rounds it takes licenses to reach their final prices—to other means of controlling auction pace, such as changes to bidding schedules or activity requirements.

82. The Commission would not establish any aggregate reserve price for licenses offered through an SMR auction format. The Commission is not aware at this time of circumstances that require establishment of an aggregate reserve price in the public interest for this auction of overlay licenses in the 2.5 GHz band and seek comment only on the per license minimum opening bids that it discusses here. The Commission seeks comment on this issue. If commenters believe the Commission should establish an aggregate reserve price, they should explain why and support their claims with valuation analyses and suggested amounts or formulas for reserve prices.

6. Bid Amounts

83. Under an SMR auction format, an eligible bidder with sufficient eligibility, in each round, would be able to place a bid on a given license in any of up to nine different amounts—the minimum acceptable bid amounts and additional

bid amounts discussed below. Under this approach, the FCC auction bidding system would list the acceptable bid amounts for each license.

84. *Minimum Acceptable Bid Amounts.* The first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a license would be equal to its minimum opening bid amount until there is a provisionally winning bid on the license. Once there is a provisionally winning bid for a license, the minimum acceptable bid amount for that license would be equal to the amount of the provisionally winning bid plus a percentage of that bid amount calculated using the activity-based formula described below. In general, the percentage would be higher for a license receiving many bids than for a license receiving few bids. In the case of a license for which the provisionally winning bid has been withdrawn (if withdrawals are allowed in Auction 108), the minimum acceptable bid amount would equal the second highest bid received for the license.

85. The percentage of the provisionally winning bid used to establish the minimum acceptable bid amount (the additional percentage) would be calculated based on an activity index at the end of each round. The activity index is a weighted average of (a) the number of distinct bidders placing a bid on the license in that round, and (b) the activity index from the prior round. Specifically, the activity index is equal to a weighting factor times the number of bidders placing a bid covering the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. For Round 1 calculations, because there is no prior round (i.e., no round 0), the activity index from the prior round would be set at 0. The additional percentage is determined as one plus the activity index times a minimum percentage amount, with the result not to exceed a given maximum. The additional percentage is then multiplied by the provisionally winning bid amount to obtain the minimum acceptable bid for the next round. The result will be rounded using the Commission's standard rounding procedures for auctions: Results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10. Under the SMR auction format, the weighting factor would be set initially at 0.5, the minimum percentage at 0.1 (10%), and the

maximum percentage at 0.2 (20%). Hence, at these initial settings, the minimum acceptable bid for a license would be between 10% and 20% higher than the provisionally winning bid, depending upon the bidding activity for the license. Equations and examples are shown in Attachment B to the *Auction 108 Comment Public Notice*. The Commission seeks comment on whether to use this activity-based formula or a different approach for the SMR auction format. In particular, the Commission asks whether it should set the maximum percentage at a higher amount, for example 30% or more, in light of concerns over the large number of rounds that may be required for this auction.

86. *Additional Bid Amounts*. The FCC auction bidding system would calculate any additional bid amounts using the minimum acceptable bid amount and an additional bid increment percentage. The minimum acceptable bid amount would be multiplied by the additional bid increment percentage, and that result (rounded) would be the additional increment amount. The first additional acceptable bid amount would equal the minimum acceptable bid amount plus the additional increment amount. The second additional acceptable bid amount would equal the minimum acceptable bid amount plus two times the additional increment amount; the third additional acceptable bid amount would be the minimum acceptable bid amount plus three times the additional increment amount; etc. The Commission would set the additional bid increment percentage at 5% initially. Hence, the calculation of the additional increment amount would be (minimum acceptable bid amount) * (0.05), rounded. The Commission seeks comment on this approach.

87. *Bid Amount Changes*. Under this auction format, OEA would retain the discretion to change the minimum acceptable bid amounts, the additional bid amounts, the number of acceptable bid amounts, and the parameters of the formulas used to calculate minimum acceptable bid amounts and additional bid amounts if OEA determines that circumstances so dictate. Further, OEA would retain the discretion to do so on a license-by-license basis. Commenters should address the size of changes in the bid amounts, in particular, the additional percentage. Should the Commission increase the size of the minimum acceptable bid amounts in order to manage expeditiously the pace of an SMR auction with approximately 8,300 licenses? At what size do changes in bid amounts make it too difficult for bidders to align their bid amounts with

their budgets and willingness to pay? OEA would also retain the discretion to limit (a) the amount by which a minimum acceptable bid for a license may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, OEA could set a limit on increases in minimum acceptable bid amounts over provisionally winning bids. Thus, if calculating a minimum acceptable bid using the activity-based formula results in a minimum acceptable bid amount that exceeds the provisionally winning bid on a license by more than the limit, the minimum acceptable bid amount would instead be capped at the provisionally winning bid plus the amount of the limit. The Commission seeks comment on the circumstances under which OEA should employ such a limit, factors OEA should consider when determining the dollar amount of the limit, and the tradeoffs in setting such a limit or changing other parameters—such as the minimum and maximum percentages of the activity-based formula. If OEA were to exercise this discretion, it would alert bidders by announcement in the FCC auction bidding system. The Commission seeks comment on these procedures.

88. The Commission seeks comment on the above procedures for the SMR auction format, including whether to use the activity-based formula to establish the additional percentage or a different approach. If commenters disagree with beginning the auction with nine acceptable bid amounts per license as described above, they should suggest an alternative number of acceptable bid amounts to use at the beginning of the auction and an alternative number to use later in the auction. Commenters may wish to address the role of the minimum acceptable bids and the number of acceptable bid amounts in managing the pace of the auction and the tradeoffs in managing auction pace by changing the bidding schedule, activity requirements, or bid amounts, or by using other means.

7. Provisionally Winning Bids

89. Under an SMR auction format, the FCC auction bidding system would determine provisionally winning bids consistent with practices in past auctions. At the end of each bidding round, the bidding system would determine a provisionally winning bid for each license based on the highest bid amount received for the license. A provisionally winning bid would

remain the provisionally winning bid until there is a higher bid on the same license at the close of a subsequent round. Provisionally winning bids at the end of the auction would become the winning bids.

90. If identical high bid amounts were submitted on a license in any given round (*i.e.*, tied bids), the FCC auction bidding system would use a pseudo-random number generator to select a single provisionally winning bid from among the tied bids. The auction bidding system would assign a pseudo-random number to each bid when the bid is entered. The tied bid with the highest pseudo-random number would become the provisionally winning bid. The remaining bidders, as well as the provisionally winning bidder, would be permitted to submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid. If the license received any bids in a subsequent round, the provisionally winning bid again would be determined by the highest bid amount received for the license.

91. A provisionally winning bid would be retained until there is a higher bid on the license at the close of a subsequent round, unless the provisionally winning bid is withdrawn (if bid withdrawals are permitted in Auction 108). Under the SMR auction design, provisionally winning bids would count toward activity for purposes of the activity rule.

8. Bid Removal and Bid Withdrawal

92. The FCC auction bidding system would allow each bidder to remove any of the bids it placed in a round before the close of that round. By removing a bid placed within a round, a bidder would effectively “unsubmit” the bid. In contrast to the bid withdrawal provisions described below, a bidder removing a bid placed in the same round would not be subject to a withdrawal payment. Once a round closes, a bidder would no longer be permitted to remove a bid.

93. The Commission seeks comment on whether bid withdrawals should be permitted should it adopt an SMR auction format for Auction 108. When permitted in an auction, bid withdrawals provide a bidder with the option of withdrawing bids placed in prior rounds that have become provisionally winning bids. A bidder would be able to withdraw its provisionally winning bids using the withdraw function in the FCC auction bidding system.

94. The Commission has recognized that bid withdrawals may be a helpful tool for bidders seeking to efficiently aggregate licenses or implement backup strategies in certain auctions. The Commission has also acknowledged that allowing bid withdrawals may encourage insincere bidding or increase opportunities for undesirable strategic bidding in certain circumstances.

95. Applying this reasoning to Auction 108, each bidder would be allowed to withdraw provisionally winning bids in no more than two rounds during the course of the auction. To permit a bidder to withdraw bids in more than two rounds may encourage insincere bidding or the use of withdrawals for undesirable strategic bidding purposes. The two rounds in which a bidder may withdraw provisionally winning bids would be at the bidder's discretion, and there would be no limit on the number of provisionally winning bids that a bidder may withdraw in either of the rounds in which it withdraws bids. Withdrawals must be in accordance with the Commission's rules, including the bid withdrawal payment provisions specified in 47 CFR 1.2104(g).

96. A bidder that withdraws its provisionally winning bid(s), if permitted, is subject to the bid withdrawal payment provisions of the Commission's rules. The Commission proposes the interim bid withdrawal payment be set at 15% of the withdrawn bid for the purposes of an SMR auction. A bidder that withdraws a bid during an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or a subsequent auction. The withdrawal payment amount is deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission. No withdrawal payment is assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids equals or exceeds that withdrawn bid. However, if a license for which a bid had been withdrawn does not receive a subsequent higher bid or winning bid in the same auction, the FCC cannot calculate the final withdrawal payment until that license receives a higher bid or winning bid in a subsequent auction. In such cases, when that final withdrawal payment cannot yet be calculated, the FCC imposes on the bidder responsible for the withdrawn bid an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed.

97. The amount of the interim bid withdrawal payment is established in advance of bidding in each auction and may range from 3% to 20% of the withdrawn bid amount. The Commission has determined that the level of the interim withdrawal payment in a particular auction will be based on the nature of the service and the inventory of the licenses being offered. The Commission noted specifically that a higher interim withdrawal payment percentage is warranted to deter the anti-competitive use of withdrawals when, for example, bidders will not need to aggregate the licenses being offered in the auction or when there are few synergies to be captured by combining licenses. With respect to the flexible-use 2.5 GHz band licenses being offered in Auction 108, the service rules permit a variety of advanced spectrum-based services, some of which may best be offered by combining licenses on adjacent frequencies or in adjacent areas. Balancing the potential need for bidders to use withdrawals to avoid winning incomplete combinations of licenses with the Commission's interest in deterring undesirable strategic use of withdrawals, the Commission proposes to establish an interim bid withdrawal payment of 15% of the withdrawn bid for Auction 108, should it adopt an SMR auction format.

98. The Commission seeks comment on allowing bid withdrawals and an interim bid withdrawal payment of 15% of the withdrawn bid under a potential SMR auction design. If commenters disagree, then the Commission asks them to support their arguments by taking into account the licenses available, the impact on auction dynamics and the pricing mechanism, and the effects on the bidding strategies of other bidders.

V. Tutorials and Additional Information for Applicants

99. The Commission intends to provide additional information on the bidding system and to offer demonstrations and other educational opportunities for applicants in Auction 108 to familiarize themselves with the FCC auction application system and the auction bidding system.

100. In addition, OEA and WTB will make available an interactive mapping tool to identify and assess potential encumbrances in the band, including as a result of pending Rural Tribal Priority Window applications. Potential applicants are again reminded, however, that this tool will not represent complete licensing information; all information should be confirmed in ULS for any specific license or area.

VI. Procedural Matters

A. Supplemental Initial Regulatory Flexibility Analysis

101. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in the *Auction 108 Comment Public Notice* to supplement the Commission's Initial and Final Regulatory Flexibility Analyses completed in the *2.5 GHz Notice of Proposed Rulemaking (NPRM)*, 83 FR 26396, June 7, 2018, and *2.5 GHz Report and Order*, and other Commission orders pursuant to which Auction 108 will be conducted. Written public comments are requested on this Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be filed by the same deadline for comments specified on the first page of the *Auction 108 Comment Public Notice*. The Commission will send a copy of the *Auction 108 Comment Public Notice*, including this Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *Auction 108 Comment Public Notice* and Supplemental IRFA (or summaries thereof) will be published in the **Federal Register**.

102. *Need for, and Objectives of, the Proposed Rules*. The *Auction 108 Comment Public Notice* sets forth the proposed auction procedures for those entities that seek to bid to acquire licenses in Auction 108. The *Auction 108 Comment Public Notice* seeks comment on proposed procedural rules to govern Auction 108, which will auction geographic overlay licenses of unlicensed spectrum in the 2.5 GHz band (2496–2690 MHz). The specific overlay licenses available in Auction 108 will be determined by the results of the Rural Tribal Priority Window, which gave federally recognized Tribes the opportunity to submit applications to acquire new 2.5 GHz band overlay licenses to provide broadband service on rural Tribal lands before the remaining unassigned spectrum is made generally available to all entities through competitive bidding. The Rural Tribal Priority Window closed on September 2, 2020. Based on review of applications received in the Rural Tribal Priority Window, OEA, in conjunction with WTB, will release a public notice announcing the final inventory of 2.5 GHz band overlay licenses to be offered in Auction 108. This public notice will be released in advance of the deadline

for the submission of short-form applications to bid in Auction 108 so that potential applicants can make informed decisions about whether to apply. OEA and WTB will also make *available resources to assist applicants* in conducting due diligence research regarding potential encumbrances in the band prior to the release of the public notice announcing the final auction inventory.

103. The *Auction 108 Comment Public Notice* and process is intended to provide notice of and adequate time for potential applicants to comment on proposed auction procedures. To promote the efficient and fair administration of the competitive bidding process for all Auction 108 participants, the Commission seeks comment on the following procedures that would apply to Auction 108 under either the single-round auction format or the SMR auction format:

- Requirement of an additional certification by each applicant in its short-form application, under penalty of perjury, that it has read the public notice adopting procedures for Auction 108 and that it has familiarized itself with those procedures and the requirements for obtaining a license and operating facilities in the 2.5 GHz band;
- use of limited information procedures under which the Commission will not make public until after the bidding has closed: (1) The licenses that an applicant selects for bidding in its auction application (FCC Form 175); (2) the amount of any upfront payment made by or on behalf of an applicant for Auction 108; (3) an applicant's bidding eligibility; and (4) any other bidding-related information that might reveal the identity of the bidder placing a bid;
- establishment of bidding credit caps for eligible small businesses and rural service providers in Auction 108;
- provision of discretionary authority to OEA, in conjunction with WTB, to delay, suspend, or cancel bidding in Auction 108 for any reason that affects the ability of the competitive bidding process to be conducted fairly and efficiently;
- a specific upfront payment amount for each license available in Auction 108;
- establishment of an additional default payment of 15% under § 1.2104(g)(2) of the rules in the event that a winning bidder defaults or is disqualified after the auction.

104. The *Auction 108 Comment Public Notice* also seeks comment on the following procedures under the single-round auction format:

- Use of a single-round auction format for Auction 108 with limited package bidding;
 - use of a pay-as-bid pricing rule whereby each winning bidder will pay the sum of its winning bid amounts for the licenses it is awarded, less any applicable bidding credit discount;
 - establishment of a bidder's bidding eligibility in bidding units based on that bidder's upfront payment through assignment of a specific number of bidding units for each license;
 - establishment of a minimum bid amount for each license available in Auction 108 based on each license's potential MHz-pops;
 - use of an either/or indicator to allow a bidder to indicate that two or more of its bids are to be treated as mutually exclusive by the bidding system when assigning winning bids; and
 - a methodology for processing bids.
105. In addition, the *Auction 108 Comment Public Notice* seeks comment on the following procedures under the SMR auction format:
- Use of a simultaneous multiple-round auction format for Auction 108, consisting of sequential bidding rounds with a simultaneous stopping rule (with discretion by OEA to exercise alternative stopping rules under certain circumstances);
 - use of an activity rule that would require bidders to bid actively during the auction rather than waiting until late in the auction before participating;
 - an auction with one or more stages, in which, for example, a bidder is required to be active on 80% of its bidding eligibility in each round of the first stage, and on 95% of its bidding eligibility in each round of the second stage;
 - provision of three activity rule waivers for each bidder to allow it to preserve eligibility during the course of the auction;
 - use of minimum acceptable bid amounts and additional bid increments, along with a methodology for calculating such amounts, with OEA retaining discretion to change its methodology if circumstances dictate;
 - a procedure for breaking ties if identical high bid amounts are submitted on a license in a given round;
 - bid removal procedures;
 - whether to permit bid withdrawals; and
 - establishment of an interim bid withdrawal percentage of 15% of the withdrawn bid if the Commission were to allow bid withdrawals in Auction 108.

106. The proposed procedures for the conduct of Auction 108 constitute the

more specific implementation of the competitive bidding rules contemplated by parts 1 and 27 of the Commission's rules, the *2.5 GHz Report and Order*, and relevant competitive bidding orders, and are fully consistent therewith.

107. *Legal Basis.* The Commission's statutory obligations to small businesses under the Communications Act of 1934, as amended, are found in 47 U.S.C. 309(j)(3)(B) and 47 U.S.C. 309(j)(4)(D). The statutory basis for the Commission's competitive bidding rules is found in various provisions of the Communications Act of 1934, as amended, including 47 U.S.C. 154(i), 301, 302, 303(e), 303(f), 303(r), 304, 307, and 309(j). The Commission has established a framework of competitive bidding rules, updated most recently in 2015, pursuant to which it has conducted auctions since the inception of the auctions program in 1994 and would conduct Auction 108. In promulgating those rules, the Commission conducted numerous RFA analyses to consider the possible impact of those rules on small businesses that might seek to participate in Commission auctions. In addition, a Final Regulatory Flexibility Analysis (FRFA) was included in the *2.5 GHz Report and Order* that adopted rule provisions relevant to this notification.

108. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules 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 proposed rules and policies, if adopted. 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.

109. As noted above, Regulatory Flexibility Analyses were incorporated into the *2.5 GHz NPRM* and the *2.5 GHz Report and Order*. In those analyses, the Commission described in detail the small entities that might be significantly affected. In the *Auction 108 Comment Public Notice*, the Commission adopts by reference the descriptions and estimates of the number of small entities from the previous Regulatory Flexibility Analyses in the *2.5 GHz NPRM* and the *2.5 GHz Report and Order*.

110. *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 entity applicants. In the first part of the Commission's two-phased auction application process, parties desiring to participate in an auction file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on an applicant's short-form application and certifications, as well as its upfront payment. In the second phase of the process, winning bidders file a more comprehensive long-form application. Thus, an applicant which fails to become a winning bidder does not need to file a long-form application and provide the additional showings and more detailed demonstrations required of a winning bidder.

111. The Commission does not expect the processes and procedures proposed in the *Auction 108 Comment Public Notice* will require small entities to hire attorneys, engineers, consultants, or other professionals to participate in Auction 108 and comply with the procedures it ultimately adopts because of the information, resources, and guidance the Commission makes available to potential and actual participants. For example, the Commission intends to release an online tutorial that will help applicants understand the procedures for filing of the auction short-form application (FCC Form 175). The Commission also intends to make information on the bidding system available and offer demonstrations and other educational opportunities for applicants in Auction 108 to familiarize themselves with the FCC auction application system and the auction bidding system. By providing these resources as well as the resources discussed below, the Commission expects small entities that use the available resources to experience lower participation and compliance costs. Nevertheless, while the Commission cannot quantify the cost of compliance with the proposed procedures, it does not believe that the costs of compliance will unduly burden small entities that choose to participate in the auction because the proposals for Auction 108 are similar in many respects to the procedures in recent auctions conducted by the Commission.

112. *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.

113. The Commission has taken steps to minimize any economic impact of its auction procedures on small entities through, among other things, the Commission's potential use of a single bidding round and a pay-as-bid pricing rule. The Commission expects that many small entities will bid in Auction 108 and the use of a single-round auction would significantly reduce the time and resource commitment required for participation, if adopted. Due to the large inventory of licenses that will be available in Auction 108, the multiple-round auction format that the Commission has typically used in auctioning spectrum licenses could require several months to complete and require participating bidders to expend resources to consistently monitor the auction during that time. In contrast, the Commission anticipates that with a single bidding round, bid processing for Auction 108 could be completed within a week. In addition, the use of a pay-as-bid pricing rule, which requires each winning bidder to pay the sum of its winning bid amounts for the licenses it is awarded, less any applicable bidding credit discount, should also benefit small entities by giving them more certainty about the costs of their winning bids.

114. In the event the Commission adopts the SMR auction format, it has also taken steps to minimize any economic impact of its auction procedures on small entities through, among other things, the many resources the Commission provides potential auction participants. OEA and WTB propose to make resources available to assist applicants in conducting due diligence research regarding potential encumbrances in the band prior to the release of the public notice announcing the final auction inventory. Small entities and other auction participants may seek clarification of or guidance on complying with competitive bidding rules and procedures, reporting requirements, and the FCC's auction

bidding system. An FCC Auctions Hotline provides access to Commission staff for information about the auction process and procedures. The FCC Auctions Technical Support Hotline is another resource which provides technical assistance to applicants, including small entities, on issues such as access to or navigation within the electronic FCC Form 175 and use of the FCC's auction bidding system. Small entities may also use the web-based, interactive online tutorial produced by Commission staff to familiarize themselves with auction procedures, filing requirements, bidding procedures, and other matters related to an auction.

115. The Commission also makes various databases and other sources of information, including the Auctions program websites and copies of Commission decisions, available to the public without charge, providing a low-cost mechanism for small entities to conduct research prior to and throughout the auction. Prior to and at the close of Auction 108, the Commission will post public notices on the Auctions website, which articulate the procedures and deadlines for the auction. The Commission makes this information easily accessible and without charge to benefit all Auction 108 applicants, including small entities, thereby lowering their administrative costs to comply with the Commission's competitive bidding rules.

116. Prior to the start of bidding, the Commission also proposes to make available to bidders various educational materials. Eligible bidders will be given an opportunity to become familiar with auction procedures and the bidding system by participating in a mock auction. Further, the Commission intends to conduct Auction 108 electronically over the internet using a web-based auction system that eliminates the need for bidders to be physically present in a specific location. Qualified bidders also have the option to place bids by telephone. These mechanisms are made available to facilitate participation in Auction 108 by all eligible bidders and may result in significant cost savings for small entities that use these alternatives. Moreover, the adoption of bidding procedures in advance of the auction, consistent with statutory directive, is designed to ensure that the auction will be administered predictably and fairly for all participants, including small entities.

117. For Auction 108, the Commission proposes a \$25 million cap on the total bidding credit amount that may be awarded to an eligible small business and a \$10 million cap on the total bidding credit amount that may be

awarded to a rural service provider. In addition, the Commission proposes a \$10 million cap on the overall amount of bidding credits that any winning small business bidder may apply to licenses won in counties located within any PEA with a population of 500,000 or less. Based on the technical characteristics of the 2.5 GHz band and its analysis of past auction data, the Commission anticipates that its proposed caps will allow the majority of small businesses to take full advantage of the bidding credit program, thereby lowering the relative costs of participation for small businesses.

118. These proposed procedures for the conduct of Auction 108 constitute the more specific implementation of the competitive bidding rules contemplated by parts 1 and 30 of the Commission's rules, 47 CFR parts 1 and 30, the *2.5 GHz Report and Order*, and relevant competitive bidding orders, and are fully consistent therewith.

119. *Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules.* None.

B. Paperwork Reduction Act Analysis

120. The *Auction 108 Comment Public Notice* contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

C. Deadlines and Filing Procedures

121. Pursuant to 47 CFR 1.415, 1.419, interested parties may file comments or reply comments on or before the dates indicated on the first page of the *Auction 108 Comment Public Notice* in AU Docket No. 20–429. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

122. *Ex Parte Requirements.* This proceeding has been designated as a “permit-but-disclose” proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations must file a copy of any written presentations or memoranda summarizing any oral presentation

within two business days after the presentation (unless a different deadline applicable to the Sunshine Period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to the Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with 47 CFR 1.1206(b). In proceedings governed by 47 CFR 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

Federal Communications Commission.

Marlene Dortch,
Secretary.

[FR Doc. 2021–03442 Filed 3–1–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[**MB Docket No. 21–55; RM–11880; DA 21–164; FR ID 17509**]

Television Broadcasting Services Kearney, Nebraska

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking (Petition) filed by KHGI Licensee, LLC, (Licensee), licensee of KHGI-TV, channel 13,

Kearney, Nebraska (KHGI or Station), requesting the substitution of channel 18 for channel 13 at Kearney in the DTV Table of Allotments. Licensee states that the proposed channel substitution for KHGI from VHF channel 13 to UHF channel 18 would allow KHGI to significantly improve its over-the-air service to the Station's viewers in the Kearney, Nebraska, area. Licensee states that the proposed channel change from channel 13 to channel 18 would result a substantial increase in signal receivability for KHGI's core viewers and enable viewers to receive the Station's signal with a significantly smaller antenna. Licensee maintains that KHGI, as a VHF channel station, has had a long history of dealing with severe reception problems exacerbated by the analog to digital conversion. The proposed migration of KHGI from channel 13 to channel 18, Licensee contends, will be a favorable arrangement of allotments based on the enhanced signal levels that will be delivered to a large percentage of the Station's population without any predicted loss of coverage. Further, Licensee maintains that the change will result in an predicted increase of more than 37,000 persons in the Station's overall population and the staff has determined there is no loss of service. Licensee concludes by saying that the public interest would be best served by promptly granting its Petition with the specifications set forth therein so that Kearney-area viewers may benefit from substantially improved over-the-air broadcast television service as soon as possible.

DATES: Comments must be filed on or before April 1, 2021 and reply comments on or before April 16, 2021.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 45 L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Paul A. Cicelski, Esq., Lerman Senter PLLC, 2001 L Street NW, Suite 400, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, Media Bureau, at (202) 418–2324; or Shaun.Maher@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rulemaking*, MB Docket No. 21–55; RM–11880; DA 21–164, adopted February 12, 2021, and released February 12, 2021. The full text of this document is available for download at <https://www.fcc.gov/edocs>. To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to