

## FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 14–78; DA 14–1018]

### Auction of Advanced Wireless Services (AWS–3) Licenses Scheduled for November 13, 2014; Notice and Filing Requirements, Reserve Prices, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 97

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the procedures, reserve prices, and minimum opening bids for the upcoming auction of AWS–3 licenses (Auction 97). This document is intended to familiarize prospective applicants with the procedures and other requirements for participation in the auction.

**DATES:** Applications to participate in Auction 97 must be filed prior to 6:00 p.m. Eastern Time (ET) on September 12, 2014. Bidding in Auction 97 is scheduled to begin on November 13, 2014.

#### FOR FURTHER INFORMATION CONTACT:

*Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* For legal and general auction questions: Valerie Barrish (attorney) at (202) 418–0660; *Broadband Division:* For licensing and service rule questions: Genevieve Ross (attorney) or Janet Young (engineer) at (202) 418–2487. To request materials in accessible formats (Braille, large print, electronic files, or audio format) for people with disabilities, send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 or (202) 418–0432 (TTY).

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction 97 Procedures Public Notice* released on July 23, 2014. The complete text of the *Auction 97 Procedures Public Notice*, including all attachments and related Commission documents, is available for public inspection and copying from the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554 during its regular business hours. The *Auction 97 Procedures Public Notice* and related Commission documents also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, fax 202–488–5563, or Web site: <http://www.BCPIWEB.com>. The *Auction 97*

*Procedures Public Notice* and related documents also are available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/97/>, or by using the search function for AU Docket No. 14–78 Commission's Electronic Comment Filing System (ECFS) Web page at <http://www.fcc.gov/cgb/ecfs/>.

## I. General Information

### A. Introduction

1. The Wireless Telecommunications Bureau (Bureau) established the procedures, reserve prices, and minimum opening bid amounts for the upcoming auction of 1,614 Advanced Wireless Services licenses in the 1695–1710 MHz, 1755–1780 MHz, and 2155–2180 MHz bands (collectively, the AWS–3 bands). This auction, which is designated as Auction 97, is scheduled to start on November 13, 2014. The *Auction 97 Procedures Public Notice* provided an overview of the procedures, terms, and conditions governing Auction 97 and the post-auction application and payment processes.

2. The Federal Communications Commission (Commission or FCC) is offering the licenses in Auction 97 pursuant to the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act). The Spectrum Act requires, among other things, that the Commission allocate for commercial use and license spectrum in certain specified frequency bands using a system of competitive bidding no later than February 2015. In February 2013, the National Telecommunications and Information Administration (NTIA) identified the 1695–1710 MHz band for reallocation from Federal use to non-Federal use in satisfaction of its Spectrum Act obligation. In the *AWS–3 Report and Order*, 79 FR 32365, June 4, 2014, the Commission identified the 1755–1780 MHz band in satisfaction of the Spectrum Act's requirement that it identify fifteen megahertz of contiguous spectrum in addition to the bands specifically identified in the Spectrum Act.

3. On May 19, 2014, the Bureau released the *Auction 97 Comment Public Notice* 79 FR 31327, June 2, 2014, seeking comment on competitive bidding procedures to be used in Auction 97. Ten comments, eight reply comments, ten *ex parte* filings, and four brief comments were submitted in response to the *Auction 97 Comment Public Notice*.

4. Based on the record and after considering comments provided in response to the *Auction 97 Comment Public Notice*, the *Auction 97*

*Procedures Public Notice*, establishes procedures for, among other things: (1) Using the Commission's standard simultaneous multiple-round (SMR) auction format in a single auction event subject to uniform bidding procedures for the unpaired 1695–1710 MHz band and the paired 1755–1780 MHz/2155–2180 MHz bands, except that bidding will close on a band after five consecutive rounds in which no bidding activity occurs on licenses in that band provided that the reserve for that band has been met; (2) filing short-form applications to participate in Auction 97 during a ten-business day window that closes on September 12, 2014; (3) limited information disclosure, to enhance competition by safeguarding against potential anti-competitive auction strategies; (4) submission of a statement by each applicant for any license in the 1755–1780 MHz band acknowledging that it has considered and accepts the risks of potential interference from Federal systems to its planned operations in certain geographic zones; (5) an aggregate reserve price for the 1695–1710 MHz license of approximately \$580 million and a separate aggregate reserve price for the paired 1755–1780 MHz/2155–2180 MHz licenses of approximately \$10.07 billion; (6) minimum opening bids for each license using a calculation based on \$0.15 per MHz-pop for paired licenses and \$0.05 per MHz-pop for unpaired licenses with a revision to the Bureau's method for incorporating price information from past auctions; (7) minimum acceptable bid amounts based on an activity-based formula under which bids in subsequent rounds may be between 10–20% higher than the provisionally winning bid; and (8) filing long-form applications in accordance with the schedule specified in the Commission's rules, but establishing a deadline for down payments and final payments from winning bidders that will occur no earlier than January 2015.

5. In addition, the *Auction 97 Procedures Public Notice* concludes that any requests for temporary, limited relief from the former defaulter rule are beyond the scope of this proceeding and notes that such requests are being addressed separately.

### B. Description of Licenses To Be Offered in Auction 97

6. The 65 megahertz of AWS–3 spectrum available in Auction 97 will be licensed on a geographic area basis. Of the 1,614 licenses offered in Auction 97, 880 will be Economic Area (EA) licenses and 734 will be Cellular Market Area (CMA) licenses. The AWS–3 frequencies will be licensed in five and

ten megahertz blocks, with each license having a total bandwidth of five, ten, or twenty megahertz.

7. The 1695–1710 MHz band will be licensed in an unpaired configuration for low-power mobile transmit (i.e., uplink) operations. The 1755–1780 MHz band will be licensed paired with the 2155–2180 MHz band, with the 1755–1780 MHz band authorized for low-power mobile transmit (i.e., uplink) operations and the 2155–2180 MHz band authorized for base station and fixed (i.e., downlink) operations. A complete list of the licenses offered in Auction 97 is available in Attachment A to the *Auction 97 Procedures Public Notice*.

### C. Rules and Disclaimers

#### 1. Relevant Authority

8. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules, including Commission decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees. Prospective bidders should also familiarize themselves with the Commission's rules relating to the AWS-3 frequencies, including incumbency issues for AWS-3 licensees, Federal and non-Federal relocation and sharing and cost sharing obligations, protection of Federal and non-Federal incumbent operations, and rules relating to applications, environment, practice and procedure. All bidders must also be thoroughly familiar with the procedures, terms and conditions contained in the *Auction 97 Procedures Public Notice* and any future public notices that may be issued in this proceeding.

9. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most auctions-related Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at <http://www.wireless.fcc.gov/auctions>.

#### 2. Prohibited Communications and Compliance With Antitrust Laws

10. To ensure the competitiveness of the auction process, 47 CFR 1.2105(c)

prohibits auction applicants for licenses in any of the same or overlapping geographic license areas from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications (FCC Form 175) as parties with whom they have entered into agreements pursuant to 47 CFR 1.2105(a)(2)(viii).

#### a. Entities Subject to 47 CFR 1.2105

11. 47 CFR 1.2105(c)'s prohibition on certain communications will apply to any applicants that submit short-form applications seeking to participate in a Commission auction for licenses in the same or overlapping geographic license area. Thus, unless they have identified each other on their short-form applications as parties with whom they have entered into agreements under 47 CFR 1.2105(a)(2)(viii), applicants for any of the same or overlapping geographic license areas must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy. In some instances, this prohibition extends to communications regarding the post-auction market structure. This prohibition applies to all applicants that submit short-form applications regardless of whether such applicants ultimately become qualified bidders or actually bid.

12. Applicants are also reminded that, for purposes of this prohibition on certain communications, 47 CFR 1.2105(c)(7)(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 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application. For example, where an individual served as an officer for two or more applicants, the Bureau has found that the bids and bidding strategies of one applicant are conveyed to the other applicant, and, absent a disclosed bidding agreement, an apparent violation of 47 CFR 1.2105(c) occurs.

13. Individuals and entities subject to 47 CFR 1.2105(c) should take special care in circumstances where their employees may receive information directly or indirectly relating to any competing applicant's bids or bidding strategies. The Bureau has not addressed a situation where non-principals (i.e., those who are not officers or directors,

and thus not considered to be the applicant) receive information regarding a competing applicant's bids or bidding strategies and whether that information should be presumed to be communicated to the applicant.

14. An exception to the prohibition on certain communications allows non-controlling interest holders to obtain interests in more than one competing applicant without violating 47 CFR 1.2105(c) provided specified conditions are met (including a certification that no prohibited communications have occurred or will occur), but that exception does not extend to controlling interest holders.

15. Auction 97 applicants selecting licenses for any of the same or overlapping geographic license areas are encouraged not to use the same individual as an authorized bidder. A violation of 47 CFR 1.2105(c) could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between such applicants. Similarly, if the authorized bidders are different individuals employed by the same organization (e.g., law firm, engineering firm or consulting firm), a violation likewise could occur. In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders, and that the applicant and its bidders will comply with 47 CFR 1.2105(c).

#### b. Prohibition Applies Until Down Payment Deadline

16. 47 CFR 1.2105(c)'s prohibition on certain communications begins at the short-form application filing deadline and ends at the down payment deadline after the auction closes, which will be announced in a future public notice.

#### c. Prohibited Communications

17. Applicants must not communicate directly or indirectly about bids or bidding strategy to other applicants in this auction. 47 CFR 1.2105(c) prohibits not only communication about an applicant's own bids or bidding strategy, it also prohibits communication of another applicant's bids or bidding strategy. While 47 CFR 1.2105(c) does not prohibit non-auction-related business negotiations among auction applicants, each applicant must remain vigilant so as not to directly or indirectly communicate information that affects, or could affect, bids, bidding strategy, or the negotiation of settlement agreements.

18. Applicants are cautioned that the Commission remains vigilant about prohibited communications taking place in other situations. For example, the Commission has warned that prohibited communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly. Moreover, the Commission has found a violation of 47 CFR 1.2105(c) where an applicant used the Commission's bidding system to disclose its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets, and has placed auction participants on notice that the use of its bidding system to disclose market information to competitors will not be tolerated and will subject bidders to sanctions. Applicants also should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become conduits for the communication of prohibited bidding information. For example, where limited information disclosure procedures are in place, as is the case for Auction 97, an applicant's statement to the press that it has lost bidding eligibility and intends to stop bidding in the auction could give rise to a finding of a 47 CFR 1.2105(c) violation. Similarly, an applicant's public statement of intent not to participate in Auction 97 bidding could also violate the rule.

19. Applicants are also hereby placed on notice that public disclosure of information relating to bidder interests and bidder identities that has not yet been made public by the Commission at the time of disclosure may violate the provisions of 47 CFR 1.2105(c) that prohibit certain communications. This is so even though similar types of information were revealed prior to and during other Commission auctions subject to different information procedures.

20. In addition, when completing short-form applications, each applicant should avoid any statements or disclosures that may violate 47 CFR 1.2105(c), particularly in light of the limited information procedures in effect for Auction 97. Specifically, an applicant should avoid including any information in its short-form applications that might convey information regarding its license selection, such as using applicant names that refer to licenses being offered, referring to certain licenses or markets

in describing bidding agreements, or including any information in attachments that may otherwise disclose the applicant's license selections. Likewise, an Auction 97 applicant must not disclose to others whether it has filed the acknowledgement concerning interference obligations that is required of each applicant that seeks to bid on any license in the 1755–1780 MHz band, as that information would reveal information regarding its license selection. The Bureau intends to withhold from public disclosure all information concerning the existence of such applicant statements until after the close of the auction.

#### d. Disclosure of Bidding Agreements and Arrangements

21. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form applications. Applicants must identify in their short-form applications all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the licenses being auctioned, including any agreements relating to post-auction market structure.

22. If parties agree in principle on all material terms prior to the short-form application filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under 47 CFR 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the short-form filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiation, discussion or communication with any other applicants after the short-form application filing deadline.

23. 47 CFR 1.2105(c) does not prohibit non-auction-related business negotiations among auction applicants. However, certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies. Such subject areas include, but are not limited to, issues such as management, sales, local marketing agreements, and other transactional agreements.

#### e. 47 CFR 1.2105(c) Certification

24. By electronically submitting a short-form application, each applicant in Auction 97 certifies its compliance with 47 CFR 1.2105(c). In particular, an

applicant must certify under penalty of perjury it has not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application, regarding the amount of the applicant's bids, bidding strategies, or the particular licenses on which it will or will not bid. However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted. The Commission has stated that it intends to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring. Any applicant found to have violated 47 CFR 1.2105(c) may be subject to sanctions.

#### f. Duty To Report Prohibited Communications

25. 47 CFR 1.2105(c)(6) provides that any applicant that makes or receives a communication that appears to violate 47 CFR 1.2105(c) must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. The Commission has clarified that each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.

26. In addition, 47 CFR 1.65 requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission of any substantial change that may be of decisional significance to that application. Thus, 47 CFR 1.65 requires an auction applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. An applicant is therefore required by 47 CFR 1.65 to report to the Commission any communication the applicant has made to or received from another applicant after the short-form application filing deadline that affects or has the potential to affect bids or bidding strategy, unless such communication is made to or received from a party to an agreement identified under 47 CFR 1.2105(a)(2)(viii).

27. 47 CFR 1.65(a) and 1.2105(c) require each applicant in competitive bidding proceedings to furnish additional or corrected information within five days of a significant occurrence, or to amend its short-form

application no more than five days after the applicant becomes aware of the need for amendment. These rules are intended to facilitate the auction process by making the information available promptly to all participants and to enable the Bureau to act expeditiously on those changes when such action is necessary.

g. Procedure for Reporting Prohibited Communications

28. A party reporting any communication pursuant to 47 CFR 1.65, 1.2105(a)(2), or 1.2105(c)(6) must take care to ensure that any report of a prohibited communication does not itself give rise to a violation of 47 CFR 1.2105(c). For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection.

29. 47 CFR 1.2105(c) requires parties to file only a single report concerning a prohibited communication and to file that report with Commission personnel expressly charged with administering the Commission's auctions. This rule is designed to minimize the risk of inadvertent dissemination of information in such reports. Any reports required by 47 CFR 1.2105(c) must be filed consistent with the instructions set forth in the *Auction 97 Procedures Public Notice*. For Auction 97, such reports must be filed with Margaret W. Wiener, the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available. Any such report should be submitted by email to Ms. Wiener at the following email address: [auction97@fcc.gov](mailto:auction97@fcc.gov). If you choose instead to submit a report in hard copy, any such report must be delivered only to Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street SW., Room 6423, Washington, DC 20554.

30. A party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by following the procedures specified in 47 CFR 0.459. Such parties also are encouraged to coordinate with the Auctions and Spectrum Access Division staff about the procedures for submitting such reports. The *Auction 97 Procedures Public Notice* provides additional guidance on procedures for

submitting application-related information.

h. Winning Bidders Must Disclose Terms of Agreements

31. Each applicant that is a winning bidder will be required to disclose in its long-form applications the specific terms, conditions, and parties involved in any agreement it has entered into. This applies to any bidding consortia, joint venture, partnership, or agreement, understanding, or other arrangement entered into relating to the competitive bidding process, including any agreement relating to the post-auction market structure. Failure to comply with the Commission's rules can result in enforcement action.

i. Additional Information Concerning Rule Prohibiting Certain Communications

32. A summary listing of documents issued by the Commission and the Bureau addressing the application of 47 CFR 1.2105(c) may be found in Attachment F to the *Auction 97 Procedures Public Notice*. These documents are available on the Commission's auction Web page at [http://wireless.fcc.gov/auctions/prohibited\\_communications](http://wireless.fcc.gov/auctions/prohibited_communications).

j. Antitrust Laws

33. Regardless of compliance with the Commission's rules, applicants remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. Compliance with the disclosure requirements of 47 CFR 1.2105(c) will not insulate a party from enforcement of the antitrust laws. For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submitted a short-form application. The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws: For example, actual or potential competitors may not agree to divide territories in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another market for the other. Similarly, the Bureau previously reminded potential applicants and others that even where the applicant discloses parties with whom it has reached an agreement on the short-form application, thereby permitting discussions with those parties, the applicant is nevertheless subject to existing antitrust laws.

34. To the extent the Commission becomes aware of specific allegations

that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.

3. Incumbency Issues

35. The AWS-3 bands are currently being used for a variety of government and non-government services. In the *AWS-3 Report and Order*, the Commission allocated the 1695-1710 MHz and 1755-1780 MHz bands for commercial use. Licenses in 1695-1710 MHz band are being made available on a shared basis with incumbent Federal meteorological-satellite (MetSat) data users. The Commission adopted twenty-seven Protection Zones for the 1695-1710 MHz band in the *AWS-3 Report and Order*. Pursuant to 47 CFR 2.106, US note 88, forty-seven Federal earth stations located in these zones will operate on a co-equal, primary basis with commercial AWS-3 licensees. To facilitate coordination, uplink/mobile transmit devices in the 1695-1710 MHz band must be under the control of, or associated with, a base station as a means to facilitate shared use of the band and prevent interference to Federal operations. Licenses in the 1755-1780 MHz band are being made available on a shared basis with a limited number of Federal incumbents indefinitely, while some of the Federal systems will over time relocate out of the band. Pursuant to 47 CFR 2.106, US note 91, Federal systems located in the Protection Zones adopted by the Commission for the 1755-1780 MHz band in the *AWS-3 Report and Order* will operate on a co-equal, primary basis with commercial AWS licensees. The Federal systems that will relocate from this band pursuant to an approved transition plan will operate on a primary basis until they are reaccommodated. To facilitate coordination, uplink/mobile transmit devices in the 1755-1780 MHz band must be under the control of, or associated with, a base station as a means to facilitate shared use of the band and prevent interference to Federal operations. Licenses to operate in the 1695-1710 MHz and 1755-1780 MHz bands are subject to the condition that the licensee must not cause harmful interference to an incumbent Federal

entity relocating from these bands under an approved Transition Plan. This condition remains in effect until NTIA terminates the applicable authorization of the incumbent Federal entity. In addition, AWS-3 licensees in the 1755-1780 MHz band must agree to accept interference from incumbent Federal users while they remain authorized to operate in the band. The 2155-2180 MHz band is already allocated for exclusive non-Federal, commercial use. Although there are no Federal users currently licensed or operating in this band, there are non-Federal incumbent Fixed Microwave and Broadband Radio Service licensees in the band. AWS-3 licensees will have to protect or relocate and/or share in the cost of relocating such incumbent licensees.

36. AWS-3 licensees in the 1695-1710 MHz and 1755-1780 MHz bands are required to successfully coordinate with Federal incumbent users in these bands prior to operating in designated protection zones. The *AWS-3 Report and Order* established that 1695-1710 MHz licensees operating at certain power levels would be required to coordinate with Federal incumbents in those protection zones, and higher-powered operations would generally require nationwide coordination. Similarly, operations in the 1755-1780 MHz band are subject to successful coordination with Federal incumbents in the protection zones adopted for that band, with the default coordination zone being nationwide. Prior to commencing operations in the 1755-1780 MHz band, an AWS-3 licensee must reach a coordination arrangement on an operator-to-operator basis with each Federal agency that has an assignment with United States and Possessions (USP) authority. The *FCC/NTIA Coordination Procedures Public Notice* contains various refinements to the previously-defined protection zones for each of these bands. That Public Notice also provides information and guidance on the overall coordination process for these bands, as contemplated by the *AWS-3 Report and Order*, including informal pre-coordination discussion and the formal process of submitting coordination requests to, and receiving responses to coordination requests from, relevant Federal agencies. The Bureau encourages each potential applicant to carefully review these coordination requirements and the policies and procedures adopted by the Commission to implement them, and to consider the impact of those requirements and policies on its business plans.

#### 4. Commercial Spectrum Enhancement Act/Spectrum Act Requirements

37. The spectrum in the 1695-1710 MHz and 1755-1780 MHz bands is covered by a Congressional mandate that requires that auction proceeds fund the estimated relocation or sharing costs of incumbent Federal entities. In 2004, the Commercial Spectrum Enhancement Act (CSEA) established a Spectrum Relocation Fund (SRF) to reimburse eligible Federal agencies operating on certain frequencies that have been reallocated from Federal to non-Federal use for the cost of relocating their operations. The SRF is funded with cash proceeds attributable to "eligible frequencies" in an auction of licenses involving such frequencies. The Spectrum Act amendments to the CSEA require Federal agencies authorized to use eligible frequencies to submit a transition plan no later than 240 days before an auction for such frequencies is scheduled to begin. The CSEA requires the NTIA to notify the Commission at least six months in advance of a scheduled auction of eligible frequencies of eligible Federal entities' estimated relocation or sharing costs and the timelines for such relocation or sharing. The NTIA must make the transition plans available on its Web site (with the exception of any classified information contained therein) no later than 120 days before the auction's scheduled start date.

38. On May 13, 2014, pursuant to the CSEA, the NTIA notified the Commission of the estimated relocation or sharing costs and relocation timelines for eligible Federal entities assigned to frequencies in the 1695-1710 MHz and 1755-1780 MHz bands. The NTIA reported that the total estimated relocation or sharing costs for the 1695-1710 MHz band equal \$527,069,000, and that the total estimated relocation or sharing costs for the 1755-1780 MHz band equal \$4,575,603,000.

39. In addition to requiring that specified auction proceeds be deposited in the SRF, the CSEA, as amended by the Spectrum Act, requires that the total cash proceeds from any auction of eligible frequencies must equal at least 110 percent of the estimated relocation or sharing costs provided to the Commission by NTIA, and prohibits the Commission from concluding any auction of eligible frequencies that falls short of this revenue requirement. In the *CSEA/Part 1 Declaratory Ruling*, the Commission determined, among other things, that total cash proceeds for purposes of meeting the CSEA's revenue requirement means winning bids net of any applicable bidding credit discounts

at the end of bidding. Thus, whether CSEA's revenue requirements regarding eligible frequencies have been met at the end of an auction involving such frequencies depends upon whether winning bids that are attributable to such spectrum, net of any applicable bidding credit discounts, equal at least 110 percent of estimated relocation costs. In the *CSEA/Part 1 Report and Order*, the Commission, among other things, modified its reserve price rule pursuant to the CSEA to ensure that the CSEA's revenue requirement would be met.

#### 5. International Coordination

40. Potential bidders seeking licenses for geographic areas adjacent to the Canadian and Mexican border should be aware that the use of some or all of the AWS-3 frequencies they acquire in the auction are subject to international agreements with Canada and Mexico. As the Commission noted in the *AWS-3 Report and Order*, the Commission routinely works with the United States Department of State and Canadian and Mexican government officials to ensure the efficient use of the spectrum as well as interference-free operations in the border areas near Canada and Mexico. Until such time as any adjusted agreements, as needed, between the United States, Mexico and/or Canada can be agreed to, operations in the AWS-3 frequency bands must not cause harmful interference across the border, consistent with the terms of the agreements currently in force.

#### 6. Quiet Zones

41. AWS-3 licensees must individually apply for and receive a separate license for each transmitter if the proposed operation would affect the radio quiet zones set forth in the Commission's rules.

#### 7. Spectrum Screen for Competitive Review of Secondary Market Transactions

42. In its recent *Mobile Spectrum Holdings Report and Order*, the Commission concluded that, instead of administering its case-by-case review of auction winners' mobile spectrum holdings at the long-form application stage, it would determine prior to an auction whether an *ex ante* application of a band-specific mobile spectrum holding limit is necessary for the initial licensing of a band through competitive bidding. For the initial licensing of the AWS-3 band through competitive bidding, the Commission found that, on balance, it is not in the public interest to adopt a band-specific mobile spectrum holdings limit.

43. The Commission's spectrum screen is a tool used to help achieve the Commission's policy of facilitating access to spectrum in a manner that promotes competition. In its competitive review of secondary market transactions, the Commission applies an initial screen to help identify for case-by-case review local markets where changes in spectrum holdings resulting from the proposed transaction may be of particular concern. The Commission observed in the *Mobile Spectrum Holdings Report and Order* that, notwithstanding whether a band-specific mobile spectrum holding limit is applied to the initial licensing of a band through competitive bidding, the band would be included in the Commission's application of its spectrum screen for competitive review of subsequent secondary market transactions if the band is deemed suitable and available for the provision of mobile telephony/mobile broadband services. Further, in the *Mobile Spectrum Holdings Report and Order*, the Commission updated its spectrum screen to reflect the current suitability and availability of spectrum for the provision of mobile telephony/broadband services. In particular, in its consideration of AWS-3 spectrum, the Commission added the 65 megahertz of AWS-3 spectrum being offered in Auction 97 to the spectrum screen on a market-by-market basis as it becomes available. Thus, the spectrum in these bands will be counted in the spectrum screen in a particular market once all relocating Federal incumbent systems in that market are within three years of completing relocation according to the Federal agency Transition Plans. Spectrum in the 2155–2180 MHz band will be counted in the spectrum screen for a particular market at the same time the Commission counts the paired 1755–1780 MHz band in that market in the screen. The Bureau encourages each potential Auction 97 applicant to carefully review the *Mobile Spectrum Holdings Report and Order* to understand how these policies might apply to its particular situation.

#### 8. Due Diligence

44. The Bureau reminds each potential bidder that it is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the licenses that it is seeking in this auction. Each bidder is responsible for assuring that, if it wins a license, it will be able to build and operate facilities in accordance with the Commission's rules. The Commission makes no representations or warranties

about the use of this spectrum for particular services. Applicants should be aware that a Commission auction represents an opportunity to become a Commission licensee, subject to certain conditions and regulations, and that the Commission's statutory authority, under the Communications Act, to add, modify and eliminate rules governing spectrum use, as the public interest warrants, applies equally to all licenses, whether acquired through the competitive bidding process or otherwise. In addition, 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.

45. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. In particular, the Bureau strongly encourages each potential bidder to review all Commission orders and public notices establishing rules and policies for the AWS-3 bands, including incumbency issues for AWS-3 licensees, Federal and non-Federal relocation and sharing and cost sharing obligations, and protection of Federal and non-Federal incumbent operations. Additionally, each potential bidder should perform technical analyses or refresh their previous analyses to assure itself that, should it become a winning bidder for any Auction 97 license, it will be able to build and operate facilities that will fully comply with all applicable technical and regulatory requirements. The Bureau strongly encourages each applicant to inspect any prospective transmitter sites located in, or near, the service area for which it plans to bid, confirm the availability of such sites, and to familiarize itself with the Commission's rules regarding the National Environmental Policy Act.

46. The Bureau strongly encourages each applicant to conduct its own research prior to Auction 97 in order to determine the existence of pending administrative or judicial proceedings, including pending allocation rulemaking proceedings, that might affect its decision to participate in the auction. The Bureau strongly encourages each participant in Auction 97 to continue such research throughout the auction. The due diligence considerations mentioned in the *Auction 97 Procedures Public Notice* do not comprise an exhaustive list of steps that should be undertaken prior to participating in this auction. As always, the burden is on the potential bidder to determine how much research to

undertake, depending upon specific facts and circumstances related to its interests.

47. The Bureau also reminds each applicant that pending and future judicial proceedings, as well as pending and future proceedings before the Commission—including applications, applications for modification, rulemaking proceedings, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal objections, and applications for review—may relate to particular applicants or the licenses available in Auction 97 (or the terms and conditions thereof, including all applicable Commission rules and regulations). Each prospective applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on licenses available in this auction.

48. The Bureau calls special attention in this auction to the requirements presented by the temporary and indefinite sharing of portions of the AWS-3 bands by incumbent Federal users and AWS-3 licensees, which may vary by geography and frequency. The *FCC/NTIA Coordination Procedures Public Notice* contains additional information regarding the extent of sharing in the AWS-3 bands, refinements to the protection zones adopted in the *AWS-3 Report and Order*, and information and guidance on the overall coordination process between commercial and Federal users. Additionally, the CSEA, as amended by the Spectrum Act, stipulates that Federal agencies will receive reimbursement for their costs in relocating their operations from, or sharing, the "eligible frequencies" offered in this auction based on their approved transition plans, which the NTIA will make available to the public. The Bureau expects that the information in both the *FCC/NTIA Coordination Procedures Public Notice* and the federal agency transition plans will be material to an applicant's potential participation in Auction 97. Therefore, the Bureau strongly encourages each applicant to closely review these materials, as well as future releases from the Commission and the NTIA concerning these issues, and to carefully consider the technical and economic implications for commercial use of the AWS-3 bands.

49. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the licenses available in

Auction 97. Each potential bidder is responsible for undertaking research to ensure that any licenses won in this auction will be suitable for its business plans and needs. Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

#### 9. Use of Integrated Spectrum Auction System

50. Bidders will be able to participate in Auction 97 over the Internet using the Commission's Web-based Integrated Spectrum Auction System (ISAS or FCC Auction System). The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees, or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning, or use of the FCC Auction System that is accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming, or other advice or service provided in connection with the FCC Auction System.

#### 10. Environmental Review Requirements

51. Licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other federal environmental statutes. The construction of a wireless antenna facility is a federal action, and the licensee must comply with the Commission's environmental rules for each such facility. These environmental rules require, among other things, that the licensee consult with expert agencies having environmental responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the U.S. Army Corps of Engineers, and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). In assessing the effect of facility construction on historic properties, the licensee must follow the provisions of the FCC's Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process. The licensee must prepare an environmental assessment for any facility that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or

endangered species, designated critical habitats, historical or archaeological sites, Native American religious sites, floodplains, surface features, or migratory birds. In addition, the licensee must prepare an environmental assessment for any facility that includes high intensity white lights in residential neighborhoods or excessive radio frequency emission.

#### D. Auction Specifics

##### 1. Bidding Methodology

52. The bidding methodology for Auction 97 will be a simultaneous multiple round format. The Commission will conduct this auction over the Internet using the FCC Auction System. Qualified bidders are permitted to bid electronically via the Internet or by telephone using the telephonic bidding option. All telephone calls are recorded.

##### 2. Pre-Auction Dates and Deadlines

53. The following dates and deadlines, as announced in the *Auction 97 Procedures Public Notice* apply: (1) Auction tutorial available (via Internet) by August 28, 2014; (2) short-Form Application (FCC Form 175) Filing Window Opens on August 28, 2014; 12:00 noon ET; (3) short-Form Application (FCC Form 175) Filing Window Deadline closes on September 12, 2014; 6:00 p.m. ET; (4) upfront Payments (via wire transfer) due by October 15, 2014; 6:00 p.m. ET; (5) Mock Auction begins on November 10, 2014; and (6) Auction 97 begins on November 13, 2014.

54. In order to provide sufficient time for Commission staff to complete review of short-form applications and for Auction 97 applicants to work with staff to address any deficiencies with their applications, the Bureau is unable to grant in full the joint request of CCA, CTIA, and NTCA to set a short-form deadline of September 24, 2014. Those parties assert setting the deadline near the end of that month would facilitate the association members' ability to participate in business negotiations and panel discussions, including panels on the AWS-3 auction, at industry conferences scheduled during September 2014 without risk of running afoul of 47 CFR 1.2105(c)'s prohibited communications period. The Bureau understands that two of three of those events will have concluded by September 12, 2014, which is the alternative date they request.

##### 3. Requirements for Participation

55. Those wishing to participate in this auction must: (1) Submit a short-form application (FCC Form 175)

electronically prior to 6:00 p.m. ET, on September 12, 2014, following the electronic filing procedures set forth in Attachment D to the *Auction 97 Procedures Public Notice*; (2) submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, on October 15, 2014, following the procedures and instructions set forth in Attachment E; and (3) comply with all provisions outlined in the *Auction 97 Procedures Public Notice* and applicable Commission rules.

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

### A. General Information Regarding Short-Form Applications

56. An application to participate in an FCC auction, referred to as a short-form application or FCC Form 175, provides information used to determine whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or permits. The short-form application is the first part of the Commission's two-phased auction application process. In the first phase, parties desiring to participate in the auction must file a streamlined, short-form application in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on the applicant's short-form application and certifications and on its upfront payment. In the second phase, each winning bidder must file a more comprehensive long-form application (FCC Form 601) and have a complete and accurate ownership disclosure information report (FCC Form 602) on file with the Commission.

57. Every entity and individual seeking a license available in Auction 97 must file a short-form application electronically via the FCC Auction System prior to 6:00 p.m. ET on September 12, 2014, following the procedures prescribed in Attachment D to the *Auction 97 Procedures Public Notice*. If an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 will be used to determine whether the applicant is eligible for the claimed bidding credit. Applicants filing a short-form application are subject to the Commission's anti-collusion rules beginning at the deadline for filing.

58. Applicants bear full responsibility for submitting accurate, complete and timely short-form applications. All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to

hold a license. Each applicant should read carefully the instructions set forth in Attachment D to the *Auction 97 Procedures Public Notice* and should consult the Commission's rules to ensure that, in addition to the materials, all the information required is included within its short-form application.

59. An individual or entity may not submit more than one short-form application for a single auction. If a party submits multiple short-form applications for any license(s) in the same or overlapping geographic area(s), only one of its applications can be found to be complete when reviewed for completeness and compliance with the Commission's rules.

60. Applicants should note that submission of a short-form application (and any amendments thereto) constitutes a representation by the person certifying the application that he or she is an authorized representative of the applicant with authority to bind the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Applicants are not permitted to make major modifications to their applications; such impermissible changes include a change of the certifying official to the application. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

#### *B. License Selection*

61. An applicant must select the licenses on which it wants to bid from the "Eligible Licenses" list on its short-form application. Applicants must review and verify their license selections before the deadline for submitting short-form applications. License selections cannot be changed after the short-form application filing deadline. The FCC Auction System will not accept bids on licenses that were not selected on the applicant's short-form application.

#### *C. Disclosure of Bidding Arrangements*

62. An applicant will be required to identify in its short-form application all real parties in interest with whom it has entered into any agreements, arrangements, or understandings of any kind relating to the licenses being auctioned, including any agreements relating to post-auction market structure.

63. Each applicant will also be required to certify under penalty of perjury in its short-form application that

it has not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application, regarding the amount of its bids, bidding strategies, or the particular licenses on which it will or will not bid. If an applicant has had discussions, but has not reached an agreement by the short-form application filing deadline, it should not include the names of parties to the discussions on its application and may not continue such discussions with any applicants after the deadline.

64. After the filing of short-form applications, the Commission's rules do not prohibit a party holding a non-controlling, attributable interest in one applicant from acquiring an ownership interest in or entering into a joint bidding arrangement with other applicants, provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While 47 CFR 1.2105(c) does not prohibit non-auction-related business negotiations among auction applicants, the Bureau reminds applicants that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies. Further, compliance with the disclosure requirements of 47 CFR 1.2105(c) will not insulate a party from enforcement of the antitrust laws.

#### *D. Ownership Disclosure Requirements*

65. Each applicant must comply with the uniform Part 1 ownership disclosure standards and provide information required by 47 CFR 1.2105 and 1.2112. Specifically, in completing the short-form application, an applicant will be required to fully disclose information on the real party- or parties-in-interest and the ownership structure of the applicant, including both direct and indirect ownership interests of 10 percent or more, as prescribed in 47 CFR 1.2105 and 1.2112. Each applicant is responsible for ensuring that information submitted in its short-form application is complete and accurate.

66. In certain circumstances, an applicant's most current ownership information on file with the Commission, if in an electronic format compatible with the short-form application (FCC Form 175) (such as

information submitted in an FCC Form 602 or in an FCC Form 175 filed for a previous auction using ISAS) will automatically be entered into the applicant's short-form application. Each applicant must carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for filing the short-form application. Any information that needs to be corrected or updated must be changed directly in the short-form application.

#### *E. Foreign Ownership Disclosure Requirements*

67. Section 310 of the Communications Act requires the Commission to review foreign investment in radio station licenses and imposes specific restrictions on who may hold certain types of radio licenses. The provisions of section 310 apply to applications for initial radio licenses, applications for assignments and transfers of control of radio licenses, and spectrum leasing arrangements under the Commission's secondary market rules. In completing the short-form application (FCC Form 175), an applicant will be required to disclose information concerning any foreign ownership of the applicant. An applicant must certify in its short-form application that, as of the deadline for filing a short-form application to participate in Auction 97, the applicant either is in compliance with the foreign ownership provisions of section 310 or has filed a petition for declaratory ruling requesting Commission approval to exceed the applicable foreign ownership limit or benchmark in section 310(b) that is pending before, or has been granted by, the Commission.

#### *F. National Security Certification Requirement for Auction 97 Applicants*

68. Section 6004 of the Spectrum Act prohibits a person who has been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant from participating in any auction that is required or authorized to be conducted pursuant to the Spectrum Act. In 2013, the Commission amended its rules to implement this mandate by adding a certification to the various other certifications that a party must make in any short-form application. Pursuant to this rule, any applicant seeking to participate in Auction 97 must certify in its short-form application, under penalty of perjury, that the applicant and all of the related individuals and entities required to be disclosed on its application are not person(s) who have

been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant, and who are thus statutorily prohibited from participating in such a Commission auction. As with other required certifications, an auction applicant's failure to include 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.

#### G. Acknowledgement Statement for Auction 97 Applicants

69. The Bureau adopts its proposal to require each applicant selecting any license in the 1755–1780 MHz band to submit with its short-form application a signed statement acknowledging that the applicant's operations the 1755–1780 MHz band may be subject to interference from Federal systems, that the applicant must accept interference from incumbent Federal operations, and that the applicant has considered these risks before submitting any bids for applicable licenses in Auction 97. The specific text that must be included in the required acknowledgement statement is contained in Attachment G to the *Auction 97 Procedures Public Notice*. The acknowledgement statement must be signed by the same individual that signs the application on behalf of the applicant. Guidance on submitting the acknowledgement statement can be found in Attachment D to the *Auction 97 Procedures Public Notice*.

70. Incumbent Federal users are currently operating in the 1695–1710 MHz and 1755–1780 MHz bands. In the *AWS–3 Report and Order*, the Commission adopted rules to address commercial operations in these bands in light of the temporary and indefinite sharing of the bands by Federal incumbent users and commercial licensees, including a requirement that commercial licensees operate on a co-equal, primary operations with Federal systems, and a requirement that licensees in the 1755–1780 MHz band accept interference from Federal systems as long as such systems remain in the band.

71. The Bureau disagrees with the recommendation of Spectrum Financial Partners that it should not require an acknowledgement on the grounds that this would be an unnecessary paperwork burden and applicant's acceptance of such interference obligations is already adequately covered by the due diligence instructions that apply to all auctions.

As both T-Mobile and AT&T recognize, it may be useful for each bidder for these frequencies to sign a statement acknowledging that it has given consideration to potential interference issues for this band. AT&T and T-Mobile request that the required statement be narrowly drafted, and seek assurances that the acknowledgement does not give rise to any new obligations for the 1755–1780 MHz band beyond those set out in the Commission's rules. They also encourage the Commission to promote disclosure by federal agencies of as much information as possible about the potential interference environment. The Bureau notes that the text of the acknowledgement statement is narrowly tailored and expressly states that it does not supersede the licensee's rights and obligations specified by law, rule, or other Commission action.

#### H. Designated Entity Provisions

72. Eligible applicants in Auction 97 may claim small business bidding credits and applicants should review carefully the Commission's decisions regarding the designated entity provisions.

##### 1. Bidding Credits for Small Businesses

73. A bidding credit represents an amount by which a bidder's winning bid will be discounted. For Auction 97, bidding credits will be available to small businesses and consortia thereof.

##### a. Bidding Credit Eligibility Criteria

74. In the *AWS–3 Report and Order*, the Commission adopted small business bidding credits to promote and facilitate the participation of small businesses in competitive bidding for licenses in the AWS–3 bands.

75. The level of bidding credit is determined as follows: (1) a bidder with attributed average annual gross revenues that do not exceed \$40 million for the preceding three years will receive a 15 percent discount on its winning bid; and (2) a bidder with attributed average annual gross revenues that do not exceed \$15 million for the preceding three years will receive a 25 percent discount on its winning bid.

76. Bidding credits are not cumulative; qualifying applicants receive either the 15 percent or the 25 percent bidding credit on its winning bid, but not both. Applicants should note that unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license to an entity not qualifying for the same level of bidding credit.

##### b. Revenue Disclosure on Short-Form Application

77. An entity applying as a small business must provide gross revenues for the preceding three years of each of the following: (1) The applicant, (2) its affiliates, (3) its controlling interests, (4) the affiliates of its controlling interests, and (5) the entities with which it has an attributable material relationship. Certification that the average annual gross revenues of such entities and individuals for the preceding three years do not exceed the applicable limit is not sufficient. Additionally, if an applicant is applying as a consortium of small businesses, this information must be provided for each consortium member.

##### 2. Attributable Interests

##### a. Controlling Interests

78. Controlling interests of an applicant include individuals and entities with either *de facto* or *de jure* control of the applicant. Typically, ownership of greater than 50 percent of an entity's voting stock evidences *de jure* control. *De facto* control is determined on a case-by-case basis. The following are some common indicia of *de facto* control: (1) The entity constitutes or appoints more than 50 percent of the board of directors or management committee; (2) the entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; and (3) the entity plays an integral role in management decisions.

79. Applicants should refer to 47 CFR 1.2110(c)(2) and Attachment D to the *Auction 97 Procedures Public Notice* to understand how certain interests are calculated in determining control. For example, pursuant to 47 CFR 1.2110(c)(2)(ii)(F), officers and directors of an applicant are considered to have controlling interest in the applicant.

##### b. Affiliates

80. Affiliates of an applicant or controlling interest include an individual or entity that (1) directly or indirectly controls or has the power to control the applicant, (2) is directly or indirectly controlled by the applicant, (3) is directly or indirectly controlled by a third party that also controls or has the power to control the applicant, or (4) has an "identity of interest" with the applicant. The Commission's definition of an affiliate of the applicant encompasses both controlling interests of the applicant and affiliates of controlling interests of the applicant. For more information regarding affiliates, applicants should refer to 47 CFR 1.2110(c)(5) and Attachment D to

the *Auction 97 Procedures Public Notice*.

### c. Material Relationships

81. The Commission requires the consideration of certain leasing and resale (including wholesale) relationships—referred to as “attributable material relationships”—in determining designated entity eligibility for bidding credits. An applicant or licensee has an “attributable material relationship” when it has one or more agreements with any individual entity for the lease or resale (including under a wholesale agreement) of, on a cumulative basis, more than 25 percent of the spectrum capacity of any individual license held by the applicant or licensee. The attributable material relationship will cause the gross revenues of that entity and its attributable interest holders to be attributed to the applicant or licensee for the purposes of determining the applicant’s or licensee’s (i) eligibility for designated entity benefits and (ii) liability for “unjust enrichment” on a license-by-license basis.

82. The Commission grandfathered material relationships in existence before the release of the *Designated Entity Second Report and Order*, meaning that those preexisting relationships alone would not cause the Commission to examine a designated entity’s ongoing eligibility for existing benefits or its liability for unjust enrichment. The Commission did not, however, grandfather preexisting material relationships for determinations of an applicant’s or licensee’s designated entity eligibility for future auctions or in the context of future assignments, transfers of control, spectrum leases, or other reportable eligibility events. Rather, in such circumstances, the Commission reexamines the applicant’s or licensee’s designated entity eligibility, taking into account all existing material relationships, including those previously grandfathered. The Commission has recently waived the bright-line application of 47 CFR 1.2110(b)(3)(iv)’s attributable material relationship rule that would otherwise trigger the automatic attribution of the lessee’s gross revenues to a designated entity (DE) applicant, where its leased licenses were not subject to DE benefits and, at the time the leases became effective, the DE applicant held no other licenses subject to DE benefits. To the extent that the requesting entity and any other similarly situated parties certify that they are qualified to claim DE benefits in any upcoming auction and become winning bidders, they will be

required to demonstrate at the long-form application stage that the specific facts and circumstances of their spectrum lease agreements do not require attribution of the lessees’ gross revenues in their respective cases.

### d. Gross Revenue Exceptions

83. The Commission has also made other modifications to its rules governing the attribution of gross revenues for purposes of determining designated entity eligibility. For example, the Commission has clarified that, in calculating an applicant’s gross revenues under the controlling interest standard, it will not attribute to the applicant the personal net worth, including personal income, of its officers and directors.

84. The Commission has also exempted from attribution to the applicant the gross revenues of the affiliates of a rural telephone cooperative’s officers and directors, if certain conditions specified in 47 CFR 1.2110(b)(3)(iii) are met. An applicant claiming this exemption must provide, in an attachment, an affirmative statement that the applicant, affiliate and/or controlling interest is an eligible rural telephone cooperative within the meaning of 47 CFR 1.2110(b)(3)(iii), and the applicant must supply any additional information as may be required to demonstrate eligibility for the exemption from the attribution rule. Applicants seeking to claim this exemption must meet all of the conditions. Additional guidance on claiming this exemption may be found in Attachment D to the *Auction 97 Procedures Public Notice*.

### e. Bidding Consortia

85. A consortium of small businesses is a conglomerate organization composed of two or more entities, each of which individually satisfies the definition of a small business. Thus, each member of a consortium of small businesses that applies to participate in Auction 97 must individually meet the criteria for small businesses. Each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, the affiliates of its controlling interests, and any entities having an attributable material relationship with the member. Although the gross revenues of the consortium members will not be aggregated for purposes of determining the consortium’s eligibility as a small business, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

### I. Tribal Lands Bidding Credit

86. To encourage the growth of wireless services in federally recognized tribal lands, the Commission has implemented a tribal lands bidding credit. Applicants do not provide information regarding tribal lands bidding credits on their short-form applications. Instead, winning bidders may apply for the tribal lands bidding credit after the auction when they file their more detailed, long-form applications.

### J. Provisions Regarding Former and Current Defaulters

87. Current defaulters or delinquents are not eligible to participate in Auction 97, but former defaulters or delinquents can participate so long as they are otherwise qualified and make upfront payments that are fifty percent more than would otherwise be necessary. An applicant is considered a “current defaulter” or a “current delinquent” when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, is in default on any payment for any Commission construction permit or license (including a down payment) or is delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for short-form applications. An applicant is considered a “former defaulter” or a “former delinquent” when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, have defaulted on any Commission construction permit or license or been delinquent on any non-tax debt owed to any Federal agency, but have since remedied all such defaults and cured all of the outstanding non-tax delinquencies.

88. Four trade associations have jointly requested that the Commission grant a limited, temporary waiver of the Commission’s “former defaulter” rule, 47 CFR 1.2106(a), as to two categories of debt for Auction 97 applicants. The Bureau concludes that any requests for temporary, limited relief from the “former defaulter” rule are beyond the scope of the *Auction 97 Procedures Public Notice*, which is limited to establishing procedures for the upcoming auction of AWS–3 licenses. The Bureau notes, however, that such requests are being addressed separately.

89. On the short-form application, an applicant must certify under penalty of perjury that it, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by 47 CFR 1.2110, are not in default on any payment for a Commission construction

permit or license (including down payments) and that it is not delinquent on any non-tax debt owed to any Federal agency. Each applicant must also state under penalty of perjury whether it, its affiliates, its controlling interests, and the affiliates of its controlling interests, have ever been in default on any Commission construction permit or license or have ever been delinquent on any non-tax debt owed to any Federal agency. Prospective applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

90. Applicants are encouraged to review the Bureau's previous guidance on default and delinquency disclosure requirements in the context of the short-form application process. For example, it has been determined that, to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for purposes of 47 CFR 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline. Therefore, with respect to regulatory or application fees, the provisions of 47 CFR 1.2105(a) and 1.2106(a) regarding default and delinquency in connection with competitive bidding are limited to circumstances in which the relevant party has not complied with a final Commission payment deadline. Parties are also encouraged to consult with the Wireless Telecommunications Bureau's Auctions and Spectrum Access Division staff if they have any questions about default and delinquency disclosure requirements.

91. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the "red light rule," that implement its obligations under the Debt Collection Improvement Act of 1996, which governs the collection of debts owed to the United States. Under the red light rule, applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission will not be processed. In the same rulemaking order, the Commission explicitly declared, however, that its competitive bidding rules "are not affected" by the red light rule. As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of its competitive bidding rules,

including the provisions and certifications of 47 CFR 1.2105 and 1.2106, with regard to current and former defaults or delinquencies.

92. Applicants are reminded, however, that the Commission's Red Light Display System, which provides information regarding debts currently owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of 47 CFR 1.2105. Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant's lack of current "red light" status is not necessarily determinative of its eligibility to participate in an auction or of its upfront payment obligation.

93. Moreover, prospective applicants in Auction 97 should note that any long-form applications filed after the close of bidding will be reviewed for compliance with the Commission's red light rule, and such review may result in the dismissal of a winning bidder's long-form application.

#### *K. Optional Applicant Status Identification*

94. Applicants owned by members of minority groups and/or women, as defined in 47 CFR 1.2110(c)(3), and rural telephone companies, as defined in 47 CFR 1.2110(c)(4), may identify themselves regarding this status in filling out their short-form applications. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of "designated entities" in its auctions.

#### *L. Minor Modifications to Short-Form Applications*

95. After the deadline for filing initial applications, an Auction 97 applicant is permitted to make only minor changes to its application. Permissible minor changes include, among other things, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons. An applicant is not permitted to make a major modification to its application (e.g., change of license selection, change control of the applicant, change the certifying official, or claim eligibility for a higher percentage of bidding credit) after the initial application filing deadline. Thus, any change in control of an applicant—resulting from a merger, for example—will be considered a major modification, and the application will consequently be dismissed.

96. If an applicant wishes to make permissible minor changes to its short-form application, such changes should be made electronically to its short-form application using the FCC Auction System whenever possible. For the change to be submitted and considered by the Commission, be sure to click on the SUBMIT button. After the revised application has been submitted, a confirmation page will be displayed stating the submission time, submission date, and a unique file number.

97. An applicant cannot use the FCC Auction System outside of the initial and resubmission filing windows to make changes to its short-form application for other than administrative changes (e.g., changing certain contact information or the name of an authorized bidder). If these or other permissible minor changes need to be made outside of these windows, the applicant must submit a letter briefly summarizing the changes and subsequently update its short-form application in the FCC Auction System once it is available. Moreover, after the filing window has closed, the system will not permit applicants to make certain changes, such as the applicant's legal classification and license selections.

98. Any letter describing changes to an applicant's short-form application must be submitted by email to [auction97@fcc.gov](mailto:auction97@fcc.gov). The email summarizing the changes must include a subject or caption referring to Auction 97 and the name of the applicant, for example, "Re: Changes to Auction 97 Short-Form Application of ABC Corp." The Bureau requests that parties format any attachments to email as Adobe® Acrobat® (PDF) or Microsoft® Word documents. Questions about short-form application amendments should be directed to the Auctions and Spectrum Access Division at (202) 418-0660.

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

100. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System, which was used for submitting comments regarding Auction 97. Further, parties submitting information related to their applications

should use caution to ensure that their submissions do not contain confidential information or communicate information that would violate 47 CFR 1.2105(c) or the limited information procedures adopted for Auction 97. A party seeking to submit information that might reflect non-public information, such as an applicant's license selections, upfront payment amount, or bidding eligibility, should consider submitting any such information along with a request that the filing or portions of the filing be withheld from public inspection until the end of the prohibition of certain communications pursuant to 47 CFR 1.2105(c).

#### *M. Maintaining Current Information in Short-Form Applications*

101. 47 CFR 1.65 and 1.2105(b) requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and in competitive bidding proceedings to furnish additional or corrected information to the Commission within five days of a significant occurrence, or to amend a short form application no more than five days after the applicant becomes aware of the need for the amendment. Changes that cause a loss of or reduction in the percentage of bidding credit specified on the originally-submitted application must be reported immediately, and no later than five business days after the change occurs. If an amendment reporting changes is a "major amendment," as defined by 47 CFR 1.2105, the major amendment will not be accepted and may result in the dismissal of the application. After the short-form filing deadline, applicants may make only minor changes to their applications. For changes to be submitted and considered by the Commission, be sure to click on the SUBMIT button in the FCC Auction System. In addition, an applicant cannot update its short-form application using the FCC Auction System after the initial and resubmission filing windows close. If information needs to be submitted pursuant to 47 CFR 1.65 after these windows close, a letter briefly summarizing the changes must be submitted by email to [auction97@fcc.gov](mailto:auction97@fcc.gov). This email must include a subject or caption referring to Auction 97 and the name of the applicant. The Bureau requests that parties format any attachments to email as Adobe® Acrobat® (PDF) or Microsoft® Word documents. A party seeking to submit information that might reflect non-public information, such as an applicant's license selections, upfront payment amount, or bidding eligibility,

should consider submitting any such information along with a request that the filing or portions of the filing be withheld from public inspection until the end of the prohibition of certain communications pursuant to 47 CFR 1.2105(c).

### **III. Pre-Auction Procedures**

#### *A. Online Auction Tutorial—Available August 28, 2014*

102. No later than Thursday, August 28, 2014, an auction tutorial will be available on the Auction 97 Web page for prospective bidders to familiarize themselves with the auction process. This online tutorial will provide information about pre-auction procedures, completing short-form applications, auction conduct, the FCC Auction Bidding System, auction rules, and AWS-3 service rules. The tutorial will also provide an avenue to ask Commission staff questions about the auction, auction procedures, filing requirements, and other matters related to this auction.

103. The Bureau believes parties interested in participating in this auction will find the interactive, online tutorial an efficient and effective way to further their understanding of the auction process. The tutorial will allow viewers to navigate the presentation outline, review written notes, listen to audio recordings of the notes, and search for topics using a text search function. Additional features of this web-based tool include links to auction-specific Commission releases, email links for contacting Commission licensing and auctions staff, a timeline with deadlines for auction preparation, and screen shots of the online application and bidding system. The tutorial will be accessible through a web browser with Adobe Flash Player.

104. The auction tutorial will be accessible from the Commission's Auction 97 Web page at <http://wireless.fcc.gov/auctions/97/> through an "Auction Tutorial" link. Once posted, this tutorial will remain available and accessible anytime for reference in connection with the procedures outlined in the *Auction 97 Procedures Public Notice*.

105. Spectrum Financial Partners asks that the Bureau clarify the online interactive auction tutorial to include a clear description of the various fields in the downloadable reports, which might not be familiar to those taking part in a Commission auction for the first time. Spectrum Financial Partners also urges the Bureau to do more to make the auction tutorial more broadly available, perhaps even by posting a video version

of the interactive tutorial on YouTube. The Bureau finds the description of the various fields in the downloadable reports contained in its auction materials to be sufficiently clear, even for first-time bidders. The Bureau's ISAS Bidder's Guide"—which is sent by overnight delivery to all qualified bidders in advance of the mock auction and which is also available to the public in the FCC Auction System—provides additional information. The Bureau therefore declines to make the changes to the tutorial materials requested by Spectrum Financial Partners. In addition, because the Bureau's auction tutorial is publicly-available on the Auction 97 Web site and is accessible 24 hours a day, 7 days a week, it is already widely accessible, and the Bureau is not persuaded that there is any need to create other formats of the tutorial.

#### *B. Short-Form Applications—Due Prior to 6:00 p.m. ET on September 12, 2014*

106. In order to be eligible to bid in this auction, applicants must first follow the procedures set forth in Attachments D and E to the *Auction 97 Procedures Public Notice* to submit a short-form application (FCC Form 175) electronically via the FCC Auction System. This short-form application must be submitted prior to 6:00 p.m. ET on September 12, 2014. Late applications will not be accepted. No application fee is required, but an applicant must submit a timely upfront payment to be eligible to bid.

107. Applications may generally be filed at any time beginning at noon ET on August 28, 2014, until the filing window closes at 6:00 p.m. ET on September 12, 2014. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. There are no limits or restrictions on the number of times an application can be updated or amended until the filing deadline on September 12, 2014.

108. An applicant must always click on the SUBMIT button on the "Certify & Submit" screen to successfully submit its FCC Form 175 and any modifications; otherwise the application or changes to the application will not be received or reviewed by Commission staff. Additional information about accessing, completing, and viewing the FCC Form 175 is included in Attachment D to the *Auction 97 Procedures Public Notice*. FCC Auctions Technical Support is available at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET. In order to provide better

service to the public, all calls to Technical Support are recorded.

### C. Application Processing and Minor Corrections

109. After the deadline for filing short-form applications, the Commission will process all timely submitted applications to determine which are complete, and subsequently will issue a public notice identifying (1) those that are complete, (2) those that are rejected, and (3) those that are incomplete or deficient because of minor defects that may be corrected. The public notice will include the deadline for resubmitting corrected applications.

110. After the application filing deadline on September 12, 2014, applicants can make only minor corrections to their applications. They will not be permitted to make major modifications (e.g., change license selection, change control of the applicant, change the certifying official, or claim eligibility for a higher percentage of bidding credit).

111. Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the short-form application, unless the applicant's certifying official or contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on its behalf. Authorizations may be sent by email to [auction97@fcc.gov](mailto:auction97@fcc.gov).

### D. Upfront Payments—Due October 15, 2014

112. In order to be eligible to bid in this auction, an upfront payment must be submitted and accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing its short-form application, an applicant will have access to an electronic version of the FCC Form 159 that can be printed and sent by fax to U.S. Bank in St. Louis, Missouri. All upfront payments must be made as instructed in this Public Notice and must be received in the proper account at U.S. Bank before 6:00 p.m. ET on October 15, 2014.

#### 1. Making Upfront Payments by Wire Transfer

113. Wire transfer payments must be received before 6:00 p.m. ET on October 15, 2014. No other payment method is acceptable. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their bankers several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and

completed before the deadline. The specific information needed to make upfront payments is outlined in the *Auction 97 Procedures Public Notice*.

114. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must fax a completed FCC Form 159 (Revised 2/03) to U.S. Bank at (314) 418-4232. On the fax cover sheet, write "Wire Transfer—Auction Payment for Auction 97." In order to meet the upfront payment deadline, an applicant's payment must be credited to the Commission's account for Auction 97 before the deadline.

115. Each applicant is responsible for ensuring timely submission of its upfront payment and for timely filing of an accurate and complete FCC Remittance Advice Form (FCC Form 159). An applicant should coordinate with its financial institution well ahead of the due date regarding its wire transfer and allow sufficient time for the transfer to be initiated and completed prior to the deadline. The Commission repeatedly has cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer. Each applicant also is responsible for obtaining confirmation from its financial institution that its wire transfer to U.S. Bank was successful and from Commission staff that its upfront payment was timely received and that it was deposited into the proper account. To receive confirmation from Commission staff, contact Gail Glasser of the Office of Managing Director's Auctions Accounting Group at (202) 418-0578, or alternatively, Theresa Meeks at (202) 418-2945.

116. Please note the following information regarding upfront payments: (1) All payments must be made in U.S. dollars; (2) all payments must be made by wire transfer; (3) upfront payments for Auction 97 go to a lockbox number different from the lockboxes used in previous Commission auctions; and (4) failure to deliver a sufficient upfront payment as instructed by the October 15, 2014, deadline will result in dismissal of the short-form application and disqualification from participation in the auction.

#### 2. FCC Form 159

117. An accurate and complete FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be faxed to U.S. Bank to accompany each upfront payment. Proper completion of this form is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form

159 are included in Attachment E to the *Auction 97 Procedures Public Notice*. An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payers using the pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed electronically, but it must be filed with U.S. Bank by fax.

#### 3. Upfront Payments and Bidding Eligibility

118. The Commission has delegated to the Bureau the authority and discretion to determine appropriate upfront payments for each auction. An upfront payment is a refundable deposit made by each bidder to establish its eligibility to bid on licenses. Upfront payments help deter frivolous or insincere bidding, and provide the Commission with a source of funds in the event that the bidder incurs liability during the auction.

119. Applicants that are former defaulters must make upfront payments that are fifty percent greater than non-former defaulters. For purposes of this calculation, the "applicant" includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by 47 CFR 1.2110.

120. An applicant must make an upfront payment sufficient to obtain bidding eligibility for the licenses on which it will bid. The Bureau proposed in the *Auction 97 Comment Public Notice* that the amount of the upfront payment would determine a bidder's initial bidding eligibility, i.e., the maximum number of bidding units on which a bidder may place bids. Under the Bureau's proposal, in order to bid on a particular license, a qualified bidder must have selected the license on its FCC Form 175 and must have a current eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses selected on its FCC Form 175 for Auction 97, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all licenses the applicant selected on its FCC Form 175, but only enough to cover the maximum number of bidding units that are associated with licenses on which it wishes to place bids and hold provisionally winning bids in any given round. The total upfront payment does

not affect the total dollar amount the bidder may bid on any given license.

121. In the *Auction 97 Comment Public Notice*, the Bureau proposed to make the upfront payments equal to approximately one-half of the minimum opening bids. The Bureau further proposed that each license be assigned a specific number of bidding units, equal to one bidding unit per dollar of the upfront payment listed for the license. The number of bidding units for each license will remain constant throughout the auction. The Bureau did not receive any comments on its proposals for calculating upfront payments or assigning bidding units to each license, and thus adopts upfront payments that are approximately one-half of the minimum opening bids. The Bureau notes that, because the minimum opening bids the Bureau adopts in the *Auction 97 Procedures Public Notice* differ from those proposed, the number of bidding units and the upfront payment amount associated with each license are different than those that were proposed in the *Auction 97 Comment Public Notice*. The complete list of licenses for Auction 97 and the specific number of bidding units and associated upfront payment for each license are set forth in Attachment A to the *Auction 97 Procedures Public Notice*.

122. In calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units. In order to make this calculation, an applicant should add together the bidding units for all licenses on which it seeks to be active in any given round. Each applicant should check its calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline.

123. If a bidder wishes to bid on License A (with 30,000 bidding units) and License B (with 28,000 bidding units) in a round, it must have selected both of these licenses on its FCC Form 175 and purchased at least 58,000 bidding units (30,000 + 28,000) of bidding eligibility. If a bidder only wishes to bid on one of these licenses, purchasing 30,000 bidding units would allow the bidder to bid on either license, but not both at the same time. If the bidder purchased only 28,000 bidding units, it would have enough eligibility to bid on License B but could not bid on License A.

124. If an applicant is a former defaulter, it must calculate its upfront payment for all of its identified licenses by multiplying the number of bidding units on which it wishes to be active by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

#### *E. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments*

125. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information be supplied. Applicants can provide the information electronically during the initial short-form application filing window after the form has been submitted. (Applicants are reminded that information submitted as part of an FCC Form 175 will be available to the public. For that reason, wire transfer information should not be included in an FCC Form 175. Wire transfer instructions can also be faxed to the Commission using the instructions provided in the *Auction 97 Procedures Public Notice*.)

#### *F. Auction Registration*

126. Approximately ten days before the auction, the Bureau will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants with submitted short-form applications that are deemed timely-filed, accurate, and complete, provided that such applicants have timely submitted an upfront payment that is sufficient to qualify them to bid.

127. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID® tokens that will be required to place bids, the "Integrated Spectrum Auction System (ISAS) Bidder's Guide," and the Auction Bidder Line phone number.

128. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, if this mailing is not received by noon on Thursday, November 6, 2014, call the Auctions Hotline at (717) 338-2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

129. In the event that SecurID® tokens are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacements. To request replacement of these items, call Technical Support at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY).

#### *G. Remote Electronic Bidding*

130. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Only qualified bidders are permitted to bid. Each applicant should indicate its bidding preference—electronic or telephonic—on its FCC Form 175. In either case, each authorized bidder must have its own SecurID® token, which the Commission will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. For security purposes, the SecurID® tokens, the telephonic bidding telephone number, and the "Integrated Spectrum Auction System (ISAS) Bidder's Guide" are only mailed to the contact person at the contact address listed on the FCC Form 175. Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 97.

131. Please note that the SecurID® tokens can be recycled, and the Bureau encourages bidders to return the tokens to the FCC. Pre-addressed envelopes will be provided to return the tokens once bidding has closed.

#### *H. Mock Auction—November 10, 2014*

132. All qualified bidders will be eligible to participate in a mock auction on Monday, November 10, 2014. The mock auction will enable bidders to become familiar with the FCC Auction System prior to the auction. The Bureau strongly recommends that all bidders participate in the mock auction. Details will be announced by public notice.

133. DISH requests that the Bureau conduct at least one, but preferably two, mock auctions at least one week before the auction begins, and that the mock auction(s) offer the same number of licenses as the auction itself to match the actual auction's scenarios as closely as possible. In keeping with the Bureau's practice in most auctions, it will hold a mock auction shortly before the start of Auction 97 that will offer a sampling of licenses available in the auction. Based on the Bureau's

experience, this approach provides adequate practice and avoids the need to lengthen the time period between the short-form application deadline and the start of bidding.

#### IV. Auction

134. The first round of bidding for Auction 97 will begin on Thursday, November 13, 2014. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

##### A. Auction Structure

###### 1. Simultaneous Multiple Round Auction

135. In the *Auction 97 Comment Public Notice*, the Bureau proposed to auction all licenses in Auction 97 in a single auction using a standard simultaneous multiple-round (SMR) auction format. This format offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses. A bidder may bid on, and potentially win, any number of licenses.

136. With one exception, all commenters that discussed this issue support using a standard SMR auction format without any form of package bidding. AT&T notes that this format has been used successfully for two decades and that the wireless industry is extremely familiar with it. AT&T maintains that using this design for Auction 97 will promote a competitive and fair auction where both large and small bidders are familiar with the format and can make informed choices in an efficient manner. Verizon Wireless supports the use of package bidding in Auction 97, and proposes allowing applicants to bid on a nationwide package of licenses in the H, I, and J Blocks. Verizon Wireless maintains that package bidding will increase participation and bidding competition because it allows bidders to bid on both the value of the individual EA licenses and the value of obtaining spectrum nationwide over a consistent set of frequencies. Verizon Wireless also claims that the risk of failing to acquire all licenses in a business plan (the "exposure problem") may inhibit participation because, for some bidders, the potential for acquisition of all desired licenses is needed to support individual license bid amounts. However, US Cellular asserts that Verizon Wireless has previously made clear that the availability of larger license areas, such as the EA-based licenses being offered in Auction 97,

would significantly mitigate the "exposure risks" it would face if it could not bid on packages of smaller license areas.

137. The Bureau concludes, based on the record and in light of its experience with previous spectrum auctions, including auctions of Advanced Wireless Services (AWS) licenses, that a standard SMR format will provide bidders with a simple and efficient means of bidding on single or multiple licenses and will offer adequate opportunity for bidders in Auction 97 to aggregate licenses in order to obtain the level of coverage they desire consistent with their business plans. The Bureau therefore adopts a standard SMR auction format for Auction 97. Accordingly, bids will be accepted on all licenses in each round of the auction until bidding stops on every license unless otherwise announced.

###### 2. Single Auction With a Single Set of Procedures and Requirements for the Unpaired and Paired Bands

138. A number of commenters ask (to varying degrees) that the Bureau recognize the differences between the unpaired and paired bands when adopting procedures and requirements for Auction 97 by establishing separate bidding eligibility, activity waivers, and stopping rules for the bands. They submit that it is not likely that licenses in the bands could be used as close substitutes because they have different technical characteristics and likely uses, and that combined procedures could enable bidders to use bidding strategies designed to hurt smaller competitors and new entrants, which could deter competition. These commenters advocate establishing separate upfront payment requirements and bidding eligibility for the unpaired and paired bands to prevent a bidder from gaming eligibility and activity requirements by "parking" bidding eligibility on licenses in one band to lock competitors out of that spectrum or distract from its real interests. They argue that such strategic parking enables larger competitors to drive up the cost of spectrum they have no real interest in winning, and could cause smaller competitors or new entrants to drop out of the auction early, thereby potentially depressing auction revenues. They maintain that separate eligibility and activity requirements will avoid such results.

139. AT&T and Verizon Wireless support a single auction with a single set of procedures. Verizon Wireless submits that separate auctions would significantly increase auction complexity, limit applicants' bidding flexibility, inhibit competition for the

1695–1710 MHz band, and decrease auction revenues. AT&T argues that commenters' arguments in support of adopting separate procedures and requirements are premised on the false assumptions that the different technical characteristics of the bands warrant separate auction treatment, and that employing common auction procedures for both bands will encourage parking. Both AT&T and Verizon Wireless maintain that other bidders may view the bands as substitutable or complementary and, if so, public interest objectives are best promoted by allowing the market to reflect substitutability through a single set of auction procedures. They also contend that commenters' concerns about parking are misplaced, because an applicant bidding solely on the 1695–1710 MHz band to preserve eligibility will quickly move its bids as soon as the reserve is met, and thus eligibility "parkers" will not drive up the price any higher than otherwise required to meet the reserve.

140. Auction 97 will offer paired and unpaired licenses in a single auction subject to one set of procedures and requirements. Particularly where, as here, interested parties are divided on whether licenses being offered may be characterized as substitutes, such information may best be discovered through a competitive bidding process. Offering both the paired and unpaired bands in the same auction will allow market forces to determine the degree to which market participants view the AWS-3 spectrum blocks as substitutable. The Bureau's approach is grounded in its experience with past auctions where the degree to which licenses may be characterized as substitutable or complementary differs depending upon the perspective of each auction participant. Providing for two different sets of bidding eligibility, activity waivers, and stopping rules would disadvantage bidders interested in both paired and unpaired blocks by forcing them to manage two separate pools of eligibility, which would reduce their ability to pursue backup strategies as prices rise. Whether in one auction or two simultaneous auctions, requiring bidders interested in both blocks to deal with separate sets of bidding actions would invite confusion and could lead to mistakes in bidding. Elsewhere in the *Auction 97 Procedures Public Notice*, the Bureau describes procedures that are intended to ameliorate the parking concerns raised by commenters. Accordingly, the Bureau will conduct Auction 97 under a single set of

procedures and requirements covering both the unpaired and paired bands.

### 3. Limited Information Disclosure Procedures: Information Available to Bidders Before and During the Auction

141. Consistent with its practice in several prior wireless spectrum auctions, the Bureau proposed in the *Auction 97 Comment Public Notice* to withhold, until after the close of bidding, public release of (1) bidders' license selections on their short-form applications (FCC Form 175), (2) the amounts of bidders' upfront payments and bidding eligibility, and (3) information that may reveal the identities of bidders placing bids and taking other bidding-related actions. The Bureau sought comment on the proposal to implement limited information disclosure procedures and on any alternatives for Auction 97.

142. The Bureau received several comments on its proposal to employ limited information disclosure procedures for Auction 97, both in support and in opposition. The limited information disclosure procedures used in past auctions have helped safeguard against potential anticompetitive behavior such as retaliatory bidding and collusion, and after carefully considering the record on this issue, the Bureau finds nothing that persuades it to depart from its now-established practice of implementing these procedures in wireless spectrum auctions. The Bureau disagrees with the assertions of commenters that argue that limited information disclosure procedures are unnecessary or harmful to smaller bidders, and concludes that the competitive benefits associated with limiting information disclosure support adoption of such procedures and outweigh the potential benefits of full disclosure. Accordingly, the Bureau adopts the limited information disclosure procedures proposed in the *Auction 97 Comment Public Notice*. Thus, after the conclusion of each round, the Bureau will disclose all relevant information about the bids placed and/or withdrawn except the identities of the bidders performing the actions and the net amounts of the bids placed or withdrawn. As in past auctions conducted with limited information procedures, the Bureau will indicate, for each license, the minimum acceptable bid amount for the next round and whether the license has a provisionally winning bid. After each round, the Bureau will also release, for each license, the number of bidders that placed a bid on the license and the amounts of those bids. Furthermore, the Bureau will indicate whether any

proactive waivers were submitted in each round, and the Bureau will release the stage transition percentage — the percentages of licenses (as measured in bidding units) on which there were new bids — for the round. In addition, bidders can log in to the FCC Auction System to see, after each round, whether their own bids are provisionally winning. The Bureau will provide descriptions and/or samples of publicly-available and bidder-specific (non-public) results files prior to the start of the auction.

143. The Bureau, however, retains the discretion not to use limited information procedures if it, after examining the level of potential competition based on the short-form applications filed for Auction 97, determines that the circumstances indicate that limited information procedures would not be an effective tool for deterring anti-competitive behavior. For example, if only two applicants become qualified to participate in the bidding, limited information procedures would be ineffective in preventing bidders from knowing the identity of the competing bidder and, therefore, limited information procedures would not serve to deter attempts at signaling and retaliatory bidding behavior.

144. *Other Issues.* Information disclosure procedures established for this auction will not interfere with the administration of, or compliance with, the Commission's prohibition of certain communications. 47 CFR 1.2105(c)(1) provides that, after the short-form application filing deadline, all applicants for licenses in any of the same or overlapping geographic license areas are prohibited from disclosing to each other in any manner the substance of bids or bidding strategies until after the down payment deadline, subject to specified exceptions.

145. In Auction 97, the Commission will not disclose information regarding license selection or the amounts of bidders' upfront payments and bidding eligibility. The Commission will disclose the other portions of applicants' short-form applications through its online database, and certain application-based information through public notices.

146. To assist applicants in identifying other parties subject to 47 CFR 1.2105(c), the Bureau will notify separately each applicant in Auction 97 whether applicants with short-form applications to participate in pending auctions, including but not limited to Auction 97, have applied for licenses in any of the same or overlapping geographic areas as that applicant.

Specifically, after the Bureau conducts its initial review of applications to participate in Auction 97, it will send to each applicant in Auction 97 a letter that lists the other applicants that have pending short-form applications for licenses in any of the same or overlapping geographic areas. The list will identify the other applicants by name but will not list their license selections. As in past auctions, additional information regarding other applicants that is needed to comply with 47 CFR 1.2105(c)—such as the identities of other applicants' controlling interests and entities with a greater than ten percent ownership interest—will be available through the publicly-accessible online short-form application database.

147. When completing short-form applications, applicants should avoid any statements or disclosures that may violate the Commission's prohibition of certain communications, pursuant to 47 CFR 1.2105(c), particularly in light of the Commission's procedures regarding the availability of certain information in Auction 97. While applicants' license selections will not be disclosed until after Auction 97 closes, the Commission will disclose other portions of short-form applications through its online database and public notices. Accordingly, applicants should avoid including any information in their short-form applications that might convey information regarding license selections. For example, applicants should avoid using applicant names that refer to licenses being offered, referring to certain licenses or markets in describing bidding agreements, or including any information in attachments that may otherwise disclose applicants' license selections.

148. If an applicant is found to have violated the Commission's rules or the antitrust laws in connection with its participation in the competitive bidding process, the applicant may be subject to various sanctions, including forfeiture of its upfront payment, down payment, or full bid amount and prohibition from participating in future auctions.

149. The Bureau hereby warns applicants that the direct or indirect communication to other applicants or the public disclosure of non-public information (e.g., bid withdrawals, proactive waivers submitted, reductions in eligibility) could violate the Commission's limited information disclosure procedures and 47 CFR 1.2105(c). To the extent an applicant believes that such a disclosure is required by law or regulation, including regulations issued by the SEC, the Bureau strongly urges that the applicant

consult with the Commission staff in the Auctions and Spectrum Access Division before making such disclosure.

#### 4. Eligibility and Activity Rules

150. The Bureau will use upfront payments to determine initial (maximum) eligibility (as measured in bidding units) for Auction 97. The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. Each license is assigned a specific number of bidding units as listed in Attachment A to the *Auction 97 Procedures Public Notice*. Bidding units assigned to each license do not change as prices change during the auction. Upfront payments are not attributed to specific licenses. Rather, a bidder may place bids on any of the licenses selected on its FCC Form 175 as long as the total number of bidding units associated with those licenses does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. At a minimum, an applicant's upfront payment must cover the bidding units for at least one of the licenses it selected on its FCC Form 175. The total upfront payment does not affect the total dollar amount a bidder may bid on any given license.

151. In order to ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. A bidder's activity level in a round is the sum of the bidding units associated with licenses covered by the bidder's new bids in the round and its provisionally winning bids from the previous round. If a bidder removes bids in the current round or withdraws provisionally winning bids, those bids no longer count towards the bidder's activity.

152. The minimum required activity is expressed as a percentage of the bidder's current eligibility, and increases by stage as the auction progresses. Because these auction stage and stage transition procedures have proven successful in maintaining the

pace of previous auctions, the Bureau adopts them for Auction 97. 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.

#### 5. Auction Stages

153. In the *Auction 97 Comment Public Notice*, the Bureau proposed to conduct the auction in two stages and employ an activity rule. Under the Bureau's proposal, a bidder desiring to maintain its current bidding eligibility would be required to be active on licenses representing at least 80 percent of its current bidding eligibility during each round of Stage One, and at least 95 percent of its current bidding eligibility in Stage Two. US Cellular supports the Bureau's proposal to divide the auction into two stages, and opposes adopting a third stage with a 98 percent activity requirement. Aloha Partners asks the Bureau to add a third stage with a 100 percent activity requirement and would require that minimum acceptable bids be 20 percent higher than provisionally winning bids, and recommends that this third stage be implemented when the number of new provisionally winning bids falls below ten bids.

154. The Bureau sees no need to establish, at this time, a third stage with a 100 percent eligibility requirement as requested by Aloha Partners. Based on its past experience, the Bureau believes that two stages with 80 percent and 95 percent activity requirements should facilitate the auction progressing at a reasonable pace. In some of the Bureau's earlier auctions, it established three stages using 80 percent, 90 percent, and 98 percent activity requirements. In many of these auctions, however, implementing Stage Two had little effect in terms of increasing bidding activity, and Stage Three was implemented shortly thereafter. Based on this experience, the Bureau has generally moved away from three-stage auctions in favor of two-stage auctions. Moreover, a 95 percent threshold allows bidders slightly more flexibility than a higher requirement would in fulfilling their activity requirements during the final stage of the auction. Accordingly, the Bureau declines to establish a third stage with a 100 percent activity threshold at this time. The Bureau notes that it has the discretion to further alter the activity requirements (by, for example, establishing a 98 or 100 percent threshold) before and/or during the auction as circumstances warrant. The Bureau also has other mechanisms

by which to influence the speed of the auction if it determines that such steps are necessary. Therefore, the Bureau will conduct the auction in two stages as follows:

155. Stage One: During the first stage of the auction, a bidder desiring to maintain its current bidding eligibility will be required to be active on licenses representing at least 80 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in the use of an activity rule waiver or, if the bidder has no activity rule waivers remaining, a reduction in the bidder's bidding eligibility in the next round. During Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by five-fourths (5/4).

156. Stage Two: During the second stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the required activity level will result in the use of an activity rule waiver or, if the bidder has no activity rule waivers remaining, a reduction in the bidder's bidding eligibility in the next round. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by twenty-nineteenths (20/19).

157. CAUTION: Since activity requirements increase in Stage Two, bidders must carefully check their activity during the first round following a stage transition to ensure that they are meeting the increased activity requirement. This is especially critical for bidders that have provisionally winning bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required activity level by logging into the FCC Auction System.

158. When the Bureau moves the auction from Stage One to Stage Two, it will first alert bidders by announcement in the bidding system. The Bureau has the discretion to further alter the activity requirements before and/or during the auction as circumstances warrant.

## 6. Stage Transitions

159. In the *Auction 97 Comment Public Notice*, the Bureau proposed that it would advance the auction to the next stage (i.e., from Stage One to Stage Two) after considering a variety of measures of auction activity, including, but not limited to, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the increase in revenue. The Bureau further proposed that it would retain the discretion to change the activity requirements during the auction. For example, the Bureau could decide not to transition to Stage Two if it believes the auction is progressing satisfactorily under the Stage One activity requirement, or to transition to Stage Two with an activity requirement that is higher or lower than 95 percent. The Bureau proposed to alert bidders of stage advancements by announcement during the auction. The Bureau received no comments on this issue.

160. The Bureau adopts its proposal for stage transitions. Thus, the auction will start in Stage One. The Bureau will regulate the pace of the auction by announcement. The Bureau retains the discretion to transition the auction to Stage Two, to add an additional stage with a higher activity requirement, not to transition to Stage Two, and to transition to Stage Two with an activity requirement that is higher or lower than 95 percent. This determination will be based on a variety of measures of auction activity, including, but not limited to, the number of new bids and the percentages of licenses (as measured in bidding units) on which there are new bids.

## 7. Activity Rule Waivers

161. The Bureau proposed in the *Auction 97 Comment Public Notice* that each bidder in the auction be provided with three activity rule waivers. The Bureau received no comments on this issue. Therefore, the Bureau adopts its proposal to provide bidders with three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's eligibility despite its activity in the current round being below the required minimum activity level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

162. The FCC Auction System assumes that a bidder with insufficient activity would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will 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. If no waivers remain and the activity requirement is not satisfied, the FCC Auction System will permanently reduce the bidder's eligibility, possibly curtailing or eliminating the ability to place additional bids in the auction.

163. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the "reduce eligibility" function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring it into compliance with the activity rule. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility, even if the round has not yet closed.

164. Finally, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a proactive waiver is applied (using the "apply waiver" function in the FCC Auction System) during a bidding round in which no bids are placed or withdrawn, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver applied by the FCC Auction System in a round in which there are no new bids, withdrawals, or proactive waivers will not keep the auction open. A bidder cannot submit a proactive waiver after bidding in a round, and applying a proactive waiver will preclude it from placing any bids in that round. Applying a waiver is irreversible: Once a bidder submits a proactive waiver, the bidder cannot unsubmit the waiver even if the round has not yet ended.

## 8. Auction Stopping Rules

165. In the *Auction 97 Comment Public Notice*, the Bureau proposed to employ a simultaneous stopping rule under its SMR proposal. Under this rule, all licenses remain available for bidding until bidding stops simultaneously on every license. More specifically, bidding will 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. Thus, under the Bureau's SMR proposal, unless it announce alternative stopping procedures, the simultaneous stopping rule will be used in this auction, and bidding will remain open on all licenses until bidding stops on every license.

166. The Bureau also proposed that it retain discretion to exercise any of the following alternative versions of the simultaneous stopping rule for Auction 97: (1) The auction would close for all licenses after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid, or places any new bids 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; (2) the auction would close for all licenses after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid, or places any new bids on a license that is not FCC-held; thus, absent any other bidding activity, a bidder placing a new bid on a license that does not already have a provisionally winning bid (an FCC-held license) would not keep the auction open under this modified stopping rule; (3) the auction would close using a modified version of the simultaneous stopping rule that combines Option (1) and Option (2); (4) the auction would end after a specified number of additional rounds (special stopping rule); if the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s), after which the auction will close; or (5) the auction would remain open even if no bidder places any new bids, applies a waiver, or withdraws any provisionally winning bids; in this event, the effect will be the same as if a bidder had applied a waiver, and the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

167. The Bureau proposed to exercise alternative versions of the simultaneous stopping rule 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 (e.g., before bidder have had an adequate opportunity to satisfy any applicable reserve prices). The Bureau noted that before exercising these options, the Bureau is likely to attempt to change the pace of the

auction by, for example, changing the number of bidding rounds per day and/or the minimum acceptable bids. The Bureau also proposed to retain the discretion to exercise any of these options with or without prior announcement during the auction.

168. As part of their general request that the Bureau adopt separate procedures and requirements for the paired and unpaired bands, several parties ask the Bureau to apply its stopping rules separately to the paired and unpaired bands. T-Mobile suggests the Bureau apply the stopping rules based on activity within a particular band rather than the activity across all licenses. Under T-Mobile's proposal, if bidding stops on one of the bands, the auction for that band would close. T-Mobile submits that this will add certainty to the auction process and avoid delaying the close of the auction any longer than necessary, and claims that leaving the entire auction open even when interest in one band diminishes may prompt insincere bidding by allowing bidders interested in one band to park bids in another merely to preserve eligibility, thereby artificially prolonging the auction. DISH and New America Foundation/Public Knowledge advocate separate stopping rules for the unpaired and paired bands, arguing that combined procedures for bands that they consider to be non-substitutable could enable bidders to employ bidding strategies designed to hurt smaller competitors and new entrants, which could deter competition and suppress revenues. Like T-Mobile, DISH and New America Foundation/Public Knowledge are concerned that applying the stopping rules based on activity across all licenses could facilitate strategic parking and permit bidders to pursue the very "wait and see" approach the eligibility and activity rules are designed to prevent. CCA echoes the sentiments of T-Mobile, DISH, and New America Foundation/Public Knowledge regarding parking and argues that such behavior could be prevented by adopting separate stopping rules for the bands.

169. The Bureau adopts procedures to address these commenters' concerns that bidding activity could stop on one band well before it stops on the other. The Bureau generally adopts its proposed stopping rules but does so on a per-band basis described as follows. After no more than five consecutive rounds in which no bids have been placed or withdrawn for licenses in one of the two bands (i.e., the unpaired 1695–1710 MHz band and the paired 1755–1780/2155–280 MHz band), no bidder has placed a proactive waiver,

and the associated reserve price has been met, the Bureau will close the bidding for that band. Accordingly, bidders will no longer be able to place new bids for licenses in the band, nor will they be able to withdraw any provisional winning bids for licenses in the band. The Bureau's decision to end the auction for a given band in this manner for Auction 97 does not pre-judge how we may approach stopping rules in any future auctions, including those in which the same or similar facts and circumstances exist. The Bureau reserves the right to close bidding for a band after fewer than five consecutive rounds without bidding activity. The Bureau will notify bidders with an announcement in the FCC Auction System before bidding closes for one of the bands.

170. Aloha Partners agrees that there should be a mechanism to end the auction when the number of bids decreases to low levels, but expresses concern that the proposed special stopping rule could be misused by a bidder that has remaining eligibility in the last round by bidding on licenses that it may not have shown an interest in previously. As an alternative, Aloha Partners recommends the Bureau instead add a third stage, to be implemented when the number of new winning bids falls below ten bids, that would require a bidder to have activity covering 100 percent of its eligibility and would require minimum acceptable bids be 20 percent higher than provisionally winning bids. The Bureau declines to adopt Aloha Partners' request for a third stage with a 100 percent eligibility requirement in lieu of its special stopping rule.

171. Aside from the per-band departure from its past procedure, the Bureau retains the discretion to employ the alternative versions of the stopping rule, with or without prior announcement during the auction. The Bureau will not, however, employ the first alternative (Option 1) for a band if the reserve price for that band has not been met. Bidders will continue to have the opportunity to place bids in a given band at least until the reserve price for that band is met.

#### 9. Auction Delay, Suspension, or Cancellation

172. In the *Auction 97 Comment Public Notice*, the Bureau proposed that, by public notice or by announcement during the auction, it may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, 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. The Bureau received no comment on this issue.

173. Because this approach has proven effective in resolving exigent circumstances in previous auctions, the Bureau adopts these proposals regarding auction delay, suspension, or cancellation. By public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that it will exercise of this authority solely at its discretion, and not as a substitute for situations in which bidders may wish to apply their activity rule waivers.

#### B. Bidding Procedures

##### 1. Round Structure

174. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released approximately ten days before the start of the auction. Each bidding round is followed by the release of round results. Details regarding formats and locations of round results will also be included in the qualified bidders public notice. Multiple bidding rounds may be conducted each day.

175. The Bureau has the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' needs to study round results and adjust their bidding strategies. The Bureau may change the amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors.

##### 2. Reserve Price and Minimum Opening Bids

###### a. Reserve Price

176. The Commission is statutorily obliged to consider and balance a variety of public interests and objectives when establishing service rules and licensing procedures with respect to the public spectrum resource. These objectives include promoting recovery for the public a portion of the value of

that resource. Certain of the frequencies in the AWS-3 bands are “eligible frequencies” under the CSEA, and the CSEA requires that auction proceeds fund the estimated relocation or sharing costs of incumbent federal entities operating on these frequencies. In view of this, the Bureau establishes reserve prices for the AWS-3 licenses offered in Auction 97.

177. The CSEA requires that the total cash proceeds attributable to “eligible frequencies” be at least 110 percent of the total estimated relocation or sharing costs provided to the Commission pursuant to the CSEA before the Commission may conclude an auction involving such frequencies. If this condition is not met, the CSEA requires the Commission to cancel the auction. For purposes of determining whether the CSEA’s revenue requirement has been met, the Commission has determined that “total cash proceeds” means winning bids net of any applicable bidding credit discounts at the end of bidding (e.g., exclusive of any Tribal lands bidding credit).

178. Pursuant to the CSEA, on May 13, 2014, the NTIA notified the Commission that the total estimated relocation or sharing costs for the 1695–1710 MHz band equal \$527,069,000, and that the total estimated relocation or sharing costs for the 1755–1780 MHz band equal \$4,575,603,000. Accordingly, in the *Auction 97 Comment Public Notice*, the Bureau proposed to establish one aggregate reserve price for the 1695–1710 MHz band and a separate aggregate reserve price for the paired 1755–1780/2155–2180 MHz band.

179. The Bureau proposed to establish an aggregate reserve price of \$579,775,900 for the licenses in the 1695–1710 MHz band. This aggregate reserve price is 110 percent of total estimated relocation or sharing costs of \$527,069,000 provided by the NTIA for this band and, therefore, the minimum reserve price required by the CSEA. Given that the 1695–1710 MHz band consists entirely of “eligible frequencies,” the Bureau propose that the winning bid for each license in this band, net of any applicable bidding credit discounts at the end of bidding (e.g., exclusive of any Tribal lands bidding credit), will be counted toward meeting the reserve price for the band. Thus, the aggregate reserve price will be met if the total winning bids for the licenses in the 1695–1710 MHz band, net of any applicable bidding credit discounts at the end of bidding (e.g., exclusive of any Tribal lands bidding credit), is at least \$579,775,900.

180. The 1755–1780 MHz band will be licensed paired with the 2155–2180 MHz band. The lower half of the frequencies in each paired license, i.e., those in the 1755–1780 MHz band, are “eligible frequencies” and are thus subject to CSEA requirements. To meet CSEA’s requirements, the Bureau proposed to establish an aggregate reserve price of \$5,033,163,300 for the 1755–1780 MHz frequencies. This aggregate reserve price is 110 percent of total estimated relocation or sharing costs of \$4,575,603,000 for the 1755–1780 MHz band provided by the NTIA and, therefore, the minimum reserve price required by CSEA. Because these frequencies are one half of the frequencies authorized for use by each of the 1755–1780/2155–2180 MHz paired licenses, the Bureau propose that one-half of each winning bid for each of the paired 1755–1780/2155–2180 MHz licenses, net of any applicable bidding credit discounts at the end of bidding, will be counted toward meeting the reserve price. The aggregate reserve price will be met if one half of the total winning bids for the licenses in the 1755–1780/2155–2180 MHz band, net of any applicable bidding credit discounts at the end of bidding (e.g., exclusive of any Tribal lands bidding credit), is at least \$5,033,163,300. Therefore, the winning “net” bids for the paired 1755–1780/2155–2180 MHz licenses must be at least twice that amount, or \$10,066,326,600, in order for the Commission to conclude the auction.

181. C Spire supports the Bureau’s proposal to use an aggregate reserve for the AWS-3 spectrum bands. A few commenters asked the Bureau to treat the unpaired and paired bands differently with respect to meeting the reserve prices. T-Mobile argues that there is no reason that the entire auction should be declared invalid if the reserve price is not met for one band and that, consistent with CSEA, only the auction for the particular band that failed to meet the reserve should be cancelled.

182. The Bureau adopts its proposed reserve prices for Auction 97 and its proposals for implementing them. Consistent with the Bureau’s past treatment of spectrum bands that are subject to separate reserve prices, and based on its reading of CSEA, the Bureau will treat the unpaired and paired bands separately with respect to meeting their respective reserve prices. Thus, if the reserve price is met or exceeded for a given band, the auction for that band will be deemed to be successful and licenses in that band will be assigned. If the reserve price for the other band is not met, the auction for

that band will, as required by CSEA, be cancelled as to only that band.

183. In light of the Bureau’s proposal to adopt procedures for limited information disclosure for Auction 97, if information regarding net bid amounts is not provided during the auction, the Bureau proposed in the *Auction 97 Comment Public Notice* to issue an announcement in the FCC Auction System, viewable by bidders and the general public, stating that a reserve price has been met immediately following the first round in which that occurs. The Bureau received no comment this proposal, and therefore adopts it for Auction 97. As the Bureau noted in the *Auction 97 Comment Public Notice*, due to factors such as bid withdrawals and the effect of bidding credits, an announcement that the reserve price has been met following a round of the auction does not guarantee that the reserve price will continue to be met. Accordingly, the Bureau will make a further announcement in the FCC Auction System after any round in which the reserve price status changes.

184. When determining whether a reserve price has been met, the Bureau will use net bid amounts that take into account bidding credits. The Bureau will not count any withdrawn bids toward meeting a reserve price. Thus, the Bureau will count only the current provisionally winning bid on a license when determining whether a reserve price has been met.

#### b. Minimum Opening Bids

185. In addition to proposing aggregate reserve prices, the Bureau proposed in the *Auction 97 Comment Public Notice* to establish minimum opening bid amounts for each license in Auction 97. The Bureau believes a minimum opening bid amount, which has been used in other auctions, is an effective bidding tool for accelerating the competitive bidding process.

186. In the *Auction 97 Comment Public Notice*, the Bureau proposed to calculate minimum opening bid amounts on a license-by-license basis using a formula based on bandwidth and license area population, similar to its approach in many previous spectrum auctions. The Bureau proposed to use a calculation based on \$0.15 per megahertz of bandwidth per population (per MHz-pop) for paired licenses and \$0.05 per MHz-pop for unpaired licenses. Additionally, the Bureau proposed, as it did for Auction 96, to adjust minimum opening bid amounts based on past auction results, in order to reflect historical price differences among different geographic areas. The Bureau further proposed a minimum of

\$2,500 per license. For the license covering the Gulf of Mexico, the Bureau proposed to set the minimum opening bid at \$2,000 per megahertz.

187. Commenters presented a number of perspectives on the Bureau's proposal. Verizon Wireless, CCA, C Spire, and NTCA advocate using \$0.05 per MHz-pop to set the minimum opening bids. Verizon Wireless also objects to the Bureau's proposal to vary the calculation of minimum opening bid amounts across license areas. Spectrum Financial Partners recommends a change to the Bureau's proposed method for reflecting historical price differences by excluding the results of Auction 96. AT&T acknowledges the merits of the Bureau's proposal to vary the calculation of minimum opening bid amounts across license areas, but suggests an alternative method. AT&T recognizes the value of adjusting minimum opening bids to account for regional price differences, but contends that making these adjustments on a license-by-license basis perpetuates anomalous bidding patterns from past auctions (which may have involved eligibility parking and inefficient pricing) into Auction 97. For these reasons, AT&T offers refinements that it believes would help prevent both inefficient allocation of bidding units and eligibility parking during the auction. AT&T proposes that the Bureau rank the licenses by population; group them into deciles; sum its proposed minimum opening bid amounts for the licenses in the decile; and then, based on population, redistribute that subtotal among the licenses in the decile. After careful consideration of the record, the Bureau finds AT&T's arguments compelling and adopts AT&T's proposal in a modified form.

188. The Bureau will calculate minimum opening bid amounts as follows. The Bureau continues to use underlying prices of \$0.15 per MHz-pop for paired licenses and \$0.05 per MHz-pop for unpaired licenses, and the Bureau continues to adjust amounts based on relative price information from previous auctions. The Bureau changes its method of incorporating past price information, however, in several ways. The Bureau will no longer use the relative price information from Auction 96 in its calculations for the EA licenses. The Bureau revises its method of incorporating past price information by using a variation of the decile-based approach suggested by AT&T. Rather than grouping by population decile, the Bureau will group the licenses by historical MHz-pop price deciles. For each decile the Bureau uses the *lowest* index price value and apply it to all of

the markets in that decile. As proposed in the *Auction 97 Comment Public Notice*, the Bureau will round the results using its standard rounding procedures. Finally, the Bureau adopts a minimum of \$1,000 per license, and adopts its proposal to set the minimum opening bids for licenses covering the Gulf of Mexico at \$2,000 per megahertz.

189. The Bureau finds that this approach accommodates several of the concerns raised in the record. The use of deciles smooths the opening bid amounts in a way that reduces the impact of price variation from previous auctions. Basing the deciles on a price index (rather than a population index), however, ensures that the Bureau does not exclude significant past price differences between similarly-sized markets in its calculations. The use of the lowest unit price for each decile, rather than the average price, ensures that minimum opening bids for licenses within a decile are not averaged up to the arithmetic mean price of the decile. As a result of these changes, the minimum opening bids the Bureau adopts are over 25 percent less than the ones proposed in the *Auction 97 Comment Public Notice*. The Bureau does not believe that it risks overpricing licenses by basing the minimum opening bid amounts on \$0.15 and \$0.05 per MHz-pop, especially given the substantial reserve prices adopted for this auction. These minimum opening bid amounts should, as intended, help to accelerate the competitive bidding process. The minimum opening bid amount for each AWS-3 license available in Auction 97, calculated pursuant to the procedures is set forth in Attachment A to the *Auction 97 Procedures Public Notice*.

### 3. Bid Amounts

190. In the *Auction 97 Comment Public Notice*, the Bureau proposed that in each round, eligible bidders be able to place a bid on a given license using one or more pre-defined bid amounts. Under the proposal, the FCC Auction System interface will list the acceptable bid amounts for each license. The Bureau received no comment on this proposal and therefore adopts it for Auction 97.

#### a. Minimum Acceptable Bids

191. The first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a license will be equal to its minimum opening bid amount until there is a provisionally winning bid on the license. After there is a provisionally winning bid for a license, the minimum acceptable bid

amount for that license will be equal to the amount of the provisionally winning bid plus a percentage of that bid amount calculated using the activity-based formula. In general, the percentage will 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, the minimum acceptable bid amount will equal the second highest bid received for the license.

192. The percentage of the provisionally winning bid used to establish the minimum acceptable bid amount (the additional percentage) is 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, and (b) the activity index from the prior round. 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 formula and examples are shown in Attachment B to the *Auction 97 Procedures Public Notice*. The Bureau proposed in the *Auction 97 Comment Public Notice* to initially set the weighting factor at 0.5, the minimum percentage at 0.1 (10%), and the maximum percentage at 0.3 (30%). Hence, at these initial settings, the minimum acceptable bid for a license will be between ten percent and thirty percent higher than the provisionally winning bid, depending upon the bidding activity covering the license.

193. All parties that commented on the Bureau's proposal to initially set the maximum acceptable bid percentage at 30 percent advocate lowering the maximum to 20 percent because they are concerned that the proposed maximum of up to 30 percent would accelerate prices too quickly, thereby discouraging bidder participation and/or causing bidders to drop out of the auction. The Bureau recognizes commenters' concerns that very rapid increases in minimum acceptable bids may potentially discourage bidder participation, inhibit price discovery, and create bid approval issues. At the same time, since the Bureau is under a statutory mandate to license the spectrum being offered in Auction 97 by February 2015, it is necessary that the auction move at a reasonably fast pace. Taking commenter concerns into account, the Bureau concludes that an initial maximum acceptable bid percentage of 20 percent will allow the

auction to proceed at a reasonably fast pace while at the same time providing bidders the flexibility to bid up to the full value they assign to licenses. The Bureau therefore adopts an initial maximum acceptable bid percentage of 20 percent for Auction 97. The Bureau will begin the auction with the weighting factor set at 0.5, the minimum percentage at 0.1 (10%), and the maximum percentage at 0.2 (20%). The Bureau reiterates that it has the discretion to modify minimum acceptable bid amounts—by changing the activity-based formula parameters or by imposing or modifying a cap on the dollar amount of bid increments—as the Bureau sees fit during the auction.

#### b. Additional Bid Amounts

194. Consistent with the Bureau's practice in past wireless spectrum auctions, it proposed in the *Auction 97 Comment Public Notice* to calculate any additional bid amounts using the minimum acceptable bid amount and a bid increment percentage—more specifically, by multiplying the minimum acceptable bid by one plus successively higher multiples of the bid increment percentage. If, for example, the bid increment percentage is five percent, the calculation of the first additional acceptable bid amount is (minimum acceptable bid amount) \* (1 + 0.05), rounded or (minimum acceptable bid amount) \* 1.05, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) \* 1.10, rounded; etc. The Bureau will round the results using the Commission's standard rounding procedures for auctions. The Bureau proposed in the *Auction 97 Comment Public Notice* initially to set the bid increment percentage at five percent. The Bureau received no comment on this proposal and therefore adopts it for Auction 97.

195. The Bureau also proposed in the *Auction 97 Comment Public Notice* to begin the auction with nine acceptable bid amounts per license (the minimum acceptable bid amount and eight additional bid amounts). The Bureau received no comment on this proposal. The Bureau therefore adopts nine acceptable bid amounts per license, which is consistent with its past practice for most spectrum auctions.

#### c. Bid Amount Changes

196. The Bureau retains 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 the Bureau determines that circumstances so dictate. Further, the Bureau retains the discretion to do so on a license-by-license basis. The Bureau also retains 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, if the Bureau set a \$10 million limit on increases in minimum acceptable bid amounts over provisionally winning bids, and the activity-based formula calculates a minimum acceptable bid amount that is \$20 million higher than the provisionally winning bid on a license, the minimum acceptable bid amount would instead be capped at \$10 million above the provisionally winning bid. The Bureau sought comment in the *Auction 97 Comment Public Notice* on the circumstances under which it should employ such a limit, factors it should consider when determining the dollar amount of the limit, and the tradeoffs in setting such a limit or changing other parameters—such as changing the minimum acceptable bid percentage, the bid increment percentage, or the number of acceptable bid amounts.

197. The Bureau received no comment on this proposal. Therefore, the Bureau will start the auction without a limit on the dollar amount by which minimum acceptable bids and additional bid amounts may increase. The Bureau retains the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the bid increment percentage, and the number of acceptable bid amounts if the Bureau determines that circumstances so dictate. Further, the Bureau retains the discretion to do so on a license-by-license basis. If the Bureau exercises this discretion, it will alert bidders by announcement in the FCC Auction System during the auction.

#### 4. Provisionally Winning Bids

198. At the end of each bidding round, a “provisionally winning bid” will be determined based on highest bid amount received for each license. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the license at the close of a subsequent round. Provisionally winning bids at the end of

the auction become the winning bids. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.

199. In the *Auction 97 Comment Public Notice*, the Bureau proposed to use a random number generator to select a single provisionally winning bid in the event of identical high bid amounts being submitted on a license in a given round (i.e., tied bids). Under this approach, the FCC Auction System will assign a random number to each bid upon submission. The tied bid with the highest random number wins the tiebreaker, and becomes the provisionally winning bid. Bidders, regardless of whether they hold a provisionally winning bid, can 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. The Bureau received no comment on its tied bids proposal and therefore adopts it for Auction 97.

#### 5. Bidding

200. All bidding will take place remotely either through the FCC Auction System or by telephonic bidding. There will be no on-site bidding during Auction 97. Please note that telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of ten minutes.

201. A bidder's ability to bid on specific licenses is determined by two factors: (1) the licenses selected on the bidder's FCC Form 175 and (2) the bidder's eligibility. The bid submission screens will allow bidders to submit bids on only those licenses the bidder selected on its FCC Form 175.

202. In order to access the bidding function of the FCC Auction System, bidders must be logged in during the bidding round using the passcode generated by the SecurID® token and a personal identification number (PIN) created by the bidder. Bidders are strongly encouraged to print a “round summary” for each round after they have completed all of their activity for that round.

203. In each round, eligible bidders will be able to place bids on a given license in any of up to nine pre-defined bid amounts. For each license, the FCC Auction System will list the acceptable bid amounts in a drop-down box. Bidders use the drop-down box to select

from among the acceptable bid amounts. The FCC Auction System also includes an “upload” function that allows text files containing bid information to be uploaded.

204. Until a bid has been placed on a license, the minimum acceptable bid amount for that license will be equal to its minimum opening bid amount. Once there are bids on a license, minimum acceptable bids for the following round will be determined.

205. During a round, an eligible bidder may submit bids for as many licenses as it wishes (providing that it is eligible to bid on the specific license), remove bids placed in the current bidding round, withdraw provisionally winning bids from previous rounds, or permanently reduce eligibility. If a bidder submits multiple bids for the same license in the same round, the system takes the last bid entered as that bidder’s bid for the round. Bidding units associated with licenses for which the bidder has removed or withdrawn bids do not count towards current activity.

206. Finally, bidders are cautioned to select their bid amounts carefully because bidders that withdraw a provisionally winning bid from a previous round, even if the bid was mistakenly or erroneously made, are subject to bid withdrawal payments.

#### 6. Bid Removal and Bid Withdrawal

207. In the *Auction 97 Comment Public Notice*, the Bureau proposed bid removal and bid withdrawal procedures. The Bureau sought comment on permitting a bidder to remove a bid before the close of the round in which the bid was placed. With respect to bid withdrawals, the Bureau proposed limiting each bidder to withdrawing provisionally winning bids in no more than two rounds during the auction. The rounds in which a bidder withdraws provisionally winning bids—if it chooses to do so—are at each bidder’s discretion.

208. The Bureau received no comment on its proposals. The proposed procedures will provide each bidder with appropriate flexibility during the auction; therefore, the Bureau adopts these proposals for Auction 97.

##### a. Bid Removal

209. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the “remove bids” function in the FCC Auction System, a bidder may effectively “undo” any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. If a bid

is placed on a license during a round, it will count towards the activity for that round; but when that bid is then removed during the same round it was placed, the activity associated with it is also removed, i.e., a bid that is removed does not count toward bidding activity.

##### b. Bid Withdrawal

210. Once a round closes, a bidder may no longer remove a bid. However, in a later round, a bidder may withdraw provisionally winning bids from previous rounds using the “withdraw bids” function in the FCC Auction System. A provisionally winning bidder that withdraws its provisionally winning bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Once a bid withdrawal is submitted during a round, that withdrawal cannot be unsubmitted even if the round has not yet ended.

211. If a provisionally winning bid is withdrawn, the minimum acceptable bid amount will equal the amount of the second highest bid received for the license, which may be less than, or in the case of tied bids, equal to, the amount of the withdrawn bid. The Commission will serve as a placeholder provisionally winning bidder on the license until a new bid is submitted on that license.

##### c. Calculation of Bid Withdrawal Payment

212. Generally, the Commission imposes payments on bidders that withdraw provisionally winning bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the winning bid in the same or subsequent auction(s). If there are multiple bid withdrawals on a single license and no subsequent higher bid is placed and/or the license is not won in the same auction, the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any subsequent intervening withdrawn bid, in either the same or subsequent auction(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any final withdrawal payment if there is a subsequent higher bid in the same or subsequent auction(s).

213. 47 CFR 1.2104(g)(1) sets forth the payment obligations of a bidder that

withdraws a provisionally winning bid on a license during the course of an auction, and provides for the assessment of interim bid withdrawal payments. In the *Auction 97 Comment Public Notice*, the Bureau proposed to establish an interim withdrawal payment of ten percent of the withdrawn bid for Auction 97.

214. The Bureau received no comment on this proposal and therefore adopts it for Auction 97. The Commission will assess an interim withdrawal payment equal to ten percent of the amount of the withdrawn bids. The ten percent interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the license. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment. 47 CFR 1.2104(g) provides specific examples showing application of the bid withdrawal payment rule.

#### 7. Round Results

215. Limited information about the results of a round will be made public after the conclusion of the round. Specifically, after a round closes, the Bureau will make available for each license its current provisionally winning bid amount, the minimum acceptable bid amount for the following round, the amounts of all bids placed on the license during the round, and whether the license is FCC-held. The system will also provide an entire license history detailing all activity that has taken place on a license with the ability to sort by round number. The reports will be publicly accessible. Moreover, after the auction closes, the Bureau will make available complete reports of all bids placed during each round of the auction, including bidder identities.

216. DISH proposes several refinements to the Bureau’s standard round result information and procedures. Specifically, DISH recommends that the Bureau (1) publish auction system specifications at least four weeks before the start of Auction 97 and consider releasing sample data files; (2) provide an auction application programming interface (API) for several different types of auction statistics and bid actions; (3) provide, after the close of each round, the total current bidder eligibility by bidding unit, the number of bidders that have reduced eligibility, and information about the total number of waivers used in the prior round. Spectrum Financial Partners requests that, in addition to making round result

reports available in TXT and XML formats in the FCC Auction System, the Bureau also make them available on an FTP site (preferably in XLS or CVS format) that can be automatically polled for updates and downloaded and processed more mechanically.

217. The Bureau respectfully declines to adopt any of these proposals. Any modifications to the FCC Auction System or related infrastructure must be considered in the context of priorities, resources, and time for testing prior to the auction. Additionally, some of the information requested by DISH is purposefully not provided as part of the Bureau's limited information procedures.

#### 8. Auction Announcements

218. The Commission will use auction announcements to report necessary information such as schedule changes and stage transitions. All auction announcements will be available by clicking a link in the FCC Auction System. DISH asks that, in addition to posting notices to the FCC Auction System, the Bureau communicate new auction announcements in several ways, to include at least emails and text messages. While communicating new auction announcements in this manner might be convenient for participants, the Bureau declines to do so. Using email and/or text messages would introduce risk by increasing reliance on systems outside of the Commission's control. As with DISH's suggested changes to the Bureau's round results procedures, modifications to the FCC Auction System, related infrastructure, or procedures must also be considered in the context of priorities, resources, and time for testing prior to the auction. The Bureau concludes that providing auction announcements in the FCC Auction System, has been an effective and efficient way to communicate necessary information to auction participants in past auctions, and that this will be the case for Auction 97 as well.

#### V. Post-Auction Procedures

219. Shortly after bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, final payments, long-form applications, and ownership disclosure information reports.

##### A. Down Payments

220. The Commission's rules provide that, unless otherwise specified by public notice, within ten business days

after release of the auction closing public notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 97 to twenty percent of the net amount of its winning bids (gross bids less any applicable small business bidding credit). Since it is currently not known when Auction 97 will end and thus whether post-auction payments will be due in late 2014 or early 2015, several commenters request that the Bureau announce in advance of the auction that down payments will be due in early 2015 to enable potential bidders to make the necessary financial arrangements to ensure their ability to participate in Auction 97. The Bureau recognizes that uncertainties regarding the year in which down payments will be due could affect potential applicants from a capital planning perspective, which could in turn affect participation in the auction. Accordingly, the Bureau exercises its discretion under 47 CFR 1.2107(b) to set the down payment deadline for Auction 97 to be the later of January 7, 2015, or ten business days after release of the auction closing public notice.

##### B. Final Payments

221. The Commission's rules provide that each winning bidder must submit the balance of the net amount of its winning bids within ten business days after the applicable deadline for submitting down payments. The same parties that ask the Bureau to announce in advance of the auction that down payments will be due in early 2015 request that the Bureau make a similar announcement concerning the due date for final payments. Because the Bureau exercises its discretion to set the down payment deadline in early 2015, it sets the final payment deadline to be the later of January 21, 2015 or ten business days after the applicable deadline for submitting down payments.

##### C. Long-Form Application (FCC Form 601)

222. The Commission's rules provide that, within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 601) for the license(s) they won through Auction 97. CCA and US Cellular request that the Bureau clarify that long-form applications will be due in 2015. Given the Spectrum Act's mandate to license the spectrum being offered in Auction 97 by February 2015, the Bureau declines to modify the timing for

winning bidders to submit their long-form applications and will require these forms to be filed according to the schedule specified in the Commission's rules.

223. Winning bidders claiming eligibility for a small business bidding credit must demonstrate their eligibility for the bidding credit. Further instructions on these and other filing requirements will be provided to winning bidders in the auction closing public notice.

224. Winning bidders organized as bidding consortia must comply with the long-form application procedures established in the *CSEA/Part 1 Report and Order*. Specifically, each member (or group of members) of a winning consortium seeking separate licenses will be required to file a separate long-form application for its respective license(s). If the license is to be partitioned or disaggregated, the member (or group) filing the long-form application must provide the relevant partitioning or disaggregation agreement in its long-form application. In addition, if two or more consortium members wish to be licensed together, they must first form a legal business entity, and any such entity must meet the applicable designated entity criteria.

##### D. Ownership Disclosure Information Report (FCC Form 602)

225. Within ten business days after release of the auction closing public notice, each winning bidder must also comply with the ownership reporting requirements in 47 CFR 1.913, 1.919, and 1.2112 by submitting an ownership disclosure information report for wireless telecommunications services (FCC Form 602) with its long-form application.

226. If an applicant already has a complete and accurate FCC Form 602 on file in ULS, it is not necessary to file a new report, but applicants must verify that the information on file with the Commission is complete and accurate. If the applicant does not have an FCC Form 602 on file, or if it is not complete and accurate, the applicant must submit one.

227. When an applicant submits a short-form application, ULS automatically creates an ownership record. This record is not an FCC Form 602, but may be used to pre-fill the FCC Form 602 with the ownership information submitted on the applicant's short-form application. Applicants must review the pre-filled information and confirm that it is complete and accurate as of the filing date of the long-form application before certifying and submitting the FCC Form

602. Further instructions will be provided to winning bidders in the auction closing public notice.

#### E. Tribal Lands Bidding Credit

228. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally recognized tribal lands that are unserved by any telecommunications carrier or that have a wireline penetration rate equal to or below 85 percent is eligible to receive a tribal lands bidding credit as set forth in 47 CFR 1.2107 and 1.2110(f). A tribal lands bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

229. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal lands bidding credit after the auction when it files its long-form application (FCC Form 601). When initially filing the long-form application, the winning bidder will be required to advise the Commission whether it intends to seek a tribal lands bidding credit, for each license won in the auction, by checking the designated box(es). After stating its intent to seek a tribal lands bidding credit, the applicant will have 180 days from the close of the long-form application filing window to amend its application to select the specific tribal lands to be served and provide the required tribal government certifications. Licensees receiving a tribal lands bidding credit are subject to performance criteria as set forth in 47 CFR 1.2110(f)(3)(vii).

230. For additional information on the tribal lands bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rulemaking proceeding regarding tribal lands bidding credits and related public notices. Relevant documents can be viewed on the Commission's Web site by going to <http://wireless.fcc.gov/auctions/> and clicking on the Tribal Lands Credits link.

#### F. Default and Disqualification

231. Any winning bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). This payment consists of a deficiency payment, equal to the difference between the amount of the Auction 97 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.

232. As noted in the *Auction 97 Comment Public Notice*, the percentage of the bid that a defaulting bidder must pay in addition to the deficiency will depend on the auction format ultimately chosen for a particular auction. The amount can range from three percent up to a maximum of twenty percent, established in advance of the auction and based on the nature of the service and the inventory of the licenses being offered. As the Bureau noted in the *Auction 97 Comment Public Notice*, the Commission explained in the *CSEA/Part 1 Report and Order* that defaults weaken the integrity of the auction process and may impede the deployment of service to the public, and that an additional default payment of up to twenty percent will be more effective in deterring defaults than the three percent used in some earlier auctions. However, the Bureau does not believe the detrimental effects of any defaults in Auction 97 are likely to be unusually great. Balancing these considerations, the Bureau proposed to establish an additional default payment for Auction 97 of fifteen percent of the applicable bid. The Bureau received no comment on this proposal and therefore adopts it for Auction 97.

233. Finally, in the event of a default, the Commission has the discretion to re-auction the license or offer it to the next highest bidder (in descending order) at its final bid amount. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing authorizations held by the applicant.

#### G. Refund of Remaining Upfront Payment Balance

234. After the auction, applicants that are not winning bidders or are winning bidders whose upfront payment exceeded the total net amount of their winning bids may be entitled to a refund of some or all of their upfront payment. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise. Bidders should not request a refund of their upfront payments before the Commission releases a public notice declaring the auction closed, identifying

the winning bidders, and establishing the deadlines for submitting down payments, long-form applications, and final payments.

235. Bidders are encouraged to file their refund information electronically using the Refund Information icon found on the *Auction Application Manager* page or through the Wire Transfer for Refund Purposes link available on the *Auction Application Submit Confirmation* page in the FCC Auction System. If an applicant has completed the refund instructions electronically, the refund will be sent automatically. If an applicant has not completed the refund instructions electronically, the applicant must send a written request.

Federal Communications Commission.

**Gary D. Michaels,**

*Deputy Chief, Auctions and Spectrum Access Division, WTB.*

[FR Doc. 2014-19080 Filed 8-11-14; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

[DA 14-995]

### Notice of Debarment

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Enforcement Bureau (the "Bureau") debars Bryan J. Cahoon from the schools and libraries universal service support mechanism (or "E-Rate Program") for a period of three years. The Bureau takes this action to protect the E-Rate Program from waste, fraud, and abuse.

**DATES:** Debarment commences on the date Mr. Bryan J. Cahoon receives the debarment letter or August 12, 2014, whichever date comes first, for a period of three years.

**FOR FURTHER INFORMATION CONTACT:** Joy M. Ragsdale, Attorney Advisor, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4-C330, 445 12th Street SW., Washington, DC 20554. Joy Ragsdale may be contacted by telephone at (202) 418-1697 or by email at [Joy.Ragsdale@fcc.gov](mailto:Joy.Ragsdale@fcc.gov). If Ms. Ragsdale is unavailable, you may contact Ms. Theresa Cavanaugh, Chief, Investigations and Hearings Division, by telephone at (202) 418-1420 and by email at [Terry.Cavanaugh@fcc.gov](mailto:Terry.Cavanaugh@fcc.gov).

**SUPPLEMENTARY INFORMATION:** The Bureau debarred Mr. Bryan J. Cahoon from the schools and libraries service support mechanism for a period of three