

U.S.C. 9622(i), notice is hereby given of a proposed covenant not to sue under section 122(h) of CERCLA, 42 U.S.C. 9622(h), contained in Administrative Order on Consent, Index No. CERCLA-02-2002-2025 ("Order"), that has been issued in connection with the Shenandoah Road Groundwater Contamination Superfund Site, East Fishkill, Dutchess County, New York ("Site"). The Order was issued on September 27, 2002, by the U.S. Environmental Protection Agency ("EPA" or the "Agency"). Under the Order, International Business Machines Corporation ("IBM") will conduct a remedial investigation and feasibility study ("RI/FS") for the Site and reimburse EPA for the costs of overseeing the work. Pursuant to Paragraph 75 of the Order, EPA is granting IBM a covenant not to sue for \$150,000 of EPA's past response costs. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the covenant not to sue. The Agency will consider all comments received and may modify or withdraw its consent to the covenant not to sue if comments received disclose facts or considerations that indicate that the proposed covenant not to sue is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at EPA, Region II, 290 Broadway, New York, New York 10007-1866.

**DATES:** Comments must be submitted on or before April 28, 2003.

**ADDRESSES:** The Order containing the proposed covenant not to sue is available for public inspection at the United States Environmental Protection Agency, 290 Broadway, New York, New York 10007-1866. A copy of the Order containing the proposed covenant not to sue may also be obtained from Laura Y. McDavid, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, 17th Floor, 290 Broadway, New York, New York 10007-1866. Requests for a copy of the Order should reference Index No. CERCLA-02-2002-2025. Any comments or requests should be addressed to Ms. McDavid and should reference the Shenandoah Road Groundwater Contamination Superfund Site, East Fishkill, Dutchess County, New York.

**FOR FURTHER INFORMATION CONTACT:** Laura Y. McDavid, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New

York, New York 10007-1866.  
Telephone: 212-637-3179.

Dated: March 19, 2003.

**William J. Muszynski, P.E.,**  
*Deputy Regional Administrator, U.S. Environmental Protection Agency, Region II.*  
[FR Doc. 03-7507 Filed 3-27-03; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC-03-50-B (Auction No. 50); DA 03-372]

### Narrowband PCS Spectrum Auction Revised Inventory and Start Date for Auction No. 50; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the procedures, minimum opening bids, and revised inventory and start date for the upcoming auction of narrowband PCS licenses. This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for this auction.

**DATES:** Auction No. 50 is scheduled to begin on September 24, 2003.

**FOR FURTHER INFORMATION CONTACT:** Auctions and Industry Analysis Division: Christopher M. Shields, Legal Branch, or Jeff Crooks, Auctions Operations Branch, at (202) 418-0660; Lisa Stover, Auctions Operations Branch, at (717) 338-2888, Media Contact: Lauren Kravetz at (202) 418-7944, Commercial Wireless Division: Policy and Rules Branch, Amal Abdallah at (202) 418-7307 or Evan Baranoff at (202) 418-7142; Licensing and Technical Analysis Branch, JoAnn Epps or Dwain Livingston, at (202) 418-0620.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction No. 50 Procedures Public Notice* released on February 7, 2003. The complete text of the *Auction No. 50 Procedures Public Notice*, including attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. *The Auction No. 50 Procedures Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402,

Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com). This document is also available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/50/>.

## I. General Information

### A. Introduction

1. By the *Auction No. 50 Procedures Public Notice*, the Wireless Telecommunications Bureau ("Bureau") announces the procedures and minimum opening bids for the upcoming Narrowband PCS Spectrum Auction (Auction No. 50). The Bureau also announces a new date for the start of Auction 50 and a revised license inventory.

2. On November 26, 2002, in accordance with the Balanced Budget Act of 1997, the Bureau released a public notice seeking comment on reserve prices or minimum opening bids and auction procedures to be used in the Narrowband PCS Spectrum Auction (Auction No. 50). The *Auction No. 50 Comment Public Notice*, 67 FR 72417 (December 5, 2002), announced that Auction No. 50 would include regional and MTA licenses. The Bureau received one comment in response to the *Auction No. 50 Comment Public Notice*. No reply comments were submitted.

3. Space Data proposed that the Commission adopt a combinatorial bidding scheme for Auction No. 50. Space Data contends that the regional licenses are uniquely complementary, because in combination, they effectively constitute a nationwide license and will be more highly valued as a combined package by prospective auction participants intending to deploy nationwide service.

4. After consideration of Space Data's comments, the Bureau has concluded that it may be appropriate to use package bidding for the auction of the regional licenses. Accordingly, by this public notice the Commission:

i. Revises the license inventory for Auction No. 50 by removing the regional narrowband PCS licenses from Auction No. 50. Auction No. 50 will include only the MTA licenses.

ii. Revises the starting date for Auction No. 50, which will commence on September 24, 2003.

5. The Bureau notes that the regional narrowband PCS licenses will be included in Auction No. 51. It will announce the dates for Auction No. 51 and seek comment on a package bidding auction design and other auction procedures in a public notice.

i. Background of Proceeding

6. In the *PCS First Report and Order*, 58 FR 42681 (August 11, 1993), the Commission provided for the operation of narrowband PCS in three one-megahertz blocks in the 900 MHz band. The Commission broadly defined PCS as mobile and fixed communications offerings that serve individuals and businesses and that can be integrated with a variety of competing networks. The Commission also adopted a spectrum allocation and channelization plan, licensing rules, and technical standards for narrowband PCS. In the *Competitive Bidding Second Report and Order*, 59 FR 22980 (May 4, 1994), the Commission determined that, pursuant to section 309(j) of the Communications Act of 1934, as amended, PCS is subject to competitive bidding in the case of mutually exclusive applications. In the *Competitive Bidding Third Report and Order*, 59 FR 26741 (May 24, 1994) the Commission established competitive bidding rules specifically for narrowband PCS.

7. Subsequently, in the *Narrowband Second Report and Order and Second Further Notice of Proposed Rule*

*Making*, 65 FR 35843 (June 6, 2000), the Commission adopted modifications to its service rules for narrowband PCS. Specifically, the Commission: (i) Adopted Major Trading Areas (“MTAs”) for future licensing of narrowband PCS; (ii) eliminated the restriction, which only applied to 100 kilohertz of the 3 megahertz blocks allocated for narrowband PCS, that limited eligibility for acquiring narrowband PCS response channels to existing paging licensees; (iii) modified the construction and minimum coverage requirement for narrowband PCS spectrum by allowing licensees to meet a “substantial service” alternative; (iv) adopted Subpart Q of Part 1 of the Commission rules to apply to narrowband PCS; and (v) eliminated the narrowband PCS spectrum aggregation limit, finding that it is not necessary to prevent an undue concentration of licenses. In the *Third Narrowband Report and Order and Order on Reconsideration*, 66 FR 29911 (June 4, 2001), the Commission modified its channel band plan to allow for the licensing of narrowband PCS spectrum for eight additional nationwide licenses and seven licenses in each of the 51 MTAs. Further, the

Commission channelized and licensed the one megahertz of narrowband spectrum that had been held in reserve and re-channelized 712 kilohertz of previously channelized spectrum for which licenses had not been auctioned. With that action, the Commission resolved the remaining issues concerning narrowband PCS in preparation for auctioning licenses for the remaining narrowband PCS spectrum. In 2001, the Commission conducted an auction of nationwide and MTA narrowband PCS licenses in Auction No. 41.

ii. Licenses to Be Auctioned

8. The licenses available in Auction No. 50 will include 48 Major Trading Area (MTA) Personal Communications Service (PCS) licenses. The spectrum to be auctioned remains unsold from Auction No. 41, which closed on October 16, 2001. A complete list of licenses available for Auction No. 50 is included as Attachment A of the *Auction No. 50 Procedures Public Notice*.

9. The following table describes the licenses that will be auctioned:

Channel number	Channel description	Frequency bands	Bandwidth (kHz)
<b>MTA Licenses</b>			
26 .....	One 50 kHz unpaired channel .....	901.35–901.40 MHz .....	50
27 .....	One 50 kHz unpaired channel .....	901.40–901.45 MHz .....	50
29 .....	One 50 kHz/50 kHz paired channel .....	901.95–902.00, 930.80–930.85 MHz .....	100
30 .....	One 50 kHz/100 kHz paired channel .....	901.65–901.70, 930.30–930.40 MHz .....	150
31 .....	One 50 kHz/150 kHz paired channel .....	901.70–901.75, 930.85–931.00 MHz .....	200
32 .....	One 12.5 kHz/100 kHz paired channel .....	901.8375–901.8500, 940.9–941.0 MHz .....	112.5
MTA Subtotal .....	.....	.....	662.5
kHz			

(Note: For Auction No. 50, licenses are not available for every channel number listed in the table in every market. See Attachment A of the *Auction No. 50 Procedures Public Notice* to determine which licenses will be offered.)

B. Rules and Disclaimers

i. Relevant Authority

10. Prospective bidders must familiarize themselves thoroughly with the Commission’s rules relating to the narrowband services, contained in title 47, part 24 and part 90 of the Code of Federal Regulations, and those relating to application and auction procedures, contained in title 47, part 1 of the Code of Federal Regulations.

11. Prospective bidders must also be thoroughly familiar with the

procedures, terms and conditions (collectively, “terms”) contained in the *Auction No. 50 Procedures Public Notice*; the *Auction No. 50 Comment Public Notice*; the *Part 1 Fifth Report and Order*, 65 FR 52401 (August 29, 2000), (as well as prior and subsequent Commission proceedings regarding competitive bidding procedures); the *Narrowband PCS R&O/Further Notice*; 62 FR 27507 (May 20, 1997), the *Narrowband Second Report and Order and Second Further Notice of Proposed Rulemaking*; and the *Third Narrowband Report and Order and Order on Reconsideration*.

12. The terms contained in the Commission’s rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and

will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at <http://wireless.fcc.gov/auctions>. Additionally, documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC 20554 or may be purchased from the Commission’s duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or

via e-mail [qualexint@aol.com](mailto:qualexint@aol.com). When ordering documents from Qualex, please provide the appropriate FCC number (for example, FCC 01-135 for the *Third Narrowband Report and Order and Order on Reconsideration*).

ii. Prohibition of Collusion

13. To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. Bidders competing for licenses in the same geographic license areas are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he or she is authorized to represent in the auction. A violation could similarly occur if the authorized bidders are different individuals employed by the same organization (e.g., law firm or consulting firm). In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.

14. However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted. The Commission's anti-collusion rules allow applicants to form certain agreements during the auction, provided the applicants have not applied for licenses covering the same geographic areas. However, all applicants may enter into bidding agreements *before* filing their FCC Form 175, as long as they disclose the existence of the agreement(s) in their Form 175. If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application pursuant to § 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other applicants for

licenses covering the same geographic areas. By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with § 1.2105(c).

15. In addition, § 1.65 of the Commission's rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, §§ 1.65 and 1.2105 require an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders therefore are required to make such notification to the Commission immediately upon discovery.

16. A summary listing of documents from the Commission and the Bureau addressing the application of the anti-collusion rules may be found in Attachment G of the *Auction No. 50 Procedures Public Notice*.

iii. Due Diligence

17. Potential bidders seeking licenses for MTAs that border Canada or Mexico will be subject to on-going coordination arrangements with those respective countries. Potential bidders are also subject to the Interim Sharing Arrangement with Canada for the Bands 901-902 MHz, 930-931 MHz, and 940-941 MHz and to any restrictions that arise from future agreements with Canada or Mexico.

18. Potential bidders also should be aware that certain applications (including those for modification), petitions for rulemaking, requests for special temporary authority ("STA") waiver requests, petitions to deny, petitions for reconsideration, and applications for review may be pending before the Commission and relate to particular applicants or incumbent licensee licenses. In addition, certain judicial proceedings that may relate to particular applicants or incumbent licensees or the licenses available in Auction No. 50 may be commenced, may be pending, or may be subject to further review. The Bureau notes that resolution of these matters could have an impact on the availability of spectrum in Auction No. 50. Some of these matters (whether before the Commission or the courts) may not be resolved by the time of the auction.

19. Potential bidders are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid

on, otherwise acquire, or make use of licenses available in Auction No. 50.

20. Potential bidders may obtain information about licenses available in Auction No. 50 through the Bureau's licensing databases on the World Wide Web at <http://wireless.fcc.gov/uls>. Potential bidders should direct questions regarding the search capabilities to the FCC Technical Support hotline at (202) 414-1250 (voice) or (202) 414-1255 (TTY), or via e-mail at [ulscomm@fcc.gov](mailto:ulscomm@fcc.gov). The hotline is available to assist with questions Monday through Friday, from 8 AM to 6 PM ET. In order to provide better service to the public, *all calls to the hotline are recorded*. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the database. Potential bidders are strongly encouraged to physically inspect any sites located in, or near, the MTA for which they plan to bid.

iv. Bidder Alerts

21. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

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

23. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may

attempt to use Auction No. 50 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a "cold call" from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of investment is less than \$25,000.
- The sales representative makes verbal representations that: (a) the Internal Revenue Service ("IRS"), Federal Trade Commission ("FTC"), Securities and Exchange Commission ("SEC"), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

24. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326-2222 and from the SEC at (202) 942-7040. Complaints about specific

deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876-7060. Consumers who have concerns about specific proposals regarding Auction No. 50 may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225-5322).

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

25. Licensees must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a wireless antenna facility is a federal action and the licensee must comply with the Commission's NEPA rules for each such facility. The Commission's NEPA rules require, among other things, that the licensee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corp of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The licensee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features.

The licensee must also prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

i. Auction Date

26. The auction will begin on Wednesday, September 24, 2003. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

ii. Auction Title

27. Auction No. 50—Narrowband PCS.

iii. Bidding Methodology

28. The bidding methodology for Auction No. 50 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network will be available as well. Qualified bidders are permitted to bid telephonically or electronically.

iv. Pre-Auction Dates and Deadlines

29. The following is a list of important dates related to Auction No. 50:

Auction Seminar .....	July 30, 2003
Short-Form Application (FCC FORM 175) .....	August 8, 2003; 6 p.m. e.t.
Upfront Payments (via wire transfer) .....	August 26, 2003; 6 p.m. e.t.
Mock Auction .....	September 19, 2003
Auction Begins .....	September 24, 2003

v. Requirements for Participation

30. Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically by 6 p.m. e.t., August 8, 2003.

- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. e.t., August 26, 2003.
- Comply with all provisions outlined in the *Auction No. 50 Procedures Public Notice*.

vi. General Contact Information

31. The following is a list of general contact information relating to Auction No. 50.

General Auction Information: .....	FCC Auctions Hotline, (888) 225-5322, Press Option #2, or direct (717) 338-2888, Hours of service: 8 a.m.-5:30 p.m. ET.
General Auction Questions .....	
Seminar Registration .....	
Auction Legal Information: .....	Auctions and Industry Analysis Division, Legal Branch (202) 418-0660.
Auction Rules, Policies, Regulations .....	
Licensing Information: .....	Commercial Wireless Division, (202) 418-0620.
Rules, Policies, Regulations .....	
Licensing Issues .....	
Due Diligence .....	
Incumbency Issues .....	
Technical Support: .....	FCC Auctions Technical Support Hotline, (202) 414-1250 (Voice), (202) 414-1255 (TTY), Hours of service: Monday through Friday 8 a.m. to 6 p.m. E.T.
Electronic Filing .....	
Automated Auction System .....	
Payment Information: .....	FCC Auctions Accounting Branch, (202) 418-0578 or (202) 418-0496, (202) 418-2843 (Fax).
Wire Transfers .....	
Refunds .....	
Telephonic Bidding .....	Will be furnished only to qualified bidders.

FCC Copy Contractor: Additional Copies of Commission Documents .....	Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, (202) 863-2893, (202) 863-2898 (Fax), <a href="mailto:qualexint@aol.com">qualexint@aol.com</a> (E-mail).
Press Information .....	Lauren Kravetz (202) 418-7944.
FCC Forms .....	(800) 418-3676 (outside Washington, DC), (202) 418-3676 (in the Washington Area), <a href="http://www.fcc.gov/formpage.html">http://www.fcc.gov/formpage.html</a> .
FCC Internet Sites .....	<a href="http://www.fcc.gov">http://www.fcc.gov</a> , <a href="http://wireless.fcc.gov/auctions">http://wireless.fcc.gov/auctions</a> <a href="http://wireless.fcc.gov/uls">http://wireless.fcc.gov/uls</a> .

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

32. Guidelines for completion of the short-form (FCC Form 175) are set forth in Attachment D of the *Auction No. 50 Procedures Public Notice*. The short-form application seeks the applicant's name and address, legal classification, status, small or very small business bidding credit eligibility, identification of the license(s) sought, the authorized bidders and contact persons. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license and, as discussed in section II.E (Provisions Regarding Defaulters and Former Defaulters), that they are not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency.

### A. License Selection

33. In Auction No. 50, Form 175 will include a mechanism that allows an applicant to create customized lists of licenses. The applicant will make selections for one or more of the filter criteria and the system will produce a list of licenses satisfying the specified criteria. The applicant may apply for all the licenses in the customized list by using the "Save all filtered licenses" option; select and save individual licenses separately from the list; or create a second customized list without selecting any of the licenses from the first list. Applicants also will be able to select licenses from one customized list and then create a second customized list to select additional licenses.

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

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

the short-form are set forth in § 1.2112 of the Commission's rules.

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

35. Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the licenses being auctioned, including any agreements relating to post-auction market structure. Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid. As discussed, if an applicant has had discussions, but has not reached a joint bidding agreement by the short-form deadline, it would not include the names of parties to the discussions on its applications and may not continue discussions with applicants for the same geographic license area(s) after the deadline. Where applicants have entered into consortia or joint bidding arrangements, applicants must submit an "Exhibit B" to the FCC Form 175.

36. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for licenses in the same geographic license area provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction related business negotiations

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

### D. Eligibility

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

37. In the *Narrowband Second Report and Order and Second Further Notice of Proposed Rule Making*, the Commission adopted bidding credits to promote and facilitate the participation of small businesses in the competitive bidding for licenses in the narrowband PCS service.

38. Bidding credits are available to small and very small businesses, or consortia thereof, (as defined in 47 CFR 1.2110(c)). A bidding credit represents the amount by which a bidder's winning bids are discounted. The size of the bidding credit depends on the average of the aggregated annual gross revenues for each of the preceding three years of the bidder, its affiliates, its controlling interests, and the affiliates of its controlling interests:

- A bidder with attributed average annual gross revenues of not more than \$40 million for the preceding three years receives a 15 percent discount on its winning bids for narrowband PCS licenses;
- A bidder with attributed average annual gross revenues of not more than \$15 million for the preceding three years receives a 25 percent discount on its winning bids for narrowband PCS licenses.

39. Bidding credits are not cumulative. A qualifying applicant receives either the 15 percent or 25 percent bidding credit on its winning bid, but not both.

#### ii. Tribal Land Bidding Credit

40. To encourage the growth of wireless services in federally recognized tribal lands the Commission has implemented a tribal land bidding credit. See section V.D. of the *Auction No. 50 Procedures Public Notice*.

### iii. Applicability of Part 1 Attribution Rules

41. *Controlling interest standard.* On August 14, 2000, the Commission released the *Part 1 Fifth Report and Order*, in which the Commission, *inter alia*, adopted a “controlling interest” standard for attributing to auction applicants the gross revenues of their investors and affiliates in determining small business eligibility for future auctions. The Commission observed that the rule modifications adopted in the various Part 1 orders would result in discrepancies and/or redundancies between certain of the new Part 1 rules and existing service-specific rules, and the Commission delegated to the Bureau the authority to make conforming edits to the Code of Federal Regulations (CFR) consistent with the rules adopted in the Part 1 proceeding. Part 1 rules that superseded inconsistent service-specific rules will control in Auction No. 50. Accordingly, the “controlling interest” standard as set forth in the part 1 rules will be in effect for Auction No. 50.

42. *Control.* The term “control” includes both *de facto* and *de jure* control of the applicant. Typically, ownership of at least 50.1 percent of an entity’s voting stock evidences *de jure* control. *De facto* control is determined on a case-by-case basis. The following are some common indicia of *de facto* control:

- the entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- the entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or
- the entity plays an integral role in management decisions.

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

44. A consortium of small or very small businesses is a “conglomerate organization formed as a joint venture between or among mutually independent business firms,” each of

which *individually* must satisfy the definition of small or very small business in § 1.2110(f). Thus, each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, and the affiliates of its controlling interests. The Bureau notes that although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for small or very small business credits, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

### iv. Supporting Documentation

45. Applicants should note that they will be required to file supporting documentation to their FCC Form 175 short-form applications to establish that they satisfy the eligibility requirements to qualify as small or very small businesses (or consortia of small or very small businesses) for this auction.

46. Applicants should further note that submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form’s instructions and certifications, and that the contents of the application and its attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

47. *Small or very small business eligibility (Exhibit C).* Entities applying to bid as small or very small businesses (or consortia of small or very small businesses) will be required to disclose on Exhibit C to their FCC Form 175 short-form applications, *separately and in the aggregate*, the gross revenues for the preceding three years of each of the following: (i) The applicant, (ii) its affiliates, (iii) its controlling interests, and (iv) the affiliates of its controlling interests. Certification that the average annual gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, a schedule of gross revenues for *each* of the preceding three years, as well as a statement of total average gross revenues for the three-year period. If the applicant is applying as a consortium of small or very small

businesses, this information must be provided for each consortium member.

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

48. Each applicant must certify on its FCC Form 175 application that it is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must attach to its FCC Form 175 application a statement made under penalty of perjury indicating whether or not the applicant, its affiliates, its controlling interests, or the affiliates of its controlling interests have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. The applicant must provide such information for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by § 1.2110 of the Commission’s rules (as amended in the *Part 1 Fifth Report and Order*). Applicants must include this statement as Exhibit D of the FCC Form 175. Prospective bidders are reminded that the statement must be made under penalty of perjury and, further, submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

49. “Former defaulters”—*i.e.*, applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—are eligible to bid in Auction No. 50, provided that they are otherwise qualified. However, as discussed *infra* in section III.D.3, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

### F. Installment Payments

50. Installment payment plans will not be available in Auction No. 50.

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

51. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(c)(2), may attach an exhibit (Exhibit E) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the

participation of “designated entities” in its auctions. Applicants wishing to submit additional information may do so, on Exhibit F (Miscellaneous Information) to the FCC Form 175.

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

52. After the short-form filing deadline (August 8, 2003), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (e.g., change their license selections or proposed service areas, change the certifying official, change control of the applicant or change bidding credits). See 47 CFR 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants must make these modifications to their FCC Form 175 electronically and should submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division, at the following address: [auction50@fcc.gov](mailto:auction50@fcc.gov). The electronic mail summarizing the changes should include a subject or caption referring to Auction No. 50. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

53. A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338-2850. Questions about other changes should be directed to Christopher Shields of the Auctions and Industry Analysis Division at (202) 418-0660.

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

54. Applicants have an obligation under 47 CFR 1.65, to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

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

#### *A. Auction Seminar*

55. On Wednesday, July 30, 2003, the FCC will sponsor a free seminar for Auction No. 50 at the Federal Communications Commission, located

at 445 12th Street, SW, Washington, DC. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC Automated Auction System, and the narrowband PCS and auction rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

56. To register complete the registration form found in Attachment B of the *Auction No. 50 Procedures Public Notice* and submit it by Monday, July 28, 2003. Registrations are accepted on a first-come, first-served basis.

#### *B. Short-Form Application (FCC Form 175)—Due August 8, 2003*

57. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be submitted electronically and received at the Commission no later than 6 p.m. e.t. on August 8, 2003. Late applications will not be accepted.

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

#### *i. Electronic Filing*

59. Applicants must file their FCC Form 175 applications electronically. Applications may generally be filed at any time beginning at noon e.t. on July 30, 2003, until 6 p.m. e.t. on August 8, 2003. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on August 8, 2003.

60. Applicants must press the “SUBMIT Application” button on the “Submission” page of the electronic form to successfully submit their FCC Form 175s. Any form that is not submitted will not be reviewed by the FCC. Information about accessing the FCC Form 175 is included in Attachment C of the *Auction No. 50 Procedures Public Notice*. Technical support is available at (202) 414-1250 (voice) or (202) 414-1255 (text telephone (TTY)); hours of service Monday through Friday, from 8 a.m. to 6 p.m. e.t. In order to provide better service to the public, *all calls to the hotline are recorded*.

61. Applicants can also contact Technical Support via e-mail. To obtain the address, click the Support tab on the Form 175 Homepage.

#### *ii. Completion of the FCC Form 175*

62. Applicants should carefully review 47 CFR 1.2105, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment D of the *Auction No. 50 Procedures Public Notice*. Applicants are encouraged to begin preparing the required attachments for FCC Form 175 prior to submitting the form. Attachments C and D of the *Auction No. 50 Procedures Public Notice* provide information on the required attachments and appropriate formats.

#### *iii. Electronic Review of FCC Form 175*

63. The FCC Form 175 electronic review system may be used to locate and print applicants' FCC Form 175 information. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications.

**Note:** Applicants should not include sensitive information (i.e., TIN/EIN) on any exhibits to their FCC Form 175 applications. There is no fee for accessing this system. See Attachment C of the Auction No. 50 Procedures Public Notice for details on accessing the review system.

#### *C. Application Processing and Minor Corrections*

64. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (i) Those applications accepted for filing; (ii) those applications rejected; and (iii) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

65. As described more fully in the Commission's rules, after the August 8, 2003, short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (e.g., change their license selections, change the certifying official, change control of the applicant, or change bidding credit eligibility).

#### *D. Upfront Payments—Due August 26, 2003*

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

that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6 p.m. e.t. on August 26, 2003.

67. Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.

• Upfront payments for Auction No. 50 go to a lockbox number different from the lockboxes used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.

- Failure to deliver the upfront payment by the August 26, 2003, deadline will result in dismissal of the application and disqualification from participation in the auction.

i. Making Auction Payments by Wire Transfer

68. Wire transfer payments must be received by 6 p.m. e.t. on August 26, 2003. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information: ABA Routing Number: 043000261, Receiving Bank: Mellon Pittsburgh, BENEFICIARY (BNF): FCC/Account # 910-1174, OBI Field: (Skip one space between each information item), "AUCTIONPAY", FCC REGISTRATION NUMBER (FRN): (same as FCC Form 159, block 11 and/ or 21), PAYMENT TYPE CODE (same as FCC Form 159, block 24A: A50U), FCC CODE 1 (same as FCC Form 159, block 28A: "50"), PAYER NAME (same as FCC Form 159, block 2), LOCKBOX NO. # 358405.

**Note:** The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

69. Applicants must fax a completed FCC Form 159 (Revised 2/00) to Mellon Bank at (412) 209-6045 at least one hour

before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer—Auction Payment for Auction Event No. 50." Bidders should confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

ii. FCC Form 159

70. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/00) must be faxed to Mellon Bank in order to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/00) is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment E of the *Auction No. 50 Procedures Public Notice*. An electronic version of the FCC Form 159 is available after filing the FCC Form 175. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

iii. Amount of Upfront Payment

71. In the *Part 1 Order*, 62 FR 13540 (March 21, 1997), the Commission delegated to the Bureau the authority and discretion to determine appropriate upfront payment(s) for each auction. In addition, in the *Part 1 Fifth Report and Order*, the Commission ordered that "former defaulters," *i.e.*, applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, be required to pay upfront payments fifty percent greater than non-"former defaulters." For purposes of this calculation, the "applicant" includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by § 1.2110 of the Commission's rules (as amended in the *Part 1 Fifth Report and Order*).

72. In the *Auction No. 50 Comment Public Notice*, the Bureau proposed that the amount of the upfront payments would determine the number of bidding units on which a bidder may place bids. In order to bid on a license, otherwise

qualified bidders that applied for that license on Form 175 must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all licenses for which the applicant has applied on Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold high bids at any given time.

73. In the *Auction No. 50 Comment Public Notice*, the Bureau proposed upfront payments on a license-by-license basis using the following formula:

$\$.00001 * \text{kHz} * \text{License Area Population with a minimum of } \$500 \text{ per license.}$

74. The Bureau received no comments on this issue. Therefore, the Bureau adopts its proposed upfront payments. The specific upfront payments and bidding units for each license are set forth in Attachment A of the *Auction No. 50 Procedures Public Notice*.

75. In calculating its upfront payment amount, an applicant should determine the *maximum* number of bidding units on which it may wish to be active (bidding units associated with licenses on which the bidder has the standing high bid from the previous round and licenses on which the bidder places a bid in the current round) in any single round, and submit an upfront payment covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all licenses on which it seeks to bid in any given round. Bidders should check their calculations carefully, as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

EXAMPLE: UPFRONT PAYMENTS AND BIDDING FLEXIBILITY

Market No.	Ch. No.	Market name	Population	Bidding units	Upfront payment
MTA003 .....	31	Chicago .....	13,220,193	26,000	\$26,000
MTA005 .....	31	Detroit .....	10,658,459	21,000	\$21,000

If a bidder wishes to bid on both licenses in a round, it must have selected both on its FCC Form 175 and purchased at least 47,000 bidding units (26,000 + 21,000). If a bidder only wishes to bid on one, but not both, purchasing 26,000 bidding units would meet the requirement for either license. The bidder would be able to bid on either license, *but not both at the same time*. If the bidder purchased only 21,000 bidding units, it would have enough eligibility for the Detroit license but not for the Chicago.

76. Former defaulters should calculate their upfront payment for all licenses by multiplying the number of bidding units they wish to purchase by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

77. An applicant may, on its FCC Form 175, apply for every applicable license being offered, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment.

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

78. The Commission will use wire transfers for all Auction No. 50 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed be supplied to the FCC. Applicants can provide the information electronically during the initial short-form filing window after the form has been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Tim Dates or Gail Glasser, at (202) 418-2843 by August 26, 2003. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call Gail Glasser at (202) 418-0578 or Tim Dates at (202) 418-0496.

Name of Bank

ABA Number

Contact and Phone Number

Account Number to Credit

Name of Account Holder

FCC Registration Number (FRN)

Taxpayer Identification Number

Correspondent Bank (if applicable)

ABA Number

Account Number

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in section V.F.

E. Auction Registration

79. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted

upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

80. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, one containing the confidential bidder identification number (BIN) required to place bids and the other containing the SecurID cards. These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.

81. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Wednesday, September 17, 2003, should contact the Auctions Hotline at (717) 338-2888. Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

82. Qualified bidders should note that lost bidder identification numbers or SecurID cards can be replaced only by appearing *in person* at the FCC Auction Headquarters located at 445 12th St., SW, Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacement codes. Qualified bidders requiring replacements must call technical support prior to arriving at the FCC.

F. Remote Electronic Bidding

83. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network will be available as well. Qualified bidders are permitted to bid electronically or telephonically, *i.e.*, over the Internet or the FCC's Wide Area Network. In either case, each authorized bidder must have its own Remote Security Access SecurID card, which the FCC will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID cards, while applicants with two or three authorized bidders will be issued three cards. For security purposes, the SecurID cards and the FCC Automated Auction System user manual are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID card is tailored to a specific auction, therefore, SecurID cards issued for other auctions or obtained from a source other than the

FCC will not work for Auction No. 50. The telephonic bidding phone number will be supplied in the first overnight mailing, which includes the confidential bidder identification number. Each applicant should indicate its bidding preference—electronic or telephonic—on the FCC Form 175.

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

G. Mock Auction

85. All qualified bidders will be eligible to participate in a mock auction on Friday, September 19, 2003. The mock auction will enable applicants to become familiar with the FCC Automated Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

86. The first round of bidding for Auction No. 50 will begin on Wednesday, September 24, 2003. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction

87. In the *Auction No. 50 Comment Public Notice*, the Bureau proposed to award all licenses in Auction No. 50 in a simultaneous multiple round auction. Space Data proposes that the Commission use combinatorial bidding for Auction No. 50 or, alternatively, for the regional licenses only. Space Data believes that participants that have, or intend to deploy, nationwide systems, likely would value certain combinations of MTA licenses that would be ideal for filling in coverage areas initially established by licenses won in Auction No. 41. They also believe the regional licenses are uniquely complementary, because, in combination, they effectively constitute a nationwide license and will be more highly valued as a combined package by prospective auction participants intending to deploy nationwide service.

88. As stated previously in the *Auction No. 50 Procedures Public Notice*, the Bureau will conduct Auction No. 50 as a simultaneous multiple round auction *without* package bidding. Unless otherwise announced, bids will

be accepted on all licenses in each round of the auction.

89. Also as previously stated, the Bureau has tentatively concluded that it may be appropriate to use package bidding for auctioning the regional licenses. Accordingly, the Bureau has removed the regional licenses from this auction and will include them in Auction No. 51. It will announce the dates for Auction No. 51 and seek comment on a package bidding auction design and other auction procedures in a public notice.

#### ii. Maximum Eligibility and Activity Rules

90. In the *Auction No. 50 Comment Public Notice*, the Bureau proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder. The Bureau received no comments on this issue.

91. For Auction No. 50 the Bureau adopts this proposal. The amount of the upfront payment submitted by a bidder determines the maximum initial eligibility (in bidding units) for each bidder. Note again that each license is assigned a specific number of bidding units equal to the upfront payments listed in Attachment A of the *Auction No. 50 Procedures Public Notice* on a bidding unit per dollar basis. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid and hold high bids. As there is no provision for increasing a bidder's eligibility during the course of an auction (as described under "Auction Stages" in section IV.A.3), prospective bidders are cautioned to calculate their upfront payments carefully. The total upfront payment does not affect the total dollars a bidder may bid on any given license.

92. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until the end before participating. Bidders are required to be active on a specific percentage of their current eligibility during each round of the auction.

93. A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. A bidder is considered active on a license in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits a bid in the current round (see "Bid Increments and Minimum Acceptable Bids" in section IV.B.(iii)). The minimum required

activity is expressed as a percentage of the bidder's current bidding eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions (as set forth under "Auction Stages" in section IV.A.iii and "Stage Transitions" in section IV.A.iv), the Bureau adopts them for Auction No. 50.

#### iii. Auction Stages

94. In the *Auction No. 50 Comment Public Notice*, the Bureau proposed to conduct the auction in three stages and employ an activity rule. It further proposed that, in each round of Stage One, a bidder desiring to maintain its current eligibility would be required to be active on licenses encompassing at least 80 percent of its current bidding eligibility. In each round of Stage Two, a bidder desiring to maintain its current eligibility would be required to be active on at least 90 percent of its current bidding eligibility. Finally, the Bureau proposed that a bidder in Stage Three, in order to maintain its current eligibility, would be required to be active on 98 percent of its current bidding eligibility. The Bureau received no comments on this proposal.

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

*Stage One:* During the first stage of the auction, a bidder desiring to maintain its current eligibility will be required to be active on licenses that represent at least 80 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and bids during the current round) by five-fourths (5/4).

*Stage Two:* During the second stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 90 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids

and bids during the current round) by ten-ninths (10/9).

*Stage Three:* During the third stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). In this stage, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and bids during the current round) by fifty-fortyninths (50/49).

*Caution:* Since activity requirements increase in each auction stage, bidders must carefully check their current activity during the bidding period of the first round following a stage transition. This is especially critical for bidders that have standing high bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity level at stage transitions. Bidders may check their activity against the required activity level by using the bidding system's bidding module.

96. Because the foregoing procedures have proven successful in maintaining proper pace in previous auctions, the Bureau adopts them for Auction No. 50.

#### iv. Stage Transitions

97. In the *Auction No. 50 Comment Public Notice*, the Bureau proposed that the auction would generally advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is below 20 percent for three consecutive rounds of bidding in each Stage. The Bureau further proposed that it retain the discretion to change stages unilaterally by announcement during the auction. This determination, the Bureau proposed, would be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Bureau received no comments on this subject.

98. The Bureau adopts its proposal. Thus, the auction will start in Stage One and will advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when, in each of three consecutive rounds of bidding, the high bid has increased on 20 percent or less of the licenses being auctioned

(as measured in bidding units). In addition, the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Bureau believes that these stage transition rules, having proven successful in prior auctions, are appropriate for use in Auction No. 50.

#### v. Activity Rule Waivers and Reducing Eligibility

99. In the *Auction No. 50 Comment Public Notice*, the Bureau proposed that each bidder in the auction would be provided five activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. The Bureau received no comment on this issue.

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

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

102. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override

the automatic waiver mechanism during the round by using the "reduce eligibility" function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in "Auction Stages" (see section IV.A.iii discussion). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

103. Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the FCC Automated Auction System) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver triggered during a round in which there are no new bids or withdrawals will not keep the auction open.

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

#### vi. Auction Stopping Rules

104. For Auction No. 50, the Bureau proposed to employ a simultaneous stopping rule approach. The Bureau also sought comment on a modified version of the stopping rule. The modified version of the stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on the license for which it is the standing high bidder would not keep the auction open under this modified stopping rule.

105. The Bureau further proposed retaining the discretion to keep the auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn in a round. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either use an activity rule waiver (if it has any left) or lose bidding eligibility.

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

The Bureau proposed to exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage (where bidders will be required to maintain a higher level of bidding activity), increasing the number of rounds per day, and/or adjusting the minimum acceptable bids and bid increments for the licenses.

107. The Bureau received no comments concerning the auction stopping rules; therefore, it adopts the proposals. Auction No. 50 will begin under the simultaneous stopping rule, and the Bureau will retain the discretion to invoke the other versions of the stopping rule. The Bureau believes that these stopping rules are most appropriate for Auction No. 50, because its experience in prior auctions demonstrates that the auction stopping rules balance the interests of administrative efficiency and maximum bidder participation.

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

108. In the *Auction No. 50 Comment Public Notice*, the Bureau proposed that, by public notice or by announcement during the auction, it may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair conduct of competitive bidding.

109. Because this approach has proven effective in resolving exigent circumstances in previous auctions, the Bureau adopts its proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of

this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

### B. Bidding Procedures

#### i. Round Structure

110. The initial bidding schedule will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of the round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will also be included in the qualified bidders public notice.

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

#### ii. Reserve Price or Minimum Opening Bid

112. *Background.* The Balanced Budget Act calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. Among other factors, the Bureau must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on the spectrum being auctioned. The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.

113. In the *Auction No. 50 Comment Public Notice*, the Bureau proposed to establish minimum opening bids for Auction No. 50 and to retain discretion to lower the minimum opening bids. Specifically, for Auction No. 50, the Bureau proposed the following license-

by-license formula for calculating minimum opening bids:

$\$.00001 * \text{kHz} * \text{License Area}$   
Population with a minimum of \$500 per license.

114. In the alternative, the Bureau sought comment on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

115. No comments were received. Therefore the Bureau adopts minimum opening bids for Auction No. 50, which are reducible at the discretion of the Bureau. The Bureau emphasizes, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureau will not entertain any requests to reduce the minimum opening bid on specific licenses.

116. The specific minimum opening bids for each license available in Auction No. 50 are set forth in Attachment A of the *Auction No. 50 Procedures Public Notice*.

#### iii. Minimum Acceptable Bids and Bid Increments

117. In the *Auction No. 50 Comment Public Notice*, the Bureau proposed to use a smoothing methodology to calculate minimum acceptable bids. The smoothing methodology is designed to vary the increment for a given license between a maximum and minimum value based on the bidding activity on that license. This methodology allows the increments to be tailored to the activity level of a license, decreasing the time it takes for active licenses to reach their final value. The formula used to calculate this increment is included as Attachment F of the *Auction No. 50 Procedures Public Notice*. The Bureau further proposed to retain the discretion to change the minimum acceptable bids and bid increments if circumstances so dictate. The Bureau received no comment on this issue.

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

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

increment, rounded as described in Attachment F of the *Auction No. 50 Procedures Public Notice*, and the minimum opening bid—*i.e.*, bid increment = (minimum opening bid)(1 + percentage increment) {rounded} – (minimum opening bid). At the start of the auction and until a bid has been placed on a license, the nine acceptable bid amounts for each license consist of the minimum opening bid and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the minimum opening bid plus the bid increment, the third bid amount equals the minimum opening bid plus two times the bid increment, etc.).

120. Once there is a standing high bid on a license, the FCC Automated Auction System will calculate a minimum acceptable bid for that license for the following round, as described in Attachment F of the *Auction No. 50 Procedures Public Notice*. The difference between the minimum acceptable bid and the standing high bid for each license will define the bid increment—*i.e.*, bid increment = (minimum acceptable bid) – (standing high bid). The nine acceptable bid amounts for each license consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

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

#### iv. High Bids

122. At the end of each bidding round, the high bids will be determined based on the highest gross bid amount of the bids received for each license.

123. In the *Auction No. 50 Comment Public Notice*, the Bureau proposed to use a random number generator to select a high bid in the event of identical high bids on a license in a given round (*i.e.*, tied bids). A random number will be assigned to each bid. The tied bid having the highest random number will become the standing high bid. The remaining bidders, as well as the high

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

#### v. Bidding

124. During a round, a bidder may submit bids for as many licenses as it wishes (subject to its eligibility), withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with licenses for which the bidder has removed or withdrawn its bid do not count towards the bidder's activity at the close of the round.

125. Please note that all bidding will take place remotely either through the FCC Automated Auction System or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 50.

126. A bidder's ability to bid on specific licenses in the first round of the auction is determined by two factors: (i) the licenses applied for on FCC Form 175 and (ii) the upfront payment amount deposited. The bid submission screens will allow bidders to submit bids on only those licenses for which the bidder applied on its FCC Form 175.

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

128. In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts. For each license, the FCC Automated Auction System interface will list the nine acceptable bid amounts in a drop-

down box. Bidders may use the drop-down box to select from among the nine acceptable bid amounts. The FCC Automated Auction System also includes an import function that allows bidders to upload text files containing their bid information.

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

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

#### vi. Bid Removal and Bid Withdrawal

131. In the *Auction No. 50 Comment Public Notice*, the Bureau proposed bid removal and bid withdrawal procedures. With respect to bid withdrawals, the Bureau proposed limiting each bidder to withdrawals in no more than two rounds during the course of the auction. The two rounds in which withdrawals are utilized would be at the bidder's discretion. The Bureau received no comments on this issue.

132. *Procedures.* Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bid" function in the bidding system, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is subsequently removed does not count toward the bidder's activity requirement. This procedure, about which the Bureau received no comments, will enhance bidder flexibility during the auction. Therefore, the Bureau adopts these procedures for Auction No. 50.

133. Once a round closes, a bidder may no longer remove a bid. However, in later rounds, a bidder may withdraw standing high bids from previous rounds using the withdraw bid function in the FCC Automated Auction System (assuming that the bidder has not exhausted its withdrawal allowance). A high bidder that withdraws its standing high bid from a previous round during the auction is subject to the bid

withdrawal payments specified in 47 CFR 1.2104(g).

**Note:** Once a withdrawal is submitted during a round, that withdrawal cannot be unsubmitted.

134. In previous auctions, the Bureau has detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While it continues to recognize the important role that bid withdrawals play in an auction, *i.e.*, reducing risk associated with efforts to secure various licenses in combination, the Bureau concludes that, for Auction No. 50, adoption of a limit on their use to two rounds per bidder is the most appropriate outcome. By doing so the Bureau believes it strikes a reasonable compromise that will allow bidders to use withdrawals. The Bureau's decision on this issue is based upon its experience in prior auctions, particularly the PCS D, E and F block auctions, and 800 MHz SMR auction, and is in no way a reflection of our view regarding the likelihood of any speculation or "gaming" in this auction.

135. The Bureau will therefore limit the number of rounds in which each bidder may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals during the auction will still be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market.

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

137. *Calculation.* Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the net high bid in the same or subsequent auction(s). See 47 CFR 1.2104(g)(1). In the case of multiple bid withdrawals on a single license, within the same or

subsequent auctions(s), the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids, in either the same or subsequent auctions(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any withdrawal payments if there is a subsequent higher bid in the same or subsequent auction(s). This policy allows bidders to allocate their resources most efficiently as well as to evaluate their bidding strategies and business plans during an auction while, at the same time, maintaining the integrity of the auction process. The Bureau retains the discretion to scrutinize multiple bid withdrawals on a single license for evidence of anti-competitive strategic behavior and take appropriate action when deemed necessary.

138. In the *Part 1 Fifth Report and Order*, the Commission modified § 1.2104(g)(1) of the rules regarding assessments of interim bid withdrawal payments. As amended, § 1.2104(g)(1) provides that in instances in which bids have been withdrawn on a license that is not won in the same auction, the Commission will assess an interim withdrawal payment equal to 3 percent of the amount of the withdrawn bids. The 3 percent interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the license. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment. The *Part 1 Fifth Report and Order* provides specific examples showing application of the bid withdrawal payment rule.

#### vii. Round Results

139. Bids placed during a round will not be published until the conclusion of that bidding period. After a round closes, the Bureau will compile reports of all bids placed, bids withdrawn, current high bids, new minimum acceptable bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 50 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

#### viii. Auction Announcements

140. The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available by clicking a link on the FCC Automated Auction System.

#### ix. Maintaining the Accuracy of FCC Form 175 Information

141. As noted in section II.H., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and certain revision of exhibits. Applicants must make these modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division at the following address: [auction50@fcc.gov](mailto:auction50@fcc.gov). The electronic mail summarizing the changes should include a subject or caption referring to Auction No. 50. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

142. A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338-2850. Questions about other changes should be directed to Christopher Shields of the Auctions and Industry Analysis Division at (202) 418-0660.

#### V. Post-Auction Procedures

##### A. Down Payments and Withdrawn Bid Payments

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

144. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any applicable small and very small business bidding credits). See 47 CFR 1.2107(b). In addition, by the same deadline all bidders must pay any bid withdrawal payments due under 47 CFR 1.2104(g), as discussed in "Bid Removal and Bid Withdrawal," section IV.B.vi. (Upfront payments are applied first to satisfy any withdrawn bid liability,

before being applied toward down payments.)

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

145. Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 601) and required exhibits for each license won through Auction No. 50. Winning bidders that are small or very small businesses must include an exhibit demonstrating their eligibility for small and very small business bidding credits. See 47 CFR 1.2112(b). Further filing instructions will be provided to auction winners at the close of the auction.

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

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

##### D. Tribal Land Bidding Credit

147. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally-recognized tribal lands that are unserved by any telecommunications carrier or that have a telephone service penetration rate equal to or below 70 percent is eligible to receive a tribal land bidding credit as set forth in 47 CFR 1.2107 and 1.2110(f). A tribal land bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

148. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal land bidding credit *after* winning the auction when it files its long-form application (FCC Form 601). When filing the long-form application, the winning bidder will be required to advise the Commission whether it intends to seek a tribal land bidding credit, for each market won in the auction, by checking the designated box(es). After stating its intent to seek a

tribal land bidding credit, the applicant will have 90 days from the close of the long-form filing window to amend its application to select the specific tribal lands to be served and provide the required tribal government certifications. Licensees receiving a tribal land bidding credit are subject to performance criteria as set forth in 47 CFR 1.2110(f).

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

#### E. Default and Disqualification

150. Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.21104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at its final bid. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant.

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

151. All applicants that submitted upfront payments but were not winning bidders for a license in Auction No. 50 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

152. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not

withdrawn a high bid during the auction must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions and a Taxpayer Identification Number (TIN). Send refund request to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Gail Glasser or Tim Dates, 445 12th Street, SW., Room 1-C863, Washington, DC 20554.

153. Bidders are encouraged to file their refund information electronically using the refund information portion of the FCC Form 175, but bidders can also fax their information to the Auctions Accounting Group at (202) 418-2843. Once the information has been approved, a refund will be sent to the party identified in the refund information.

**Note:** Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Tim Dates at (202) 418-0496 or Gail Glasser at (202) 418-0578.

Federal Communications Commission.

**Louis J. Sigalos,**

*Deputy Chief, Auctions and Industry Analysis Division, WTB.*

[FR Doc. 03-7459 Filed 3-27-03; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### Technological Advisory Council

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, this notice advises interested persons of the first of the Technological Advisory Council ("Council") under its new charter.

**DATES:** April 17, 2003, beginning at 10 a.m. and concluding at 3 p.m.

**ADDRESSES:** Federal Communications Commission, 445 12th St. SW., Room TW-C305 Washington, DC 20554. See **SUPPLEMENTARY INFORMATION** for Filing Instructions.

**FOR FURTHER INFORMATION CONTACT:** Jeffery Goldthorp, (202) 418-1096.

**SUPPLEMENTARY INFORMATION:** Continuously accelerating technological changes in telecommunications design, manufacturing, and deployment require that the Commission be promptly informed of those changes to fulfill its statutory mandate effectively. The

Council was established by the Federal Communications Commission to provide a means by which a diverse array of recognized technical experts from different areas such as manufacturing, academia, communications services providers, the research community, etc., can provide advice to the FCC on innovation in the communications industry. At this first meeting under the Council's new charter, the topic of broadband access technologies will be treated using a symposium format. Members of the public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many persons as possible. Admittance, however, will be limited to the seating available. Unless so requested by the Council's Chair, there will be no public oral participation, but the public may submit written comments to Jeffery Goldthorp, the Federal Communications Commission's Designated Federal Officer for the Technological Advisory Council, before the meeting. Mr. Goldthorp's e-mail address is [jgoldtho@fcc.gov](mailto:jgoldtho@fcc.gov). Mail delivery address is: Federal Communications Commission, 445 12th Street, SW., Room 7-A325, Washington, DC 20554.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 03-7523 Filed 3-27-03; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### Privacy Act System of Records

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice; one altered Privacy Act system of records; deletion of five routine uses; and addition of one new routine use.

**SUMMARY:** Pursuant to the provisions of the *Privacy Act of 1974*, as amended, 5 U.S.C. 552a(e)(4) and (e)(11), the FCC proposes to change the name and alter one system of records, FCC/Central-2, "Employee Locator System" (formerly "Employee Locator Card Files"). The altered system of records will incorporate changes in what information is maintained and how the information is stored—from a paper file card system to an electronic database; the deletion of five routine uses; the addition of one new routine use; and other edits and revisions as necessary.

**DATES:** In accordance with 5 U.S.C. 552a(e)(4) and (e)(11) of the *Privacy Act of 1974*, as amended, any interested