

## FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 07-157; Report No. AUC-07-73-B (Auctions 73 and 76); DA 07-4171]

### Auction of 700 MHz Band Licenses Scheduled for January 24, 2008; Notice and Filing Requirements, Minimum Opening Bids, Reserved Prices, Upfront Payments and Other Procedures for Auctions 73 and 76

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the procedures and minimum opening bids for the upcoming auction of certain 700 MHz Band Licenses (Auctions 73 and 76). This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for these auctions.

**DATES:** Applications to participate in 700 MHz Band Licenses Auctions 73 and 76 must be filed before 6 p.m. ET on December 3, 2007. Bidding for Auction No. 73 is scheduled to begin on January 24, 2008. Contingent subsequent bidding in Auction 76, if necessary, will begin on a date to be announced after Auction 73 has closed.

**FOR FURTHER INFORMATION CONTACT:** Wireless Telecommunications Bureau, Auctions Spectrum and Access Division: For legal questions: Scott Mackoul, Stephen Johnson or Howard Davenport at (202) 418-0660. For general auction questions: Lisa Stover at (717) 338-2868. Mobility Division: For service rule questions: Erin McGraft (legal), Keith Harper (engineering) and Denise Walter (licensing) at (202) 418-0620. To request materials in accessible formats (Braille, large print, electronic files or audio format) for people with disabilities, send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auctions 73 and 76 Procedures Public Notice* released on October 5, 2007. The complete text of the *Auctions 73 and 76 Procedures Public Notice*, including attachments, as well as related Commission documents are available for public inspection and copying from 8 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8 a.m. to 11:30 a.m. on Friday at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. On October 19, 2007, a Public Notice was released announcing a change in the

date of the bidders' seminar for Auctions 73 and 76 from November 19, 2007 to November 20, 2007. The *Auctions 73 and 76 Procedures Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone 202-488-5300, facsimile 202-488-5563, or Web site: <http://www.BCPIWEB.com>. When ordering documents from BCPI, please provide the appropriate FCC document number, for example, DA 07-4171 for the *Auctions 73 and 76 Procedures Public Notice*. The *Auctions 73 and 76 Procedures Public Notice* and related documents are also available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/73/>.

#### I. General Information

##### A. Introduction

1. The Wireless Telecommunications Bureau (the Bureau) announces the procedures and minimum opening bid amounts for the upcoming auction of licenses for services in the 698-806 MHz band (700 MHz Band) scheduled to begin on January 24, 2008. This auction is designated as Auction 73. Auction 73 will offer 700 MHz Band licenses for initial bidding and the 700 MHz Band licenses may be offered in contingent subsequent bidding. In the event that any licenses are offered in contingent subsequent bidding, that event will be designated as Auction 76. On August 17, 2007, in accordance with Section 309(j)(3) of the Communications Act of 1934, as amended, the Bureau released a public notice seeking comment on competitive bidding procedures for both the initial bidding and the contingent subsequent bidding for *700 MHz Band Licenses*. Interested parties submitted 12 comments and 8 reply comments in response to the *700 MHz Auction Public Notice*, 72 FR 48272, August 23, 2007, as well as a number of *ex parte* communications.

2. In the *700 MHz Auction Public Notice*, the Bureau proposed to include all available, commercial 700 MHz Band licenses (1,099 licenses) for initial bidding in Auction 73 using the Commission's standard simultaneous multiple-round (SMR) auction format for the A, B, D, and E block licenses and an auction design with hierarchical package bidding (HPB) for the C Block licenses. The *700 MHz Auction Public Notice* also proposed procedures for the contingent subsequent bidding, now designated Auction 76, on licenses for spectrum associated with any initially

offered licenses for which the Auction 73 results do not satisfy applicable reserve prices. Based on the record and after considering comments provided in response to the *700 MHz Auction Public Notice*, the Bureau hereby announces the final procedures for Auctions 73 and Auction 76.

3. The *Auctions 73 and 76 Procedures Public Notice* provides, among other things, procedures for the following: (1) Anonymous bidding, to enhance competition by safeguarding against potential anti-competitive auction strategies; (2) package bidding, to enable bidders trying to combine multiple C Block licenses to place bids on packages of those licenses; (3) block-specific aggregate reserve prices, to help assure that the public recovers a portion of the value of the spectrum resource; and (4) prompt subsequent bidding in Auction 76, to offer licenses for relevant block(s) in the event Auction 73 results do not satisfy applicable reserve prices.

4. *Anonymous Bidding*. In the *700 MHz Second Report and Order*, 65 FR 17594, April, 4, 2000, the Commission found that the public interest would be served if the auction for new 700 MHz Band licenses is conducted using anonymous (or limited information) bidding procedures, regardless of any pre-auction measurement of likely auction competition. Such information procedures are intended to reduce the potential for anti-competitive bidding behavior, including bidding activity that aims to prevent the entry of new competitors. Having proposed and sought comment on more detailed procedures for employing anonymous bidding for the upcoming auction, the Bureau now announces the anonymous bidding procedures.

5. *Package Bidding for C Block Licenses*. The Commission also determined in the *700 MHz Second Report and Order* that providing for package bidding for C Block licenses would serve the public interest. The Commission found that package bidding for these licenses should facilitate the entry of entities seeking to create a nationwide footprint and whose business plans require the economies of scale that only can be obtained with nationwide operation. At Commission direction, the Bureau previously proposed and sought comment on detailed procedures for implementing package bidding for the C Block licenses and not for licenses in the other blocks to be auctioned. In the *Auctions 73 and 76 Procedures Public Notice*, the Bureau detailed the process for package bidding for the C Block licenses.

6. *Block-Specific Aggregate Reserve Prices*. The Commission also decided to

provide for aggregate reserve prices for licenses authorizing the use of each block of the commercial 700 MHz Band yet to be licensed. The Commission concluded that, consistent with its statutory mandate, disclosed reserve prices would promote the recovery of a portion of the value of the public spectrum resource. The Commission directed the Bureau to adopt aggregate reserve prices reflecting the potential market value of this spectrum based on a variety of factors including, but not limited to, the characteristics of this band and the auction prices of other recently auctioned licenses, such as licenses for Advanced Wireless Services in the 1710–1755 MHz and 2110–2155 MHz bands (AWS–1). Accordingly, the Bureau proposed and sought comment on the following block-specific aggregate reserve prices: Block A, \$1.807380 billion; Block B, \$1.374426 billion; Block C, \$4.637854 billion; Block D, \$1.330000 billion; Block E, \$0.903690 billion. Further, the Bureau proposed that if the sum of the provisionally winning bids for the licenses in a block does not satisfy the relevant aggregate reserve price, none of the relevant licenses for the particular block will be assigned based on the auction results. In the *Auctions 73 and 76 Procedures Public Notice*, the Bureau adopted this proposal.

7. *Auction 76 Overview*. The Commission decided that, if licenses initially offered for the A, B, C, or E Blocks are not assigned because the auction results do not satisfy the applicable aggregate reserve price(s) for those licenses, the Commission promptly will offer alternative licenses for those blocks. More specifically, the Commission will offer licenses for the A, B, and E Blocks subject to alternative performance requirements. With respect to the C Block, the Commission will offer alternative licenses without the open platform conditions and based on different geographic areas and spectrum bandwidth. If the D Block license is not assigned because the auction results do not satisfy the D Block reserve price, the Commission may re-offer that license subject to the same rules or reconsider the applicable rules. For administrative purposes, the Bureau will designate as Auction 76 any subsequent bidding for alternative licenses for the A, B, C or E Blocks or for the D Block license that occurs because Auction 73 results for licenses initially offered for the relevant blocks do not satisfy the applicable aggregate reserve price(s). In the *Auctions 73 and 76 Procedures Public Notice*, the Bureau announced detailed

procedures for conducting Auction 76, if necessary.

8. The Commission will conduct bidding in Auction 73 and any contingent subsequent bidding in Auction 76 for 700 MHz Band licenses as a single auction to the extent possible, given the strong public interest in promptly assigning all 700 MHz Band licenses for recovered analog spectrum and the related nature of the licenses being offered in Auctions 73 and 76. Thus, pursuant to the *700 MHz Second Report and Order*, the Bureau will permit only qualified bidders in the initial auction to participate in the contingent subsequent auction. To enable a prompt start to Auction 76 after Auction 73, applicants must select any licenses on which they may bid in Auction 76 by the deadline for filing their Auction 73 application. Applicants must select those licenses by submitting a separate abbreviated short-form application to participate in Auction 76. The abbreviated Auction 76 application must be filed together with the applicant's standard application for Auction 73, following procedures described in the *Auctions 73 and 76 Procedures Public Notice*. In the event that Auction 76 takes place, bidder identity and other information on the applicant's completed Auction 73 short-form application will be combined with the licenses selected in the abbreviated Auction 76 application to create the applicant's Auction 76 application. This process will minimize the time period between auctions by eliminating any need for applicants to take time following Auction 73 to file new applications or select additional licenses, and for the Commission to review newly-filed short-form applications. Applicants in Auction 76, however, will have an opportunity after Auction 73 to obtain additional eligibility for any licenses offered in Auction 76 by supplementing their upfront monies on deposit with the Commission pursuant to the procedures as provided for in the *700 MHz Second Report and Order*.

9. The Bureau also will use the Auction 73 design in Auction 76, including an aggregate reserve price for each block that matches the applicable initial reserve price. In the event that alternative licenses for the C Block are offered for Blocks C1 and C2, the Bureau will conduct package bidding for the C2 Block only, using the pre-determined packages. Alternative licenses for Blocks C1 and C2 will be subject to reserve prices. There will be a joint aggregate reserve price equal to the initial auction C Block aggregate reserve price, and separate aggregate reserve prices for the

C1 and C2 Blocks that add to the joint aggregate reserve price. Licenses in both blocks will be assigned if the joint aggregate reserve price is met. If the joint aggregate reserve price is not met but one of the block-specific reserve prices is met, licenses in the block for which the reserve price is met will be assigned. Licenses in the other block will not be assigned. This will assure the aggregate reserve price in the initial auction continues to apply while maximizing the opportunity for licenses for either Block C1 or C2 to be assigned.

#### i. Background of Proceeding

10. The Commission is offering the licenses in Auction 73 consistent with the requirements of the Digital Television Transition and Public Safety Act of 2005 (DTV Act). Pursuant to the DTV Act the Commission must conduct the auction of licenses for recovered analog spectrum by commencing the bidding not later than January 28, 2008. A number of incumbent broadcasters are licensed and operating on these frequencies (TV Channels 52–53, 56–58, 60–62, and 65–67) and adjacent channels.

#### ii. Licenses To Be Offered in Auction 73

11. Auction 73 will offer a total of 1,099 licenses: 176 Economic Area (EA) licenses in each of the A and E Blocks, 734 Cellular Market Area (CMA) licenses in the B Block, 12 Regional Economic Area Grouping (REAG) licenses in the C Block, and one nationwide license, to be used as part of the 700 MHz Public/Private Partnership, in the D Block.

#### B. Rules and Disclaimers

##### i. Relevant Authority

12. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules set forth in Title 47, part 1, of the CFR, including recent amendments and clarifications; rules relating to the 700 MHz Band contained in Title 47, part 27, of the CFR; rules relating to the public/private partnership applicable to the D Block contained in Title 47, part 90, of the CFR; and rules relating to applications, environment, practice and procedure contained in Title 47, part 1, of the CFR. Prospective applicants must also be thoroughly familiar with the procedures, terms and conditions (terms) contained in the *Auctions 73 and 76 Procedures Public Notice* and the Commission's decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of

Commission licensees. For example, among other Commission orders, prospective bidders should be familiar with the *700 MHz First Report and Order*, 65 FR 3139, January 20, 2000, and the *700 MHz Second Report and Order*.

13. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to Auctions 73 and 76.

#### ii. Prohibition of Collusion; Compliance With Antitrust Laws

14. To ensure the competitiveness of the auction process, § 1.2105(c) of the Commission's rules prohibits auction applicants for licenses in any of the same geographic license areas from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications (FCC Forms 175) as parties with whom they have entered into agreements pursuant to § 1.2105(a)(2)(viii).

#### a. Entities Subject to Anti-Collusion Rule

15. The anti-collusion rule will apply to any applicants that submit short-form applications for Auctions 73 or 76 and select licenses in the same or overlapping CMAs, EAs, REAGs or the nationwide license in the D Block. For example, assume that one applicant applies for a REAG license and a second applicant applies for an EA license covering any area within that REAG. The two entities will have applied for licenses covering the same geographic areas and would be precluded from communicating with each other under the rule. The rule also applies where one applicant has selected a license in Auction 73 and another applicant selects a license in Auction 76 that covers any of the same geographic area. In addition, the rule precludes applicants that apply to bid for the nationwide license in the D Block, or all the licenses in any other block, from communicating with all other applicants. Thus, applicants that have applied for licenses covering the same markets (unless they have identified each other on their FCC Form 175 applications as parties with whom they have entered into agreements under

§ 1.2105(a)(2)(viii)) must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy, which may include communications regarding the post-auction market structure. This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid. Information concerning applicants' license selections will not be available to the public. Therefore, the Commission will inform each applicant by letter of the identity of each of the other applicants that has applied for licenses covering any of the same geographic areas as the licenses that it has selected in its short-form application.

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

17. Entities and parties subject to the anti-collusion rule should take special care in circumstances where their employees may receive information directly or indirectly from a competing applicant relating to any competing applicant's bids or bidding strategies. In situations where the anti-collusion rule views the same person as the applicant with respect to two different entities filing competing applications, under Bureau precedent the bids and bidding strategies of one applicant are necessarily conveyed to the other and, absent a disclosed bidding agreement, an apparent violation of the anti-collusion rule occurs. The Bureau has not addressed situations where employees who do not qualify as the applicant, (e.g., are not officers or directors) receive information regarding a competing applicant's bids or bidding strategies and whether that information might be deemed to necessarily convey to the applicant. The Bureau notes that the exception to the anti-collusion rule providing that non-controlling interest holders may have interests in more than one competing bidder without violating the anti-collusion rule, provided specified conditions are met (including a certification that no prohibited communications have occurred or will occur), does not extend to controlling interest holders.

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

18. Section 1.2105(c)'s anti-collusion prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. In recognition of the related nature of the initial auction and any contingent auction of alternative licenses, the Commission concluded in the *700 MHz Second Report and Order* that the provisions of the anti-collusion rule would continue to apply until the down payment deadline for the subsequent auction.

19. Some commenters argue that the Bureau should allow applicants to opt-out from the anti-collusion prohibition in the event Auction 76 is conducted. A commenter proposed that an applicant that has no intention to bid in the subsequent auction could inform the Commission of its intent in writing with a certification that its decision is not based on any discussion with other competing bidders of auction strategy or post-auction market structure. As one commenter acknowledges, changing the application of the rule in this way is beyond the Bureau's delegated authority and beyond the scope of this non-rulemaking proceeding and would require action by the Commission to reconsider its determination in the *700 MHz Second Report and Order*. Thus, the Bureau is unable to adopt the proposed opt-out certification procedure. If it is necessary to conduct Auction 76, the provisions of the anti-collusion rule will apply to all applicants until the down payment deadline, which will occur after the close of bidding on licenses offered in Auction 76.

#### c. Prohibited Communications

20. Prospective applicants for upcoming Auctions 73 and 76 and other parties that may be engaged in discussion with such prospective applicants are cautioned of the need to comply with the Commission's anti-collusion rule, § 1.2105(c). The anti-collusion rule prohibits not only a communication about an applicant's own bids or bidding strategy, but also a communication of another applicant's bids or bidding strategy. While the anti-collusion rule provisions do not prohibit business negotiations among auction applicants, applicants must remain vigilant so as not to communicate directly or indirectly information that affects, or could affect, bids or bidding strategy, or the negotiation of settlement agreements.

21. The Commission remains vigilant about prohibited communications

taking place in other situations. For example, the Commission has warned that prohibited communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly.

22. Applicants are hereby placed on notice that public disclosure of information relating to bidder interests and bidder identities that is confidential in both Auctions 73 and 76 at the time of disclosure may violate the anti-collusion rule. This is so even though similar types of information were revealed prior to and during other Commission auctions subject to different information procedures. Bidders should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become a conduit for the communication of prohibited bidding information. For example, where limited information disclosure procedures are in place, as for Auctions 73 and 76, a qualified bidder's statement to the press that it has lost bidding eligibility and stopped bidding in the auction could give rise to a finding of an anti-collusion rule violation. Similarly, an applicant's public statement of intent not to participate in Auction 76 bidding could also violate the rule.

23. Applicants for licenses for any of the same geographic license areas must not communicate directly or indirectly about bids or bidding strategy. Accordingly, such applicants 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 such applicants. Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or engineering firm or consulting firm), a violation similarly could occur. In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule. A violation of the anti-collusion rule could occur in other contexts, such as an individual serving as an officer for two or more applicants. Moreover, the Commission has found a

violation of the anti-collusion rule where a bidder used the Commission's bidding system to disclose its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets, and has placed auction participants on notice that the use of its bidding system to disclose market information to competitors will not be tolerated and will subject bidders to sanctions.

24. In addition, when completing short-form applications, applicants should avoid any statements or disclosures that may violate the Commission's anti-collusion rule, particularly in light of the Commission's procedures for limited information. Specifically, applicants should avoid including any information in their short-form applications that might convey information regarding their license selection, such as using applicant names that refer to licenses being offered, referring to certain licenses or markets in describing bidding agreements, or including any information in attachments that may otherwise disclose applicants' license selections.

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

25. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form application. If parties agree in principle on all material terms prior to the short-form filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under § 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the short-form filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiations, discussions or communications with any other applicants for licenses covering any of the same or overlapping geographic areas after the short-form filing deadline.

#### e. Anti-Collusion Certification

26. By electronically submitting a short-form application following the electronic filing procedures set forth in Attachments D and E to the *Auctions 73 and 76 Procedures Public Notice*, each applicant certifies its compliance with § 1.2105(c). 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 has stated that it intends to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring. Any applicant found to have violated the anti-collusion rule may be subject to sanctions.

#### f. Antitrust Laws

27. Applicants are also reminded that, regardless of compliance with the Commission's rules, they remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. Compliance with the disclosure requirements of the Commission's anti-collusion rule will not insulate a party from enforcement of the antitrust laws. For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submits a short-form application. The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws: For example, actual or potential competitors may not agree to divide territories horizontally in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another for the other. Similarly, the Bureau has long reminded potential applicants and others that even where the applicant discloses parties with whom it has reached an agreement on the short-form application, thereby permitting discussions with those parties, the applicant is nevertheless subject to existing antitrust laws. To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.

28. One commenter urges the Commission to adopt an auction rule that states that a bidder cannot release any bidding information to the public during the course of the auction, and provide notice that all parties remain subject to the antitrust laws. As another commenter points out, however, the

Commission has consistently provided such guidance in prior auctions. The Bureau does so again here: All parties remain subject to the antitrust laws.

g. Duty to Report Prohibited Communications

29. If an applicant makes or receives a communication that appears to violate the anti-collusion rule, it must report such communication in writing to the Commission immediately and in no case later than five business days after the communication occurs. The Commission recently clarified that each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five day period.

30. Section 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, § 1.65 requires an auction applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. Applicants are therefore required by § 1.65 to report to the Commission any communications they have made to or received from another applicant after the short-form filing deadline that affect or have the potential to affect bids or bidding strategy unless such communications are made to or received from parties to agreements identified under § 1.2105(a)(2)(viii).

31. Applicants must be aware that failure to comply with the Commission's rules can result in enforcement action.

h. Winning Bidders Must Disclose Terms of Agreements

32. Applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in any bidding consortia, joint ventures, partnerships, and other arrangements entered into relating to the competitive bidding process.

i. Additional Information Concerning Anti-Collusion Rule

33. A summary listing of documents issued by the Commission and the Bureau addressing the application of the anti-collusion rule may be found in Attachment I of the *Auctions 73 and 76 Procedures Public Notice*. These documents are available on the

Commission's auction anti-collusion Web page.

iii. Protection of Incumbent Operations

34. A number of incumbent broadcasters are licensed and operating on these frequencies (TV Channels 52–53, 56–58, 60–62, and 65–67) and adjacent channels. In accordance with the Commission's rules, 700 MHz Band licensees must protect analog and digital TV incumbents from harmful interference through February 17, 2009, the end of the DTV transition period. After February 17, 2009, 700 MHz licensees must continue to operate in accordance with the Commission's rules to reduce the potential for interference to public reception of the signals of DTV broadcast stations transmitting on DTV Channel 51. These limitations may restrict the ability of such geographic area licensees to use certain portions of the electromagnetic spectrum or provide service to some parts of their geographic license areas.

35. In the *700 MHz Second Report and Order*, the Commission grandfathered an incumbent guard band B Block licensee in Major Economic Areas (MEAs) 21 and 39 at 761–763 MHz and 791–793 MHz of the D Block. The new D Block licensee will be authorized on a secondary basis at 761–763 MHz and 791–793 MHz in these markets, and it may not cause interference to the primary operations of the grandfathered licensee. If the grandfathered licensee, or a successor or assignee, cancels either of the grandfathered licenses, or if either license cancels automatically, is terminated by the Commission, or expires, then the licensed geographic area will revert to the D Block licensee automatically.

a. International Coordination

36. Potential bidders seeking licenses for geographic areas that are near the Canadian or Mexican borders are subject to international agreements with Canada and Mexico. Pursuant to these agreements, the U.S. must protect the signals of Canadian and Mexican television broadcast stations located in the border area. Unless otherwise modified by international treaty, licensees must not cause interference to, and must accept harmful interference from, television broadcast operations in Mexico and Canada. Further, until such time as existing agreements are replaced or modified to reflect the new uses, licensees in the band will be subject to existing agreements.

b. Quiet Zones

37. 700 MHz Band licensees must protect the radio quiet zones set forth in the Commission's rules. Licensees are cautioned that they must receive the appropriate approvals directly from the relevant quiet zone entity prior to operating within the areas described in the Commission's rules.

iv. Due Diligence

38. The Bureau cautions potential applicants formulating their bidding strategies to investigate and consider the extent to which 700 MHz Band frequencies are occupied. Applicants and their investors should also understand that Commission rules and requirements place limitations on the ability of 700 MHz Band licensees to use this spectrum. There are a number of incumbent broadcast television licensees already licensed and operating in the band that will be subject to the upcoming auction. Geographic area licensees operating on the spectrum associated with Channels 52–53, 56–58, 60–62, and 65–67 must comply with the co-channel and the adjacent channel provision of § 27.60 of the Commission's rules. These limitations may restrict the ability of such geographic area licensees to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license areas. For example, bidders should become familiar with any petitions or other pleadings filed in response to the *700 MHz First Report and Order*, *700 MHz Second Report and Order*, and any other orders that have been or may be released affecting the 700 MHz Band.

39. Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of 700 MHz Band licenses. 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 the 700 MHz Band subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

40. Potential bidders are strongly encouraged to conduct their own research prior to the beginning of

bidding in Auction 73 in order to determine the existence of any pending legislative, administrative or judicial proceedings that might affect their decision regarding participation in the auction, including any subsequent auction (if necessary). Participants in Auctions 73 and 76 are strongly encouraged to continue such research throughout the auction. In addition, potential bidders should perform technical analyses sufficient to assure themselves that, should they prevail in competitive bidding for a specific license, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements as well as other applicable Federal, state, and local laws.

41. Applicants should also be aware that certain pending and future proceedings, including rulemaking proceedings or petitions for rulemaking, applications (including those for modification), requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal oppositions, and applications for review, before the Commission may relate to particular applicants or incumbent licensees or the licenses available in Auctions 73 and 76. For example, bidders should note that petitions have been filed for reconsideration of certain decisions made in the *700 MHz First Report and Order* and the *700 MHz Second Report and Order*. In addition, applicants should be aware that the Commission has sought comment on a range of proposals concerning consumer education about the DTV transition, including the possible imposition of reporting requirements on winning bidders for 700 MHz band licenses. Of course, pending and future judicial proceedings may relate to particular applicants or incumbent licensees, or the licenses available in Auctions 73 and 76. Prospective bidders are responsible for assessing the likelihood of the various possible outcomes, and considering their potential impact on spectrum licenses available in Auctions 73 and 76.

42. Applicants should perform due diligence to identify and consider all proceedings that may affect the spectrum licenses being auctioned and that could have an impact on the availability of spectrum for Auction 73. In addition, although the Commission may continue to act on various pending applications, informal objections, petitions, and other requests for Commission relief, some of these matters may not be resolved by the beginning of bidding in the auction.

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

44. Applicants may use the licensing database for the Media Bureau on the Internet in order to determine which frequencies are already licensed to incumbent licensees. Licensing records for the Media Bureau are contained in the Media Bureau's Consolidated Data Base System (CDBS) and may be researched on the Internet at <http://www.fcc.gov/mb/cdbs.html>. Potential bidders should direct questions regarding the search capabilities of CDBS to the Media Bureau help line at (202) 418-2662, or via e-mail at [cdbshelp@fcc.gov](mailto:cdbshelp@fcc.gov).

45. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, applicants may obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

46. Potential applicants are strongly encouraged to physically inspect any prospective sites located in, or near, the geographic area for which they plan to bid, and also to familiarize themselves with the environmental review obligations.

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

47. The Commission will make available a browser-based bidding system to allow bidders to participate in Auction 73 over the Internet using the Commission's Integrated Spectrum Auction System (ISAS or FCC Auction System). The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning or use of the FCC Auction System that is accessible to qualified bidders in

connection with Auctions 73 and 76. Moreover, no obligation or liability will arise out of the Commission's technical, programming or other advice or service provided in connection with the FCC Auction System.

#### vi. Fraud Alert

48. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction 73 to deceive and defraud unsuspecting investors. Information about deceptive telemarketing investment schemes is available from the Commission as well as the FTC and SEC. 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.

#### vii. Environmental Review Requirements

49. Licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other federal environmental statutes. The construction of a wireless antenna facility is a federal action and the licensee must comply with the Commission's environmental rules for each such facility. The Commission's environmental rules require, among other things, that the licensee consult with expert agencies having environmental responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corps of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). In assessing the effect of facilities construction on historic properties, the licensee must follow the provisions of the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process. 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 also must prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

i. Auction 73 Start Date

50. Bidding in Auction 73 will begin on Thursday, January 24, 2008.

51. This change of the previously-announced start date for Auction 73 will provide interested parties with additional time after this announcement of competitive bidding procedures to develop business plans, assess market conditions, and evaluate the availability of equipment for new 700 MHz Band services.

52. Some commenters had sought a postponement of the previously-announced start date until January 25 or 28, 2008. Pursuant to the Congressional mandate, the Commission must conduct the auction of licenses for recovered analog spectrum in the 700 MHz Band by commencing the bidding not later than January 28, 2008. Starting the

auction on the statutory deadline for commencing the auction, or one business day prior to the deadline would provide insufficient time to address unexpected matters that might arise just prior to the start of bidding.

53. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Moreover, unless otherwise announced, bidding on all licenses and packages will be conducted on each business day until bidding has stopped on all licenses and packages.

ii. Auction Title

54. The auction in which the 700 MHz Band licenses will initially be offered is designated as Auction 73—700 MHz Band. In the event that any licenses, including alternative licenses, are offered in contingent subsequent

bidding, that will be designated as Auction 76.

iii. Bidding Methodology

55. The bidding methodology for Auction 73 will be simultaneous multiple round (SMR) bidding for the A, B, D, and E Block licenses and an auction design with hierarchical package bidding (HPB) for the C Block licenses. The Commission will conduct Auctions 73 and 76 over the Internet using the FCC Auction System, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically via the Internet or by telephone. All telephone calls are recorded.

iv. Pre-Auction Dates and Deadlines

56. The following dates and deadlines apply:

Auction Seminar .....	November 20, 2007.
Auction 73 and 76 Short-Form Application (FCC Form 175) Filing Window Opens .....	November 19, 2007; 12 noon ET.
Auction 73 and 76 Short-Form Application (FCC Form 175) Filing Window Deadline .....	December 3, 2007; prior to 6 p.m. ET.
Auction 73 Upfront Payments (via wire transfer) .....	December 28, 2007; 6 p.m. ET.
Mock Auction .....	January 18, 2008.
Auction 73 Begins .....	January 24, 2008.

57. If contingent subsequent bidding is necessary, the Bureau intends to announce the start date for Auction 76 and the deadline for additional upfront payments within five business days after the end of bidding in Auction 73. The Bureau expects that Auction 76 would begin within three weeks of that announcement.

v. Requirements for Participation in Auction 73 and 76

58. Those wishing to participate in Auction 73 and 76 (should any subsequent auction become necessary), must: (1) For Auction 73, submit a short-form application (FCC Form 175) electronically prior to 6 p.m. ET, December 3, 2007, following the electronic filing procedures set forth in Attachment D to the *Auctions 73 and 76 Procedures Public Notice*; (2) for Auction 76, submit short-form applications (FCC Form 175) electronically prior to 6 p.m. ET, December 3, 2007, for each auction following the electronic filing procedures set forth in Attachments D and E to the *Auctions 73 and 76 Procedures Public Notice*. Bidding in Auction 76 is open only to applicants that qualify to participate in Auction 73, and that comply with all of the requirements for participating in Auction 76, including submitting a separate short-form application; (3) for Auction 73, submit a sufficient upfront payment and an FCC Remittance Advice

Form (FCC Form 159) by 6 p.m. ET, December 28, 2007, following the procedures and instructions set forth in Attachment F to the *Auctions 73 and 76 Procedures Public Notice*; (4) for Auction 76 (if necessary), submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by the deadline to be announced following the end of bidding in Auction 73; and (5) comply with all provisions outlined in this Public Notice and applicable Commission rules.

D. Other Issues Raised by Commenters

59. Two commenters raised issues that are unrelated to those raised in the *700 MHz Auction Public Notice*. One commenter proposes that the Commission should require that all licenses offered in Auction 73 be made available to public safety personnel for priority use during critical emergencies. The commenter also suggests that such a requirement be considered in the event of a contingent auction, if any. Another commenter urges the Commission to require applicants to disclose on their short-form applications whether winning the licenses they have selected would cause their spectrum holdings to exceed 70 MHz of spectrum in the markets of the selected licenses. In the event that any applicants indicate that their spectrum holdings would exceed this amount, the commenter proposed that their short-form applications should be dismissed before

the commencement of Auction 73. The commenter also requests that the Commission investigate alleged violations of the Commission's *ex parte* rules by a wireless company concerning policy on the open platform provisions for C Block licenses, and proposes excluding that company from Auction 73 as a possible sanction for violating the Commission's rules.

60. These issues are outside the scope of this non-rulemaking proceeding, which is confined to establishing competitive bidding procedures for Auction 73. The Bureau notes that some of these issues have been presented to the Commission in petitions for reconsideration of the *700 MHz Second Report and Order* and will be addressed in that proceeding.

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

61. Entities seeking licenses available in Auction 73 must file a short-form application electronically via the FCC Auction System prior to 6 p.m. ET on December 3, 2007, following the procedures prescribed in Attachment D to the *Auctions 73 and 76 Procedures Public Notice*. Applicants filing a short-form application are subject to the Commission's anti-collusion rules beginning on the deadline for filing. For Auctions 73 and 76, applicants filing a short-form application for Auction 73 will remain subject to the Commission's anti-collusion rules through the

completion of Auction 76, if conducted. If an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 will be used in determining whether the applicant is eligible for the claimed bidding credit. Applicants bear full responsibility for submitting accurate, complete and timely short-form applications. All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license. Applicants should read the instructions set forth in Attachment D to the *Auctions 73 and 76 Procedures Public Notice* carefully and should consult 26 the Commission's rules to ensure that all the information that is required under the Commission's rules is included with their short-form applications.

62. Entities seeking licenses that may be offered in Auction 76, if Auction 76 is conducted, must file electronically via the FCC Auction System prior to 6 p.m. ET on December 3, 2007 both a short-form application for Auction 73, following the procedures prescribed in Attachment D to the *Auctions 73 and 76 Procedures Public Notice*, and an abbreviated short-form application for Auction 76, following the procedures prescribed in Attachment E to the *Auctions 73 and 76 Procedures Public Notice*. Applicants filing short-form applications for both Auctions 73 and 76 are subject to the Commission's anti-collusion rules beginning on the deadline for filing both applications.

63. To streamline the application process, other than license selection requirements, all relevant information for the application to participate in Auction 76 must be submitted as part of the application to participate in Auction 73. The Auction 76 abbreviated application will request—and will accept—only information that the FCC Auction System requires in order to enable applicants to submit license selections for Auction 76. For example, applicants seeking to submit information regarding bidding agreements with respect to licenses offered in Auction 76 will not be able to access the bidding agreement screens that are usually part of the short-form application in the Auction 76 abbreviated application. Instead, such applicants must submit information regarding those agreements as part of their Auction 73 short-form application.

64. To comply with FCC Auction System requirements, however, applicants will be required to repeat some information submitted in their Auction 73 application, e.g., their FCC Registration Number (FRN), their name

and address, certification of the form's contents, etc. As noted in the procedures for filing the abbreviated short-form application for Auction 76, applicants must provide the same information submitted in their application for Auction 73 as they provide in their Auction 76 application. Most importantly, if an entity wishes to submit a short-form application for Auction 76, it must do so using the same FRN that it uses for its short-form application for Auction 73. In addition, the same person must certify both applications, as the certification applies to information submitted in both applications.

65. An entity may not submit more than one short-form application for Auction 73. Similarly, an entity may not submit more than one short-form application for Auction 76. If a party submits multiple short-form applications for either Auction 73 or Auction 76, only one application for each will be accepted for filing.

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

#### *A. Preferences for Small Businesses and Others*

##### *i. Size Standards for Bidding Credits*

67. A bidding credit represents the amount by which a bidder's winning bid will be discounted. For Auction 73 and Auction 76, bidding credits will be available to small businesses and very small businesses, and consortia thereof, as follows: (1) A bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) will receive a 15 percent discount on its winning bid; and (2) a bidder with attributed average annual gross revenues that do not exceed \$15 million for the preceding three years (very small business) will

receive a 25 percent discount on its winning bid.

68. 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.

69. Every applicant that claims eligibility for a bidding credit as either a small business or a very small business, or a consortium of small businesses or very small businesses, will be required to provide information regarding revenues attributable to the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests on its FCC Form 175 short-form application for Auction 73 to establish that it satisfies the applicable eligibility requirement. An applicant's disclosure of this information in the short-form application for Auction 73 will become part of the applicant's Auction 76 application, in the event the Commission conducts Auction 76. Accordingly, applicants are not required—and will not be able to—submit this information in their abbreviated Auction 76 application. Applicants claiming eligibility as a designated entity in Auction 73 and Auction 76 should review carefully the *CSEA/Part 1 Report and Order*, 71 FR 6992, February 10, 2006, the *Designated Entity Second Report and Order*, 71 FR 26245, May 5, 2006, and the *Order on Reconsideration of the Designated Entity Second Report and Order*, 71 FR 34272, June 14, 2006. In that connection, the Commission adopted rules governing eligibility for designated entity benefits in the *Designated Entity Second Report and Order*. The Commission's rules regarding applicants seeking eligibility for designated entity benefits require the disclosure of: (1) All parties with which the applicant has entered into arrangements for the lease or resale (including wholesale agreements) of any of the capacity of any of the applicant's spectrum; and (2) the gross revenues, separately and in the aggregate, of entities with which the applicant has an attributable material relationship, as defined in § 1.2110(b)(3)(iv)(B).

70. The Commission has adopted a narrow exemption from the attribution rule for the officers and directors of a rural telephone cooperative pursuant to which the gross revenues of the affiliates of the cooperative's officers and directors are not attributed to the applicant. An applicant (or controlling interest) seeking to claim this exemption must include in its short-form application a certification that it is validly organized under the most

closely applicable organizing statute for a cooperative, and that such organization is reflected in its articles of incorporation, bylaws, and/or other relevant organic documents. Applicants seeking to claim this exemption must meet all of the conditions specified in § 1.2110(b)(3)(iii) of the Commission's rules. Additional guidance on completing the FCC Form 175 to claim this exemption may be found in Attachment D to the *Auctions 73 and 76 Procedures Public Notice*.

ii. Tribal Lands Bidding Credit

71. To encourage the growth of wireless services in federally recognized tribal lands, the Commission has implemented a tribal lands bidding credit. Applicants do not provide information regarding tribal lands bidding credits on their FCC Form 175 short-form applications. Instead, winning bidders may apply for the tribal lands bidding credit after the auction when they file their FCC Form 601 long-form applications.

iii. Installment Payments

72. Installment payment plans will not be available in Auction 73 or in Auction 76.

*B. License Selection*

73. An applicant must select the initially offered licenses on which it wants to bid individually or as part of a pre-defined package in Auction 73 from the Eligible Licenses list on its short-form application for Auction 73. An applicant interested in bidding on licenses in the contingent subsequent auction must select those licenses from the Eligible Licenses list on its short-form application for Auction 76. Applicants will be able to bid on pre-defined packages of initially offered C Block licenses and alternative C2 Block licenses, if offered in subsequent bidding, pursuant to the package bidding procedures, only if they have selected all the individual licenses that comprise the relevant package on their respective short-form applications.

74. To assist applicants in identifying licenses of interest that will be available in Auctions 73 and 76, FCC Form 175 will include a filtering mechanism that allows an applicant to filter the Eligible Licenses list. 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 select all the licenses in the customized list or select individual licenses from the list. Applicants also will be able to select licenses from one customized list and

then create additional customized lists to select additional licenses.

75. Applicants will not be able to change their license selections for either Auction 73 or Auction 76 after the short-form application filing deadline. Applicants interested in participating in Auctions 73 and 76 must have selected license(s) available in the respective auction by the short-form application deadline. Applicants must confirm their license selections before the deadline for submitting FCC Form 175. The FCC Auction System will not accept bids from an applicant on individual licenses that the applicant has not selected on its FCC Form 175. In addition, the FCC Auction System will not accept bids from an applicant on a pre-defined hierarchical package unless the applicant selected on its FCC Form 175 all the individual licenses that comprise the package.

*C. Disclosure of Bidding Arrangements*

76. Applicants will be required to identify in their short-form application for Auction 73 all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the licenses being auctioned in Auctions 73 and 76, including any agreements relating to post-auction market structure. The agreements identified in the short-form application for Auction 73 will become part of the applicant's Auction 76 application, in the event the 31 Commission conducts Auction 76. Accordingly, applicants are not required—and will not be able to—disclose bidding agreements in their abbreviated Auction 76 application.

77. Applicants also will be required to certify under penalty of perjury in their short-form applications that they have not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application to participate in Auction 73, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid. If an applicant has had discussions, but has not reached an agreement by the short-form application filing deadline, it would not include the names of parties to the discussions on its application and may not continue such discussions with any applicants after the deadline.

78. After the filing of short-form applications, the Commission's rules do not prohibit a party holding a non-controlling, attributable interest in one applicant from acquiring an ownership interest in or entering into a joint bidding arrangement with other

applicants, provided that: (1) The attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has entered into a joint bidding arrangement; and (2) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction-related business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies. Compliance with the disclosure requirements of the Commission's anti-collusion rule will not insulate a party from enforcement of the antitrust laws.

*D. Ownership Disclosure Requirements*

79. 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 the short-form application for Auction 73, applicants will be required to fully disclose information on the real party or parties-in-interest and ownership structure of the applicant. The ownership disclosure standards for the short-form application are prescribed in § 1.2105 and 1.2112 of the Commission's rules. Each applicant is responsible for information submitted in its short-form application being complete and accurate. An applicant's disclosure of ownership information in the short-form application for Auction 73 will become part of the applicant's Auction 76 application, in the event the Commission conducts Auction 76. Accordingly, applicants are not required—and will not be able to—submit ownership disclosure information in their abbreviated Auction 76 application.

80. An applicant's most current ownership information on file with the Commission, if in an electronic format compatible with the short-form application (FCC Form 175) (such as information submitted in an online FCC Form 602 or in an FCC Form 175 filed for a previous auction using ISAS) will automatically be entered into the applicant's short-form application. An applicant is responsible for ensuring that the information submitted in its short-form application for Auction 73 is complete and accurate. Accordingly, applicants should carefully review any information automatically entered to confirm that it is complete and accurate

as of the deadline for filing the short-form application. Applicants can update any information that was entered automatically and needs to be changed directly in the short-form application.

#### E. Bidding Credit Revenue Disclosures

81. To determine which applicants qualify for bidding credits as small businesses or very small businesses, the Commission considers the gross revenues of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests. Therefore, entities applying to bid as small businesses or very small businesses (or consortia of small businesses or very small businesses) will be required to disclose on their short-form applications for Auction 73 the gross revenues of the preceding three years for each of the following: (1) The applicant; (2) its 33 affiliates; (3) its controlling interests; and (4) the affiliates of its controlling interests. Certification that the average annual gross revenues of such entities and individuals for the preceding three years do not exceed the applicable limit is not sufficient. Applicants must also disclose the gross revenues of the entities with which they have attributable material relationships, as defined by the Commission's rules. Additionally, if an applicant is applying as a consortium of small businesses or very small businesses, this information must be provided for each consortium member. An applicant's disclosure of bidding credit revenue information in the short-form application for Auction 73 will become part of the applicant's Auction 76 application, in the event the Commission conducts Auction 76. Accordingly, applicants are not required and will not be able to submit bidding credit revenue information in their abbreviated Auction 76 application.

82. Controlling interests of an applicant include individuals and entities with either *de facto* or *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: (1) The entity constitutes or appoints more than 50 percent of the board of directors or management committee; (2) the entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; and (3) the entity plays an integral role in management decisions.

83. Officers and directors of an applicant are also considered to have controlling interest in the applicant. 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; and any parties having an attributable material relationship with the applicant will be counted in determining small business eligibility.

84. In the *Designated Entity Second Report and Order*, the Commission adopted material relationship rules. The Commission now requires the consideration of certain leasing and resale (including wholesale) relationships—material relationships—in determining designated entity eligibility. Material relationships fall into two categories: impermissible and attributable. An applicant or licensee has an impermissible material relationship when it has agreements with one or more other entities for the lease or resale (including under a wholesale agreement) of, on a cumulative basis, more than 50 percent of the spectrum capacity of any of its licenses. If an applicant or a licensee has an impermissible material relationship, it is, as a result, (1) ineligible for the award of designated entity benefits, and (2) subject to unjust enrichment on a license-by-license basis.

85. An applicant or licensee has an attributable material relationship when it has one or more agreements with any individual entity for the lease or resale (including under a wholesale agreement) of, on a cumulative basis, more than 25 percent of the spectrum capacity of any individual license held by the applicant or licensee. The attributable material relationship will cause the gross revenues and, if applicable, total assets of that entity and its attributable interest holders to be attributed to the applicant or licensee for the purposes of determining the applicant's or licensee's (1) eligibility for designated entity benefits and (2) liability for unjust enrichment on a license-by-license basis.

86. The Commission grandfathered material relationships in existence before the release of the *Designated Entity Second Report and Order*, meaning that those preexisting relationships would not alone cause the Commission to examine a designated entity's ongoing eligibility for benefits or its liability for unjust enrichment. The Commission did not, however, grandfather preexisting material relationships for determinations of an applicant's or licensee's designated entity eligibility for future auctions or in

the context of future assignments, transfers of control, spectrum leases, or other reportable eligibility events. Rather, the occurrence of any of those 35 eligibility events after the release date of the *Designated Entity Second Report and Order* triggers a reexamination of the applicant's or licensee's designated entity eligibility, taking into account all existing material relationships, including those previously grandfathered.

87. In recent years the Commission has also made other modifications to its rules governing the attribution of gross revenues for purposes of determining small business eligibility. These changes include exempting the gross revenues of the affiliates of a rural telephone cooperative's officers and directors from attribution to the applicant if certain specified conditions are met. The Commission has also clarified that, in calculating an applicant's gross revenues under the controlling interest standard, it will not attribute the personal net worth, including personal income, of its officers and directors to the applicant.

88. A consortium of small businesses or very small businesses is a conglomerate organization composed of two or more entities, each of which individually satisfies the definition of a small business or very small business as those terms are defined in the service-specific rules. Thus, each member of a consortium of small or very small businesses that applies to participate in Auction 73 must individually meet the definition of small business or very small business adopted by the Commission for the 700 MHz Band. Each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, the affiliates of its controlling interests, and any entities having an attributable material relationship with the member. Although the gross revenues of the consortium members will not be aggregated for purposes of determining the consortium's eligibility as a small business or very small business, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

#### F. Provisions Regarding Former and Current Defaulters

89. Each applicant must state under penalty of perjury on its short-form application whether or not the applicant, its affiliates, its controlling interests, and the affiliates of its 36 controlling interests, as defined by § 1.2110, have ever been in default on any Commission licenses or have ever

been delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must certify under penalty of perjury on its short-form application that, as of the short-form filing deadline, the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by § 1.2110, are not in default on any payment for Commission licenses (including down payments) and that they are not delinquent on any non-tax debt owed to any Federal agency. Prospective applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution. These statements and certifications are prerequisites to submitting an application in the FCC Auction System. Accordingly, applicants seeking licenses that may be offered in Auction 76 will be required to make these statements and certifications in both their short-form application for Auction 73 and their abbreviated Auction 76 application.

90. Former defaulters—i.e., applicants, including any of their affiliates, any of their controlling interests, or any of the affiliates of their controlling interests, 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 Auctions 73 and 76, provided that they are otherwise qualified. Former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

91. Current defaulters—i.e., applicants, including any of their affiliates, any of their controlling interests, or any of the affiliates of their controlling interests, that are in default on any payment for any Commission licenses (including down payments) or are delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for short-form applications—are not eligible to bid in either Auction 73 or Auction 76.

92. Applicants are encouraged to review the Bureau's previous guidance on default and delinquency disclosure requirements in the context of the short-form application process. For example, it has been determined that to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for

purposes of § 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline. Therefore, with respect to regulatory or application fees, the provisions of § 1.2105(a) and 1.2106(a) regarding default and delinquency in connection with competitive bidding are limited to circumstances in which the relevant party has not complied with a final Commission payment deadline.

93. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the red light rule, that implement the Commission's obligations under the Debt Collection Improvement Act of 1996, which governs the collection of claims owed to the United States. Under the red light rule, the Commission will not process applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission. In the same rulemaking order, the Commission explicitly declared, however, that the Commission's competitive bidding rules are not affected by the red light rule. As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of the Commission's competitive bidding rules, including the provisions and certifications of § 1.2105 and 1.2106, with regard to current and former defaults or delinquencies. Applicants are reminded, however, that the Commission's Red Light Display System, which provides information regarding debts owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of § 1.2105. Thus, while the red light rule ultimately may prevent the processing of long-form 38 applications by auction winners, an auction applicant's red light status is not necessarily determinative of its eligibility to participate in an auction or of its upfront payment obligation.

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

#### G. Other Information

95. Applicants owned by members of minority groups and/or women, as defined in § 1.2110(c)(3), may identify themselves in filling out their short-

form applications 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.

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

96. Applicants are not permitted to make major modifications to their short-form applications (e.g., change their license selections, change control of the applicant, change the certifying official, or change their size to claim eligibility for a higher bidding credit) after the short-form application deadline. Thus, any change in control of an applicant, resulting from a merger for example, will be considered a major modification to the applicant's FCC Form 175, which will consequently be dismissed.

97. Applicants are, however, permitted to make only minor changes to their FCC Form 175 after the short-form application deadline. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons.

98. If an applicant wishes to make permissible minor changes to its short-form application, such changes should be made electronically to its Auction 73 short-form application using the FCC Auction System. Applicants should not make changes to short-form applications 39 associated with Auction 76. Applicants are reminded to click on the SUBMIT button in the FCC Auction System for the changes to be submitted and considered by the Commission. After the revised application has been submitted, a confirmation page will be displayed that states the submission time and date, along with a unique file number.

99. In addition, during those periods outside of the initial and resubmission filing windows (i.e., when an applicant cannot electronically update its FCC Form 175), an applicant should submit a letter briefly summarizing the changes and subsequently update its short-form applications in ISAS as soon as possible. After the filing window has closed, the auction system will not permit applicants to make certain changes, such as legal classification and bidding credit. Any letter describing changes to an applicant's short-form application should be submitted by electronic mail to the following address: [auction73@fcc.gov](mailto:auction73@fcc.gov). The electronic mail summarizing the changes must include a subject or caption referring to Auction 73 and the name of the applicant (e.g.,

RE: Changes to Auction 73 Short-Form Application of ABC Corp.), and should not reference Auction 76.

100. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System (ECFS).

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

101. Section 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Changes that cause a loss of or reduction in eligibility for a bidding credit must be reported immediately. If an amendment reporting substantial changes is a major amendment as defined by § 1.2105, the major amendment will not be accepted and may result in the dismissal of the short-form application.

102. After the short-form filing deadline, applicants may make only minor changes to their short-form applications, such as deleting or adding authorized bidders (to a maximum of three). Applicants must click on the SUBMIT button in the FCC Auction System for the changes to be submitted and considered by the Commission. In addition, applicants must submit a letter, briefly summarizing the changes, by electronic mail at the following address: [auction73@fcc.gov](mailto:auction73@fcc.gov). The electronic mail summarizing the changes must include a subject or caption referring to Auction 73 and the name of the applicant. Applicants must not submit application-specific material through ECFS.

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

#### *A. Auction Seminar—November 20, 2007*

103. On Tuesday November 20, 2007, the FCC will sponsor a free seminar for parties interested in participating in Auctions 73 and 76 at the FCC headquarters, located at 445 12th Street, SW., Washington, DC. The seminar will provide attendees with information about pre-auction procedures, completing FCC Form 175, auction conduct, the FCC Auction System, auction rules, and the 700 MHz Band service rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff concerning the auction, auction procedures, filing requirements and

other matters related to Auctions 73 and 76.

104. To register, please provide the information listed on the Auctions 73 and 76 Public Notice released October 19, 2007 (DA 07-4236), by fax (717) 338-2850, e-mail [Auchelp@fcc.gov](mailto:Auchelp@fcc.gov) or telephone (717) 338-2868 to the FCC by Friday, November 16, 2007. For individuals who are unable to attend, an Audio/Video webcast of this seminar will be available from the FCC's Auction 73 Web page at <http://wireless.fcc.gov/auctions/73/>.

#### *B. Short-Form Applications (FCC Form 175)—Due Prior to 6 p.m. ET on December 3, 2007*

105. In order to be eligible to bid in Auction 73 or Auction 76, applicants must first follow the procedures set forth in Attachments D and E to the *Auctions 73 and 76 Procedures Public Notice* to submit an FCC Form 175 application electronically via the FCC Auction System. The application must be received at the Commission prior to 6 p.m. ET on December 3, 2007. Late applications will not be accepted. There is no application fee required when filing an FCC Form 175, but an applicant must submit an upfront payment to be eligible to bid.

106. Applications may generally be filed at any time beginning at noon ET on November 19, 2007, and the filing window will close prior to 6 p.m. ET on December 3, 2007. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their applications multiple times until the filing deadline on December 3, 2007.

107. Applicants must always click on the SUBMIT button on the Certify & Submit screen of the electronic form to successfully submit or modify their FCC Form 175. Any form that is not submitted will not be reviewed by the FCC. Additional information about accessing, completing, and viewing the FCC Form 175 is included in Attachments D and E of the *Auctions 73 and 76 Procedures Public Notice*. FCC Auctions Technical Support is available at (877) 480-3200, or (202) 414-1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8 a.m. to 6 p.m. ET.

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

108. After the deadline for filing short-form applications, the Commission will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice

identifying: (1) Those applications accepted for filing; (2) those applications rejected; and (3) those applications which have minor defects that may be corrected, and the deadline for resubmitting corrected applications.

109. After the December 3, 2007, short-form filing deadline, applicants may make only minor corrections to their applications. Applicants will not be permitted to make major modifications to their applications (e.g., change their license selections, change control of the applicant, change certifying official, or change their size to claim eligibility for a higher bidding credit). Accordingly, applicants interested in participating in any potential contingent subsequent bidding must have selected license(s) available in the initial bidding as well as licenses that may be available in contingent subsequent bidding, including alternative licenses, by the deadline for submitting their application to participate in Auction 73. FCC personnel will communicate regarding a short-form application only with an applicant's contact person or certifying official, as designated on the applicant's FCC Form 175, unless the applicant's certifying official or contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on its behalf.

#### *D. Upfront Payments—Due December 28, 2007*

110. In order to be eligible to bid in Auction 73 and any contingent subsequent auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). Only applicants that become qualified bidders in Auction 73, by, among other things, making upfront payments to be eligible to bid in Auction 73, will be eligible to participate in any contingent subsequent auction. However, qualified bidders in Auction 73 will be permitted to make additional upfront payments with respect to licenses being offered in any contingent subsequent auction at a later date. After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and sent by facsimile to Mellon Bank in Pittsburgh, PA. All upfront payments for Auction 73 must be received in the proper account at Mellon Bank by 6 p.m. ET on December 28, 2007.

#### *i. Making Upfront Payments by Wire Transfer*

111. Wire transfer payments for Auction 73 must be received by 6 p.m.

ET on December 28, 2007. No other payment method is acceptable. 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. The BNF and Lockbox number are specific to the upfront payments for Auction 73. Do not use BNF or Lockbox numbers from previous auctions. Wire transfer information for Auction 76 will be made available in a future public notice.

112. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must send by facsimile a completed FCC Form 159 (Revised 2/03) to Mellon Bank at (412) 209-6045. On the cover sheet of the facsimile, write Wire Transfer—Auction Payment for Auction 73. In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account before the deadline. Applicants are responsible for obtaining confirmation from their financial institution that Mellon Bank has timely received their upfront payment and deposited it in the proper account.

113. Please note that: (1) All payments must be made in U.S. dollars; (2) all payments must be made by wire transfer; (3) upfront payments for Auction 73 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; and (4) failure to deliver the upfront payment as instructed by the December 28, 2007, deadline will result in dismissal of the application and disqualification from participation in the auction as well as ineligibility for participation in any contingent subsequent bidding for 700 MHz Band licenses.

ii. FCC Form 159

114. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be sent by facsimile to Mellon Bank to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/03) is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment F to the *Auctions 73 and 76 Procedures Public Notice*. An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payers using a pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including

payment amounts, is accurate. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

iii. Upfront Payments and Bidding Eligibility

115. In the *700 MHz Auction Public Notice*, the Bureau proposed that the amount of the upfront payment would determine a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids. In addition, consistent with the Commission's direction in the *700 MHz Second Report and Order*, the Bureau proposed that qualified bidders in Auction 73 would have an opportunity to submit additional upfront payments to obtain bidding eligibility for licenses in any contingent subsequent auction (Auction 76).

116. Under the Bureau's proposal, in order to bid on a particular license or package, qualified bidders must have selected the license(s) on FCC Form 175 and must have a current eligibility level that meets or exceeds the number of bidding units assigned to that license or package. For a package, the bidding units are calculated by adding together the bidding units of the individual licenses that make up the package. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses selected on its FCC Form 175 for Auction 73, or else the applicant will not be eligible to participate in Auction 73 or in Auction 76. An applicant does not have to make an upfront 45 payment to cover all licenses the applicant selected on its FCC 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 provisionally winning bids (via bids on licenses and/or packages) at any given time in Auction 73. If contingent subsequent bidding is necessary, qualified bidders for Auction 73 will be given an opportunity to supplement their upfront payments in order to increase their bidding eligibility for Auction 76.

117. In the *700 MHz Auction Public Notice*, the Bureau proposed to calculate upfront payments as follows: (1) For licenses covering CMAs in the 50 states in which the licenses offered in Auction 66 were sold, \$0.05 per MHz per population (MHz-pop) for Metropolitan Statistical Area (MSA) licenses and \$0.03/MHz-pop for Rural Service Area (RSA) licenses; (2) for licenses covering EAs in the 50 states in which the corresponding licenses in both EA blocks offered in Auction 66 were sold,

the sum of \$0.05/MHz-pop for counties contained within an MSA and \$0.03/MHz-pop for counties contained within an RSA; (3) for licenses covering REAGs in the 50 states in which the corresponding licenses in all three REAG blocks offered in Auction 66 were sold, the sum of \$0.05/MHz-pop for counties contained within an MSA and \$0.03/MHz-pop for counties contained within an RSA; (4) for licenses covering geographic areas for which an Auction 66 license was unsold, \$0.01/MHz-pop; (5) for licenses covering the Gulf of Mexico, \$1,000 per MHz; and (6) for all remaining licenses, \$0.01/MHz-pop. For all licenses, the results of the above calculations are subject to a minimum of \$500 per license and are rounded using its standard rounding procedure.

118. The Bureau set forth the specific upfront payments and bidding units for each license in Attachment A of the *700 MHz Auction Public Notice* and sought comment on this proposal. The Bureau did not receive any comments in response to the proposed upfront payments, or on its proposal that the upfront payment amount would determine a bidder's initial bidding eligibility. Therefore, the Bureau adopts the upfront payments and bidding units for each 46 license in Auction 73 as proposed and set forth in Attachment A of the *Auctions 73 and 76 Procedures Public Notice*.

119. In calculating its upfront payment amount, an applicant interested in bidding only on individual licenses should determine the maximum number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round in Auction 73, and submit an upfront payment amount covering that number of bidding units. Applicants interested in bidding on packages should determine their upfront payment amount by calculating the sum of bidding units associated with each discrete license they wish to include in new bids (package or individual bids) or have included in provisionally winning bids in any single round. The bidding units associated with a given license, even if the license is included in more than one bid, will be counted only once per bidder per round. In order to make this calculation, an applicant should add together the upfront payments for all licenses comprising all combinations of licenses and packages of licenses on which it seeks to be active in any given round. If a bidder has enough eligibility to bid on certain licenses, it can place bids on the licenses individually and on packages containing those licenses without needing additional eligibility. For example, if licenses A, B, and C

each have 10,000 bidding units, and a bidder wishes in a single round to be able to bid on licenses A, B, and C individually and on packages AB and ABC, the bidder needs 30,000 bidding units of eligibility. Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility for Auction 73 after the upfront payment deadline.

120. The Bureau reiterates that, in the event it is necessary to conduct Auction 76, bidders will have an opportunity to supplement their upfront payments in order to increase their bidding eligibility for Auction 76. The instructions and deadline for doing so would be announced within five business days after the end of bidding in Auction 73.

121. For Auction 73 and any contingent subsequent auction, former defaulters must calculate their upfront payment for all licenses and packages by multiplying the number of bidding units on which they wish to be active by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

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

122. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information be supplied to the FCC. Applicants can provide the information electronically during the initial short-form application filing window after the form has been submitted. Applicants are reminded that information submitted as part of an FCC Form 175 will be available to the public; for that reason, wire transfer information should not be included in an FCC Form 175.

#### E. Auction Registration

123. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for Auction 73. 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 license(s) initially offered in Auction 73.

124. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID® tokens that

will be required to place bids, the Integrated Spectrum Auction System (ISAS) Bidder's Guide, and the Auction Bidder Line phone number.

125. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder that has not received this mailing by noon on Tuesday, January 15, 2008, should call (717) 338-2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

126. In the event that SecurID® tokens are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacement registration material. Qualified bidders requiring the replacement of these items must call Technical Support at (877) 480-3201 or (202) 414-1255 (TTY).

#### F. Remote Electronic Bidding

127. The Commission will conduct Auctions 73 and 76 over the Internet and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically and telephonically. Each applicant should indicate its bidding preference—electronic or telephonic—on the FCC Form 175. In either case, each authorized bidder must have its own SecurID® token, which the FCC will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. For security purposes, the SecurID® tokens, the telephonic bidding telephone number, and the Integrated Spectrum Auction System (ISAS) Bidder's Guide are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID® token is tailored to a specific auction; therefore, SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 73. In the event that it is necessary to conduct Auction 76, qualified bidders for Auction 76 will use the same SecurID® tokens as they used for Auction 73.

128. Please note that the SecurID® tokens can be recycled, and the Bureau encourages bidders to return the tokens to the FCC. The Bureau will provide pre-addressed envelopes that bidders may use to return the tokens once the auction is closed.

#### G. Mock Auction—January 18, 2008

129. All qualified bidders will be eligible to participate in a mock auction on Friday, January 18, 2008. The mock auction will enable applicants to become familiar with the FCC Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

#### IV. Auction 73

130. The first round of bidding for Auction 73 will begin on Thursday, January 24, 2008. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is to be released approximately 10 days before the start of the auction.

##### A. Auction 73 Structure

##### i. Simultaneous Multiple Round Auction With Package Bidding on C Block Licenses

131. In the *700 MHz Auction Public Notice*, the Bureau proposed using the Commission's standard simultaneous multiple-round (SMR) auction format for the A, B, D, and E Block licenses, while enabling package bidding for C Block licenses using an auction design with hierarchical package bidding (HPB). An SMR-HPB auction format offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses and on certain pre-defined packages of specified licenses, which, for Auction 73, only include C Block licenses. A bidder may bid on, and potentially win, any number of licenses and/or packages. Typically, bidding remains open on all licenses until bidding stops on every license, unless an alternative version of the stopping rule is invoked.

132. The *700 MHz Auction Public Notice* proposed pre-defined packages for C Block licenses according to a hierarchical structure. The initial level consists of individual licenses, and the next level consists of non-overlapping packages of those licenses, such that a given license is included only once in each level. The winning set of bids could therefore consist of bids from various levels as long as each license is included in only one winning bid. The Bureau proposed to accept individual bids on C Block licenses for REAGs 1-12 (Level 1) and package bids on the following combinations of C Block REAG licenses (Level 2): (1) REAGs 1-8 (the 50 States package); (2) REAGs 10 and 12, comprising Puerto Rico, the U.S. Virgin Islands and the Gulf of Mexico (the Atlantic package); and (3) REAGs 9

and 11, comprising the U.S. Pacific territories (the Pacific package).

133. The Bureau also sought comment on alternative levels or alternative ways of packaging licenses within levels. Additionally, the Bureau proposed to conduct the auction using standard SMR procedures for all of the licenses, including the C Block licenses in the event that currently unforeseen difficulties make it impracticable to implement package bidding.

134. The majority of commenters support package bidding for C Block licenses either in general or for the HPB auction format specifically. Some commenters, however, urge the Bureau to abandon package bidding for Auction 73 under the unforeseen difficulties exception to the Commission's directive to use package bidding for the C Block licenses. These parties assert that the SMR-HPB format is too complex, will disadvantage bidders interested in only individual licenses, and will not be fully understood by bidders or implemented by the Bureau in time for the start of the auction. When the Commission directed the Bureau to adopt package bidding for the C Block, it noted that package bidding minimizes exposure risk for applicants whose business plans require the economies of scale that only can be obtained with nationwide operation, but would not preclude the participation of entities wishing to bid on individual licenses. The HPB auction format was chosen in part because it mitigates issues inherent in some other package bidding formats that give bidders interested in large packages an advantage over bidders interested in individual licenses. Of course, to the extent that providing bidders the option of package bidding favors those bidders seeking packages over those seeking individual licenses, the Bureau notes that the same argument could be applied in reverse to the other 1,087 licenses in Auction 73 that bidders will not have the option to package in order to decrease their exposure risk. After review of the record, the Bureau concluded that considerations raised in the comments opposing package bidding are not the kinds of unforeseen difficulties regarding the feasibility of package bidding for the C Block licenses that the Commission envisioned in the *700 MHz Second Report and Order*.

135. Therefore, the Bureau concludes that the SMR format for A, B, E and D Block licenses, and the HPB auction format for the C Block licenses, will best meet the needs of bidders in Auction 73, and therefore adopt them as proposed. As is typical with both formats, bids will be accepted on all individual

licenses and on pre-defined packages of licenses in each round of the auction until bidding stops on every license, allowing bidders to take advantage of synergies that exist among licenses.

136. With regard to the proposed pre-defined packages for C Block licenses, the Bureau declines to adopt the alternate packages suggested by two commenters. One commenter asserts that it sees value in adopting a 12 REAG package or even allowing bidders to choose their own package. The second commenter proposed adopting packages of regions larger than REAGs (e.g., East, Midwest, West Coast) and a package of only the lower 48 States. The commenter bases its proposal for a lower 48 State package on the premise that prospective nationwide bidders have limited interest in Hawaii and Alaska, and that these states would be better served if they are not included in a nationwide package. The State of Hawaii submitted reply comments challenging the assertion that nationwide carriers have little interest in providing coverage to Hawaii, noting several major carriers already do in fact operate in Hawaii. The State of Hawaii also asserts that any nationwide package without Hawaii and Alaska unfairly discriminates against these states and its inhabitants, which would not only be inconsistent with the Communications Act, but also with Commission precedent. The commenter also suggests that the Bureau eliminate the Atlantic and Pacific packages on the grounds that bidders would not obtain any benefits from bidding on the licenses as packages. The Bureau sees no disadvantages to including the packages.

137. The Commission adopted package bidding for C Block licenses to reduce the exposure problem that might otherwise inhibit bidders seeking to create a nationwide footprint. At the same time, the Commission directed the Bureau to implement package bidding without imposing disadvantages on parties that wish to bid on individual licenses comprising the nationwide footprint. The Bureau finds that offering three packages—the 50 States, Atlantic, and Pacific packages—meets this balance by reducing exposure risk of bidders seeking to provide nationwide coverage without disadvantaging those bidders seeking individual licenses. Therefore, the Bureau adopts the pre-defined packages as proposed in the *700 MHz Auction Public Notice*.

ii. Information Available to Bidders Before and During the Auctions

138. In the *700 MHz Second Report and Order*, the Commission found that

the public interest would be served if the auction for new 700 MHz Band licenses is conducted using anonymous (or limited information) bidding procedures, regardless of any pre-auction measurement of likely auction competition. Such information procedures are intended to reduce the potential for anti-competitive bidding behavior, including bidding activity that aims to prevent the entry of new competitors. The Commission therefore directed the Bureau to propose and seek comment on more detailed procedures for employing anonymous bidding for the 700 MHz auction.

139. In the *700 MHz Auction Public Notice*, the Bureau proposed to withhold, until after the close of bidding, public release of (1) bidders' license selections on their short-form applications, (2) the amounts of bidders' upfront payments and bidding eligibility, and (3) information that may reveal the identities of bidders placing bids and taking other bidding-related actions. In contrast to procedures implemented for anonymous bidding in past auctions, and consistent with the *700 MHz Second Report and Order*, the Bureau proposed to withhold this information irrespective of any pre-auction measurement of likely auction competition.

140. Commenters generally support the proposal to implement limited information disclosure procedures for the 700 MHz auction, though they differ on the disclosure of specific data elements. Some commenters suggest that the Commission should inform bidders of the license(s) or license block(s) for which an overlap occurs with other applicants, citing fundamental differences between the different 700 MHz license blocks and the particular needs of small and rural bidders to better identify those bidders interested in nationwide/open access licenses. A commenter opposes disclosure of this information. The Bureau finds that revealing information on license blocks selected by competing applicants would be inconsistent with the goals of limiting information disclosure. Thus, the Bureau will not release information on licenses or license blocks selected until after the close of bidding.

141. Commenters also recommend releasing each bidder's upfront payment amount and initial bidding eligibility before the auction on the grounds that this information would help small companies better gauge the level of competition. Some entities also seek disclosure of an aggregate eligibility ratio after each round. A commenter advocates releasing the total number of

active bidders and, for each license and package, the number of bids and amount of the bids after each round. While these parties contend that release of this information would not facilitate anticompetitive practices and would not disclose bidder identities, the Bureau disagrees. As a commenter notes, release of bidder eligibility before the auction could be used by incumbents to block new entrants or for other strategic purposes. Similarly, a commenter contends that release of this information weakens anonymous bidding. This information could potentially be used to discern the identities of individual bidders. Moreover, the Bureau is particularly concerned that release of such information could foster anticompetitive bidding activity, particularly in light of the use of reserve prices in this auction.

142. Two commenters urge the Commission to release names of auction applicants and provide access to the ownership information in applicants' short form applications. This information has been made publicly available in past auctions even where limited information procedures have been implemented. The Bureau plans to continue to make available the names of applicants and their ownership information, as release of that information is necessary for other applicants to comply with the anti-collusion rules and does not undermine the purpose of its anonymous bidding procedures. To enable applicants to comply with the Commission's anti-collusion rules, once the Bureau has conducted its initial review of applications to participate in Auction 73 and Auction 76, each applicant will receive a letter that lists the other applicants in Auction 73 and Auction 76 that have applied for licenses in any of the same geographic areas as the applicant.

143. The Bureau adopts the proposals set out in the *700 MHz Auction Public Notice*. Thus, the Bureau will disclose after the conclusion of each round the amount of every bid placed and whether a bid was withdrawn. More generally, the Bureau will disclose, after the conclusion of each round, all relevant information about all bids placed, withdrawn, or dropped except for the identities of the bidders performing the actions and the net amounts of the bids placed, withdrawn, or dropped. As in past auctions conducted with limited information procedures, for each license the Bureau will indicate the minimum acceptable bid amount for the next round and whether the license has a provisionally winning bid. After each round, the Bureau will also release for

each license the number of bidders that placed a bid on the license. Furthermore, the Bureau will indicate whether any proactive waivers were submitted in each round, and the Bureau will release the stage transition percentage—the percentages of licenses (as measured in bidding units) on which there were new bids—for the round. In addition, after each round, bidders logged in to the FCC Auction System will be able to see whether their own bids are provisionally winning. The Bureau will provide samples of publicly-available and bidder-specific (non-public) results files prior to the start of the auction.

144. Several commenters argue that information about the initial auction results (for Auction 73) should not be withheld in the event that a contingent auction (Auction 76) must be conducted. Some commenters urge disclosure of initial auction results for blocks that meet their reserve prices before the contingent auction, claiming that such information may be necessary to meet Securities and Exchange Commission and other regulatory requirements, to allow bidders to communicate with financial institutions, and to facilitate network build-out. Similarly, other commenters favor allowing bidders to announce that they won licenses in a block that has met its reserve price if required by law or regulation. These parties do not, however, cite any specific regulatory requirements that would compel such disclosures, and the Bureau is not aware of any such regulations. To the extent that any such requirements are related to winning bidders' payments, the Bureau notes that if Auction 76 were to be held, winning bidders in Auction 73 of licenses in the A, B, C, or E Blocks will not be required to make down payments until after the subsequent bidding. The Bureau finds that premature disclosure to financial institutions, vendors, and others of identities of successful bidders in Auction 73 would undermine the purposes of the limited information procedures.

145. Regarding Auction 76 and the timing of information disclosure, the Bureau adopts its proposal not to release until after the close of bidding in both auctions: (a) Information on the winning bidders for licenses in blocks for which the reserve price was met in the first auction, (b) information on bidder license selections and eligibility, and (c) any other information that may reveal the identities of bidders placing bids and taking other bidding-related actions on licenses in all blocks. For the D Block, however, in the event there is a

winning bidder for the D Block license in Auction 73, the Bureau will make public before the close of bidding in an Auction 76 only such information as may be necessary to proceed with promptly facilitating the D Block winner's obligations to negotiate a Network Sharing Agreement with the national Public Safety Broadband Licensee in the adjacent spectrum block.

146. Commenting parties also urge the Commission to allow applicants to opt-out of Auction 76 in order to be free of anti-collusion prohibition, so long as bidder certifies that its decision has not been based on discussion with other parties concerning auction strategy or post-auction market structure. As one commenter acknowledges, reversal of the Commission's determination on this issue would need to be addressed by full Commission. As such, the Bureau cannot implement such a change in this proceeding.

147. *Other Issues.* The Bureau concluded in the rulemaking proceeding that the information disclosure procedures established for this auction will not interfere with the administration of or compliance with the Commission's anti-collusion rule. Section 1.2105(c)(1) of the Commission's rules provides that after the short-form application filing deadline, all applicants for licenses in any of the same geographic license areas are prohibited from disclosing to each other in any manner the substance of bids or bidding strategies until after the down payment deadline, subject to specified exceptions. When limited information procedures are not in effect for a particular auction, each applicant's selection of licenses has been publicly available through the Commission's online short-form application database. In Auction 73 and Auction 76, however, the Commission will not disclose information regarding license selection or the amounts of bidders' upfront payments and bidding eligibility. As in the past, the Commission will disclose the other portions of applicants' short-form applications, through its online database and certain application-based information through public notices. Thus, even without information regarding license selection, applicants would be able to comply with § 1.2105(c) by not disclosing bids or bidding strategies to any other applicants in the auction. This approach, however, could inhibit otherwise lawful communications with applicants for licenses in other geographic license areas, which the Commission's anti-collusion rule permits.

148. Consequently, the Bureau will notify separately each applicant with short-form applications to participate in a pending auction whether applicants in Auction 73 and Auction 76 have applied for licenses in any of the same geographic areas as that applicant. Specifically, after the Bureau conducts its initial review of applications to participate in Auction 73 and Auction 76, each applicant with a pending short-form application will receive a letter that lists the applicants in Auction 73 and Auction 76 that have applied for licenses in any of the same geographic areas as the applicant. The list will identify the Auction 73 and Auction 76 applicant(s) by name but will not list the license selections of the Auction 73 and Auction 76 applicant(s). As in past auctions, additional information regarding applicants in Auction 73 and Auction 76 that is needed to comply with § 1.2105(c), e.g., the identities of controlling interest(s) in an applicant and ownership interests greater than ten percent, will be available through the publicly accessible online short-form application database.

149. When completing short-form applications, applicants should avoid any statements or disclosures that may violate the Commission's anti-collusion rule, particularly in light of the Commission's procedures regarding the availability of certain information in Auction 73 and Auction 76. While applicants' license selection will not be disclosed until after Auction 73 and Auction 76 close, the Commission will disclose other portions of short-form applications through its on-line database and public notices. Accordingly, applicants should avoid including any information in their short-form applications that might convey information regarding license selections. For example, applicants should avoid using applicant names that refer to licenses being offered, referring to certain licenses or markets in describing bidding agreements, or including any information in attachments that may otherwise disclose applicants' license selections. If an applicant is found to have violated the Commission's rules or antitrust laws in connection with its participation in the competitive bidding process, the applicant may be subject to various sanctions, including forfeiture of its upfront payment, down payment, or full bid amount and prohibition from participating in future auctions.

### iii. Eligibility and Activity Rules

150. The Bureau will use upfront payments to determine initial (maximum) eligibility (as measured in

bidding units) for Auction 73. The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. Each license is assigned a specific number of bidding units listed in Attachment A of the *Auctions 73 and 76 Procedures Public Notice*. Bidding units for a given license do not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific licenses or packages. Rather, a bidder may place bids on any of the licenses selected on its FCC Form 175 as long as the total number of bidding units associated with those licenses does not exceed its current eligibility. Eligibility cannot be increased during Auction 73; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. At a minimum, an applicant's upfront payment must cover the bidding units for at least one of the licenses it selected on its FCC Form 175 for Auction 73. The total upfront payment does not affect the total dollar amount a bidder may bid on any given license or package of licenses.

151. A bidder is eligible to bid on a package of licenses if it selected all the licenses in the package on its FCC Form 175 and has sufficient eligibility. The bidding units for a package are calculated by adding together the bidding units of the individual licenses that make up the package.

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

153. A bidder's activity level in a round is the sum of the bidding units associated with any licenses covered by new and provisionally winning bids. The bidding units associated with a given license will be counted only once in a bidder's activity calculation for the round, even if the bidder places a bid on the license and a bid on a package containing the license. For example, consider two licenses, A and B, each having 10,000 bidding units. Assuming a bidder bids on license A as well as the package AB in a given round, the

bidder's activity would be 20,000 bidding units, calculated as the sum of the bidding units of licenses A and B. Note that the bidding units for license A are not counted twice. A bidder is considered active on a license in the current round if it is either the provisionally winning bidder at the end of the previous bidding round and does not withdraw the provisionally winning bid in the current round, or if it submits a bid in the current round.

154. The minimum required activity is expressed as a percentage of the bidder's current eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions, the Commission adopts them for Auction 73. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

155. With package bidding in the C Block, it is possible that a bidder may have an activity level that exceeds its eligibility, since the FCC Auction System considers bids placed in 60 previous rounds when determining the provisionally winning set. If a non-winning bid placed in a previous round later becomes provisionally winning, the bidder will receive activity for the newly provisionally winning bid. When added to the activity for the bidder's provisionally winning bids from the previous round and its new bids—which were limited by the bidder's current bidding eligibility—the total activity may exceed the bidder's current bidding eligibility. If this occurs, the bidder's current bidding eligibility will not increase to accommodate the additional activity. In subsequent rounds, the bidder will not be permitted to place new bids if its total activity from provisionally winning bids exceeds its bidding eligibility.

156. A commenter argues that the Bureau should allow bidders limited additional eligibility so that they can continue to bid on licenses or packages that become provisionally winning in later rounds. The Bureau finds that allowing maximum eligibility to be increased in this way may provide an incentive for bidders to intentionally place bids that are likely to become provisionally winning in later rounds, so as to increase their eligibility outside of the usual pre-auction process that requires them to purchase eligibility with upfront payments. Thus, the Bureau will not modify its procedures as suggested.

157. A commenter proposes that the Bureau modify the activity rules to reduce the difference between the number of bidding units associated with the C Block licenses and the bidding units associated with the D Block license. It maintains that the C and D Blocks are in many ways substitutes, but notes that since the C Block has a bandwidth of 22 MHz compared to 10 MHz for the D Block, the C Block has many more bidding units. The commenter contends that because of the activity rule, the effect of this difference is to harm bidders that alternatively bid in the C and D Blocks. It therefore favors the modification of the activity rules through the attribution of a total bandwidth of 22 MHz to the D Block. The commenter maintains that this would enable bidders to freely alternate between the C and D Blocks, increasing auction efficiency and revenues. Another commenter criticizes this proposal on several grounds, including arguing that the proposal would depart from established auction practice and is inconsistent with the reserve prices. The Bureau declines to adopt the proposal. The Bureau finds that its current method of determining bidding units, combined with its activity and eligibility rules, offer bidders adequate opportunities to change bidding strategies.

#### iv. Auction Stages

158. In the *700 MHz Auction Public Notice*, the Bureau proposed to conduct the auction in two stages and employ an activity rule. The Bureau further proposed that, in each round of Stage One, a bidder desiring to maintain its current bidding eligibility would be required to be active on licenses representing at least 80 percent of its current bidding eligibility. Finally, the Bureau proposed that in each round of Stage Two, a bidder desiring to maintain its current bidding eligibility would be required to be active on at least 95 percent of its current bidding eligibility.

159. Some commenters favor the addition of a third stage with either a reduced eligibility threshold (before the two proposed stages) or a higher threshold (after the two proposed stages). According to a commenter small and regional bidders need time to acquaint themselves with the many new features and procedures in Auction 73. Therefore, the commenter proposes creating a new Stage One with a 60 percent activity threshold and moving the 80 percent and 95 percent activity thresholds to Stages Two and Three, respectively. While some other commenters support adopting a 60 percent activity threshold for Stage One,

one commenter opposes any minimum activity level decrease and instead proposes a Stage Three with a 98 percent activity threshold.

160. The Bureau finds that adding a new initial first stage with a lower eligibility threshold is at this time unnecessary. When determining the bidding schedule, the Bureau needs to balance the desirability of concluding the auction reasonably swiftly with the benefit in giving bidders sufficient time for placing bids during rounds and for analysis between rounds. The Bureau finds no compelling reason to create a new first stage that requires only a 60 percent eligibility requirement. Such a lower activity requirement would unnecessarily prolong the auction by allowing bidders to postpone bidding activity until the later rounds of the auction. Establishing an 80 percent activity threshold to start the auction, and retaining the discretion to make changes as circumstances warrant represents the best compromise between allowing auction participants time to learn from the information revealed in the auction, and requiring them to participate actively throughout the auction.

161. The Bureau likewise sees no need to establish, at this time, a third stage with a 98 percent eligibility requirement, finding that a 95 percent threshold should be a sufficiently high activity requirement for the final stage of the auction. In past auctions, the Bureau established three stages using 80 percent, 90 percent, and 98 percent activity requirements. In many of these auctions, however, implementing Stage Two had little effect in terms of increasing bidding activity, and Stage Three was implemented shortly thereafter. Based on this experience, the Bureau has generally moved away from three-stage auctions in favor of two-stage auctions. Moreover, a 95 percent threshold allows bidders a little more flexibility in fulfilling their activity requirements during the final stage of the auction. Therefore, the Bureau declines to establish a 98 percent activity threshold at this time. The Bureau has the discretion to further alter the activity requirements before and/or during the auction as circumstances warrant, and also has other mechanisms by which it may influence the speed of an auction. The Bureau finds that, for now, two stages for an activity requirement adequately balances the desire to conclude the auction quickly with giving sufficient time for bidders to consider the status of the bidding and to place bids. Therefore, the Bureau adopts the two stages.

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

163. Stage Two: During the second stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the required activity level will result in the use of an activity rule waiver or, if the bidder has no activity rule waivers remaining, a reduction in the bidder's bidding eligibility in the next round. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by twenty-nineteenths (20/19). Since activity requirements increase in Stage Two, bidders must carefully check their activity during the first round following a stage transition to ensure that they are meeting the increased activity requirement. This is especially critical for bidders that have provisionally winning bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required activity level by logging into the FCC Auction System.

164. Because the foregoing procedures have proven successful in maintaining the proper pace in previous auctions, the Bureau adopts them for Auction 73.

#### v. Stage Transitions

165. In the *700 MHz Auction Public Notice*, the Bureau proposed that the auction would advance to the next stage (*i.e.*, from Stage One to Stage Two) after considering a variety of measures of auction activity, including, but not limited to, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the increase in revenue. The

Bureau further proposed that the Bureau would retain the discretion to change the activity requirements during the auction. For example, the Bureau could decide not to transition to Stage Two if it believes the auction is progressing satisfactorily under the Stage One activity requirement, or to transition to Stage Two with an activity requirement that is higher or lower than the 95 percent. The Bureau proposed to alert bidders of stage advancements by announcement during the auction.

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

#### vi. Activity Rule Waivers

167. In the *700 MHz Auction Public Notice*, the Bureau proposed that each bidder in the auction be provided with three activity rule waivers. Commenters proposed two variations on the Bureau's proposal regarding activity rule waivers. The Bureau declines to adopt these alternatives and adopts the proposed three activity rule waivers per bidder.

168. One commenter advocates providing bidders with two additional activity rule waivers to allow more time for decision-making during the auction. The commenter suggests that the two additional waivers would provide bidders, especially those that are consortia, greater flexibility during the auction. Another commenter opposes any additional activity rule waivers because, it argues, no clear connection exists between having additional waivers and decision-making. The Bureau agrees with the opposing commenter that the request for additional waivers does not demonstrate why the proposed three waivers are insufficient, or why consortia might have a greater need for flexibility than any other bidder. The Bureau is satisfied that providing three waivers over the course of the auction will give bidders a sufficient number of waivers and flexibility, while also safeguarding the integrity of the auction.

169. Another commenter proposes a limit on activity rule waivers for bidders

that are closely affiliated. That commenter expresses concern with bidders entering more than one entity in the auction in order to receive more than standard three activity rule waivers, allowing it to preserve bidding eligibility for later in the auction. The commenter proposes a total limit of three activity rule waivers for all closely affiliated applicants, *i.e.*, under common control, applying for overlapping licenses. Still another commenter disagrees noting that, while affiliated bidders may get twice the number of waivers, they would use them twice as fast as a single bidder in rounds in which they were not bidding. The Bureau agrees with the other commenter that no clear advantage seems possible. The Bureau also adds that entities are prohibited from submitting more than one application. This measure prevents bidders from entering multiple entities while permitting legitimate business plans that entail common control among more than one applicant.

170. Therefore, the Bureau adopts its proposal to provide bidders with three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum activity level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Activity rule waivers can be either applied proactively by the bidder (a proactive waiver) or applied automatically by the FCC Auction System (an automatic waiver) and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

171. The FCC Auction System assumes that bidders with insufficient activity would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round where a bidder's activity level is below the minimum required unless: (1) There are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility. If a bidder has no waivers remaining and does not satisfy the activity requirement, the FCC Auction System will permanently reduce the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

172. 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 bidding round by using the reduce eligibility function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility even if the round has not yet ended.

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

#### vii. Auction Stopping Rules

174. For Auction 73, the Bureau proposed to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all licenses remain available for bidding until bidding closes simultaneously on all licenses. More specifically, bidding will close simultaneously on all licenses and packages after the first round in which no bidder submits any new bids, applies a proactive waiver, or withdraws any provisionally winning bids.

175. The Bureau also sought comment on alternative versions of the simultaneous stopping rule for Auction 73: *Option 1*. The auction would close for all licenses after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid, or places any new bids on any license or package on which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license or a package of licenses for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule; *Option 2*. The auction would end after a specified

number of additional rounds. If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) and the auction will close; and *Option 3*. The auction would remain open even if no bidder places any new bids, applies a proactive waiver, or withdraws any provisionally winning bids in a round. In this event, the effect will be the same as if a bidder had applied a 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.

176. The Bureau proposed to exercise these options only in circumstances such as where the auction is proceeding unusually slowly or quickly, where there is minimal overall bidding activity, or where it appears likely that the auction will not close within a reasonable period of time or will close prematurely, *e.g.*, before bidders have had an adequate opportunity to satisfy any applicable reserve prices. The Bureau noted that before exercising these options, it is likely to attempt to increase the pace of the auction by, for example, changing the number of bidding rounds per day and/or changing the minimum acceptable bids.

177. One commenter advocates explicitly adopting an alternate stopping rule that would give bidders one final opportunity to place bids that would meet the reserve prices. The commenter believes adopting this measure will curb any incentive by some to bid in such a way to avoid the reserves being met. Another commenter opposes the proposal, given the unique nature of this auction and the complexity of the eligibility management issues.

178. The Bureau finds that the stopping rules as proposed are appropriate for Auction 73. The Bureau's experience in prior auctions demonstrates that these stopping rules balance interests of administrative efficiency and maximum bidder participation. Therefore, Auction 73 will begin under the simultaneous stopping rule approach.

179. While the Bureau declines to adopt any of the alternate stopping rules at this time, the Bureau retains the discretion to employ the alternative versions of the stopping rule, with or without prior announcement during the auction. The Bureau will not, however, employ the first alternative (*i.e.*, Option 1) until the reserve prices have been met. This will allow bidders to continue to place new bids even if they are the provisional winning bidders. Bidders, therefore, will continue to have the opportunity to place bids until the reserve prices are met.

viii. Auction Delay, Suspension, or Cancellation

180. In the *700 MHz Auction Public Notice*, the Bureau proposed that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. The Bureau received no comment on this issue.

181. Because the Bureau's approach to notification of delay during an auction has proven effective in resolving exigent circumstances in previous auctions, the Bureau adopts its proposed rules regarding auction delay, suspension, or cancellation. By public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, 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*

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

183. The Bureau 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, the amount of

time between rounds, or the number of rounds per day, depending upon bidding activity and other factors.

184. A commenter advocates limiting the number of rounds per day in the first phase (Stage One) of Auction 73. More than four rounds in the auction's early stage would place substantial strains on consortia's more deliberate decision-making processes. The commenter, however, suggests lifting the limit for Stage Two. Another commenter opposes limiting the number of rounds per day. The Bureau agrees with the opposing commenter that lifting the limited for Stage Two fails to demonstrate why consortia would be disadvantaged vis-à-vis other bidders unless Stage One had a maximum of four rounds per day. The Bureau add that the commenter does not provide any rationale why, if a limit were necessary to allow effective decision-making amongst consortia members, it would not hold true in Stage Two of the auction, particularly when the stakes are even higher. Therefore, the Bureau declines to adopt any limit on rounds per day. Rather, the Bureau will continue to exercise discretion with regard to the number of rounds per day under the particular circumstances of the auction.

##### *ii. Reserve Price and Minimum Opening Bids*

185. Section 309(j) of the Communications Act of 1934, as amended, calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when applications for 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.

##### *a. Reserve Price*

186. In the *700 MHz Second Report and Order*, the Commission concluded

that establishing separate aggregate reserve prices for all the licenses in each block of the 700 MHz Band spectrum to be offered in Auction 73 will serve the public interest. More specifically, the Commission directed the Bureau to adopt and publicly disclose block-specific aggregate reserve prices, pursuant to its existing delegated authority and the regular pre-auction process and consistent with the Commission's conclusions in the *700 MHz Second Report and Order*. In the *700 MHz Auction Public Notice*, the Bureau proposed that the sum of the provisionally winning gross bids for all licenses in each block must equal or exceed the disclosed aggregate reserve price for the block before the Commission will assign licenses in that block. More specifically, the Bureau proposed the following block-specific aggregate reserve prices to be used under this proposal: Block A, \$1.807380 billion; Block B, \$1.374426 billion; Block C, \$4.637854 billion; Block D, \$1.330000 billion; Block E, \$0.903690 billion. The Bureau adopts this proposal.

187. *Background.* In the *700 MHz Second Report and Order*, the Commission concluded that the block-specific aggregate prices should reflect current assessments of the potential market value of licenses for the 700 MHz Band. The Commission directed that this assessment be based on various factors including, but not limited to, the characteristics of this band and the value of other recently auctioned licenses, such as licenses for Advanced Wireless Services. The Commission reasoned that using AWS-1 auction results might be an appropriate guide for setting block-specific reserve prices reflecting a conservative estimate of final market value. Spectrum in the 700 MHz Band possesses superior propagation characteristics to AWS-1 spectrum. In addition, as of February 18, 2009, the 700 MHz Band spectrum will be unencumbered, while full access to AWS-1 spectrum requires the relocation of both Government and commercial incumbent users. Thus, other factors aside, 700 MHz Band licenses with comparable geographic service areas and bandwidth should have a higher market value than AWS-1 licenses.

188. The Commission expressly noted that the detailed rules regarding the D Block license, the D Block licensee's required construction of a network to be shared by public safety service users, and the resulting limitations on the flexibility of the D Block licensee, should be given weight in assessing the D Block's potential market value. Based solely on geographic area and spectrum

block size, AWS-1 auction results might suggest a D Block reserve price of \$1.7 billion. However, in light of the D Block license conditions essential to the public safety purpose of the public/private partnership, it might be appropriate to expect bidders to bid only about 75 percent to 80 percent of such an amount, or about \$1.33 billion. In addition, when determining relative valuation of other blocks, the Bureau should consider the relative valuation of differing blocks in the recent auction of AWS-1 licenses.

189. The Commission further noted that in setting block-specific reserve prices, the Bureau should also give consideration to Congress's view as to the value of the spectrum, as reflected in Congressional mandates regarding the uses for revenues from this auction.

190. *Comments.* A commenter contends that the proposed reserve prices are excessive and proposes an alternative set of reserve prices roughly equal to one-fifth the reserve prices proposed by the Bureau. The commenter asserts that the Bureau's proposed reserve price represent an estimate of final license values and that establishing such a reserve, particularly in light of the potential subsequent auction of alternative licenses, is misguided. The commenter further argues that the Bureau's reliance on bidding for AWS licenses is misplaced in that it does not take into account subsequent changes in the credit markets or significant differences between AWS licenses and 700 MHz licenses, which should reduce the relative value of the 700 MHz licenses.

191. In reply, and in opposition to the comments, two commenters echo the Commission's observation that that the value of the 700 MHz licenses in fact should be greater than the AWS licenses and contend that the Bureau's proposed reserve prices reflect a conservative estimate of the likely value of the 700 MHz licenses. As one commenter notes, attempts to take into account the fluctuating state of the credit market are not appropriate, given the degree of uncertainty inherent in such attempts. While another commenter notes that the Bureau's proposal takes into account conditions placed on the various blocks of 700 MHz spectrum. Finally, the same commenter notes that the proposed reserves are consistent with Congressional expectations.

192. *Discussion.* The Bureau does not find the commenters arguments for reducing the proposed reserve prices persuasive. The commenter errs in asserting that the Bureau's proposed reserves seek to estimate the final value of the licenses. The Bureau has not

attempted to determine the value of the licenses but will rely on the auction process to do so. Rather, pursuant to statutory mandate and Commission direction, the Bureau proposed reserve prices intended to represent a likely low end of the licenses' potential value, in order to assure that the public recovers a portion of the value of the public spectrum resource. Consistent with the guidance of the Commission, the Bureau adopts the proposal and will use the following block-specific aggregate reserve prices for Auction 73: Block A, \$1.807380 billion; Block B, \$1.374426 billion; Block C, \$4.637854 billion; Block D, \$1.330000 billion; Block E, \$0.903690 billion. Together, these block-specific aggregate reserves sum to \$10.053350 billion.

193. The D Block reserve price of \$1.33 billion is discounted from an amount based more closely on AWS-1 bids because of the unique service rules and related obligations imposed upon the D Block licensee. For the A, B, C, and E Blocks, the Bureau based the reserve prices on the respective market value reflected in AWS-1 bids, adding one percent, and rounding to the nearest thousand dollars. Because of the value-enhancing propagation characteristics and relatively unencumbered nature of the 700 MHz Band spectrum, the Bureau believes these are conservative estimates, at the low end of the spectrum's potential value. Given this approach, there is no need to further reduce the proposed reserves based on the specific rules applicable to licenses for the A, B, C, and E Blocks.

194. As proposed in the *700 MHz Auction Public Notice*, the Bureau will use gross bid amounts rather than net bid amounts in determining whether the block-specific reserve prices have been met. No commenter suggested any alternative to this aspect of the Bureau's reserve price procedures. Anonymous bidding procedures that will be used in Auction 73 preclude disclosing the identity of bidders and the net amounts of bids made until after the close of bidding. Consequently, if net bids determined whether or not reserves had been met, publicly disclosing whether reserves had been met might inadvertently disclose whether applicants eligible for bidding credits held certain provisionally winning bids, potentially disclosing the identity of the bidders. For example, presuming net bids determined whether or not the reserve is met, for the reserve not to be met when the provisionally winning bid on the D Block license is for \$1.5 billion dollars, the party making the bid must be an applicant eligible for a bidding credit. Depending on the number of

parties eligible for a bidding credit competing for the D Block license, this information might disclose the identity of the provisionally winning bidder, thwarting the Commission's anonymous bidding procedures. Moreover, net bid amounts, unlike gross bid amounts, may decline even as the gross bids increase. For example, a party not eligible for a bidding credit might hold a provisionally winning bid of \$1.4 billion on the D Block license, in which case the reserve would be met. However, in the next round, a party eligible for a bidding credit might place a provisionally winning bid of \$1.5 billion, increasing the value bid for the license. However, because the party eligible for a bidding credit might have a net bid less than the reserve, now the reserve would not be met. The Bureau believes that it serves the public interest for bidders to know when the reserve is met and to know that once a reserve is met that fact will not change. This certainty will give bidders greater confidence in the significance of their bids and therefore may enhance competition. For these reasons, the Bureau will use gross bid amounts rather than net bid amounts in determining whether block-specific reserve prices have been met.

195. The Bureau will count the gross amount of any withdrawn bids for licenses toward meeting the reserve prices for several reasons. First, withdrawn bids presumably reflect sincere valuations of the license, notwithstanding the withdrawal and the reserve is intended to measure that valuation. Second, counting withdrawn bids assures that once a reserve is met that fact will not change. Third, if the Bureau did not count withdrawn bids, bidders could attempt to use bid withdrawals as a strategic mechanism to prevent auction results from satisfying a reserve in order to force an auction of alternative licenses.

196. The Commission's rules and the procedures for Auction 73 allow each bidder one round in which the bidder may withdraw provisionally winning bids for licenses not subject to package bidding. Allowing bidders to withdraw provisionally winning bids enables bidders to respond to price discovery as the auction develops by adopting alternative plans, thereby encouraging bidders to compete at early stages in the auction. Accordingly, the Bureau presumes that bids placed and withdrawn reflect bidders' sincere valuations of the relevant licenses. Consistent with this presumption, the Commission's rules require bidders to cover any shortfall if a subsequent

winning bid for a license is less than a withdrawn provisionally winning bid.

197. Second, counting withdrawn bids is essential to assuring that once a reserve price is met, that fact does not change. With regards to bid withdrawals, when a bid is withdrawn, there is no provisionally winning bid on that license until a new high bid is placed on it in a subsequent round. Accordingly, if the Bureau does not count withdrawn bids, then the amount counted for a particular license toward meeting the reserve price could drop from whatever the withdrawn bid is to zero. For example, if a provisionally winning bid on the D Block license of \$2.66 billion is withdrawn and only a provisionally winning high bid is counted toward the reserve, the reserve will not be met, notwithstanding the fact that a round before there was a provisionally winning bid in an amount equal to twice the reserve.

198. Third, if the Bureau does not count a withdrawn bid toward meeting the reserve, the Bureau would allow a bidder's decision to withdraw a bid to affect whether or not the reserve price has been met. As the foregoing example indicates, a bidder could outbid rivals for a license in amounts far in excess of the reserve and then, at the last minute, withdraw its bid in an attempt to prevent the auction results from meeting the applicable reserve price. If the withdrawing bidder's competitors had moved to other blocks due to the withdrawn bid, they may no longer have an interest or the budget to return and bid again on the license subject to the withdrawal. In that event, the withdrawal might succeed at preventing the reserve from being met and at forcing an auction of alternative licenses.

199. The Bureau will count the gross amount of either the provisionally winning bid on a license, or on a package that includes the license, or, if higher, the highest withdrawn provisionally winning bid on a license when determining whether a reserve price has been met. The Bureau will not count more than one bid per license, be it a provisionally winning or withdrawn bid, towards meeting the relevant reserve price. In the case of licenses with multiple withdrawn bids or a withdrawn bid and a provisionally winning bid, the Bureau will count the highest of the gross bid amounts toward the reserve price. Other than the gross amounts of withdrawn bids, licenses without provisionally winning bids will not count towards meeting a reserve price.

200. Finally, the Bureau will issue an announcement in the FCC Auction

System stating that a reserve has been met immediately following the first round in which that occurs. Both the registered bidders and the general public will be able to view such announcements through the Commission's Web site. The current total of relevant provisionally winning bids may not determine whether or not the reserve has been met, given that the Bureau also will count withdrawn bids toward meeting the reserve. By making an announcement when the reserve is met, the Bureau will free auction observers and participants therefore from a need to monitor withdrawn bids over the course of the auction in order to determine whether the reserve has been met and avoid any uncertainty.

#### b. Minimum Opening Bids

201. In addition to proposing aggregate reserve prices, the Bureau proposed in the *700 MHz Auction Public Notice* to establish minimum opening bids for each license, while retaining discretion to lower the minimum opening bids. Specifically, for Auction 73, the Bureau proposed to calculate minimum opening bid amounts as follows: (1) For licenses covering geographic areas in the 50 states for which all of the corresponding licenses offered in Auction 66 for the exact same geographic area were sold, 25 percent of the dollars per MHz per population (MHz-pop) of the net amounts of the Auction 66 winning bids for licenses covering the same geographic license area, subject to a minimum of \$0.03/MHz-pop; (2) for licenses covering geographic areas for which a corresponding Auction 66 license was unsold, \$0.01/MHz-pop; (3) for licenses covering the Gulf of Mexico, \$1,000 per MHz; and (4) for all remaining licenses, \$0.01/MHz-pop. For all licenses, the results of the above calculations are subject to a minimum of \$500 per license and are rounded using the Bureau's standard rounding procedure. The Bureau proposed to calculate the minimum opening bid for any package as the sum of the minimum opening bids for the licenses in the package. The Bureau sought comment on this proposal and, in the alternative, whether, consistent with Section 309(j), the public interest would be served by having no minimum opening bids.

202. The Bureau received a range of comments concerning the proposed minimum opening bids. One commenter supports the Bureau's proposed method for establishing minimum opening bid amounts. However, another commenter advocates calculating minimum opening bids on the same basis that was used for Auction 66, rather than on one that uses

the winning bids from that auction. A third commenter opposes using minimum opening bids based on Auction 66 results, arguing that the 700 MHz Band spectrum is not readily comparable to that offered in Auction 66. It maintains that some prices in that auction resulted from one-time bidding wars, so that RSA minimum opening bids based on these prices would be overly high and harm small and rural carriers. A commenter also contends that the proposed minimum opening bids would discourage these carriers from participating. It proposes that the minimum opening bids from Auction 66 should generally be used. In addition, the same commenter claims that reducing the minimum opening bids would prevent the auction from proceeding at too rapid a pace. RTG agrees that the proposed minimum opening bids for some RSAs are too high, and proposes that these be reduced to either the same level as the upfront payments or capped at 25 percent of the median net high bid for all RSAs sold in Auction 66. Another commenter generally criticizes as arbitrary the proposals to lower the minimum opening bids to the value of the upfront payments, but agrees that certain RSA minimum opening bids may be overly high. A commenter expresses support for the argument that reducing the minimum opening bids will make the auction less likely to proceed overly quickly.

203. The Bureau finds that the minimum opening bid amounts proposed in the *700 MHz Auction Public Notice* are generally appropriate. While the record indicates that the proposed minimum opening bid amounts are higher than many parties would like, the proposed amounts better enable the Commission to meet the statutory objective of recovering for the public a portion of the value of the spectrum resource made available for commercial use. The proposed minimum opening bid amounts also will help the Commission meet its statutory deadlines for auctioning this spectrum.

204. In response to comments, however, the Bureau modifies the proposed minimum opening bids for certain rural licenses. The Bureau recognizes concerns commenters raised regarding proposed minimum opening bids and the potential for some licenses, particularly those in rural areas, to remain unsold after the auction. Thus, for RSA licenses only (CMAs 307–734), minimum opening bids will not be greater than \$0.10/MHz-pop. Accordingly, the Bureau adopts the revised minimum opening bid amounts

and set the minimum opening bids using the revised formulas as follows: (1) For licenses covering geographic areas in the 50 states for which all of the corresponding licenses offered in Auction 66 for the exact same geographic area were sold, 25 percent of the dollars per MHz per population (MHz-pop) of the net amounts of the Auction 66 winning bids for licenses covering the same geographic license area, subject to a minimum of \$0.03/MHz-pop, for RSA licenses only, subject to a maximum of \$0.10/MHz-pop; (2) for licenses covering geographic areas for which a corresponding Auction 66 license was unsold, \$0.01/MHz-pop; (3) for licenses covering the Gulf of Mexico, \$1,000 per MHz; and (4) for all remaining licenses, \$0.01/MHz-pop.

205. Two commenters suggest that the minimum opening bid for the D Block should be set at its reserve price since it is only one license and will not be assigned if the reserve is not met. Another commenter opposes this suggestion, arguing that setting the D Block minimum opening bid at the reserve bid would deny bidders the opportunity to determine the relative value of the D Block, and may even hurt the winning bidder's ability to finance its bid for the D Block. The Bureau agrees that there may be value, to bidders and others, in accepting bids for the D Block short of the reserve. Therefore, the Bureau adopts the minimum opening bid for the D Block as proposed in the *700 MHz Auction Public Notice*.

206. The Commission did not receive any comments addressing the proposal that the Bureau retain the discretion to reduce minimum opening bid amounts. The Bureau adopts this proposal. The minimum opening bid amounts 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 activity waivers. During the course of the auction, the Bureau will not entertain requests to reduce the minimum opening bid amount on specific licenses or packages.

207. The specific minimum opening bid amounts for each license available in Auction 73 calculated pursuant to the procedures set forth in Attachment A of the *Auctions 73 and 76 Procedures Public Notice*.

### iii. Bid Amounts

208. In the *700 MHz Auction Public Notice*, the Bureau proposed that in each round, eligible bidders be able to place a bid on a given license or package using one or more predefined bid

amounts. Under the proposal, the FCC Auction System interface will list the acceptable bid amounts for each license or package. A commenter proposed best and final bid procedures to allow bidders a chance to enter their own bid amounts, if they wish to bid more for a license but less than the minimum acceptable bid increment would require. The commenter believes adopting a best and final bid procedure would give bidders a better opportunity to bid up to the full amount of their final license valuations. Two commenters oppose creating this best and final bid procedure because it may encourage gaming the auction system and would be unfair to bidders that have a provisionally winning bid. The Bureau recognizes that there may be circumstances under which the proposed procedure could enhance the economical efficiency of the auction, but find that the costs in terms of increased auction complexity and opportunity for anti-competitive signaling would outweigh the benefits in Auction 73. The Bureau adopts the proposal set out in the *700 MHz Auction Public Notice*.

209. *Minimum Acceptable Bids.* Under the Bureau's proposed procedures, the first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a license will be equal to its minimum opening bid amount until there is a provisionally winning bid for the license or package that includes the license. The minimum acceptable bid amount for a package will be the sum of the minimum acceptable bid amounts for the licenses in the package. Minimum acceptable bids are calculated based on current price estimates and an activity-based formula.

210. *Current Price Estimates.* Under the proposed HPB auction procedures, after there is a provisionally winning bid for a license, the FCC will determine a current price estimate (CPE) for each license in each round as a basis for calculating minimum acceptable bids. For non-C Block licenses the CPE will be the provisionally winning bid amount, so that minimum acceptable bids are based on provisionally winning bid amounts, as in an SMR auction without package bidding. For licenses in the C Block subject to HPB, if a bid on an individual license is provisionally winning, the CPE for that license will be the provisionally winning bid amount. If a package bid is provisionally winning, the CPEs for individual licenses in the package will be constructed by scaling up the bids on individual licenses so that the sum of

the license CPEs equals the provisionally winning package bid. Bids are scaled up by adding shares to the highest bid received so far in the auction for each license in the package. These shares are proportional to the bidding units associated with each license relative to the total number of bidding units in the package. The proposed mechanism for determining CPEs in an HPB auction format is described in more detail in Attachment H of the *Auctions 73 and 76 Procedures Public Notice*.

211. Commenters disagree on the method for calculating the CPEs for C Block packages. One commenter suggests using current high bids as weights when scaling up bids. Another commenter advocates using provisionally winning bids, not bidding units, to determine CPEs for C Block bids while other commenters support the Bureau's proposed method of calculating CPEs.

212. The Bureau does not agree that it should scale up license prices using current bid amounts, since doing so may encourage undesirable strategic bidding. Bidders would have an incentive to bid up the prices of other licenses while holding back on the licenses they are interested in, in order to force other license prices to bear a larger share of the shortfall.

213. The Bureau also declines to adopt the suggestions of commenters that it base the minimum acceptable bids for C Block REAG licenses directly on the highest bids for those licenses. Scaling up the minimum acceptable bid amounts for licenses in a package, so that the sum of bids on individual licenses equals the minimum acceptable bid on the package, mitigates the coordination or threshold problem that may face bidders trying to compete with a large package bid in a package bidding auction. Absent such a procedure, package bid prices could become disproportionately large relative to the prices for the package components, making it difficult for bidders on the individual licenses to compete with the package bid, especially since bidders on the individual licenses may bid cautiously, hoping that bidders on other licenses will make up the difference required to catch up with the package bid.

214. The Bureau does not believe that the proposed method of calculating CPEs is overly complex. In fact, the Bureau will use HPB in part because the mechanism for calculating CPEs is significantly simpler than other package bidding pricing mechanisms that adequately address coordination issues.

215. *Activity-Based Formula*. Under the Bureau's proposal, once CPEs are calculated, minimum acceptable bids are then determined for each license as the amount of the CPE plus a percentage of the CPE. The percentage is calculated using the activity-based formula. In general, the percentage will be higher when many bidders are bidding on a license, or on a package containing a license, than when few bidders are bidding on a license.

216. The percentage of the provisionally winning bid used to establish the minimum acceptable bid amount (the additional percentage) is calculated at the end of each round, based on an activity index which is a weighted average of (a) the number of distinct bidders placing a bid on the license, including package bids, in that round, and (b) the activity index from the prior round. Specifically, the activity index is equal to a weighting factor times the number of bidders placing a bid covering the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The additional percentage is determined as one plus the activity index times a minimum percentage amount, with the result not to exceed a given maximum. The additional percentage is then multiplied by the CPE amount to obtain the minimum acceptable bid for the next round.

217. The Bureau proposed initially to set the weighting factor at 0.5, the minimum percentage (floor) at 0.1 (10%), and the maximum percentage (ceiling) at 0.2 (20%). At these initial settings, the minimum acceptable bid for a license will be between ten percent and twenty percent higher than the CPE (which for non-C Block licenses will equal the provisionally winning bid), depending upon the bidding activity covering the license. Equations and examples are shown in Attachment G of the *Auctions 73 and 76 Procedures Public Notice*.

218. A number of commenters addressed the activity-based formula to calculate minimum acceptable bids. One advocates increasing the activity weight factor from 0.5 to, for example, 0.75, so that the current round's activity has more weight in determining the next rounds minimum acceptable bid and further advocates modifying the minimum acceptable bid formula by decreasing the floor from the proposed 10 percent to 5 percent, and decreasing the ceiling from the proposed 20 percent to 10 percent. Other commenters express support for the change in floor and ceiling percentages.

219. In the *700 MHz Auction Public Notice*, the Bureau notes that it retains discretion to limit the absolute amount by which a minimum acceptable bid for a license may increase over the previous provisionally winning bid—for example, the Bureau could set a \$10 million cap on increases in minimum acceptable bid amounts over provisionally winning bids—and the Bureau sought comment on the circumstances under which the Bureau should employ such a limit. A commenter suggested a cap on bid increments of \$150 million per license per round would help avoid problems associated with bids rising more quickly than bidders, especially new entrants, can obtain approval for the additional funds, and would not delay the auction significantly.

220. The Bureau recognizes bidder concerns that very rapid increases in minimum acceptable bids may potentially discourage bidder participation, inhibit price discovery, and create bid approval issues, especially since the minimum opening bids in Auction 73 are higher than were the Bureau's starting bids, for example, in Auction 66. At the same time, since the licenses initially offered in Auction 73 will not be sold unless reserve prices are met, it will be useful for the auction to move at a reasonably fast pace at least until reserve prices are satisfied. The Bureau reiterates that it has the discretion to modify minimum acceptable bid amounts—by changing the activity-based formula parameters or by imposing or modifying a cap on the dollar amount of bid increments—as it sees fit during the auction. Taking commenter concerns into account, the Bureau determined that it will retain initial floor and ceiling parameters at 10 and 20 percent, respectively, as proposed, but the Bureau will begin the auction with a \$100 million cap on the amount of the bid increment. That is, minimum acceptable bids for the next round generally will be between 10 and 20 percent higher than provisionally winning bids, but they will not exceed provisionally winning bids by more than \$100 million dollars.

221. *Additional Bid Amounts*. Any additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded. If, for example, the bid increment percentage is ten percent, the calculation is (minimum acceptable bid amount) \* (1 + 0.1), rounded, or (minimum acceptable bid amount) \* 1.1, rounded;

the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) \* 1.2, rounded; etc. The Bureau will round the results of these calculations and the minimum acceptable bid calculations using the Bureau's standard rounding procedures.

222. For Auction 73, the Bureau proposed to set the bid increment percentage at 0.1, so that any additional bid amounts above the minimum acceptable bid would each be 10 percent 85 higher. For non-C Block licenses, the Bureau proposed to begin the auction with one acceptable bid amount per license (the minimum acceptable bid amount). For C Block licenses subject to HPB, the Bureau proposed to begin the auction with three acceptable bid amounts per license (the minimum acceptable bid amount and two additional bid amounts) and one acceptable bid amount per package (the minimum acceptable bid amount and no additional bid amounts).

223. The Bureau received no comments on its proposal to set the bid increment percentage at 0.1. The Bureau adopts the proposal to begin the auction with a bid increment percentage of 0.1.

224. Several commenters, however, advocate providing more than one acceptable bid amount per license for the non-C Block licenses. The Bureau is not persuaded that additional bid amounts provide bidders with significantly more flexibility to express their valuations. The Bureau experience with past auctions indicates that bidders rarely use multiple increment bids as the commenters suggest—to express their final valuations more precisely—but more frequently use jump bids as a means of signaling other bidders. As noted in the *700 MHz Auction Public Notice*, the Bureau proposed that bidders on licenses in the C Block be able to make multiple increment bids to ensure that bidders on individual licenses can effectively compete with package bids, even when there are not individual bids on one or more of the licenses in the package. Absent that need for multiple increment bids in the non-package bidding blocks, the Bureau will not modify its proposal. Therefore, the Bureau will begin the auction with one acceptable bid amount for each non-C Block license and C Block packages and three acceptable bid amounts for each C Block license.

225. The Bureau retains the discretion to change the minimum acceptable bid amounts, the additional bid amounts, the dollar cap on bid increments, the

number of acceptable bid amounts, and the parameters of the formulas used to calculate minimum acceptable bid 86 amounts and additional bid amounts if it determines that circumstances so dictate. Further, the Bureau retains the discretion to do so on a license-by-license and package-by-package basis.

#### iv. Provisionally Winning Bids

226. At the end of each bidding round, a provisionally winning bid will be determined based on which combination of bids together provides the greatest aggregate gross amount. Provisionally winning bids at the end of the auction become the winning bids, provided that applicable reserve prices are met. For the 1,087 licenses not subject to package bidding, the FCC Auction System determines a provisionally winning bid for each license based on the highest bid amount received for the license, taking into account the bids placed in the round and the provisionally winning bids from the previous round. For licenses in the C Block subject to HPB, the FCC Auction System will determine which combination of individual and package bids yields the highest aggregate gross bid amount, taking into consideration each bidder's highest bid on each license or package submitted up to that point in the auction. These bids become the provisionally winning bids for the round. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.

227. In order to determine which combination of bids on licenses and/or packages yields the highest aggregate bid amount in a HPB auction, the FCC Auction System compares aggregate bid amounts across the various levels in a recursive process. It first compares, for each package in the second level, the sum of the highest individual license bids from the first level with the highest bids on packages in the second level containing those licenses. Those bids that generate the maximum total bid amounts become provisionally winning. Attachment H of the *Auctions 73 and 76 Procedures Public Notice* provides additional detail on this procedure.

228. In the *700 MHz Auction Public Notice*, the Bureau proposed to break ties randomly. A commenter suggests that because there will be at most a single acceptable bid amount for all but the individual C Block licenses, there will be multiple ties, and that therefore, 87 the Bureau should consider alternate means of breaking ties. Another commenter opposes this proposal, arguing that adopting such a procedure for breaking ties would result in bidders

feeling pressure to submit their bids hastily which would raise bidding costs, increase the potential for bidding errors, and discourage proper analysis and review before submitting bids.

229. In previous FCC auctions, even though up to nine acceptable bid amounts were permitted, multiple increment bids accounted for only a small fraction of the total number of bids placed. The Bureau does not expect that the frequency of tied bids will be significantly different than in past auctions, and the Bureau does not adopt any changes to its tie-breaking procedures. Hence, the Bureau adopts the proposal. The FCC Auction System will assign a random number to each license in each bid upon submission. In the event of ties among bids that generate the highest aggregate gross bid amount, the set of bids with the highest sum of random numbers becomes provisionally winning. Bidders, regardless of whether they hold a provisionally winning bid, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid.

230. All bidding will take place remotely either through the FCC Auction System or by telephonic bidding. There will be no on-site bidding during Auction 73. Please note that telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of ten minutes.

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

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

233. In each round, eligible bidders will be able to place bids on a given license or package in one or more pre-defined bid amounts. For each license

and package, the FCC Auction System will list the acceptable bid amounts in a drop-down box. Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC Auction System also includes an upload function that allows bidders to upload text files containing bid information.

234. Until a bid has been placed on a license or a package that includes the license, the minimum acceptable bid amount for that license will be equal to its minimum opening bid amount. Once there are bids on a license or a package that includes the license, minimum acceptable bids for a license.

235. During a round, an eligible bidder may submit bids for as many licenses as it wishes, remove bids placed in the current bidding round, withdraw provisionally winning bids from previous rounds (in blocks without package bidding), drop non-provisionally winning bids (C-Block licenses or packages), or permanently reduce eligibility. If a bidder submits multiple bids for the same license or package in the same round—multiple bids on the exact same license or package, not one bid on a package and one bid on a license in that package—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, dropped, or withdrawn its bid do not count towards the bidder's current activity.

236. For licenses subject to package bidding in HPB, the FCC Auction System considers each bidder's highest bid on each license or package when determining the 89 provisionally winning bids. Consequently, for licenses in the C Block, an individual license or package bid that does not become a provisionally winning bid at the conclusion of the round in which it was placed may become a provisionally winning bid at the conclusion of a subsequent round. This may occur even if the bidder does not have the bidding eligibility to cover the newly-provisionally winning bid. This contrasts with the SMR procedure used for licenses not subject to package bidding, in which only provisionally winning bids from the previous round and bids placed during the round are considered when determining provisionally winning bids.

237. A commenter requests that the Bureau clarify that a bidder can win a license or package that becomes provisionally winning, after not having been part of the winning set in the previous rounds; the Bureau clarifies that point here. Another commenter opposes allowing a bidder to win

licenses with bidding units exceeding its eligibility at the auction's end. The commenters argue that winning reactivated bids may force bidders to win more licenses than they can afford. The Bureau does not accept the proposal that it not allow bidders to win licenses with bidding units that exceed its eligibility. The Bureau recognizes that occasionally bidders may need to change bid strategies as prices rise. Accordingly, the Bureau provide limited opportunities for bidders to withdraw and drop bids, which if used carefully, allow bidders to avoid winning licenses they no longer wish to win. Thus, the Bureau finds that the requested restriction on winning bids that exceed eligibility is unnecessary to protect bidders from winning more than they wish to win.

238. The Bureau encourages bidders on licenses and packages in the C Block to bear in mind that their highest bid on each package or license will be considered every time the FCC Auction System determines a new set of provisionally winning bids. This feature allows bidders on individual licenses to compete more effectively with package bids, since their individual license bid can combine with bids on other individual licenses placed in previous rounds, and stabilizes CPEs. Bidders will be able to evaluate the extent to which a bid placed in a previous 90 round is likely to become winning by comparing the bid to the other considered bids for the license or package.

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

#### v. Bid Removal, Bid Withdrawal, and Dropped Bids

240. In the *700 MHz Auction Public Notice*, the Commission proposed bid removal, bid withdrawal, and dropped bids procedures. The Bureau sought comment on permitting a bidder to remove a bid before the close of the round in which the bid was placed. With respect to bid withdrawals, the Commission proposed limiting each bidder to withdrawals of provisionally winning bids on licenses not subject to package bidding (i.e., all licenses except in the C Block) in no more than two rounds during the course of the auction. The Bureau further proposed that bidders be able to drop non-provisionally winning bids on packages and on licenses subject to package

bidding in no more than one round of the auction.

241. *Bid Removal*. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the remove bids function in the FCC Auction System, a bidder may effectively unsubmit any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, i.e., a bid that is removed does not count toward bidding activity. These procedures will enhance bidder flexibility during the auction, and therefore the Bureau adopts them for Auction 73.

242. *Bid Withdrawal*. Once a round closes, a bidder may no longer remove a bid. However, in a later round, a bidder may withdraw provisionally winning bids from previous rounds for non-C Block licenses using the withdraw bids function in the FCC Auction System. A 91 provisionally winning bidder that withdraws its provisionally winning bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Once a withdrawal is submitted during a round, that withdrawal cannot be unsubmitted even if the round has not yet ended.

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

244. The *700 MHz Auction Public Notice* proposed limiting each bidder to withdrawals in no more than two rounds during the course of the auction. The round in which withdrawals are used would be at each bidder's discretion. The Bureau received no comments on the number of proposed withdrawal rounds.

245. The Bureau has decided, in contrast to the proposal in the *700 MHz Auction Public Notice*, to limit each bidder to withdrawing bids in only one round of the auction. In recent auctions, the Bureau has detected bidder conduct that, arguably, may have constituted anticompetitive behavior through the use of bid withdrawals. While continuing to recognize that bid withdrawals may reduce risk associated with efforts to secure various licenses in combination, analysis of previous auctions indicates that bidders rarely

need two withdrawal rounds to avoid aggregation risk. Therefore, the Bureau concluded that, for Auction 73, adoption of a limit on the use of withdrawals to one round per bidder will better balance the need for bidding flexibility with the goal of discouraging anti-competitive bidding behavior. The Bureau will therefore limit the number of rounds in which bidders may place withdrawals to one round.

246. The Bureau received a number of comments and replies addressing the proposal not to allow withdrawals on provisionally winning bids for licenses in the C Block. One commenter urges that bidders on C Block licenses should have the same withdrawal options as other bidders. It asserts that this would reduce the exposure risk concerns for C Block bidders. Another commenter asserts that the Bureau's proposal to not allow withdrawals on C Block licenses creates major financial risks for bidders. A third commenter contends that the proposed bid withdrawal rules should be modified, because they could discourage bidding in the C Block and restrict bidders from seeking alternative licenses in later rounds of the auction. A commenter maintains that the highest bids on individual C Block REAG licenses should be subject to standard bid withdrawal rules, rather than those for dropped bids.

247. The Bureau proposed not to permit withdrawals of provisionally winning bids in the C Block because, with package bidding, a withdrawn bid can affect the composition of the provisionally winning set of bids, thus affecting the status of the bids of other bidders. In addition, under the mechanism used to determine CPEs in HPB, a withdrawn bid can affect the prices of other licenses. In SMR, in contrast, license-by-license bidding ensures that a withdrawn bid affects only the status of the bidder placing the withdrawal. Since bidders would be able to use withdrawals in the C Block to affect other bidders, permitting withdrawals would facilitate undesirable strategic bidding behavior. Therefore, to avoid the potential for gaming, the Bureau maintains its position not to permit withdrawals of provisionally winning bids in the C Block.

248. A commenter suggests that withdrawals not be permitted in the D Block. Because the D Block license is nationwide, bidders do not face the risk of winning an incomplete aggregation of licenses in the block. The Bureau will permit that each bidder have only one round in which to withdraw bids, but it does not impose a special prohibition on withdrawals in the D Block,

recognizing that D Block bidders may also need to consider their financial commitment to bids in the C Block, where they are unable to withdraw provisionally winning bids.

249. *Dropped Bids.* A bid for a package or a license in the C Block can become provisionally winning many rounds after it was placed, since HPB considers bids made in previous rounds when determining provisionally winning bids. These non-provisionally winning bids are useful to the auction since they enhance the ability of bidders interested in single licenses or smaller packages to combine their bids with the bids of others to compete with a large package bid, and they provide stability to the process for determining current price estimates. It may be the case, however, that a bidder wishes to focus on alternative licenses instead, and no longer wishes to win one of its previous bids. In order to allow bidders to opt out of non-provisionally winning bids that they no longer wish to win, the Bureau proposed that under HPB, for licenses subject to package bidding, bidders be allowed a limited number of opportunities to drop non-provisionally winning bids from further consideration in the auction.

250. Eliminating non-provisionally winning bids from consideration may affect the current price estimates of other licenses, thereby affecting other bidders. This ability to affect the bids of other bidders may lead to undesirable strategic use of dropped bids. Therefore, the *700 MHz Auction Public Notice* proposed to permit bidders to drop non-provisionally winning bids on packages and on licenses subject to package bidding in no more than one round of the auction. To discourage bidders from dropping bids in order to disadvantage their competitors, the *700 MHz Auction Public Notice* also proposed the following restrictions on the circumstances under which bids may be dropped and on the bidder's subsequent bidding activity: (1) A bidder that is a provisionally winning bidder on a package will not be permitted to drop bids on licenses that are included in the package; (2) a bidder that drops its bids on a license or package will not be permitted to submit further bids on that particular license or package during the auction; and (3) a bidder that drops its bids on a license will not be permitted to submit any bids on packages containing that license for the duration of the auction.

251. Under these proposals, if a bidder drops a bid on a package, it will be permitted to bid individually on the licenses in the package. When a bid is dropped, all of the bidder's previous

bids on that license or package are removed from consideration.

252. No payments are associated with dropped bids. The round in which a bidder may drop non-provisionally winning bids from consideration will be at the bidder's discretion. The Bureau sought comment on these proposals, and on the possibilities of not allowing dropped bids, of allowing dropped bids not subject to all the restrictions proposed, and of imposing other restrictions than proposed.

253. The Bureau received a number of comments and reply comments addressing dropped bids. Several entities favor permitting bidders to re-bid on licenses they previously dropped, some also suggested that dropped bids should be subject to withdrawal payments that the Bureau should consider disallowing dropped bids, and that dropped bids should be announced in advance. A commenter argues that permitting dropped bids in only one round favors package bidders, and may discourage bidders interested in individual licenses from competing in the C Block.

254. Another commenter maintains that the individual C Block REAG licenses should be subject to standard bid withdrawal rules, rather than those for dropped bids. It also proposes that bidders that are outbid on individual REAG C Block licenses should not be committed to their bids if the higher bidder withdraws or drops its bid. Instead, the commenter recommends that the individual license should revert to the Commission with a minimum acceptable bid equal to the second highest bid price.

255. The Bureau also received several requests for clarification of its intended procedures with respect to dropped bids. A commenter suggests that the Bureau allow bidders who drop a package bid to be able to bid on the individual licenses in the dropped package. The Bureau clarifies that this is its intention. The Bureau is not persuaded that it should modify the 95 proposed procedures on dropped bids. Dropped bid procedures in a package bidding environment must be designed to avoid creating disadvantages for other bidders—intentionally or unintentionally—when bids are pulled out of consideration, and the Bureau's rules are designed with that goal in mind. For example, since withdrawn provisionally winning bids can affect the winning bids of other bidders, the Bureau permit drops on non-provisionally winning bids only. Because it is more difficult for bidders on individual licenses to compete against a package bid when only current

round bids are considered, the Bureau considers bids placed in all rounds, including after a bid is dropped, in order not to give an undue advantage to package bidders.

256. In addition, the Bureau finds that these dropped bids procedures, and HPB procedures in general, strike a careful balance between permitting bidders adequate bidding flexibility and discouraging insincere and anti-competitive bidding behavior. For example, the prohibition against rebidding on a license that has been dropped will keep bidders from strategically shifting off of a license so that its price will fall relative to the other licenses competing against a package bid, and then rebidding at a lower relative price. The Bureau adopts the proposal to permit bidders on licenses and packages in the C Block to drop non-provisionally winning bids during any one round of the auction.

257. *Calculation of Bid Withdrawal Payment.* 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 provisionally winning bid in the same or subsequent auction(s). In Auction 73, if a bid is withdrawn on a license in a block that does not meet the reserve price in the initial auction, withdrawal payments will be based on the provisionally winning bid or bids for the license in Auction 76, or in any subsequent auction, consistent with the Bureau's usual withdrawal payment rule. In the case of multiple bid withdrawals on a single license, within the same or subsequent auction(s), the 96 payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any subsequent intervening withdrawn bid, in either the same or subsequent auction(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any final withdrawal payment if there is a subsequent higher bid in the same or subsequent auction(s).

258. Section 1.2104(g)(1) of the rules sets forth the payment obligations of a bidder that withdraws a high bid on a license during the course of an auction, and provides for the assessment of interim bid withdrawal payments. No interim bid withdrawal payments will be assessed until the conclusion of

Auction 76. In the *700 MHz Auction Public Notice*, the Bureau proposed to establish the percentage at ten percent (10%) for the 700 MHz Band auction and sought comment on the proposal.

259. The Bureau received no comments on this issue and adopts its proposal. The Commission will assess an interim withdrawal payment equal to ten percent (10%) of the amount of the withdrawn bids. The ten percent (10%) 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.

#### vi. Round Results

260. Limited information about the results of a round will be made public after the conclusion of the round. Specifically, after a round closes, the Bureau will make available for each license, its current provisionally winning bid amount, the minimum acceptable bid amount for the following round, the amounts of all bids placed on the license during the round, and whether the license is FCC held. If the license is provisionally winning and part of a larger package additional details regarding the package that contains the specific license will be 97 available. The system will also provide an entire license history detailing all activity that has taken place on a license with the ability to sort by round number. The reports will be publicly accessible. Moreover, after the auction, the Bureau will make available complete reports of all bids placed during each round of the auction, including bidder identities.

#### vii. Auction Announcements

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

### V. Auction 76

262. In the *700 MHz Second Report and Order*, the Commission noted the strong public interest in promptly assigning all 700 MHz Band licenses for recovered analog spectrum. Accordingly, the Commission concluded that if licenses for the A, B, C or E Blocks are not assigned because the auction results do not satisfy the applicable aggregate reserve price(s) in Auction 73, the public interest will be served by offering alternative licenses

for the relevant blocks in a subsequent auction, as soon as possible after the initial auction. Similarly, if the license for the D Block is not assigned because the reserve price for that license is not met, the license for the D Block may be offered again. For administrative purposes, the Bureau designates any such subsequent bidding as Auction 76.

263. As detailed in the *700 MHz Second Report and Order*, any alternative A, B and E Block licenses will be subject to alternative performance requirements. Alternative C Block licenses will be based on different geographic areas and spectrum bandwidth. In addition, the alternative C Block licenses will not be subject to the open platform conditions applicable to the licenses initially offered for the C Block.

264. The Commission concluded that the public interest in prompt licensing of 700 MHz spectrum and the related nature of licenses in Auctions 73 and 76 made it appropriate to adopt auction procedures treating Auctions 73 and 76 as a single auction for purposes of assessing bidders' qualifications and applying the Commission's anti-collusion rule. The Commission directed the Bureau to permit only qualified bidders in Auction 73, to participate in Auction 76, and to use the same auction design, including the applicable aggregate reserve price(s), insofar as possible. The Commission also required the Bureau to establish procedures that give applicants an opportunity to obtain bidding eligibility specifically for licenses offered in a contingent subsequent auction. Accordingly, the Bureau sought comment on specific procedures for contingent subsequent bidding. Generally, the Bureau will apply the Commission's competitive bidding rules with a presumption that Auctions 73 and 76 should be considered to be a single auction, subject to explicit exceptions when necessary. With the following detailed exceptions, the Bureau will apply all of the previously discussed procedures for Auction 73 to Auction 76.

#### A. Announcement of Auction 76

265. If, at the close of bidding in Auction 73, the aggregate reserve price for any block has not been met, the Bureau will issue an announcement that bidding in Auction 73 has closed and that Auction 76 will commence on a date not later than three weeks following the announcement. The announcement of Auction 76 will establish the deadline by which Auction 73 qualified bidders that selected licenses to be offered in Auction 76 may

obtain additional bidding eligibility for Auction 76 by supplementing their upfront payments, if necessary. In the event that the reserve price for the D Block license is met during Auction 73, a Closing Public Notice will be released with respect to the D Block. In the event that Auction 73 results meet the reserve prices in all blocks, the Bureau will proceed to issue a Closing Public Notice and Auction 76 will not be held.

#### *B. Licenses To Be Offered*

266. Any licenses in the A, B, D and E Blocks available in Auction 76 will cover the same geographic areas and frequencies as such licenses offered in Auction 73. However, the alternative C Block will include C1 Block licenses offered in each of the 176 EAs and C2 Block licenses offered in each of the 12 REAGs. A complete list of licenses that may be available in Auction 76 is included as Attachment B of the *Auctions 73 and 76 Procedures Public Notice*.

#### *C. Auction Structure*

##### *i. Licenses for Blocks A, B, D and/or E*

267. If Auction 76 offers licenses in blocks not subject to package bidding in Auction 73—Blocks A, B, D, and/or E—those block will not be subject to package bidding in Auction 76, and will be offered using the Commission's standard SMR auction design. The procedures applicable to the auction will be the same with respect to licenses for Blocks A, B, D and E in Auction 73.

##### *ii. Alternative Licenses for C Block—Available Packages*

268. In the *700 MHz Auction Comment Public Notice*, the Bureau sought comment on whether to accept package bids for alternative licenses for the C Block using the HPB auction design for the initial C Block licenses. One commenter proposed that package bids be accepted on three potential packages, one package of all C1 Block licenses, one package of all C2 Block licenses, and one package of all C 1 and C2 Block licenses. Two other commenters argue against accepting any package bids for alternative C Block licenses, contending that the complexity that they believe should preclude package bidding with respect to the original 12 C Block licenses will be further exacerbated should the Commission offer 188 alternative C1 and C2 Block licenses in subsequent bidding.

269. The Bureau concluded that it will use non-package bidding SMR procedures for licenses in the C1 Block and HPB package bidding procedures

for C2 Block licenses. This approach balances the Commission's interest in providing opportunities for new entrants competing on a nationwide basis with its goal of offering alternative licenses that may be of greater interest to a different mix of bidders, including smaller entities.

270. Accordingly, if there is subsequent bidding on alternative licenses in the C Block, the Bureau will employ the HPB auction design for the C2 Block only, with package bids accepted on the packages. The procedures applicable to the HPB auction of C2 Block licenses will be the same as those with respect to C Block licenses in Auction 73, subject to the differences.

271. Licenses in the C1 Block will be auctioned using the SMR auction procedures for licenses in Blocks A, B, D and E in auctions 73 and 76. Bids for alternative C1 Block licenses will be accepted on individual EA Block licenses only.

272. With respect to C2 Block licenses, bids will be accepted on individual REAG licenses, and on three packages, consisting of a package of REAGs 1–8 (the 50 States), REAGs 10 & 12 (the Atlantic territories), and REAGs 9 & 11 (the Pacific territories). The hierarchical package structure for the C2 licenses is the same as was adopted for the C Block licenses in auction 73.

#### *D. Bidder Qualification*

273. As directed by the Commission, only applicants found qualified to bid in Auction 73 may be eligible to bid in Auction 76. To be eligible to bid in Auction 76, an Auction 73 qualified bidder also must have selected a license offered in Auction 76 on the abbreviated Auction 76 application filed together with its application to participate in Auction 73. The announcement that Auction 73 bidding has ended without one or more aggregate reserve prices 101 being met also will announce the deadline by which such bidders may submit supplemental upfront payments to purchase bidding eligibility in the subsequent auction.

274. In response to the *700 MHz Auction Public Notice*, a commenter contends that the Commission's treatment of Auction 73 and any contingent subsequent auction as a single auction for purposes of the Commission's anti-collusion rule requires that applicants select all licenses in which they may be interested, including potential alternative licenses, prior to bidding in Auction 73. The commenter contends that this result is compelled by the § 1.2105(b)(2) of the Commission's

competitive bidding rules, which prohibits changes in license selection after the initial application filing deadline. Moreover, the commenter contends that requiring applicants to select potential alternative licenses prior to Auction 73 will limit the amount of time required between Auction 73 and any contingent subsequent auction.

275. Given the presumption that Auction 73 and any contingent subsequent bidding on licenses should be treated as a single auction, the Bureau has concluded that applicants should select both licenses offered in Auction 73 and licenses that may be offered in Auction 76 by the initial deadline for filing an application to participate in Auction 73. The Bureau concluded that bidders will be able to make informed selections prior to Auction 73 of licenses, including alternative licenses that may be offered in contingent subsequent bidding. Bidders will have the opportunity to obtain additional bidding eligibility for licenses to be offered subsequently. These procedures will enable contingent subsequent bidding, if necessary, to proceed with minimal delay.

##### *i. Bidder Status*

276. To participate in Auction 76, a potential bidder must: (1) Have become qualified to bid for at least one license offered in Auction 73 by selecting license(s) offered in Auction 73 and making an upfront payment sufficient to establish eligibility to bid for at least one of those license(s), and (2) file an abbreviated Auction 76 application and selected at least one license offered in Auction 76. Qualified bidders in Auction 73 need not bid on the licenses offered in Auction 73 in order to be able to become qualified to participate in Auction 76.

##### *ii. Auction 76 Initial Bidding Eligibility*

277. For Auction 76, qualified bidders will have their initial bidding eligibility based on their initial bidding eligibility in Auction 73 and will also have an opportunity to purchase additional bidding eligibility. However, qualified bidders' initial bidding eligibility for Auction 73 will be reduced for Auction 76 if they hold winning bids for any licenses offered in Auction 73 in blocks for which the reserve price was met in Auction 73. For winning bidders of licenses in the A, B, C, or E Blocks, the amount of the reduction will be equal to the number of bidding units associated with the licenses won. For the winning bidder of the D Block license, the amount of the reduction will be equal to the amount of any withdrawal payment owed for withdrawn bid(s) on the D

Block license plus the amount of the net winning bid for the D Block license, up to the amount of the winning bidder's initial Auction 73 bidding eligibility.

iii. Supplementing Upfront Payments To Obtain Additional Eligibility

278. All bidders qualified to participate in Auction 76 will have an opportunity to purchase additional bidding eligibility. Bidders will be able to purchase additional bidding eligibility for licenses to be offered in Auction 76 by supplementing their upfront payments pursuant to the procedures for making upfront payments by wire transfer set forth in the *Auction 73 and 76 Procedures Public Notice*, subject to a schedule to be announced following the close of bidding in Auction 73.

iv. Continuing Applicability of the Anti-Collusion Rule

279. In the *700 MHz Second Report and Order*, the Commission directed the Bureau to adopt any procedures that may enhance the effectiveness of an auction of licenses in Auction 73 or any contingent subsequent auction. In part, the Commission found that the Commission's anti-collusion rule should treat Auction 73 and any such subsequent auction as a single auction, given the related nature of the auctions. Accordingly, the applicable down payment deadline marking the end of the anti-collusion period for Auction 73 and any subsequent auction shall be the down payment deadline established following the close of the subsequent auction.

E. Bidding Procedures

i. Aggregate Reserve Prices

280. As required by the Commission, the licenses in subsequent bidding will be subject to the same aggregate reserve price(s) applicable in the initial auction. A commenter argues in its comments that the licenses in the second auction should not be subject to any reserve prices because using a reserve price in the contingent subsequent auction runs the risk that the licenses will not be awarded prior to the June 30, 2008, statutory deadline for filing auction proceeds. As a commenter acknowledges in its comments, the Commission decision in the *700 MHz Second Report and Order* is binding, absent reconsideration of that Order by the Commission as a whole. Consequently, the commenters proposal is beyond the scope of the present non-rulemaking auctions procedures process.

281. In the *700 MHz Second Report and Order*, the Commission noted that the Bureau has delegated authority to determine how to allocate the C Block reserve price upon auction of alternative licenses. Accordingly, in the *700 MHz Auction Comment Public Notice*, the Bureau proposed to apply the C Block aggregate reserve price of \$4.637854 billion to all of the alternative C Block licenses. That is, the sum of the gross bid amounts on the C1 and C2 Block licenses must equal or exceed \$4.637854 billion in order to meet the reserve price. No commenters addressed this proposal.

282. The Bureau adopts its proposal, with one additional feature. In the event that the sum of the gross bid amounts on the C1 and C2 Block licenses does not meet the reserve price 104 covering both blocks, the Bureau then will apportion the aggregate reserve price between the two blocks based on their respective bandwidth and apply those aggregate reserve prices to the respective blocks separately. More specifically, if the aggregate reserve price of \$4.637854 billion covering both Blocks C1 and C2 is not met, the Commission nevertheless will assign licenses for the respective block based on the auction results if the gross bid amounts on the C 1 Block licenses exceed \$2.529739 billion or the gross bid amounts on the C2 Block licenses exceed \$2.108115 billion. Applying these separate aggregate reserve prices will increase the likelihood that licenses will be assigned for the respective blocks in the contingent subsequent auction, while continuing to apply the aggregate reserve price from the initial auction to each block in proportion to the megahertz in each block.

ii. Minimum Opening Bids

283. For Auction 76, the Bureau will calculate minimum opening bid amounts on a license-by-license basis using the same approach as in Auction 73, drawing on the Auction 66 prices that were bid on licenses for the exact same geographic areas. For any licenses that may be offered in Auction 76, including alternative C1 and C2 Block licenses, minimum opening bids are set forth in Attachment B of the *Auction 73 and 76 Procedures Public Notice*.

F. Additional Procedures

284. In the *700 MHz Auction Comment Public Notice*, pursuant to Commission direction, the Bureau sought comment on the possibility of denying bidding eligibility in a contingent subsequent auction based on bidder behavior in Auction 73, if that behavior appeared designed to thwart

the assignment of licenses. Specifically, the Bureau proposed that bidders defaulting on winning bids in Auction 73 should be denied eligibility in any subsequent auction. The Bureau declines to restrict the circumstances under which it might deny bidding eligibility in a contingent subsequent auction to an otherwise qualified bidder. The Commission retains the authority to sanction bidders that are found to have violated the antitrust laws or the 105 Commission's rules in connection with competitive bidding by requiring forfeiture of any upfront payments, down payment or full bid amounts, and by prohibiting the bidders participation in future auctions. The Commission intends to make full use of this authority, including banning participation in a contingent subsequent auction, with respect to bidders that seek to thwart the assignment of licenses in Auction 73.

VI. Post-Auction Procedures

A. Considerations Relating to Certain Post-Auction Payment Rules

i. Apportioning Package Bids

285. In package bidding, when a bidder places an all-or-nothing bid on a package of licenses, there will be no identifiable bid amounts on the individual licenses that comprise the package. However, the Commission's competitive bidding rules and procedures assume that the amount of each bid on an individual license always is known. For example, rules for calculating the amount of small business, new entrant, or tribal land bidding credits presume that the winning bid on the license is known. Similarly, in determining the amount of a default or withdrawal payment, which involves a comparison between the withdrawing or defaulting bidder's bid and a subsequent bid, the rules assume that there are bid amounts for individual licenses. Accordingly, the Commission recently adopted a rule providing that, in advance of each auction with package bidding, the Commission shall establish a methodology for determining how to estimate the price or bid on an individual license included in a package of licenses.

286. The Bureau proposed to apportion package bids when regulatory calculations require individual license bid amounts by dividing the package bid amount among the licenses comprising the package in proportion to the number of bidding units for each license. Alternatively, the Bureau proposed to use the final round CPEs for each license to apportion package bids.

The Bureau sought comment on these proposals.

287. A commenter suggests that the Bureau use a measure more closely related to relative license values, such as minimum opening bid amounts, to apportion package bid amounts among the licenses in the package. The Bureau accepts the commenter's recommendation that relative license values be used to apportion package bids, but rather than use a pre-auction estimate of value such as minimum opening bids, the Bureau will use the final CPEs of the licenses in the package, as in its alternative proposal. Final CPEs will reflect relative prices as determined in Auction 73. Therefore, when regulatory calculations require individual license bid amounts, the Bureau will divide the package bid amount among the licenses comprising the package in proportion to the final round CPEs for the licenses.

ii. Interim Withdrawal Payment Percentage

288. In general, the Commission's rules provide that a bidder that withdraws a bid during an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or a subsequent auction. However, if a license for which a bid has been withdrawn does not receive a subsequent higher bid or winning bid in the same auction, the final withdrawal payment cannot be calculated until a corresponding license receives a higher bid or winning bid in a subsequent auction. When that final payment cannot yet be calculated, the bidder responsible for the withdrawn bid is assessed an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed.

289. The Commission recently amended its rules to provide that in advance of the auction, the Commission shall establish a percentage between three percent and twenty percent of the withdrawn bid to be assessed as an interim bid withdrawal payment. When it adopted the new rule, the Commission indicated that it would consider the nature of the service and the inventory of the licenses being offered when determining the level of the interim withdrawal payment in a particular auction.

290. In the *700 MHz Auction Public Notice*, the Bureau noted that the 700 MHz auction will offer licenses under several different geographic licensing schemes and bandwidth sizes, and it found that bidders may have a

legitimate interest in using withdrawals to facilitate their efforts to aggregate licenses across potentially substitutable blocks of licenses not subject to package bidding. The Bureau also observed that the likely significant bid amounts for licenses in this auction (and resulting absolute value of withdrawal payments) will in themselves serve as a deterrent to unnecessary withdrawals. Therefore, the Bureau did not propose to set the interim bid withdrawal payment at the maximum rate of twenty percent. At the same time, the Bureau noted that a rate above the minimum three percent will help deter undesirable strategic use of withdrawals. Specifically, the Bureau proposed to establish an interim bid withdrawal payment of ten percent of the withdrawn bid in the 700 MHz auction and sought comment on this issue.

291. No commenters suggested any alternative to the Bureau's proposed percentage for interim withdrawal payments. For the reasons set forth above and in the *700 MHz Auction Public Notice*, the Bureau adopts its proposal. The Commission will assess an interim withdrawal payment equal to ten percent (10%) of the amount of the withdrawn bids. The ten percent (10%) 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. Section 1.2104(g) provides specific examples showing application of the bid withdrawal payment rule.

iii. Additional Default Payment Percentage

292. Any winning bidder that defaults or is disqualified after the close of an 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) is liable for a default payment under § 1.2104(g)(2) of the Commission's rules. This payment consists of a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less. Until recently this additional payment for non-combinatorial auctions has been set at three percent of the defaulter's bid or of the subsequent winning bid, whichever is less.

293. The percentage of the bid that a defaulting bidder must pay in addition to the deficiency will depend on the auction format ultimately chosen for a particular auction. In non-package auctions, the amount can range from three percent up to a maximum of twenty percent, established in advance of the auction and based on the nature of the service and the inventory of the licenses being offered. In auctions with package bidding, the additional payment is set, pursuant to § 1.2104(g)(2)(ii), at 25 percent of the applicable bid. This higher level reflects the fact that a defaulted winning bid in an auction with package bidding may have affected which other bids were winning other licenses.

294. The Bureau proposed to establish an additional default payment of fifteen percent with respect to bids on licenses in Blocks A, B, D, and E, which are not subject to package bidding. As previously noted by the Commission, defaults weaken the integrity of the auction process and impede the deployment of service to the public, and an additional default payment of more than three percent will be more effective in deterring defaults. Moreover, the Bureau concluded an additional default payment greater than ten percent, which the Commission has established in several recent auctions, is appropriate for the 700 MHz auction. Because no licenses in Blocks A, B, or E will be sold unless the aggregate reserve price for that block is met, bidders may have an additional incentive to bid on a license and later default (after determination that the reserve price has been met), in order to help ensure that the reserve price is met and other initial licenses in the block are assigned. The Bureau concluded that a higher additional default 109 payment will help deter such behavior. With respect to the D Block, for which there is a single nationwide license that will not be assigned unless the D Block reserve price is met, a default by the winning bidder will delay the especially time-sensitive process of establishing a public-private partnership for the provision of public safety services. Given the unusually large public interest benefits of timely licensing the D Block, the Bureau proposed to deter defaults by imposing a higher additional default payment in that block as well. Accordingly, it proposed an additional default payment of fifteen percent on licenses in the A, B, D, and E Blocks. The Bureau sought comment on this proposal. The Bureau stated that for licenses in the C Block, because they are subject to package bidding, the

additional default payment will be twenty-five percent as set forth in § 1.2104(g)(2)(ii). This additional default payment will apply to all bids for packages and for licenses that are subject to package bidding.

295. While no comments were filed in response to the *700 MHz Auction Public Notice* focused on the appropriate percentage for the additional default payments, a commenter proposed in its comments that the Commission impose no default penalty in connection with any defaults on a winning bid for the D Block license. The commenter's argument focused particularly on a scenario where the winning bidder is unable to negotiate a Network Sharing Agreement with the Public Safety Licensee, even while negotiating in good faith. Another commenter opposed this proposal in its reply because it runs counter to the Commission's decision in the *700 MHz Second Report and Order*, which held that [i]n the event that the long-form application filed by the winning bidder for the D Block license is denied, the winning bidder of the D Block licenses will be deemed to have defaulted \* \* \* [and] it will be liable for the default payment set forth in the Commission's competitive bidding rules. Accordingly, the commenter's proposal is beyond the scope of the current non-rulemaking auction procedures process.

296. The Bureau adopts its proposal and sets the additional default payment percentage at fifteen percent of the defaulted bid for licenses in the A, B, D and E Blocks. Pursuant to existing Commission rules regarding licenses subject to package bidding, the additional default payment percentage will be twenty-five percent of the defaulted bid for licenses in the C Block. These percentages are appropriate to reduce the risk that bidders may default on their winning bids.

#### B. Down Payments

297. After bidding has ended in Auction 73 and Auction 76, the Commission will issue a public notice declaring the auction(s) closed and identifying winning bidders, down payments and final payments due. In addition, if the D Block bidding satisfies the reserve price and there is a winning bidder for the D Block license in Auction 73, the Commission will issue a public notice identifying the winning bidder, down payments and final payments due after bidding ends in Auction 73, even if Auction 76 will be held for licenses in any other block(s).

298. Within ten business days after release of the auction closing notice, each winning bidder must submit

sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for licenses offered in Auction 73 and Auction 76 to 20 percent of the net amount of its winning bids (gross bids less any applicable small business or very small business bidding credits).

#### C. Final Payments

299. Each winning bidder will be required to submit the balance of the net amount of its winning bids within 10 business days after the applicable deadline for submitting down payments.

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

300. Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 601) for each license won through Auction 73 and/or Auction 76. Winning bidders that are small 111 businesses or very small businesses must demonstrate their eligibility for a small business or very small business bidding credit. Further filing instructions will be provided to auction winners at the close of the auction.

301. The *CSEA/Part 1 Report and Order*, 71 FR 6214, February 7, 2006, modified the procedure by which a consortium that is a winning bidder in Auction 73 and/or Auction 76 will apply for a license. In particular, (a) each member or group of members of a winning consortium seeking separate licenses will be required to file a separate long-form application for its respective license(s) and, in the case of a license to be partitioned or disaggregated, the member or group filing the applicable long-form application shall provide the parties' partitioning or disaggregation agreement in its long-form application; (b) two or more consortium members seeking to be licensed together shall first form a legal business entity; and (c) any such entity must meet the applicable eligibility requirements for small business status. Applicants applying as consortia should review the *CSEA/Part 1 Report and Order* in detail and monitor any relevant future proceedings to understand how the members of the consortia will apply for a license in the event they are winning bidders.

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

302. 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. An ownership disclosure record is automatically created in ULS for any applicant that submits an FCC Form 175. However, winning bidders will be required to review and confirm that it is complete and accurate as of the date of filing Form 601. Further instructions will be provided to winning bidders at the close of the auction.

#### F. Tribal Lands Bidding Credit

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

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

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

#### G. Default and Disqualification

306. Any winning bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments

described in 47 CFR 1.2104(g)(2). The payments include both a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

307. Pursuant to recent modifications to the rule governing default payments, the percentage of the applicable bid to be assessed as an additional payment for defaults in a particular auction is established in advance of the auction. Accordingly, in the *700 MHz Auction Public Notice*, the Bureau proposed to set the additional default payment for the auction of 700 MHz Band licenses at fifteen percent of the applicable bid with respect to bids on licenses in Blocks A, B, D, and E, which are not subject to package bidding. For licenses in the C Block, because they are subject to package bidding, the additional default payment will be twenty-five percent as set forth in § 1.2104(g)(2)(ii).

308. The Commission will apportion package bids when regulatory calculations require individual license bid amounts by dividing the package bid amount among the licenses comprising the package in proportion to the final round CPEs for the licenses. Accordingly, in the event that a winning bidder defaults on a package bid for C Block licenses and the licenses subsequently are won individually or in a different combination, the Bureau will apportion the defaulted package bid for the C Block licenses based on the ratio of the bidding units for the relevant licenses to the bidding units for the entire package.

309. The Bureau adopted its proposal and sets the additional default payment for the auction of 700 MHz Band licenses at fifteen percent of the applicable bid for licenses in Blocks A, B, D, and E and at twenty-five percent of the applicable bid for Block C packages and licenses.

310. Finally, the Bureau notes that in the event of a default, the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at its final bid amount. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare

the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant.

#### *H. Refund of Remaining Upfront Payment Balance*

311. The Commission received two sets of comments addressing the refund of upfront payments. One commenter urges that the Commission clarify that it will promptly refund upfront payments after the close of the initial auction, prior to Auction 76. It maintains that this would promote full participation in the auction. Another commenter advocates the adoption of procedures for the refund of upfront payments, and other deposits, after they are deposited in the Digital Television Transition and Public Safety Fund on June 30, 2008, pursuant to the DTV Act. The commenter argues that the lack of such procedures would discourage the participation of potential applicants.

312. The Commission concluded that Auction 73 and Auction 76 are a single auction event for purposes of the Commission's anti-collusion rule. Applicants in Auction 73 are prohibited from communicating bids or bidding strategies prior to the conclusion of Auction 76. Disclosing the activity of applicants in Auction 73 or Auction 76 by providing for refunds of upfront payments prior to the conclusion of Auction 76 would conflict with this conclusion. As a practical matter, the Bureau notes that applicants in any Commission auction must take into account the fact that the Commission's auctions are of indefinite duration. Thus, even if Auction 76 should not prove necessary, applicants cannot reasonably expect the return of funds by any specific date and therefore cannot reasonably require that funds be refunded immediately after the Commission announces that it will make alternative licenses available for Auction 76. Moreover, bidders in Auction 73 subject to any liabilities arising from Auction 73 may not have the extent of their liability determined prior to the close of Auction 76. For example a bidder that withdrew a provisionally winning bid in Auction 73 would be subject to a determination of the extent of its liability only after the conclusion of Auction 76. The

Commission has never provided for refunds of upfront payments to such bidders. In the past, the Commission has provided for refunds of upfront payment to bidders that have no auction liabilities and no remaining bidding eligibility prior to the competition of an auction. Nevertheless, the Commission has not made any such refunds in auctions subject to anonymous bidding. For all of these reasons, the Bureau concluded that bidders reasonably should be required to maintain their upfront payments in Auction 73 and Auction 76 on deposit with the Commission until the conclusion of any contingent subsequent auction.

313. All upfront payments submitted by applicants in Auction 73 and all upfront payments submitted by Auction 73 qualified bidders in connection with Auction 76 may be available to be refunded after the conclusion of any contingent subsequent auction; subject to any required payments (i.e. winning bid, deficiency, withdrawal, and/or default payments). 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.

314. Bidders are encouraged to file their refund information electronically using the Refund Information icon found on the *Auction Application Manager* page or through the Wire Transfer for Refund Purposes link available in various locations throughout the FCC Auction System. If an applicant has completed the refund instructions electronically, the refund will be sent automatically. If an applicant has not completed the refund instructions electronically, the applicant may send a written request for the refund, including wire transfer instructions and FCC Registration Number (FRN) by facsimile to the Auctions Accounting Group at (202) 418-2843 or by mail to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Gail Glasser, 445 12th Street, SW., Room 1-C864, Washington, DC 20554.

Federal Communications Commission.

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