

application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. A copy of this notice must be placed in the public inspection file along with the application. Additionally, an applicant for assignment of license must broadcast the same notice over the station at least once daily on four days in the second week immediately following the tendering for filing of the application.

On April 4, 2000, the Commission adopted a Report and Order in MM Docket No. 95-31 in the Matter of Reexamination of the Comparative Standards for Noncommercial Educational Applicants. This Report and Order adopted new procedures to select among competing applicants for noncommercial educational (NCE) broadcast channels. The new procedure will use points to compare objective characteristics whenever there are competing applications for full-service radio or television channels reserved for NCE use. The new procedure established a four-year holding period of on-air operations for licenses approved as a result of evaluation in a point system. The FCC 314 has been revised to reflect the new policy and to require stations authorized under the point system who have not operated for a four-year period to submit with their applications an exhibit demonstrating compliance with Section 73.7005.

The data is used by FCC staff to determine whether the applicants meet basic statutory requirements to become a Commission licensee/permittee and to assure that the public interest would be served by grant of the application.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

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FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC-00-35-E (Auction No. 35); DA 00-2259]

Notice and Filing Requirements for 422 Licenses in the C and F Block Broadband PCS Spectrum Auction Minimum Opening Bids, Upfront Payments and Other Procedural Issues For Final Auction Inventory

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids

for the upcoming auction of broadband Personal Communications Services (PCS) spectrum and also provides the final inventory of licenses to be made available for this auction; we will not add to this inventory for the December 12, 2000, auction.

DATES: Auction No. 35 is scheduled for December 12, 2000.

FOR FURTHER INFORMATION CONTACT: Auctions and Industry Analysis Division: Audrey Bashkin, Legal Branch, or Craig Bomberger, Auctions Operations Branch, at (202) 418-0660; Lisa Stover, Auctions Operations Branch, at (717) 338-2888. Commercial Wireless Division: Gary Oshinsky, Policy and Rules Branch, at (202) 418-7167 or JoAnn Epps, Licensing and Technical Analysis Branch, at (202) 418-0620. Media Contact: Meribeth McCarrick at (202) 418-0654.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released October 5, 2000. The complete text of the public notice, including Attachments A through I, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW, Washington, D.C. 20036, (202) 857-3800. It is also available on the Commission's web site at <http://www.fcc.gov>.

List of Attachments available at the FCC:

- Attachment A..... Upfront Payments and Minimum Opening Bids for Auction No. 35
- Attachment B..... FCC Auction Seminar Registration Form Auction No. 35
- Attachment C..... Electronic Filing and Review of the FCC Form 175
- Attachment D..... Guidelines for Completion of FCC Form 175 and Exhibits
- Attachment E..... Auction-Specific Instructions for FCC Remittance Advice (FCC Form 159-July 1997 edition)
- Attachment F..... FCC Bidding Preference/Remote Software Order Form Auction No. 35
- Attachment G..... Bid Increments and Exponential Smoothing
- Attachment H..... Accessing the FCC Network to File FCC Form 175
- Attachment I..... Summary Listing of Documents from the Commission and the Wireless Telecommunications Bureau Addressing Application of the Anti-Collusion Rules

I. General Information

A. Introduction

1. By this public notice, the Wireless Telecommunications Bureau ("Bureau") announces the procedures and minimum opening bids for the upcoming auction of broadband Personal Communications Services (PCS) spectrum in the C and F blocks (Auction No. 35) scheduled for December 12, 2000. The public notice also provides the final inventory of licenses to be made available for this auction; we will not add to this inventory for the December 12, 2000, auction.

2. On March 3, 2000, in accordance with the Balanced Budget Act of 1997, the Bureau released the *Auction No. 35 Public Notice* seeking comment on reserve prices or minimum opening bids and the procedures to be used in Auction No. 35. After the August 29, 2000 release of the *C/F Block Sixth Report and Order*, 65 FR 53624 (September 5, 2000), the Bureau released the *Auction No. 35 Comment Public Notice*, 65 FR 55243 (September 13, 2000) on September 6, 2000, revising the list of licenses available and again seeking comment on reserve prices or minimum opening bids and the procedures to be used in Auction No. 35. The Bureau received seven comments and two reply comments in response to the *Auction No. 35 Public Notice*, and three comments and two reply comments in response to the *Auction No. 35 Comment Public Notice*.

i. Background of Proceeding

3. Auction No. 35 will be the fourth auction of C block spectrum and the third auction of F block spectrum. In the past, these spectrum blocks were designated by the Commission as "entrepreneurs' blocks," meaning that participation in auctions of C and F block licenses was limited to entities qualifying under the Commission's rules as entrepreneurs. The initial C block licenses were awarded through two auctions, Auction No. 5, which ended on May 6, 1996, and Auction No. 10, which concluded on July 16, 1996. Auction No. 11, the initial F block auction, ended on January 14, 1997, and also included D and E block licenses. Auction No. 22, which concluded on April 15, 1999, made available C, E, and F block licenses that had been returned to, or reclaimed by, the Commission.

4. On August 29, 2000, the Commission released the *C/F Block Sixth Report and Order*, revising the service and auction rules for auction of C and F block PCS licenses. The Commission decided to reconfigure

each 30 MHz C block license available in Auction No. 35 and other future broadband PCS auctions into three 10 MHz C block licenses. The Commission also divided Basic Trading Areas ("BTAs") into two tiers according to the population size, with Tier 1 comprising markets with population at or above 2.5 million, based on 1990 census figures, and Tier 2 comprising the remaining markets. The Commission decided that some licenses would be available to all bidders in "open" bidding, while other licenses would be available only to entrepreneurs in "closed" bidding. The Commission established open bidding for all C and F block licenses available but unsold in Auction No. 22 or any subsequent auction. The Commission also established open bidding for the following licenses: two of the three

reconfigured 10 MHz C block licenses in Tier 1, one of the three reconfigured 10 MHz C block licenses in Tier 2, the 15 MHz C block licenses in Tier 1, and all F block licenses (Tier 1 and Tier 2). The Commission established small and very small business bidding credits of 15 percent and 25 percent, respectively, for licenses won in open bidding and eliminated bidding credits for licenses won in closed bidding. Additionally, the Commission removed from its rules the § 24.710 license cap, which had prohibited an applicant from winning more than 98 of the licenses available in the C and F blocks. Finally, the Commission decided that the Commercial Mobile Radio Services spectrum cap would continue to apply to C and F block licenses, including those won in Auction No. 35.

ii. Licenses to Be Auctioned

5. The 422 licenses available in Auction No. 35 cover 195 various BTAs and consist of 312 C block 10 MHz licenses, 43 C block 15 MHz licenses, and 67 F block 10 MHz licenses. As stated, the BTAs are divided into two tiers according to the population size, with Tier 1 comprising markets with population at or above 2.5 million, and Tier 2 comprising the remaining markets. There will be 252 licenses open to all bidders in "open" bidding, while 170 licenses will only be available to entrepreneurs in "closed" bidding.

6. The following table contains the Block/Eligibility Status/Frequency Cross-Reference List for Auction No. 35:

Channel block	Eligibility status		Bandwidth (MHz)	Frequencies
	Tier 1	Tier 2		
C1	[Open]	Closed	15	1902.5–1910, 1982.5–1990
C2	[Open]	Closed*	15	1895–1902.5, 1975–1982.5
C3	Closed*	Closed*	10	1895–1900, 1975–1980
C4	Open	Closed*	10	1900–1905, 1980–1985
C5	Open	Open	10	1905–1910, 1985–1990
F	Open	Open	10	1890–1895, 1970–1975

Note: Brackets indicate that no licenses of the particular tier/channel block combination will be available in Auction No. 35. *The entrepreneur eligibility restriction does not apply to licenses that were available but unsold in Auction No. 22. Tier 2 C2 licenses are classified as closed, but all of the C2 licenses available in Auction No. 35 were available but unsold in Auction No. 22 and are therefore open to all bidders. Certain C block licenses were also available but unsold in Auction No. 22 (as 30 MHz licenses), and the corresponding C3 and C4 licenses are therefore open to all bidders.

7. A complete list of licenses available for Auction No. 35 is included as Attachment A of the Public Notice. The attachment specifies the eligibility status of each license.

8. AT&T proposes switching the eligibility status of the C3 and C5 blocks, thereby making all of the C3 licenses open to all bidders. AT&T argues that the C3 block should be open rather than the C5 block, because that would afford AT&T and other bidders the opportunity to obtain 20 MHz of contiguous spectrum. We note that granting AT&T's request would be contrary to the Commission's recently adopted rules on the location of open and closed blocks of C block spectrum. As the Commission indicated in the *C/F Block Sixth Report and Order*, it placed the closed band(s) next to the F block spectrum in order that entrepreneurs aggregating newly acquired closed 10 MHz C block licenses with F block licenses might enjoy reduced base station facilities costs and simplified maintenance requirements. Accordingly, we will not make the change requested by AT&T.

B. Rules and Disclaimers

i. Relevant Authority

9. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to Broadband PCS, contained in title 47, part 24, of the Code of Federal Regulations, and those relating to application and auction procedures, contained in title 47, part 1, of the Code of Federal Regulations.

10. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, "Terms") contained in this public notice; the *Auction No. 35 Comment Public Notice*; the *C/F Block Sixth Report and Order*; the *Part 1 Fifth Report and Order*, 65 FR 52323 (August 29, 2000); the *C Block Second Report and Order*, 62 FR 55348 (October 24, 1997); the *C Block Reconsideration Order*, 63 FR 17111 (April 8, 1998); the *C Block Fourth Report and Order*, 63 FR 50791 (September 23, 1998); part 24, subparts A, B, C, E, H, and I, of the Commission's Rules concerning broadband PCS; and part 1, subpart Q, of the Commission's Rules concerning competitive bidding proceedings.

11. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission rules and with all, public notices and pronouncements, including orders on delegated authority or by the Commission relevant to one or more of the licenses or otherwise pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Internet node via anonymous ftp at <ftp://fcc.gov> or the FCC Auctions World Wide Web site at <http://www.fcc.gov/wtb/auctions>. Additionally, documents may be obtained for a fee, by calling the Commission's copy contractor, International Transcription Service, Inc. ("ITS"), at (202) 314-3070. When ordering documents from ITS, please provide the appropriate FCC number (for example, FCC 00-313 for the *C/F Block Sixth Report and Order*). See also Due Diligence section.

ii. Prohibition of Collusion

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

13. 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. In Auction No. 35, for example, the rule would apply to any applicants bidding for the same BTA. Therefore, applicants that apply to bid for any license in a BTA would be precluded from communicating after filing the FCC Form 175 short-form application with any other applicant for a license in the same BTA. However, applicants may enter into bidding agreements *before* filing their FCC Form 175, as long as they disclose the existence of the agreement(s) in their FCC Form 175. If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application under § 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other applicants for the same geographic license areas. By signing their FCC Form 175 short-form

applications, applicants are certifying their compliance with § 1.2105(c). In addition, § 1.65 of the Commission's rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, § 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules immediately upon learning of such violation.

14. A summary listing of documents from the Commission and the Bureau addressing the application of the anti-collusion rules may be found in Attachment I of the Public Notice.

iii. Due Diligence

15. Potential bidders are reminded that private and common carrier fixed microwave services ("FMS") operating in the 1850–1990 MHz band (and other bands) are being relocated to available frequencies in higher bands or to other media. Bidders should become familiar with the status of FMS operation and relocation, and applicable Commission rules and orders, in order to make a reasoned, appropriate decision about their participation in Auction No. 35 and their bidding strategy.

16. Potential bidders and interested parties should be aware that various proceedings that may relate to the licenses available in Auction No. 35 may be pending or subject to further administrative review before the Commission, including, for example, waiver requests, petitions for reconsideration, and applications for review. In addition, certain judicial proceedings that may relate to the licenses available in Auction No. 35 are pending or may be subject to further review. Resolution of these matters could have an effect on the availability of spectrum included in Auction No. 35, and the auction is subject to such matters. Some of these matters (whether before the Commission or the courts) may not be resolved by the time of the auction. The Commission will continue to act on matters before it, but it makes no representations as to the resolution of judicial proceedings. Potential bidders are solely responsible for identifying associated risks, and investigating and evaluating the degree to which such matters may affect their ability to bid on or otherwise acquire licenses in Auction No. 35.

17. Potential bidders may obtain information about licenses available in Auction No. 35 through the Bureau's licensing databases on the World Wide

Web at <http://www.fcc.gov/wtb/uls>. Potential bidders should direct questions regarding the search capabilities to the FCC Technical Support hotline at (202) 414–1250 (voice) or (202) 414–1255 (TTY), or via e-mail at ulscomm@fcc.gov. The hotline is available to assist with questions Monday through Friday, from 7:00 AM to 10:00 PM ET, Saturday, 8:00 AM to 7:00 PM ET, and Sunday, 12:00 noon to 6:00 PM ET. In order to provide better service to the public, *all calls to the hotline are recorded*. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems.

18. Further, potential bidders are strongly encouraged to physically inspect any sites located in, or near, the geographic area for which they plan to bid.

19. Finally, potential bidders are strongly encouraged to make periodic, and continuing, inquiries to the Office of the Secretary and other available sources regarding any proceedings that are, or may be, pending with respect to the licenses available in Auction No. 35.

iv. Clarification of Payment Issue Relating to Licenses Subject to Pending Proceedings

20. As noted, potential bidders should be aware that certain of the licenses included in Auction No. 35 are or may become the subject of Commission or judicial proceedings initiated by parties claiming to have continuing interests in the licenses, despite their failure to meet payment obligations. This public notice clarifies that the Commission will return the payments made by winning bidders of licenses in Auction No. 35 in the event that such bidders are subsequently required to surrender licenses won to prior applicants or license holders as a result of final determinations reached in pending proceedings. The Commission, however, will not pay interest on the returned payments, as it lacks legal authority to do so.

21. Including contested licenses in the auction helps to fulfill the Commission's statutory mandate to hasten the development and deployment of new technologies and services and to promote competition for the benefit of the public. Returning payments to winning bidders if licenses won are later determined to be unavailable due to subsequent resolution of other proceedings furthers these vital public interest goals by reducing uncertainty in the licensing process and encouraging auction

participants to bid on licenses regardless of whether they are subject to pending proceedings. Retaining payments under the circumstances could have a chilling effect on participation in Auction No. 35 and would therefore undermine our efforts to encourage more efficient use of the spectrum. We note that winning bidders of licenses subject to pending proceedings are still required to meet the normal payment and construction schedules established by the Commission.

v. Bidder Alerts

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

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

24. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 35 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a "cold call" from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of investment is less than \$25,000.
- The sales representative makes verbal representations that: (a) the

Internal Revenue Service ("IRS"), Federal Trade Commission ("FTC"), Securities and Exchange Commission ("SEC"), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

25. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326-2222 and from the SEC at (202) 942-7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876-7060. Consumers who have concerns about specific proposals regarding Auction No. 35 may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225-5322).

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

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

C. Auction Specifics

i. Auction Date

27. The auction will begin on Tuesday, December 12, 2000. The initial schedule for bidding will be announced by public notice at least one week before

the start of the auction. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

28. In response to comments received, the Commission announces that bidding for Auction No. 35 will be temporarily suspended during the holidays. Beginning Friday, December 22, 2000 through Wednesday, January 3, 2001, no bidding will be conducted. Bidding will resume on Thursday, January 4, 2001.

ii. Auction Title

29. Auction No. 35—C and F Block Broadband PCS

iii. Bidding Methodology

30. The bidding methodology for Auction No. 35 will be simultaneous multiple round bidding. Bidding will be permitted only from remote locations, either electronically (by computer) or telephonically.

iv. Pre-Auction Dates and Deadlines

31. The following are important events and deadlines related to Auction No. 35:

Auction Seminar: October 20, 2000.
Short-Form Application (FCC FORM 175): November 6, 2000; 6:00 p.m. ET.
Upfront Payments (via wire transfer): November 27, 2000; 6:00 p.m. ET.
Orders for Remote Bidding Software: November 28, 2000; 6:00 p.m. ET.
Mock Auction: December 8, 2000.
Auction Begins: December 12, 2000.

v. Requirements For Participation

32. Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically by 6:00 p.m. ET, November 6, 2000.
- Submit a sufficient upfront payment and a FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, November 27, 2000.
- Comply with all provisions outlined in this public notice.

vi. General Contact Information

33. The following is a list of general contact information relating to Auction No. 35:

General Auction Information

General Auction Questions
Seminar Registration
Orders for Remote Bidding Software
FCC Auctions Hotline, (888) 225-5322, Press Option #2, or direct (717) 338-2888, Hours of service: 8 a.m.—5:30 p.m. ET.

Auction Legal Information

Auction Rules, Policies, Regulations

Auctions and Industry Analysis
Division, Legal Branch (202) 418-0660.

Licensing Information

Rules, Policies, Regulations
Licensing Issues
Due Diligence
Incumbency Issues

Commercial Wireless Division, (202)
418-0620.

Technical Support

Electronic Filing Assistance
Software Downloading

FCC Auctions Technical Support
Hotline, (202) 414-1250 (Voice),
(202) 414-1255 (TTY).

Hours of service: Monday through
Friday 7 a.m. to 10:00 p.m. ET,
Saturday, 8:00 a.m. to 7:00 p.m.,
Sunday, 12:00 noon to 6:00 p.m.

Payment Information

Wire Transfers
Refunds

FCC Auctions Accounting Branch,
(202) 418-1995, (202) 418-2843
(Fax).

Telephonic Bidding

Will be furnished only to qualified
bidders.

FCC Copy Contractor

Additional Copies of Commission
Documents

International Transcription Services,
Inc., 445 12th Street, SW Room CY-
B400, Washington, DC 20554, (202)
314-3070.

Press Information

Meribeth McCarrick (202) 418-0654.

FCC Forms

(800) 418-3676 (outside Washington,
DC), (202) 418-3676 (in the
Washington Area) [http://
www.fcc.gov/formpage](http://www.fcc.gov/formpage).

FCC Internet Sites

<http://www.fcc.gov>; <http://ftp.fcc.gov>;
<http://www.fcc.gov/wtb/auctions>.

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

34. Guidelines for completion of the short-form (FCC Form 175) are set forth in Attachment D of the Public Notice. The short-form application seeks the applicant's name and address, legal classification, status, small and very small business bidding credit eligibility, identification of the license(s) sought, the authorized bidders and contact persons. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise

qualified to hold a license and, as discussed in section II.E (Provisions Regarding Defaulters and Former Defaulters), that they are not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency.

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

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

B. Consortia And Joint Bidding Arrangements (FCC Form 175 Exhibit B)

36. Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships, or other agreements or understandings which relate in any way to the licenses being auctioned, including any agreements relating to post-auction market structure. See 47 CFR 1.2105(a)(2)(viii) and 1.2105(c)(1). Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular construction permits on which they will or will not bid. See 47 CFR 1.2105(a)(2)(ix). As discussed, if an applicant has had discussions, but has not reached a joint bidding agreement by the short-form deadline, it would not include the names of parties to the discussions on its applications and may not continue discussions with applicants for the same geographic license area(s) after the deadline. Where applicants have entered into consortia or joint bidding arrangements, applicants must submit an "Exhibit B" to the FCC Form 175.

37. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for licenses in the same geographic license area provided that (i) the attributable interest holder certifies

that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, bidders are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.

C. Eligibility

i. Eligibility for Closed Bidding (FCC Form 175 Exhibit C)

38. *General rule.* In order to be eligible to bid for one or more closed licenses, an applicant must show on Exhibit C that, as of the FCC Form 175 filing deadline, the applicant, its affiliates, persons or entities that hold interests in the applicant, and their affiliates, have combined total assets of less than \$500 million and have had combined gross revenues of less than \$125 million in each of the last two years. Applicants that can make this showing qualify as "entrepreneurs" for purposes of C and F block auctions. See § 24.709 of the Commission's Rules.

39. *Grandfather exception.* Qualified applicants that were eligible for and participated in Auction No. 5 or 10 may bid on closed C block licenses in any auction that begins on or before March 23, 2001, even if their total assets and gross revenues exceed the financial caps for auction participation as an entrepreneur. This exception does not extend to F block licenses.

ii. Small Business Bidding Credit Eligibility (FCC Form 175 Exhibit D)

40. Bidding credits are available to small and very small businesses, or consortia thereof, (as defined in 47 CFR 24.720(b)) that win licenses in open bidding. A bidding credit represents the amount by which a bidder's winning bids are discounted. The size of the bidding credit depends on the average annual gross revenues for the preceding three years of the bidder, together with its affiliates and controlling interests of the bidder and its affiliates:

- A bidder with average annual gross revenues of not more than \$40 million for the preceding three years ("small business") receives a 15 percent discount on its winning bids for C and F block licenses;

- A bidder with average annual gross revenues of not more than \$15 million for the preceding three years (“very small business”) receives a 25 percent discount on its winning bids for C and F block licenses.

41. Bidding credits are not cumulative; qualifying applicants receive either the 15 percent or the 25 percent bidding credit, but not both. No small and very small business bidding credits are provided for licenses subject to closed bidding.

iii. Tribal Land Bidding Credit

42. To encourage the growth of wireless services in federally recognized tribal lands the Commission has implemented a tribal land bidding credit. See Part V.C.

iv. Applicability of Part 1 Attribution Rules

43. *Controlling interest standard.* On August 14, 2000, the Commission released the *Part 1 Fifth Report and Order*, in which the Commission, *inter alia*, adopted a “controlling interest” standard for attributing to auction applicants the total assets and/or gross revenues of their investors and affiliates in determining entrepreneur and small business eligibility for future C and F block auctions. The Commission observed that the rule modifications adopted in the various part 1 orders would result in discrepancies and/or redundancies between certain of the new part 1 rules and existing service-specific rules, and the Commission delegated to the Bureau the authority to make conforming edits to the Code of Federal Regulations (CFR) consistent with the rules adopted in the part 1 proceeding. Time may not permit conforming edits to the part 24 C and F block rules to be made in advance of Auction No. 35; however, the part 1 rules that superseded inconsistent service-specific rules will control in Auction No. 35. *Accordingly, the “controlling interest” standard as set forth will be in effect for Auction No. 35, even if conforming edits to the CFR are not made prior to the auction.*

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

- The entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- The entity has authority to appoint, promote, demote, and fire senior

executives that control the day-to-day activities of the licensee; or

- The entity plays an integral role in management decisions.

45. *Attribution for entrepreneur eligibility.* For purposes of determining which entities qualify as entrepreneurs for closed bidding, the Commission will consider the total assets and gross revenues of the applicant, its controlling interest holders, the affiliates of the applicant, and their controlling interest holders. The Commission does not impose specific equity requirements on parties with controlling interests. Once principals or entities with a controlling interest are determined, only the assets and revenues of those principals or entities, the applicant, and their affiliates will be counted in determining entrepreneur eligibility. Applicants for closed bidding in Auction No. 35 should not include existing C and F block licenses in their calculations of total assets; however, all other Commission licenses must be included in such calculations.

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

47. A consortium of small or very small businesses is a “conglomerate organization formed as a joint venture between or among mutually independent business firms,” each of which *individually* must satisfy the definition of small or very small business in § 24.720(b). Thus, each consortium member must disclose its gross revenues along with those of its affiliates, controlling interests, and controlling interests’ affiliates. We note that although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for small or very small business credits, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

v. Application Showing

48. Applicants should note that they will be required to file supporting

documentation to their FCC Form 175 short-form applications to establish that they satisfy the eligibility requirements to qualify as entrepreneurs and/or small or very small businesses (or consortia of small or very small businesses) for this auction.

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

50. *Entrepreneur eligibility (Exhibit C).* Entities applying to bid on closed licenses will be required to disclose on Exhibit C to their FCC Form 175 short-form applications, *separately and in the aggregate*, the gross revenues for the preceding two years and the total assets of each of the following: (i) the applicant, (ii) the applicant’s affiliates, (iii) the applicant’s controlling interest holders, and (iv) the affiliates of the applicant’s controlling interest holders. Certification that the gross revenues for each of the preceding two years or the total assets do not exceed the applicable limit is not sufficient. The applicant must provide separately for itself, its affiliates, its controlling interest holders, and their affiliates a schedule of gross revenues for *each* of the preceding two years. As stated, entities applying for closed bidding under the grandfather exception (47 CFR 24.709(b)(i)) need not meet the total assets and gross revenues limits of § 24.709(a) of the Commission’s rules. Applicants claiming auction eligibility under the grandfather exception should note the Commission’s clarification of this exception in the *C/F Block Sixth Report and Order*.

51. *Small and very small business eligibility (Exhibit D).* Entities applying to bid as small or very small businesses (or consortia of small or very small businesses) will be required to disclose on Exhibit D to their FCC Form 175 short-form applications, *separately and in the aggregate*, the gross revenues for the preceding three years of each of the following: (i) the applicant, (ii) the applicant’s affiliates, (iii) the applicant’s controlling interest holders, and (iv) the affiliates of the applicant’s controlling interest holders. Certification that the average annual gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A

statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its affiliates, its controlling interest holders, and their affiliates a schedule of gross revenues for *each* of the preceding three years, as well as a statement of total average gross revenues for the three-year period. If the applicant is applying as a consortium of very small or small businesses, this information must be provided for each consortium member.

D. Special C Block Eligibility Restriction Regarding Surrendered C Block Licenses

52. C block licensees that surrendered C block licenses pursuant to the disaggregation, prepayment, and/or amnesty/prepayment election options the Commission made available in the *C Block Second Report and Order*, as modified by the *C Block Reconsideration Order*, are ineligible to reacquire the spectrum represented by their surrendered licenses through auction participation, or by any other means, until March 23, 2001. This prohibition extends to qualifying members of the licensee's control group, and their affiliates. Licensees that surrendered licenses pursuant to the "pure amnesty" election option remain eligible to reacquire the spectrum represented by those surrendered licenses through auction participation or a secondary market transaction. Applicants that are prohibited from bidding on licenses representing previously surrendered spectrum, should not select "all markets" on their FCC Form 175 application if any of their surrendered spectrum is available in Auction No. 35.

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

53. Each applicant must certify on its FCC Form 175 application that it is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must attach to its FCC Form 175 application a statement made under penalty of perjury indicating whether or not the applicant has ever been in default on any Commission licenses or has ever been delinquent on any non-tax debt owed to any federal agency. Applicants must include this statement as Exhibit E of the FCC Form 175. If any of an applicant's controlling interests holders or their affiliates, as defined by § 1.2110 of the Commission's rules (as recently amended in the *Part 1 Fifth Report and Order*) have ever been in default on any Commission license or have ever been

delinquent on any non-tax debt owed to any Federal agency, the applicant must include such information as part of the same attached statement. Prospective bidders are reminded that the statement must be made under penalty of perjury and, further, submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

54. "Former defaulters"—*i.e.*, applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—are eligible to bid in Auction No. 35, provided that they are otherwise qualified. However, as discussed *infra* in section III.D.3, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

F. Transfer and Assignment Restrictions on Licenses Won in Closed Bidding

55. C or F block licenses won in closed bidding generally may be transferred or assigned only to an entity that meets the entrepreneur financial caps or that holds another C or F block license that it acquired while meeting the entrepreneur financial caps. This restriction ends five years after the date of the initial license grant or upon notification by the licensee that it has satisfied its five-year construction requirement under 47 CFR 24.203(c), whichever comes first. Licenses won in open bidding are not subject to this restriction and may be transferred or assigned any time after grant to any qualified entity.

G. Unjust Enrichment Payments

56. C or F block licensees that use a small or very small business bidding credit, and during the first five years of their license term seek to assign or transfer control of a license to an entity that does not meet the eligibility criteria for a small or very small business bidding credit, or that is eligible for a lower bidding credit, will have to reimburse the U.S. Government for a percentage of the amount of the bidding credit, plus interest.

57. In the *C/F Block Sixth Report and Order*, the Commission decided that licensees are not subject to bidding credit unjust enrichment payments for early transfer or assignment of licenses won in Auction No. 5 or No. 10. We

clarify that transfer or assignment of a license won in Auctions No. 11, 22, 35, or any other auction using a small or very small business bidding credit, will still be subject to any applicable bidding credit unjust enrichment payment under the Commission's rules.

H. Installment Payments

58. Installment payment plans will not be available in Auction No. 35.

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

59. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(c)(2), may attach an exhibit (Exhibit F) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of "designated entities" in its auctions. Applicants wishing to submit additional information may do so on Exhibit G (Miscellaneous Information) to the FCC Form 175.

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

60. After the short-form filing deadline (November 6, 2000), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections or proposed service areas, change the certifying official, or change control of the applicant or change bidding credits). See 47 CFR 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants should make these changes on-line, and submit a letter to Louis Sigalos, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Suite 4-A668 Washington, DC 20554, briefly summarizing the changes. Questions about other changes should be directed to Audrey Bashkin of the Auctions and Industry Analysis Division at (202) 418-0660.

K. Maintaining Current Information in Short-Form Applications (FCC Form 175)

61. Applicants have an obligation under 47 CFR 1.65, to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications, as defined by 47 CFR

1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

III. Pre-auction Procedures

A. Auction Seminar

62. On Friday, October 20, 2000, the FCC will sponsor a free seminar for Auction No. 35 at the Federal Communications Commission, located at 445 12th Street, SW, Washington, DC. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC remote bidding software, and the C and F block broadband PCS spectrum and auction rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

B. Short-Form Application (FCC Form 175)—Due November 6, 2000

63. In order to be eligible to bid in this auction, applicants must first submit a FCC Form 175 application. This application must be submitted electronically and received at the Commission no later than 6:00 p.m. ET on November 6, 2000. Late applications will not be accepted.

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

i. Electronic Filing

65. Applicants must file their FCC Form 175 applications electronically. Applications may generally be filed at any time beginning at noon on October 20, 2000, until 6:00 p.m. ET on November 6, 2000. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on November 6, 2000.

66. Applicants must press the "Submit Form 175" button on the "Submit" page of the electronic form to successfully submit their FCC Forms 175. Any form that is not submitted will not be reviewed by the FCC. Information about accessing the FCC Form 175 is included in Attachment C of the Public Notice. Technical support is available at (202) 414-1250 (voice) or (202) 414-1255 (text telephone (TTY)); the hours of service Monday through Friday, from 7:00 AM to 10:00 PM ET, Saturday, 8:00 AM to 7:00 PM ET, and Sunday, 12:00 noon to 6:00 PM ET. In order to provide better service to the public, *all calls to the hotline are recorded.*

ii. Completion of the FCC Form 175

67. Applicants should carefully review 47 CFR 1.2105, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment D of the Public Notice. Applicants are encouraged to begin preparing the required attachments for FCC Form 175 prior to submitting the form. Attachments C and D to this public notice provide information on the required attachments and appropriate formats.

iii. Electronic Review of FCC Form 175

68. The FCC Form 175 electronic review software may be used to review and print applicants' FCC Form 175 information. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. For this reason, it is important that applicants do not include their Taxpayer Identification Numbers (TINs) on any exhibits to their FCC Form 175 applications. There is no fee for accessing this system. See Attachment C of the Public Notice for details on accessing the review system.

C. Application Processing and Minor Corrections

69. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (1) those applications accepted for filing (including FCC account numbers and the licenses for which they applied); (2) those applications rejected; and (3) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

70. As described more fully in the Commission's rules, after the November 6, 2000 short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (e.g., change their license selections, change the certifying official, change control of the applicant, or change bidding credit eligibility).

D. Upfront Payments—Due November 27, 2000

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

electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6:00 p.m. ET on November 27, 2000.

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 35 go to a lockbox number different from the ones used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the November 27, 2000, deadline will result in dismissal of the application and disqualification from participation in the auction.

i. Making Auction Payments by Wire Transfer

72. Wire transfer payments must be received by 6:00 p.m. ET on November 27, 2000. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261
Receiving Bank: Mellon Pittsburgh
BNF: FCC/AC 910-0198
OBI Field: (Skip one space between each information item)
"AUCTIONPAY"
TAXPAYER IDENTIFICATION NO.:
(same as FCC Form 159, block 26)
PAYMENT TYPE CODE (enter "A35U")
FCC CODE 1 (same as FCC Form 159, block 23A: "35")
PAYER NAME (same as FCC Form 159, block 2)
LOCKBOX NO. #358410

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

73. Applicants must fax a completed FCC Form 159 to Mellon Bank at (412) 209-6045 or (412) 236-5702 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer—Auction Payment for Auction Event No. 35." Bidders should confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

ii. FCC Form 159

74. A completed FCC Remittance Advice Form (FCC Form 159) must be

faxed to Mellon Bank in order to accompany each upfront payment. Proper completion of FCC Form 159 is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment E of the Public Notice. An electronic version of the FCC Form 159 is available after filing the FCC Form 175. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

iii. Amount of Upfront Payment

75. *In the Part 1 Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making*, 62 FR 13570 (March 21, 1997), the Commission delegated to the Bureau the authority and discretion to determine an appropriate upfront payment for each license being auctioned. In addition, as required by the *Part 1 Fifth Report and Order*, the upfront payment amount for "former defaulters," *i.e.*, applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, will be fifty percent more than the normal amount required to be paid. In the *Auction No. 35 Comment Public Notice*, the Bureau proposed upfront payments for Auction No. 35. Specifically, the Bureau proposed upfront payments using the following formula:

Tier 1

- (1) 15 MHz licenses—2.5 % of most recent net high bid for C block licenses in same BTA
- (2) 10 MHz licenses—1.6 % of most recent net high bid for C block licenses in same BTA

Tier 2

- (1) 15 MHz licenses—1.25 % of most recent net high bid for C block licenses in same BTA
- (2) 10 MHz licenses—1.0 % of most recent net high bid for C block licenses in same BTA

We adopt the proposed formula for upfront payments (with clarification):

Tier 1

- (1) 15 MHz licenses—2.5 % of most recent net high bid for 30 MHz C block license in same BTA
- (2) 10 MHz licenses—1.6 % of most recent net high bid for 30 MHz C block license in same BTA

Tier 2

- (1) 15 MHz licenses—1.25 % of most recent net high bid for 30 MHz C block license in same BTA

- (2) 10 MHz licenses—1.0 % of most recent net high bid for 30 MHz C block license in same BTA

76. Please note that upfront payments are not attributed to specific licenses, but instead will be translated to bidding units to define a bidder's maximum bidding eligibility. For Auction No. 35, the amount of the upfront payment will be translated into bidding units on a one-to-one basis, *e.g.*, a \$25,000 upfront payment provides the bidder with 25,000 bidding units. The total upfront payment defines the maximum amount of bidding units on which the applicant will be permitted to bid (including standing high bids) in any single round of bidding. Thus, an applicant does not have to make an upfront payment to cover all licenses for which the applicant has selected on 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 high bids at any given time.

77. In order to be able to place a bid on a license, in addition to being qualified for and having specified that license on the FCC Form 175, a bidder must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on the FCC Form 175, or else the applicant will not be eligible to participate in the auction.

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

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

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

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

80. The Commission will use wire transfers for all Auction No. 35 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed be supplied to the FCC. Applicants can provide the information electronically during the initial short-form filing window after the form has been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Tim Dates or Gail Glasser, at (202) 418-2843 by November 28, 2000. Should the payer fail to submit the requested information, the refund will be returned to the original payer. For additional information, please call (202) 418-1995.

Name of Bank
ABA Number
Contact and Phone Number
Account Number to Credit
Name of Account Holder
Correspondent Bank (if applicable)
ABA Number
Account Number
(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in Part V.F.

A. Auction Registration

81. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

82. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, each containing part of the confidential identification codes required to place bids. These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.

83. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Friday, December 8, 2000, should contact the Auctions Hotline at (717) 338-2888. Receipt of both registration mailings is

critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

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

B. Remote Electronic Bidding Software

85. Qualified bidders are allowed to bid electronically or telephonically. If choosing to bid electronically, each bidder must purchase its own copy of the remote electronic bidding software. Electronic bids will only be accepted from those applicants purchasing the software. However, the software may be copied by the applicant for use by its authorized bidders at different locations. The price of the FCC's remote bidding software is \$175.00 and must be ordered by Tuesday, November 28, 2000. For security purposes, the software is only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that auction software is tailored to a specific auction, so software from prior auctions will not work for Auction No. 35. If bidding telephonically, the telephonic bidding phone number will be supplied in the first Federal Express mailing of confidential login codes. Qualified bidders that do not purchase the software may only bid telephonically. To indicate your bidding preference, a FCC Bidding Preference/Remote Software Order Form can be accessed when submitting the FCC Form 175. Bidders should complete this form electronically, print it out, and fax to (717) 338-2850. A manual copy of this form is also included as Attachment F of the Public Notice.

C. Mock Auction

86. All qualified bidders will be eligible to participate in a mock auction on Friday, December 8, 2000. The mock auction will enable applicants to become familiar with the electronic software prior to the auction. Free demonstration software will be available for use in the mock auction. Participation by all bidders is strongly

recommended. Details will be announced by public notice.

IV. Auction Event

87. The first round of bidding for Auction No. 35 will begin on Tuesday, December 12, 2000. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction

88. In the *Auction No. 35 Comment Public Notice*, we proposed to award all licenses in Auction No. 35 in a single, simultaneous multiple round auction. We received no comment on this issue. We conclude that it is operationally feasible and appropriate to auction the PCS licenses through a single, simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction. This approach, we believe, allows bidders to take advantage of any synergies that exist among licenses and is most administratively efficient.

ii. Maximum Eligibility and Activity Rules

89. In the *Auction No. 35 Comment Public Notice*, we proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder.

90. For Auction No. 35 we will adopt this proposal. The amount of the upfront payment submitted by a bidder determines the initial maximum eligibility (in bidding units) for each bidder. Note again that upfront payments are not attributed to specific licenses, but instead will be translated into bidding units to define a bidder's initial maximum eligibility. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid. As there is no provision for increasing a bidder's maximum eligibility during the course of an auction (as described under "Auction Stages" as set forth in Part IV.A.4), prospective bidders are cautioned to calculate their upfront payments carefully. The total upfront payment does not define the total dollars a bidder may bid on any given license.

91. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction,

rather than wait until the end before participating. Bidders are required to be active on a specific percentage of their maximum eligibility during each round of the auction.

92. A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. A bidder is considered active on a license in the current round either if it is the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits an acceptable bid in the current round (*see* "Minimum Accepted Bids" in Part IV.B.(iii)). The minimum required activity level is expressed as a percentage of the bidder's maximum bidding eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions as set forth under "Auction Stages" in Part IV.A.4 and "Stage Transitions" in Part IV.A.v., we adopt them for Auction No. 35.

iii. Activity Rule Waivers and Reducing Eligibility

93. In the *Auction No. 35 Comment Public Notice*, we proposed that each bidder in the auction would be provided five activity rule waivers that may be used in any round during the course of the auction.

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

95. The FCC automated auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any round where a bidder's activity level is below the minimum required unless: (1) there are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing

eligibility, thereby meeting the minimum requirements.

96. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the reduce eligibility function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in "Auction Stages" (see Part IV.A.iv.). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

97. Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open.

iv. Auction Stages

98. In the *Auction No. 35 Comment Public Notice*, we proposed to conduct the auction in three stages and employ an activity rule. We further proposed that, in each round of Stage One, a bidder desiring to maintain its current eligibility would be required to be active on licenses encompassing at least 80 percent of its current bidding eligibility. In each round of Stage Two, a bidder desiring to maintain its current eligibility would be required to be active on at least 90 percent of its current bidding eligibility. Finally, we proposed that a bidder in Stage Three, in order to maintain eligibility, would be required to be active on 98 percent of its current bidding eligibility.

99. We conclude that the auction will be composed of three stages, which are each defined by an increasing activity rule. We will adopt our proposals for the activity rules. Listed are the activity levels for each stage of the auction. The FCC reserves the discretion to further alter the activity percentages before and/or during the auction.

Stage One: During the first stage of the auction, a bidder desiring to maintain its current eligibility will be required to be active on licenses that represent at least 80 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One,

reduced eligibility for the next round will be calculated by multiplying the sum of bidding units of the bidder's standing high bids and valid bids during the current round by five-fourths (5/4).

Stage Two: During the second stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 90 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage Two, reduced eligibility for the next round will be calculated by multiplying the sum of bidding units of the bidder's standing high bids and valid bids during the current round by ten-ninths (10/9).

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

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

Because the foregoing procedures have proven successful in maintaining proper pace in previous auctions, we adopt them for Auction No. 35.

v. Stage Transitions

100. In the *Auction No. 35 Comment Public Notice*, we proposed that the auction would generally advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is below 10 percent for three consecutive rounds of bidding in each Stage. However, we further proposed that the Bureau would retain the discretion to change stages unilaterally

by announcement during the auction. This determination, we proposed, would be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue.

101. We adopt our proposal. Thus, the auction will start in Stage One. Under the FCC's general guidelines, the auction will start in Stage One and it will advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when, in each of three consecutive rounds of bidding, the high bid has increased on 10 percent or less of the licenses being auctioned (as measured in bidding units). However, the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. We believe that these stage transition rules, having proven successful in prior auctions, are appropriate for use in Auction No. 35.

vi. Auction Stopping Rules

102. For Auction No. 35, the Bureau proposed to employ a simultaneous stopping rule. Under this rule, bidding will remain open on all licenses until bidding stops on every license. The auction will close for all licenses when one round passes during which no bidder submits a new acceptable bid on any license, applies a proactive waiver, or withdraws a previous high bid. After the first such round, bidding closes simultaneously on all licenses.

103. The Bureau also proposed a modified version of the simultaneous stopping rule. This modified version will close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder will not keep the auction open under this modified stopping rule.

104. The Bureau further proposed retaining the discretion to keep an auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn in a round. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the

activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use an activity rule waiver (if it has any left).

105. In addition, we proposed that the Bureau reserve the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the Bureau invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. We proposed to exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity, or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage (where bidders will be required to maintain a higher level of bidding activity), increasing the number of bidding rounds per day, and/or adjusting the amount of the minimum bid increments for the licenses.

106. We adopt all of the proposals concerning the auction stopping rules. Auction No. 35 will begin under the simultaneous stopping rule, and the Bureau will retain the discretion to invoke the other versions of the stopping rule. We believe that these stopping rules are most appropriate for Auction No. 35, because our experience in prior auctions demonstrates that the auction stopping rules balance the interests of administrative efficiency and maximum bidder participation. The substitutability among licenses in different geographic areas and the importance of preserving the ability of bidders to pursue backup strategies support the use of these stopping rules.

vii. Auction Delay, Suspension, or Cancellation

107. In the *Auction No. 35 Comment Public Notice*, we 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, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding.

108. Because this approach has proven effective in resolving exigent circumstances in previous auctions, we will adopt our proposed auction cancellation rules. By public notice or

by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. We emphasize 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

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

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

ii. Reserve Price or Minimum Opening Bid

111. *Background.* The Balanced Budget Act calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (*i.e.*, because there are mutually exclusive applications for those licenses), 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.

112. In the *Auction No. 35 Comment Public Notice*, the Bureau proposed to establish minimum opening bids for Auction No. 35 and to retain discretion to lower the minimum opening bids. Specifically, for Auction No. 35, the Commission proposed the following formula for minimum opening bids:

Tier 1

- (1) 15 MHz licenses—5 % of most recent net high bid for C block licenses in same BTA
- (2) 10 MHz licenses—3.2 % of most recent net high bid for C block licenses in same BTA

Tier 2

- (1) 15 MHz licenses—2.5 % of most recent net high bid for C block licenses in same BTA
- (2) 10 MHz licenses—1.6 % of most recent net high bid for C block licenses in same BTA

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

114. We will adopt minimum opening bids for Auction No. 35, which are reducible at the discretion of the Bureau. Congress has enacted a presumption that unless the Commission determines otherwise, minimum opening bids, or reserve prices are in the public interest. We adopt the proposed formula for minimum opening bids (with clarification):

Tier 1

- (1) 15 MHz licenses—5 % of most recent net high bid for 30 MHz C block license in same BTA
- (2) 10 MHz licenses—3.2 % of most recent net high bid for 30 MHz C block license in same BTA

Tier 2

- (1) 15 MHz licenses—2.5 % of most recent net high bid for 30 MHz C block license in same BTA
- (2) 10 MHz licenses—1.6 % of most recent net high bid for 30 MHz C block license in same BTA

115. We conclude that the adopted formula presented here best meets the objectives of our authority in establishing reasonable minimum opening bids. We have noted in the past that the reserve price and minimum opening bid provision is not a requirement to maximize auction revenue but rather a protection against assigning licenses at unacceptably low prices, and that we must balance the revenue raising objective against our other public interest objectives in setting the minimum bid level. For the sake of auction integrity and fairness, minimum opening bids must be set in a manner that is consistent across licenses.

116. As a final safeguard against unduly high pricing, minimum opening bids are reducible at the discretion of the Bureau. This discretion will allow the Bureau flexibility to adjust the minimum opening bids if circumstances warrant. We emphasize, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureau will not entertain any bidder requests to reduce the minimum opening bid on specific licenses.

iii. Bid Increments and Minimum Accepted Bids

117. In the *Auction No. 35 Comment Public Notice*, we proposed to use a smoothing methodology to calculate minimum bid increments. We further proposed to retain the discretion to change the minimum bid increment if circumstances so dictate.

118. We will adopt our proposal for a smoothing formula. The smoothing methodology is designed to vary the increment for a given license between a maximum and minimum value based on the bidding activity on that license. This methodology allows the increments to be tailored to the activity level of a license, decreasing the time it takes for active licenses to reach their final value. The formula used to calculate this increment is included as Attachment G of the Public Notice.

119. We adopt our proposal of initial values for the maximum of 0.2 (20 percent of the license value) and for the minimum of 0.1 (10 percent of the license value). The Bureau retains the

discretion to change the minimum bid increment if it determines that circumstance so dictate. The Bureau will do so by announcement in the Automated Auction System. Under its discretion, the Bureau may also implement an absolute dollar floor for the bid increment to further facilitate a timely close of the auction. The Bureau may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant. As an alternative approach, the Bureau may, in its discretion, adjust the minimum bid increment gradually over a number of rounds as opposed to single large changes in the minimum bid increment (*e.g.*, by raising the increment floor by one percent every round over the course of ten rounds). The Bureau also retains the discretion to use alternate methodologies, such as a flat percentage increment for all licenses, for Auction No. 35 if circumstances warrant.

iv. High Bids

120. Each bid will be date-and time-stamped when it is entered into the FCC computer system. In the event of tied high bids (identical gross bid amounts) for a license during a round, the earliest of the tied bids will be the standing high bid at the end of the round. The bidding software allows bidders to make multiple submissions in a round. As each bid is individually date-and time-stamped according to when it was submitted, bids submitted by a bidder earlier in a round will have an earlier date and time stamp than bids submitted later in a round.

v. Bidding

121. During a bidding round, a bidder may submit bids for as many licenses as it wishes (subject to its eligibility), withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each bidding round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round, and the date-and time-stamp of that bid reflects the latest time the bid was submitted.

122. Please note that all bidding will take place remotely either through the automated bidding software or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, four to five minutes are necessary to complete

a bid submission.) There will be no on-site bidding during Auction No. 35.

123. A bidder's ability to bid on specific licenses in the first round of the auction is determined by three factors: (1) the licenses applied for on FCC Form 175, (2) eligibility restrictions on those licenses, and (3) the upfront payment amount deposited. The bid submission screens will be tailored for each bidder to include only those licenses for which the bidder applied on its FCC Form 175. A bidder also has the option to further tailor its bid submission screens to call up specified groups of licenses.

124. The bidding software requires each bidder to log in to the FCC auction system during the bidding round using the FCC account number, bidder identification number, and the confidential security codes provided in the registration materials. Bidders are strongly encouraged to download and print bid confirmations *after* they submit their bids.

125. The bid entry screen of the Automated Auction System software for Auction No. 35 allows bidders to place multiple increment bids. Specifically, high bids may be increased from one to nine bid increments. A single bid increment is defined as the difference between the standing high bid and the minimum acceptable bid for a license. The bidding software will display the bid increment for each license.

126. To place a bid on a license, the bidder must increase the standing high bid by one to nine times the bid increment. This is done by entering a whole number between 1 and 9 in the bid increment multiplier (Bid Mult) field in the software. This value will determine the amount of the bid (Amount Bid) by multiplying the bid increment multiplier by the bid increment and adding the result to the high bid amount according to the following formula:

$$\text{Amount Bid} = \text{High Bid} + (\text{Bid Mult} * \text{Bid Increment})$$

127. Thus, bidders may place a bid that exceeds the standing high bid by between one and nine times the bid increment. For example, to bid the minimum acceptable bid, which is equal to one bid increment, a bidder will enter "1" in the bid increment multiplier column and press submit.

128. For any license on which the FCC is designated as the high bidder (*i.e.*, a license that has not yet received a bid in the auction or where the high bid was withdrawn and a new bid has not yet been placed), bidders will be limited to bidding only the minimum acceptable bid. In both of these cases no increment exists for the licenses, and

bidders should enter "1" in the Bid Mult field. Note that in this case, any whole number between 1 and 9 entered in the multiplier column will result in a bid value at the minimum acceptable bid amount. Finally, bidders are cautioned in entering numbers in the Bid Mult field because, as explained in the following section, a high bidder that withdraws its standing high bid from a previous round, even if mistakenly or erroneously made, is subject to bid withdrawal payments.

vi. Bid Removal and Bid Withdrawal

129. In the *Auction No. 35 Comment Public Notice*, we proposed bid removal and bid withdrawal rules. With respect to bid withdrawals, we proposed limiting each bidder to withdrawals in no more than two rounds during the course of the auction. The two rounds in which withdrawals are utilized, we proposed, would be at the bidder's discretion.

130. In previous auctions, we have detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While we continue to recognize the important role that bid withdrawals play in an auction, *i.e.*, reducing risk associated with efforts to secure various geographic area licenses in combination, we conclude that, for Auction No. 35, adoption of a limit on their use to two rounds is the most appropriate outcome. By doing so we believe we strike a reasonable compromise that will allow bidders to use withdrawals. Our decision on this issue is based upon our experience in prior auctions, particularly the PCS D, E and F block auctions, and 800 MHz SMR auction, and is in no way a reflection of our view regarding the likelihood of any speculation or "gaming" in this auction.

131. The Bureau will therefore limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals during the auction will still be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market. If a high bid is withdrawn, the license will be offered in the next round at the second highest bid price, which may be less than, or equal to, in the case of tie bids, the amount of the withdrawn bid, without any bid increment. The Commission will serve as a "place holder" on the license until a new

acceptable bid is submitted on that license.

132. Procedures. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bid" function in the software, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is subsequently removed does not count toward the bidder's activity requirement. This procedure will enhance bidder flexibility during the auction. Therefore, we will adopt these procedures for Auction No. 35.

133. Once a round closes, a bidder may no longer remove a bid. However, in later rounds, a bidder may withdraw standing high bids from previous rounds using the "withdraw bid" function (assuming that the bidder has not exhausted its withdrawal allowance). A high bidder that withdraws its standing high bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g).

134. Calculation. Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the net high bid in the same or subsequent auction(s). In the case of multiple bid withdrawals on a single license, within the same or subsequent auction(s), the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids, in either the same or subsequent auction(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any withdrawal payments if there is a subsequent higher bid in the same or subsequent auction(s). This policy allows bidders to most efficiently allocate their resources as well as to evaluate their bidding strategies and business plans during an auction while, at the same time, maintaining the integrity of the auction process. The Bureau retains the discretion to scrutinize multiple bid withdrawals on a single license for evidence of anti-competitive strategic

behavior and take appropriate action when deemed necessary.

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

vii. Round Results

136. Bids placed during a round will not be published until the conclusion of that bidding period. After a round closes, the Commission will compile reports of all bids placed, bids withdrawn, current high bids, new minimum accepted bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 35 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

viii. Auction Announcements

137. The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available on the FCC remote electronic bidding system, as well as on the Internet.

ix. Maintaining the Accuracy of FCC Form 175 Information

138. As noted in Part II.J., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and certain revision of exhibits. Filers must make these changes on-line, and submit a letter summarizing the changes to: Louis Sigalos, Deputy Chief, Auctions and Industry Analysis

Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Room 4-A668, Washington, DC 20554.

139. A separate copy of the letter should be mailed to Audrey Bashkin, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Room 4-A665, Washington, DC 20554. Questions about other changes should be directed to Audrey Bashkin at (202) 418-0660.

V. Post-auction Procedures

A. Down Payments and Withdrawn Bid Payments

140. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bids and bidders for each license, and listing withdrawn bid payments due.

141. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any applicable small and very small business bidding credits). See 47 CFR 1.2107(b). In addition, by the same deadline all bidders must pay any withdrawn bid amounts due under 47 CFR 1.2104(g), as discussed in "Bid Removal and Bid Withdrawal," Part IV.B.6. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

B. Long-Form Application

142. Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application and required exhibits for each license won through Auction No. 35. Winning bidders that are entrepreneurs and/or small or very small businesses must include an exhibit demonstrating their eligibility for closed bidding and/or small and very small business bidding credits as applicable. See 47 CFR 1.2112(b), 24.709(c)(2)(i). Further filing instructions will be provided to auction winners at the close of the auction.

C. Tribal Land Bidding Credit

143. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally-recognized tribal lands that are unserved by any telecommunications carrier or that have

a telephone service penetration rate equal to or below 70 percent is eligible to receive a tribal land bidding credit as set forth in 47 CFR 1.2107 and 1.2110(e). A tribal land bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

144. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal land bidding credit *after* winning the auction when it files its long-form application (FCC Form 601). In order for a winning bidder to be awarded a tribal land bidding credit, it must provide specific certifications regarding the servicing of tribal lands and is subject to specific performance criteria as set forth in 47 CFR 1.2110(e).

145. For additional information on the tribal land bidding credit, including how to determine the amount of credit available, see Public Notice DA 00-2219, released September 28, 2000, entitled *Wireless Telecommunications Bureau Announces Availability of Bidding Credits For Providing Wireless Services To Qualifying Tribal Lands*.

D. Auction Discount Voucher

146. On June 8, 2000, the Commission awarded Qualcomm, Inc. a transferable Auction Discount Voucher in the amount of \$125,273,878.00. This Auction Discount Voucher may be used by Qualcomm or its transferee, in whole or in part, to adjust a winning bid in any spectrum auction prior to June 8, 2003, subject to terms and conditions set forth in the Commission's Order.

E. Default and Disqualification

147. Any high bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at its final bid. See 47 CFR 1.2109(b) and (c). 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. See 47 CFR 1.2109(d).

F. Refund of Remaining Upfront Payment Balance

148. All applicants that submitted upfront payments but were not winning bidders for a license in Auction No. 35 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid.

149. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions and a Taxpayer Identification Number (TIN). Send refund request to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Shirley Hanberry, 445 12th Street, SW, Room 1-A824, Washington, DC 20554.

150. Bidders are encouraged to file their refund information electronically using the refund information portion of the FCC Form 175, but bidders can also fax their information to the Auctions Accounting Group at (202) 418-2843. Once the information has been approved, a refund will be sent to the party identified in the refund information. NOTE: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Tim Dates or Gail Glasser at (202) 418-1995.

Federal Communications Commission.

Margaret Wiener,

Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.

[FR Doc. 00-30860 Filed 12-1-00; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1347-DR]

Arizona; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arizona, (FEMA-1347-DR), dated