

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* 2017 Base Year Emissions Inventories for the Washington, DC-MD-VA Nonattainment Area for the 2015 Ozone National Ambient Air Quality Standard.	* The District of Columbia portion of the Washington, DC-MD-VA nonattainment area for the 2015 ozone NAAQS (<i>i.e.</i> , the District of Columbia).	* 11/4/2020	* 4/13/2022, [INSERT Federal Register CITATION].	* Docket 2022–03863.

Subpart V—Maryland

■ 3. In § 52.1070, the table in paragraph (e) is amended by adding an entry for “2017 Base Year Emissions Inventories

for the Washington, DC-MD-VA Nonattainment Area for the 2015 Ozone National Ambient Air Quality Standard” at the end of the table to read as follows:

§ 52.1070 Identification of plan.
* * * * *
(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* 2017 Base Year Emissions Inventories for the Washington, DC-MD-VA Nonattainment Area for the 2015 Ozone National Ambient Air Quality Standard.	* Maryland portion of the Washington, DC-MD-VA nonattainment area for the 2015 ozone NAAQS.	* 10/7/2020	* 4/13/2022, [INSERT Federal Register CITATION].	* The Maryland portion consists of Calvert, Charles, Frederick, Montgomery, and Prince George’s counties.

Subpart VV—Virginia

■ 4. In § 52.2420, the table in paragraph (e)(1) is amended by adding an entry for “2017 Base Year Emissions Inventories

for the Washington, DC-MD-VA Nonattainment Area for the 2015 Ozone National Ambient Air Quality Standard” at the end of the table to read as follows:

§ 52.2420 Identification of plan.
* * * * *
(e) * * *
(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* 2017 Base Year Emissions Inventories for the Washington, DC-MD-VA Nonattainment Area for the 2015 Ozone National Ambient Air Quality Standard.	* The Virginia portion of the Washington, DC-MD-VA nonattainment area for the 2015 ozone NAAQS (<i>i.e.</i> , the District of Columbia).	* 12/11/2020	* 4/13/2022, [insert Federal Register citation].	* The Virginia portion consists of Arlington, Fairfax, Loudoun, and Prince William counties and Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park cities.

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FEDERAL COMMUNICATIONS COMMISSION**47 CFR Parts 1 and 27**

[AU Docket No. 20–429; FCC 22–24; FR ID 81075]

Auction of Flexible-Use Licenses in the 2.5 GHz Band for Next-Generation Wireless Services; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 108; Bidding Scheduled To Begin July 29, 2022

AGENCY: Federal Communications Commission.

ACTION: Final action; requirements and procedures.

SUMMARY: This document summarizes the procedures, deadlines, and upfront payment and minimum opening bid amounts for the upcoming auction of approximately 8,000 new flexible-use geographic overlay licenses in the 2.5 GHz band (Auction 108). The *Auction 108 Procedures Public Notice* summarized here provides details regarding the procedures, terms, conditions, dates, and deadlines governing participation in Auction 108 bidding, as well as overview of the post-auction application and payment process. The *Auction 108 Procedures Public Notice* released on March 21, 2022, was corrected by an erratum released on April 1, 2022. The changes

made by the erratum are included in this document.

DATES: Applications to participate in Auction 108 must be submitted before 6 p.m. Eastern Time (ET) on May 10, 2022. Upfront payments for Auction 108 must be received by 6 p.m. ET on June 23, 2022. Bidding in Auction 108 is scheduled to start on July 29, 2022.

FOR FURTHER INFORMATION CONTACT:

General Auction 108 Information: FCC Auctions Hotline at 888–225–5322, option two; or 717–338–2868.

Auction 108 Legal Information: Lyndsey Grunewald, Daniel Habif or Scott Mackoul at (202) 418–0660.

2.5 GHz Band Licensing Information: Madelaine Maior or Nadja Sodos-Wallace at (202) 418–2487.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s

document, *Auction 108 Procedures Public Notice*, in AU Docket No. 20–429, FCC 22–24, released on March 21, 2022. The complete text of this document, including attachments and any related document, is available on the Commission’s website at <http://www.fcc.gov/auction/108> or by using the search function for on the Commission’s Electronic Comment Filing System (ECFS) web page at www.fcc.gov/ecfs. Alternative formats are available to persons with disabilities by sending an email to FCC504@fcc.gov or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

I. General Information

A. Introduction

1. By the *Auction 108 Procedures Public Notice*, the Commission establishes the procedures to be used for Auction 108, the auction of approximately 8,000 new flexible-use geographic overlay licenses in the 2.5 GHz band. Auction 108 will offer the single largest contiguous portion of available mid-band spectrum below 3 GHz, and the licenses made available in this auction will help extend 5G service beyond the most populated areas.

2. Bidding in Auction 108 is scheduled to commence on July 29, 2022. Auction 108 will be conducted using an ascending clock auction with a supply of one in each category of frequency-specific channel blocks, referred to as the clock-1 auction format. The *Auction 108 Procedures Public Notice* provides details regarding the procedures, terms, conditions, dates, and deadlines governing participation in Auction 108 bidding, as well as an overview of the post-auction application and payment processes.

B. Background and Relevant Authority

3. In the *2.5 GHz Report and Order*, 84 FR 57343, July 11, 2019, the Commission made available 117.5 megahertz of spectrum in the 2.5 GHz band for new licensed use. In that Order, the Commission established a Rural Tribal Priority Window to enable federally-recognized Tribal Nations an opportunity to obtain 2.5 GHz licenses to provide service using unassigned spectrum in the former Educational Broadband Service (EBS) band on rural Tribal lands before the remaining unassigned spectrum is made generally available through competitive bidding. Among other things, the Commission authorized both fixed and mobile operations in the 2.5 GHz band using geographic area licensing, replaced the

regulatory regime of the EBS with new flexible-use licensing and operating rules, and decided to use its competitive bidding rules to assign remaining overlay licenses following the close of the Rural Tribal Priority Window.

4. On January 13, 2021, in accordance with section 309(j)(3) of the Communications Act of 1934, as amended (Communications Act), the Commission released the *Auction 108 Comment Public Notice*, 86 FR 12146, March 2, 2021, seeking comment on certain competitive bidding procedures and various other procedures to be used in Auction 108. Interested parties filed 16 comments and 26 reply comments in response to the *Auction 108 Comment Public Notice*. On February 9, 2022, the Commission’s Office of Economics and Analytics (OEA) and Wireless Telecommunications Bureau (WTB) released the *Auction 108 Further Comment Public Notice*, 87 FR 8764, February 16, 2022, seeking further comment on multiple-round auction procedures for Auction 108. Specifically, OEA and WTB sought comment on whether a clock auction would address commenters’ concerns and suggestions regarding the simultaneous multiple-round (SMR) and single-round, sealed bid auction formats proposed in the *Auction 108 Comment Public Notice*. Interested parties filed 13 comments in response to the *Auction 108 Further Comment Public Notice*. On February 18, 2022, OEA and WTB released the *Auction 108 Inventory Comment Public Notice*, 87 FR 11379, March 1, 2022, that announced an updated auction inventory and sought comment whether any procedures need to be adjusted for all the licenses available in Auction 108 in light of additions to the initial license inventory. Interested parties filed eight comments in response to the *Auction 108 Inventory Comment Public Notice*. In the *Auction 108 Procedures Public Notice*, the Commission resolves all open issues raised in the *Auction 108 Comment Public Notice*, the *Auction 108 Further Comment Public Notice*, and the *Auction 108 Inventory Comment Public Notice* and address the comments received.

5. Other Commission rules and decisions provide the underlying authority for the procedures the Commission adopts for Auction 108. Among other things, prospective applicants should familiarize themselves with the Commission’s general competitive bidding rules, including amendments and clarifications thereto, as well as Commission decisions regarding competitive bidding procedures,

application requirements, and obligations of Commission licensees. Prospective applicants also should familiarize themselves with the Commission’s rules regarding the 2.5 GHz band, as well as the licensing and operating rules that are applicable to all Part 27 services. In addition, applicants must be thoroughly familiar with the procedures, terms, and conditions contained in the *Auction 108 Procedures Public Notice* and any future public notices that may be released in this proceeding.

6. The terms contained in the Commission’s rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time and will issue public notices to convey any new or supplemental generally applicable information to applicants. Pursuant to the Commission’s rules, OEA and WTB also retain the authority to implement further procedures during the course of Auction 108. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to Auction 108.

C. Description of Licenses To Be Offered in Auction 108

7. Consistent with the Commission’s determination, any remaining unassigned EBS spectrum will be made available in Auction 108. Auction 108 will offer geographic overlay licenses for unassigned spectrum in the 2.5 GHz (2496–2690 MHz) band. The Commission will offer up to three blocks of spectrum—49.5 megahertz, 50.5 megahertz, and 17.5 megahertz blocks, respectively—licensed on a county basis. Specifically, the first channel block will include channels A1–A3, B1–B3, C1–C3 (49.5 megahertz); the second channel block will include channels D1–D3, the J channels, and channels A4, B4, C4, D4, and G4 (50.5 megahertz); and the third channel block will include channels G1–G3 and the relevant K channels (16.5 megahertz of contiguous spectrum and 1 megahertz of the K channels associated with the G channel group, for a total of 17.5 megahertz). New overlay licenses in the EBS portion of the 2.5 GHz band will be issued for 10-year, renewable license terms. A licensee in this band may provide any services permitted under terrestrial fixed or mobile allocations, as set forth in the non-Federal Government column of the Table of Frequency Allocations in 47 CFR 2.106.

8. Concurrent with the release of the *Auction 108 Comment Public Notice*, OEA and WTB made available a file listing all county and channel block

combinations potentially available for Auction 108. Several commenters, including some incumbent licensees, noted potential discrepancies between the Commission's initial list of potentially available licenses and commenters' own analyses of available white space in the band. These commenters and others urged the Commission to audit the preliminary list of licenses available in Auction 108 to ensure that the final list of available licenses is complete and accurate. In light of these comments, WTB staff performed additional geographic information systems (GIS) analysis of existing 2.5 GHz licenses and prepared a new list of potentially available licenses based on license service area data extracted from the Universal Licensing System (ULS) on February 2, 2022. The revised list also took into account licenses issued pursuant to Rural Tribal Priority Window applications and information provided by commenters. OEA and WTB released that updated list of potentially available licenses, which added 189 licenses to the list and removed 370, on February 18, 2022, and requested comment on whether any of the procedures proposed in the *Auction 108 Comment Public Notice* or the *Auction 108 Further Comment Public Notice* needed to be adjusted in light of licenses added to the initial license inventory.

9. Many of the issues raised by commenters in response to the *Auction 108 Comment Public Notice* were addressed in the revised inventory released with the *Auction 108 Inventory Comment Public Notice*. The revised list of licenses also excluded county/channel block combinations where the only areas with unassigned spectrum were over large bodies of water such as the Atlantic Ocean or the Great Lakes. Since a licensee may only place base stations within their geographic service area (GSA) and limit the power flux density of their signal within their GSA, there would be no prospect for a licensee to deploy service to land-based populations in that scenario.

10. The revised license inventory released in conjunction with the *Auction 108 Procedures Public Notice* incorporates WTB's comprehensive review of the inventory in response to additional GIS analyses and feedback from interested parties including incumbent licensees and lessees. The Commission declines a request by certain parties to implement a more formal process by which interested parties may submit data to challenge the revised license inventory. Interested parties had multiple opportunities to provide input on the development of the

license inventory, as WTB has continued to refine and revise the inventory in response to feedback from interested parties. Most recently, several parties submitted additional information in response to the *Auction 108 Inventory Comment Public Notice*, and WTB has taken that information into account in developing the most recent inventory listing reflected in the updated Attachment A that is being released in conjunction with the *Auction 108 Procedures Public Notice*. Second, a new, formal process at this time would significantly delay the auction of critical mid-band spectrum.

11. On March 15, 2022, WTB granted seven additional Rural Tribal Priority Window applications in Alaska. As a result of those grants, all 2.5 GHz spectrum in Bristol Bay and Lake and Peninsula Boroughs in Alaska was assigned on all three channel blocks. Accordingly, the three licenses for those boroughs have been removed from the list of available licenses.

12. In light of comments, the Commission has also excluded from its analysis of active licensees' geographic service areas the potential effect of licenses that expired before January 10, 2005, and were not reinstated prior to March 10, 2008. As a result, the Commission removed 80 licenses in 57 counties from the auction inventory.

13. Concurrent with the release of the *Auction 108 Procedures Public Notice*, the Commission makes available an updated file listing all county and channel block combinations potentially available for Auction 108. This file is listed as an Attachment A file on the Auction 108 website at www.fcc.gov/auction/108. This inventory of overlay licenses available in Auction 108 released concurrently with the *Auction 108 Procedures Public Notice* removes 87 licenses from the revised inventory released on February 18, 2022, based on OEA and WTB review of comments and the results of the Rural Tribal Priority Window. If additional licenses are removed from inventory because of future Rural Tribal Priority Window grants, those actions will be announced by subsequent public notice(s).

14. The Commission has also made available resources to assist applicants in conducting due diligence research regarding potential encumbrances in the band. These resources include a new mapping tool to help identify and view existing licenses and Rural Tribal Priority Window applications. The new mapping tool is being made available to all potential bidders in Auction 108, and the public generally, concurrently with the release of the *Auction 108 Procedures Public Notice*. It can be

found under the Education tab on the Auction 108 website at www.fcc.gov/auction/108. Potential applicants are reminded, however, that this mapping tool is merely a graphical aid for potential applicants and does not represent official licensing information; all information should be confirmed in the Universal Licensing System (ULS) for any specific license or area.

15. The Commission will not adopt an expansion of existing requirements on incumbent licensees and lessors in this band that would mandate disclosure of additional details of spectrum lease agreements to potential bidders. The Commission finds that adoption of proponents' expanded disclosure requirement is beyond the bounds of the existing spectrum leasing rules and the Commission's prior determinations supporting those disclosure requirements. The Commission's spectrum leasing rules already provide that each licensee that enters into a leasing agreement must disclose to the Commission a significant amount of information pertaining to the agreement, including the identity of the lessee, the term, and the spectrum and geographic area covered, and that such information is publicly available through ULS. Given the spectrum lease information already available, the Commission finds that proponents of disclosure have not supported their assertion that additional information is necessary in making decisions about whether or how to participate in this auction. Finally, even if additional information may be helpful or material to one or more bidders—and the Commission makes no such finding—the Commission is not convinced that the benefits to potential bidders of obtaining such information would outweigh the potential competitive harm to the leaseholders from disclosure.

16. Each potential bidder is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the potential uses of a license that it may seek in Auction 108, including the availability of unassigned white space in any particular license area. In addition to the typical due diligence considerations encouraged of bidders in all auctions, the Commission calls particular attention in Auction 108 to potential encumbrances due to existing licenses and pending applications. In particular there will be a substantial number of licenses in the inventory where the amount of unassigned area or unassigned spectrum is very small. For example, there could be licenses in Channel Block 2 where as little as .333 megahertz of spectrum is unassigned.

There are also a substantial number of licenses where the area with unassigned spectrum is smaller than one square mile. Each applicant should carefully consider these issues and the technical and economic implications for commercial use of the 2.5 GHz band.

D. Auctions Specifics

1. Auction Title and Start Date

17. The auction of licenses in the 2.5 GHz band will be referred to as Auction 108. Bidding in Auction 108 will begin on Friday, July 29, 2022. Pre-bidding dates and deadlines are listed below. The initial schedule for bidding rounds in Auction 108 will be announced by

public notice at least one week before bidding begins.

18. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

2. Auction Dates and Deadlines

19. The following dates and deadlines apply to Auction 108:

Auction Application Tutorial Available (via internet)	No later than April 5, 2022.
Short-Form Application (FCC Form 175) Filing Window Opens	April 27, 2022, 12 p.m. Eastern Time (ET).
Short-Form Application (FCC Form 175) Filing Window Deadline	May 10, 2022, 6 p.m. ET.
Upfront Payments (via wire transfer)	June 23, 2022, 6 p.m. ET.
Bidding Tutorial Available (via internet)	No later than July 13, 2022.
Mock Auction	July 26–27, 2022.
Bidding Begins in Auction 108	July 29, 2022.

3. Requirements for Participation

20. Those wishing to participate in Auction 108 must:

- Submit a short-form application (FCC Form 175) electronically prior to 6 p.m. ET on May 10, 2022, following the electronic filing procedures and other instructions set forth in the *Auction 108 Procedures Public Notice* and in the FCC Form 175 Instructions.

- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. ET on June 23, 2022, following the procedures and instructions set forth in the *Auction 108 Procedures Public Notice*.

- Comply with all provisions outlined in the *Auction 108 Procedures Public Notice* and applicable Commission rules.

II. Applying To Participate in Auction 108

A. Certification of Notice of Auction 108 Requirements and Procedures

21. For the reasons set forth in the *Auction 108 Comment Public Notice*, the Commission adopts the proposal to require any applicant seeking to participate in Auction 108 to certify in its short-form application, under penalty of perjury, that it has read the *Auction 108 Procedures Public Notice* adopting procedures for Auction 108 and that it has familiarized itself with these procedures and with the requirements for obtaining a license and operating facilities in the 2.5 GHz band. No commenter opposed the proposed certification, and one commenter, T-Mobile, supports it.

22. This certification is designed to bolster applicants' efforts to educate themselves about the procedures for auction participation and to ensure that, prior to submitting their short-form applications, applicants understand their obligation to stay abreast of relevant, forthcoming information.

Familiarity with the Commission's rules and procedures governing Auction 108 may also help bidders avoid the consequences to them associated with defaults, which also cause harm to other applicants and the public by reducing the efficiency of the auction process and reducing the likelihood that the license will be assigned to the bidder that values it the most. This certification, along with the other certifications required pursuant to 47 CFR 1.2105(a), will promote submission of applications that meet the Commission's requirements, thereby leading to a more efficient application process.

23. A substantively similar requirement was recently instituted for Auction 110, a Commission auction of flexible-use licenses in the 3.45–3.55 GHz band. That requirement furthered a long-standing policy under which the Commission expressly places a burden upon each applicant to be thoroughly familiar with the procedures, terms, and conditions contained in the relevant *Procedures Public Notice* and any future public notices that may be released in the auction proceeding. While the certification the Commission adds refers to information regarding auction procedures and licensing that is available at the time of certification, potential auction applicants are on notice that their educational efforts must continue even after their short-form applications are filed. Commission staff routinely makes available detailed educational materials, such as interactive, online tutorials and technical guides, to enhance interested parties' comprehension of the pre-bidding and bidding processes and to help minimize the need for applicants to engage outside engineers, legal counsel, or other auction experts.

24. For these reasons, the Commission will require each Auction 108 applicant to certify as follows in its short-form

application: That the applicant has read the public notice adopting procedures for the auction and that it has familiarized itself both with the auction procedures and with the requirements for obtaining a license and operating facilities in the 2.5 GHz band.

25. An applicant must provide this certification under penalty of perjury, consistent with 47 CFR 1.2105(a). This certification is in addition to the certifications already required under 47 CFR 1.2105. Consistent with the other certifications required in the short-form application, an applicant's failure to make this certification in its FCC Form 175 by the May 10, 2022 filing deadline will render its application unacceptable for filing, and its application will be dismissed with prejudice.

B. General Information Regarding Short-Form Applications

26. An application to participate in Auction 108, referred to as a short-form application or FCC Form 175, provides information that the Commission uses to determine whether the applicant has the legal, technical, and/or financial qualifications to participate in a Commission auction for spectrum licenses or permits. The short-form application is the first part of the Commission's two-phased auction application process. In the first phase, a party seeking to participate in Auction 108 must file a short-form application in which it certifies, under penalty of perjury, that it is qualified to participate. Eligibility to participate in Auction 108 is determined based on an applicant's short-form application and certifications and on the applicant's upfront payment. After bidding closes, in the second phase of the process, each winning bidder in Auction 108 must file a more comprehensive post-auction long-form application (FCC Form 601) for the licenses it wins in the auction,

and it must have a complete and accurate ownership disclosure information report (FCC Form 602) on file with the Commission.

27. A party seeking to participate in Auction 108 must file an FCC Form 175 electronically via the Auction Application System prior to 6 p.m. ET on May 10, 2022, following the procedures prescribed in the FCC Form 175 Instructions. If an applicant claims eligibility for a bidding credit, then the information provided in its FCC Form 175 will be used to determine whether the applicant appears to be eligible for the claimed bidding credit, with the final determination of bidding credit eligibility to occur based on a winning bidder's post-auction long-form application. Below the Commission describes more fully the information disclosures and certifications required in the short-form application. Each Auction 108 applicant will be subject to the Commission's rule prohibiting certain communications. An applicant is subject to the prohibition beginning at the deadline for filing short-form applications—6 p.m. ET on May 10, 2022.

28. An Auction 108 applicant bears full responsibility for submitting an accurate, complete, and timely short-form application. Pursuant to the Commission's competitive bidding rules, an applicant must make a series of certifications under penalty of perjury on its FCC Form 175 related to the information provided in its application and its participation in the auction, and an applicant must confirm that it is legally, technically, financially, and otherwise qualified to hold a license. As noted above, each participant in Auction 108 must also certify that it has read the *Auction 108 Procedures Public Notice* and familiarized itself both with the auction procedures and with the requirements for obtaining a license and operating facilities in the 2.5 GHz band. If an Auction 108 applicant fails to make the required certifications in its FCC Form 175 by the filing deadline, then its application will be deemed unacceptable for filing and cannot be corrected after the filing deadline.

29. An applicant should note that submitting an FCC Form 175 (and any amendments thereto) constitutes a representation by the certifying official that he or she is an authorized representative of the applicant with authority to bind the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Submitting 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.

30. Applicants are cautioned that, because the required information submitted in FCC Form 175 bears on each applicant's qualifications, requests for confidential treatment will not be routinely granted. The Commission generally has held that it may publicly release confidential business information where the party has put that information at issue in a Commission proceeding or where the Commission has identified a compelling public interest in disclosing the information. In this regard, the Commission specifically has held that information submitted in support of receiving bidding credits in auction proceedings should be made available to the public.

31. An applicant must designate between one and three individuals as authorized bidders in its FCC Form 175. The Commission's rules prohibit an individual from serving as an authorized bidder for more than one auction applicant.

32. In order to access the auction bidding system, each authorized bidder will be required to have a unique email address associated with an FCC Username Account that is linked to the applicant's FCC Registration Number (FRN) in the Commission Registration System (CORES). This added security measure is newly implemented for bidding in Commission auctions. If an authorized bidder does not provide an FCC Username Account linked to the applicant's FRN in the applicant's FCC Form 175, that bidder will be unable to place or submit bids. For further details, applicants should refer to the FCC Form 175 Instructions for Auction 108.

33. No individual or entity may file more than one short-form application or have a controlling interest in more than one short-form application. If a party submits multiple short-form applications for an auction, then only one application may form the basis for that party to become qualified to bid in that auction.

34. Similarly, and consistent with the Commission's general prohibition on joint bidding agreements, a party generally is permitted to participate in a Commission auction only through a single bidding entity. Accordingly, the filing of applications in Auction 108 by multiple entities controlled by the same individual or set of individuals generally will not be permitted. As noted by the Commission in adopting the prohibition on applications by commonly controlled entities, this rule, in conjunction with the prohibition

against joint bidding agreements, protects the competitiveness of the Commission's auctions.

35. After the initial short-form application filing deadline, Commission staff will review all timely submitted applications for Auction 108 to determine whether each application complies with the application requirements and whether the applicant has provided all required information concerning its qualifications for bidding. After this review is completed, a public notice will be released announcing the status of applications and identifying the applications that are complete and those that are incomplete because of minor defects that may be corrected. That public notice also will establish an application resubmission filing window, during which an applicant may make permissible minor modifications to its application to address identified deficiencies. The public notice will include the deadline for resubmitting modified applications. To become a qualified bidder, an applicant must have a complete application (*i.e.*, have timely filed an application that is deemed complete after the deadline for correcting any identified deficiencies), and must make a timely and sufficient upfront payment. Qualified bidders will be identified by public notice at least 10 days prior to the mock auction.

36. The Commission discusses below additional details regarding certain information required to be submitted in the FCC Form 175. An applicant should consult the Commission's rules to ensure that, in addition to the materials described below, all required information is included in its short-form application. To the extent the information in the *Auction 108 Procedures Public Notice* does not address an applicant's specific operating structure, or if the applicant needs additional information or guidance concerning the described disclosure requirements, the applicant should review the educational materials for Auction 108 (see the Education section of the Auction 108 website at www.fcc.gov/auction/108) and use the contact information provided in the *Auction 108 Procedures Public Notice* to consult with Commission staff to better understand the information that it must submit in its short-form application.

C. License Area Selection

37. An applicant must select all of the license areas on which it may want to bid from the list of available counties on its FCC Form 175. An applicant must carefully review and verify its license area (*i.e.*, county) selections before the

FCC Form 175 filing deadline because those selections cannot be changed after the auction application filing deadline. An applicant is not required to place bids on licenses in any or all of the license areas selected, but the FCC Auction Bidding System (bidding system) will not accept bids for licenses in license areas (*i.e.*, counties) that the applicant did not select in its FCC Form 175.

38. When two or more short-form applications (FCC Form 175) are submitted selecting the same licenses in Auction 108, mutual exclusivity exists for auction purposes as to those licenses, and the licenses must be awarded by competitive bidding procedures. Once mutual exclusivity exists for auction purposes, even if only one applicant is qualified to bid for a particular license, that applicant is required to submit a bid in order to obtain the license. An applicant may select licenses on its Form 175 by using the select all licenses checkbox or by selecting any particular county. Selection of a county will allow the applicant to bid on any available license within that county, provided that it otherwise becomes a qualified bidder and has sufficient bidding eligibility.

D. Disclosure of Agreements and Bidding Arrangements

39. An applicant must provide in its FCC Form 175 a brief description of, and identify each party to, any partnerships, joint ventures, consortia or agreements, arrangements, or understandings of any kind relating to the licenses being auctioned, including any agreements that address or communicate directly or indirectly bids (including specific prices), bidding strategies (including the specific licenses on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls or is controlled by the applicant, is a party. In connection with the agreement disclosure requirement, the applicant must certify under penalty of perjury in its FCC Form 175 that it has described, and identified each party to any such agreements, arrangements, or understandings to which it (or any party that controls it or that it controls) is a party. Moreover, since each applicant must maintain the accuracy and completeness of the information in its pending auction application, if it enters into any agreement relating to the licenses being auctioned after the FCC Form 175 filing deadline, then that agreement is subject to these same disclosure requirements.

40. For purposes of making the required agreement disclosures on the

FCC Form 175, if parties agree in principle on all material terms prior to the application filing deadline, then each party to the agreement that is submitting an auction application must provide a brief description of, and identify the other party or parties to, the agreement on its respective FCC Form 175, even if the agreement has not been reduced to writing. Parties that have not agreed in principle by the FCC Form 175 filing deadline should not describe, or include the names of parties to, the discussions on their applications.

41. The Commission's rules generally prohibit joint bidding and other arrangements involving auction applicants (including any party that controls or is controlled by such applicants). For purposes of the prohibition, a joint bidding arrangement includes any arrangement relating to the licenses being auctioned that addresses or communicates, directly or indirectly, bidding in the auction, bidding strategies, including arrangements regarding price or the specific licenses on which to bid, and any such arrangement relating to the post-auction market structure.

42. This prohibition applies to joint bidding arrangements involving two or more nationwide providers, as well as joint bidding arrangements involving a nationwide provider and one or more non-nationwide providers, where at least one party to the arrangement is an applicant for the auction. In the *Updating Part 1 Report and Order*, 80 FR 56763, Sep. 18, 2015, the Commission stated that entities that qualify as nationwide providers generally would be identified in procedures public notices released before each auction. To that end, and consistent with the Commission's decisions in recent spectrum auctions and in the *2020 Communications Marketplace Report*, the Commission considers AT&T, T-Mobile, and Verizon to be nationwide providers for the purpose of implementing the competitive bidding rules in Auction 108.

43. Under certain circumstances, a non-nationwide provider may enter into an agreement to form a consortium or a joint venture (as applicable) that results in a single party applying to participate in an auction. Specifically, a designated entity can participate in one consortium or joint venture in an auction, and non-nationwide providers that are not designated entities may participate in an auction through only one joint venture. A non-nationwide provider may enter into only one agreement to form a consortium or joint venture (as applicable), and such consortium or

joint venture shall be the exclusive bidding vehicle for its members in the auction. The general prohibition on joint bidding arrangements excludes certain agreements, including those that are solely operational in nature, as defined in 47 CFR 1.2105(a)(2)(ix)(A)–(C).

44. To implement the prohibition on joint bidding arrangements, the Commission's rules require each applicant to certify in its short-form application that it has disclosed any arrangements or understandings of any kind relating to the licenses being auctioned to which it (or any party that controls or is controlled by it) is a party. The applicant must also certify that it (or any party that controls or is controlled by it) has not entered and will not enter into any arrangement or understanding of any kind relating directly or indirectly to bidding at auction with, among others, any other applicant or a nationwide provider.

45. Although the Commission's rules do not prohibit auction applicants from communicating about matters that are within the scope of an excepted agreement that has been disclosed in an FCC Form 175, the Commission reminds applicants that certain discussions or exchanges could nonetheless touch upon impermissible subject matters, and that compliance with the Commission's rules will not insulate a party from enforcement of the antitrust laws.

46. Applicants should bear in mind that a winning bidder will be required to disclose, in its post-auction long-form application, the specific terms, conditions, and parties involved in any agreement relating to the licenses being auctioned into which it had entered prior to the time bidding was completed. This applies to any bidding consortium, joint venture, partnership, or other agreement, arrangement, or understanding of any kind entered into relating to the competitive bidding process, including any agreements relating to the licenses being auctioned that address or communicate directly or indirectly bids (including specific prices), bidding strategies (including the specific licenses on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls or is controlled by the applicant, is a party.

E. Ownership Disclosure Requirements

47. Each applicant must comply with the applicable part 1 ownership disclosure requirements and provide information required by 47 CFR 1.2105 and 1.2112, and, where applicable, 47 CFR 1.2110. Specifically, in completing FCC Form 175, an applicant must fully

disclose information regarding the real party- or parties-in-interest in the applicant or application and the ownership structure of the applicant, including both direct and indirect ownership interests of 10% or more, as prescribed in 47 CFR 1.2105 and 1.2112 and, where applicable, 47 CFR 1.2110. Each applicant is responsible for ensuring that information submitted in its short-form application is complete and accurate.

48. In certain circumstances, an applicant may have previously filed an FCC Form 602 ownership disclosure information report or filed an auction application for a previous auction in which ownership information was disclosed. If the applicant used the same FCC Registration Number (FRN) the applicant is using to submit its FCC Form 175, the most current ownership information contained in any such filing will automatically be pre-filled into certain ownership sections on the applicant's FCC Form 175, if such information is in an electronic format compatible with FCC Form 175. Each applicant must carefully review any ownership information automatically entered into its FCC Form 175, including any ownership attachments, to confirm that all information supplied on FCC Form 175 is complete and accurate as of the application filing deadline. Any information that needs to be corrected or updated must be changed directly in FCC Form 175.

F. Foreign Ownership Disclosure Requirements

49. Section 310 of the Communications Act requires the Commission to review foreign investment in radio station licenses and imposes specific restrictions on who may hold certain types of radio licenses. Section 310 applies to applications for initial radio licenses, applications for assignments and transfers of control of radio licenses, and spectrum leasing arrangements under the Commission's secondary market rules. In completing FCC Form 175, an applicant is required to disclose information concerning foreign ownership of the applicant. If an applicant has foreign ownership interests in excess of the applicable limit or benchmark set forth in 47 U.S.C. 310(b), then it may seek to participate in Auction 108 as long as it has filed a petition for declaratory ruling with the Commission prior to the FCC Form 175 filing deadline. An applicant must certify in its FCC Form 175 that, as of the deadline for filing its application to participate in the auction, the applicant either is in compliance with the foreign ownership provisions of 47 U.S.C. 310

or has filed a petition for declaratory ruling requesting Commission approval to exceed the applicable foreign ownership limit or benchmark in 47 U.S.C. 310(b) that is pending before, or has been granted by, the Commission.

G. Information Procedures During the Auction Process

50. Consistent with past practice in many prior spectrum license auctions, the Commission adopts the proposal to limit information available in Auction 108 in order to prevent the identification of bidders placing particular bids until after the bidding has closed. Specifically, the Commission will not make public until after bidding has closed: (1) The license areas that an applicant selects for bidding in its short-form application, (2) the amount of any upfront payment made by or on behalf of an applicant for Auction 108, (3) any applicant's bidding eligibility, and (4) any other bidding-related information that might reveal the identity of the bidder placing a bid.

51. Once bidding begins in Auction 108, under the limited information procedures (sometimes also referred to as anonymous bidding), information to be made public after each round of bidding will include, for each license, the aggregate demand, the posted price of the completed round, and the clock price for the next round. The identities of bidders placing specific bids will *not* be disclosed until after the close of bidding.

52. Throughout the auction, bidders will have access to additional information related to their own bidding and bidding eligibility through the Commission's bidding system. Specifically, after the bids of a round have been processed, the bidding system will inform each bidder of its processed demand, whether the bidder has a proxy instruction in place for each license, and its eligibility for the next round.

53. After the close of bidding, bidders' license area selections, upfront payment amounts, bidding eligibility, bids, and other bidding-related actions will be made publicly available. Bids placed according to a bidder's proxy instructions will be available, but a bidder's proxy instructions will not be disclosed.

54. The Commission warns applicants that direct or indirect communication to other applicants or the public disclosure of non-public information (*e.g.*, reductions in eligibility, identities of bidders) could violate the Commission's rule prohibiting certain communications. Therefore, to the extent an applicant believes that such a

disclosure is required by law or regulation, including regulations issued by the U.S. Securities and Exchange Commission (SEC), the Commission strongly urges that the applicant consult with Commission staff in the Auctions Division before making such disclosure.

H. Prohibited Communications and Compliance With Antitrust Laws

55. The rules prohibiting certain communications set forth in 47 CFR 1.2105(c) apply to each applicant in Auction 108. Section 1.2105(c)(1) provides that, subject to specified exceptions, after the short-form application filing deadline, all applicants are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other or any nationwide provider of communications services that is not an applicant, or, if the applicant is a nationwide provider, any non-nationwide provider that is not an applicant, in any manner the substance of their own, or each other's, or any other applicants' bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after the down payment deadline.

1. Entities Subject to Section 1.2105(c)

56. An applicant for purposes of this rule includes all controlling interests in the entity submitting the FCC Form 175 auction application, as well as all holders of interests amounting to 10% or more of the entity (including institutional investors and asset management companies), and all officers and directors of that entity. Under 47 CFR 1.2105(c), a party that submits an application becomes an applicant under the rule, which goes into effect at the application deadline, and that status does not change based on later developments.

57. As proposed in the *Auction 108 Comment Public Notice*, the Commission considers AT&T, T-Mobile, and Verizon to be nationwide providers for the purposes of the prohibited communications rule for Auction 108.

2. Prohibition Applies Until Down Payment Deadline

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

3. Scope of Prohibition on Certain Communications; Prohibition on Joint Bidding Agreements

59. Section 1.2105(c) prohibits certain communications between applicants for an auction, regardless of whether the applicants seek permits or licenses in the same geographic area or market. The rule also applies to communications by applicants with non-applicant nationwide providers of communications services and by nationwide applicants with non-applicant, non-nationwide providers. The rule further prohibits joint bidding arrangements, including arrangements relating to the permits or licenses being auctioned that address or communicate, directly or indirectly, bidding at the auction, bidding strategies, including arrangements regarding price or the specific permits or licenses on which to bid, and any such arrangements relating to the post-auction market structure. The rule allows for limited exceptions for communications within the scope of any arrangement consistent with the exclusion from the Commission's rule prohibiting joint bidding, provided such arrangement is disclosed on the applicant's auction application. Applicants may communicate pursuant to any pre-existing agreements, arrangements, or understandings relating to the licenses being auctioned that are solely operational or that provide for the transfer or assignment of licenses, provided that such agreements, arrangements, or understandings are disclosed on their applications and do not both relate to the licenses at auction and address or communicate bids (including amounts), bidding strategies, or the particular permits or licenses on which to bid or the post-auction market structure.

60. In addition to express statements of bids and bidding strategies, the prohibition against communicating in any manner includes public disclosures as well as private communications and indirect or implicit communications. Consequently, an applicant must take care to determine whether its auction-related communications may reach another applicant.

61. Parties subject to 47 CFR 1.2105(c) should take special care in circumstances where their officers, directors, and employees may receive information directly or indirectly relating to any applicant's bids or bidding strategies. Such information may be deemed to have been received by the applicant under certain circumstances. For example, Commission staff have found that, where an individual serves as an officer

and director for two or more applicants, the bids and bidding strategies of one applicant are presumed to be conveyed to the other applicant through the shared officer, which creates an apparent violation of the rule.

62. Subject to the limited exceptions for communications within the scope of any arrangement consistent with the exclusion from the Commission's rule prohibiting joint bidding, 47 CFR 1.2105(c)(1) prohibits applicants from communicating with specified other parties only with respect to their own, or each other's, or any other applicant's bids or bidding strategies. The *Prohibited Communications Guidance Public Notice*, 80 FR 63215, October 19, 2015, released in advance of the broadcast incentive auction (Auction 1000) reviewed the scope of the prohibition generally, as well as in that specific auction's forward auction of spectrum licenses and reverse auction to relinquish broadcast licenses. As the Commission explained therein, a communication conveying bids or bidding strategies (including post-auction market structure) must also relate to the licenses being auctioned in order to be covered by the prohibition. Thus, the prohibition is limited in scope and does not apply to all communications between or among the specified parties. The Commission consistently has made clear that application of the rule prohibiting communications has never required total suspension of essential ongoing business. Entities subject to the prohibition may negotiate agreements during the prohibition period, provided that the communications involved do not relate to both: (1) The licenses being auctioned and (2) bids or bidding strategies or post-auction market structure.

63. Accordingly, business discussions and negotiations that do not convey information about the bids or bidding strategies, including the post-auction market structure, of an applicant are not prohibited by the rule. Moreover, not all auction-related information is covered by the prohibition. For example, communicating merely whether a party has or has not applied to participate in Auction 108 will not violate the rule. In contrast, communicating, among other things, how a party will participate, including specific geographic areas selected, specific bid amounts, and/or whether or not the party is placing bids, would convey bids or bidding strategies and would be prohibited.

64. While 47 CFR 1.2105(c) does not prohibit business discussions and negotiations among auction applicants that are unrelated to the auction, each

applicant must remain vigilant not to communicate, directly or indirectly, information that affects, or could affect, bids or bidding strategies. Certain discussions might touch upon subject matters that could convey price or geographic information related to bidding strategies. Such subject areas include, but are not limited to, management, sales, local marketing agreements, and other transactional agreements.

65. The Commission cautions applicants that bids or bidding strategies may be communicated outside of situations that involve one party subject to the prohibition communicating privately and directly with another such party. For example, the Commission has warned that prohibited communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly. Moreover, the Commission found a violation of the rule against prohibited communications when an applicant used the Commission's bidding system to disclose its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets, and it has placed auction participants on notice that the use of its bidding system to disclose market information to competitors will not be tolerated and will subject bidders to sanctions.

66. Likewise, when completing a short-form application, each applicant should avoid any statements or disclosures that may violate 47 CFR 1.2105(c), particularly in light of the limited information procedures in effect for Auction 108. Specifically, an applicant should avoid including any information in its short-form application that might convey information regarding its license area selections, such as referring to counties or other geographic areas in describing agreements, including any information in application attachments that will be publicly available that may otherwise disclose the applicant's license area selections, or using applicant names that refer to licenses being offered.

67. Applicants also should be mindful that communicating non-public application or bidding information publicly or privately to another applicant may violate 47 CFR 1.2105(c) even though that information subsequently may be made public during later periods of the application or bidding processes.

4. Communicating With Third Parties

68. Section 1.2105(c) does not prohibit an applicant from communicating bids or bidding strategies to a third party, such as a consultant or consulting firm, counsel, or lender. An applicant should take appropriate steps, however, to ensure that any third party it employs for advice pertaining to its bids or bidding strategies does not become a conduit for prohibited communications to other specified parties, as that would violate the rule. For example, an applicant might require a third party, such as a lender, to sign a non-disclosure agreement before the applicant communicates any information regarding bids or bidding strategy to the third party. Within third-party firms, separate individual employees, such as attorneys or auction consultants, may advise individual applicants on bids or bidding strategies, as long as such firms implement firewalls and other compliance procedures that prevent such individuals from communicating the bids or bidding strategies of one applicant to other individuals representing separate applicants. Although firewalls and/or other procedures should be used, their existence is not an absolute defense to liability if a violation of the rule has occurred.

69. As the Commission has noted in other spectrum auctions, in the case of an individual, the objective precautionary measure of a firewall is not available. As a result, an individual that is privy to bids or bidding information of more than one applicant presents a greater risk of becoming a conduit for a prohibited communication. The Commission will take the same approach to interpreting the prohibited communications rule in Auction 108. The Commission emphasizes that whether a prohibited communication has taken place in a given case will depend on all the facts pertaining to the case, including who possessed what information, what information was conveyed to whom, and the course of bidding in the auction.

70. The Commission reminds potential applicants that they may discuss the short-form application or bids for specific licenses or license areas with the counsel, consultant, or expert of their choice *before* the short-form application deadline. Furthermore, the same third-party individual could continue to give advice after the short-form deadline regarding the application, provided that no information pertaining to bids or bidding strategies, including license areas, or counties, selected on

the short-form application, is conveyed to that individual.

71. Applicants also should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become conduits for the communication of prohibited bidding information. For example, even though communicating that it has applied to participate in the auction will not violate the rule, an applicant's statement to the press that it intends to stop bidding in an auction could give rise to a finding of a 47 CFR 1.2105 violation. Similarly, an applicant's public statement of intent not to place bids during bidding in Auction 108 could also violate the rule.

5. Section 1.2105(c) Certifications

72. By electronically submitting its FCC Form 175, each applicant for Auction 108 certifies its compliance with 47 CFR 1.2105(c). The mere filing of a certifying statement as part of an application, however, will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted. Any applicant found to have violated these communication prohibitions may be subject to sanctions.

6. Duty To Report Prohibited Communications

73. 47 CFR 1.2105(c)(4) requires that any applicant that makes or receives a communication that appears to violate 47 CFR 1.2105(c) must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. Each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.

7. Procedures for Reporting Prohibited Communications

74. A party reporting any information or communication pursuant to 47 CFR 1.65(a), 1.2105(a)(2), or 1.2105(c)(4) must take care to ensure that any report of a prohibited communication does not itself give rise to a violation of 47 CFR 1.2105(c). For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other parties specified under the rule through the use of Commission filing procedures that allow such materials to be made available for public inspection.

75. An applicant must file only a single report concerning a prohibited communication and must file that report

with the Commission personnel expressly charged with administering the Commission's auctions. This rule is designed to minimize the risk of inadvertent dissemination of information in such reports. Any reports required by 47 CFR 1.2105(c) must be filed consistent with the instructions set forth in the *Auction 108 Procedures Public Notice*. For Auction 108, such reports must be filed with the Chief of the Auctions Division, Office of Economics and Analytics, by the most expeditious means available. Any such report should be submitted by email to the Auctions Division Chief and sent to auction108@fcc.gov. If you choose instead to submit a report in hard copy, contact Auctions Division staff at auction108@fcc.gov or (202) 418-0660 for guidance.

76. Given the potential competitive sensitivity of public disclosure of information in such a report, a party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by following the procedures specified in 47 CFR 0.459. The Commission encourages such parties to coordinate with the Auctions Division staff about the procedures for submitting such reports.

8. Winning Bidders Must Disclose Terms of Agreements

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

9. Additional Information Concerning Prohibition on Certain Communications in Commission Auctions

78. A summary listing of documents issued by the Commission and OEA/WTB addressing the application of 47 CFR 1.2105(c) is available on the Commission's auction web page at www.fcc.gov/summary-listing-documents-addressing-application-rule-prohibiting-certain-communications.

10. Antitrust Laws

79. Regardless of compliance with the Commission's rules, applicants remain

subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace.

Compliance with the disclosure requirements of 47 CFR 1.2105(c)(4) will not insulate a party from enforcement of the antitrust laws. For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submits a short-form application. The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws: for example, actual or potential competitors may not agree to divide territories in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another market for the other.

80. To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, they may refer such allegations to the United States Department of Justice for investigation. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, then it may be subject to a forfeiture and may be prohibited from participating further in Auction 108 and in future auctions, among other sanctions.

I. Provisions for Small Businesses and Rural Service Providers

81. A bidding credit represents an amount by which a bidder's overall payment across all of the licenses won will be discounted, subject to the caps discussed below. As set forth in 47 CFR 1.2110, and as described below, the designated entity rules include, but are not limited to: (1) A two-pronged standard for evaluating eligibility for small business benefits, (2) an attribution rule for certain disclosable interest holders of applicants claiming designated entity benefits, (3) updated gross revenue amounts defining eligibility for small business benefits, (4) a bidding credit for eligible rural service providers, and (5) caps on the total amount of designated entity benefits any eligible winning bidder may receive.

82. In Auction 108, designated entity bidding credits will be available to applicants demonstrating eligibility for a small business or a rural service provider bidding credit and subsequently winning license(s). These bidding credits will not be cumulative—an applicant is permitted to claim either a small business bidding credit or a rural service provider bidding credit, but not both. Each applicant must also

certify that it is eligible for the claimed bidding credit in its FCC Form 175. In addition to the information provided below, each applicant should review carefully the Commission's decisions regarding the designated entity provisions as well as the part 1 rules.

83. In particular, the Commission reminds applicants applying for designated entity bidding credits that they should take due account of the requirements of the Commission's rules and implementing orders regarding *de jure* and *de facto* control of such applicants. These rules include a prohibition, which applies to all applicants (whether they seek bidding credits or not), against changes in ownership of the applicant that would constitute an assignment or transfer of control after the initial filing deadline for FCC Form 175. Applicants should not expect to receive any opportunities to revise their ownership structure after the filing of their short- and long-form applications, including making revisions to their agreements or other arrangements with interest holders, lenders, or others in order to address potential concerns relating to compliance with the designated entity bidding credit requirements. This policy will help to ensure compliance with the Commission's rules applicable to the award of bidding credits prior to the conduct of the auction, which will involve competing bids from those that do and do not seek bidding credits, and thus preserves the integrity of the auction process. The Commission also believes that this will meet the Commission's objectives in awarding licenses through the competitive bidding process.

1. Small Business Bidding Credit

84. For Auction 108, bidding credits will be available to eligible small businesses and consortia thereof, subject to the caps discussed below. Under the service rules applicable to the 2.5 GHz band licenses to be offered in Auction 108, the level of bidding credit available is determined as follows:

- A bidder that qualifies as a small business—*i.e.*, one with attributed average annual gross revenues that do not exceed \$55 million for the preceding five years—is eligible to receive a 15% discount on its overall payment.
- A bidder that qualifies as a very small business—*i.e.*, one with attributed average annual gross revenues that do not exceed \$20 million for the preceding five years—is eligible to receive a 25% discount on its overall payment.

85. In adopting this two-tiered approach in the *2.5 GHz Report and Order*, the Commission observed that

this approach would provide consistency and predictability for small businesses.

86. Small business bidding credits are not cumulative; an eligible applicant may receive either the 15% or the 25% bidding credit on its overall payment, but not both. The Commission's unjust enrichment provisions also apply to a winning bidder that uses a bidding credit and subsequently seeks to assign or transfer control of its license within a certain period to an entity not qualifying for at least the same level of small business bidding credit.

87. Each applicant claiming a small business bidding credit must disclose the gross revenues for the preceding five years for each of the following: (1) The applicant, (2) its affiliates, (3) its controlling interests, and (4) the affiliates of its controlling interests. The applicant must also submit an attachment that lists all parties with which the applicant has entered into any spectrum use agreements or arrangements for any licenses that may be won by the applicant in Auction 108. In addition, to the extent that an applicant has an agreement with any disclosable interest holder for the use of more than 25% of the spectrum capacity of any license that may be won in Auction 108, the applicant must disclose the identity and the attributable gross revenues of any such disclosable interest holder. This attribution rule will be applied on a license-by-license basis. As a result, an applicant may be eligible for a bidding credit on some, but not all, of the licenses for which it is bidding in Auction 108. If an applicant is applying as a consortium of small businesses, then the disclosures described in this paragraph must be provided for each consortium member.

2. Rural Service Provider Bidding Credit

88. An eligible applicant may request a 15% discount on its overall payment using a rural service provider bidding credit, subject to the cap discussed below. To be eligible for a rural service provider bidding credit, an applicant must: (1) Be a service provider that is in the business of providing commercial communications services and, together with its controlling interests, affiliates, and the affiliates of its controlling interests, has fewer than 250,000 combined wireless, wireline, broadband, and cable subscribers; and (2) serve predominantly rural areas. Rural areas are defined as counties with a population density of 100 or fewer persons per square mile. An applicant seeking a rural service provider bidding credit must provide the number of subscribers served as of the short-form

application deadline. An applicant may count any subscriber as a single subscriber even if that subscriber receives more than one service.

89. Each applicant seeking a rural service provider bidding credit must disclose the number of its subscribers, along with the number of subscribers of its affiliates, controlling interests, and the affiliates of its controlling interests. The applicant must also submit an attachment that lists all parties with which the applicant has entered into any spectrum use agreements or arrangements for any licenses that may be won by the applicant in Auction 108. In addition, to the extent that an applicant has an agreement with any disclosable interest holder for the use of more than 25% of the spectrum capacity of any license that may be won in Auction 108, the identity and the attributable subscribers of any such disclosable interest holder must be disclosed. Like applicants seeking eligibility for small business bidding credits, eligible rural service providers may also form a consortium. If an applicant is applying as a consortium of rural service providers, then the disclosures described in this paragraph, including the certification, must be provided for each consortium member.

3. Caps on Bidding Credits

90. Eligible applicants claiming either a small business or rural service provider bidding credit will be subject to specified caps on the total bidding credit discount that they may receive. The Commission adopts the bidding credit caps for Auction 108 at the amounts proposed for the reasons discussed by the Commission in the *Auction 108 Comment Public Notice*. Specifically, the Commission adopts a \$25 million cap on the total bidding credit discount that may be awarded to an eligible small business, and a \$10 million cap on the total bidding credit discount that may be awarded to an eligible rural service provider. Additionally, to create parity among eligible small businesses and rural service providers competing against each other in smaller markets, no winning designated entity bidder may receive more than \$10 million in bidding credit discounts in total for licenses won in counties located within any partial economic area (PEA) with a population of 500,000 or less.

4. Attributable Interests

a. Controlling Interests and Affiliates

91. Pursuant to 47 CFR 1.2110, an applicant's eligibility for designated entity benefits is determined by

attributing the gross revenues (for those seeking small business benefits) or subscribers (for those seeking rural service provider benefits) of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests. Controlling interests of an applicant include individuals and entities with either *de facto* or *de jure* control of the applicant. Typically, ownership of greater than 50% of an entity's voting stock evidences *de jure* control. *De facto* control is determined on a case-by-case basis based on the totality of the circumstances. The following are some common indicia of *de facto* control:

- The entity constitutes or appoints more than 50% 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; and
- the entity plays an integral role in management decisions.

92. Additionally, for attribution purposes, officers and directors of an applicant seeking a bidding credit are considered to have a controlling interest in the applicant. Applicants should refer to 47 CFR 1.2110(c)(2) and the FCC Form 175 Instructions to understand how certain interests are calculated in determining control for purposes of attributing gross revenues.

93. Affiliates of an applicant or controlling interest include an individual or entity that: (1) Directly or indirectly controls or has the power to control the applicant, (2) is directly or indirectly controlled by the applicant, (3) is directly or indirectly controlled by a third party that also controls or has the power to control the applicant, or (4) has an identity of interest with the applicant. The Commission's definition of an affiliate of the applicant encompasses both controlling interests of the applicant and affiliates of controlling interests of the applicant. For more information on the application requirements regarding controlling interests and affiliates, applicants should refer to 47 CFR 1.2110(c)(2) and (5) respectively, as well as the FCC Form 175 Instructions.

94. An applicant seeking a small business bidding credit must demonstrate its eligibility for the bidding credit by: (1) Meeting the applicable small business size standard, based on the controlling interest and affiliation rules discussed above; and (2) retaining control, on a license-by-license basis, over the spectrum associated with the licenses for which it seeks small business benefits. For purposes of the first prong of the standard, applicants

should note that control and affiliation may arise through, among other things, ownership interests, voting interests, management and other operating agreements, or the terms of any other types of agreements—including spectrum lease agreements—that independently or together create a controlling, or potentially controlling, interest in the applicant's or licensee's business as a whole. In addition, once an applicant demonstrates eligibility as a small business under the first prong, it must also be eligible for benefits on a license-by-license basis under the second prong. As part of making the FCC Form 175 certification that it is qualified as a designated entity under 47 CFR 1.2110, an applicant is certifying that it does not have any spectrum use or other agreements that would confer either *de jure* or *de facto* control of any license it seeks to acquire with bidding credits.

95. Applicants should note that, under this standard for evaluating eligibility for small business bidding credits, if an applicant executes a spectrum use agreement that does not comply with the Commission's relevant standard of *de facto* control, then it will be subject to unjust enrichment obligations for the benefits associated with that particular license, as well as the penalties associated with any violation of 47 U.S.C. 310(d) and related regulations, which require Commission approval of transfers of control. If that spectrum use agreement (either alone or in combination with the designated entity controlling interest and attribution rules described above) goes so far as to confer control of the applicant's overall business, then the gross revenues of the additional interest holders will be attributed to the applicant, which could render the applicant ineligible for all current and future small business benefits on all licenses.

b. Limitation on Spectrum Use

96. Under 47 CFR 1.2110(c)(2)(ii)(I), the gross revenues (or the subscribers, in the case of a rural service provider) of an applicant's disclosable interest holder are attributable to the applicant, on a license-by-license basis, if the disclosable interest holder has an agreement with the applicant to use, in any manner, more than 25% of the spectrum capacity of any license won by the applicant and acquired with a bidding credit during the five-year unjust enrichment period for the applicable license. For purposes of this requirement, a disclosable interest holder of an applicant seeking designated entity benefits is defined as

any individual or entity holding a 10% or greater interest of any kind in the applicant, including but not limited to, a 10% or greater interest in any class of stock, warrants, options, or debt securities in the applicant or licensee. Any applicant seeking a bidding credit for licenses won in Auction 108 will be subject to this attribution rule and must make the requisite disclosures.

97. Certain disclosable interest holders may be excluded from this attribution rule. Specifically, an applicant claiming the rural service provider bidding credit may have spectrum license use agreements with a disclosable interest holder, without having to attribute the disclosable interest holder's subscribers, so long as the disclosable interest holder is independently eligible for a rural service provider credit and the disclosable interest holder's spectrum use and any spectrum use agreements are otherwise permissible under the Commission's existing rules. If applicable, the applicant must attach to its FCC Form 175 any additional information as may be required to indicate any license (or license area) that may be subject to this attribution rule or to demonstrate its eligibility for the exception from this attribution rule. Consistent with the Commission's limited information procedures, the Commission intends to withhold from public disclosure all information contained in any such attachments until after the close of Auction 108.

c. Exceptions From Attribution Rules for Small Businesses and Rural Service Providers

98. Applicants claiming designated entity benefits may be eligible for certain exceptions from the Commission's attribution rules. For example, in calculating an applicant's gross revenues under the controlling interest standard, the Commission will not attribute to the applicant the personal net worth, including personal income, of its officers and directors. However, to the extent that the officers and directors of the applicant are controlling interest holders of other entities, the gross revenues of those entities will be attributed to the applicant. Moreover, if an officer or director operates a separate business, then the gross revenues derived from that business would be attributed to the applicant.

99. The Commission has also exempted from attribution to the applicant the gross revenues of the affiliates of a rural telephone cooperative's officers and directors, if certain conditions specified in 47 CFR

1.2110(b)(4)(iii) are met. An applicant claiming this exemption must provide, in an attachment, an affirmative statement that the applicant, affiliate and/or controlling interest is an eligible rural telephone cooperative within the meaning of 47 CFR 1.2110(b)(4)(iii), and the applicant must supply any additional information as may be required to demonstrate eligibility for the exemption from the attribution rule.

100. An applicant claiming a rural service provider bidding credit may be eligible for an exception from the Commission's attribution rules as an existing rural partnership. To qualify for this exception, an applicant must be a rural partnership providing service as of July 16, 2015, and each member of the rural partnership must individually have fewer than 250,000 combined wireless, wireline, broadband, and cable subscribers. Because each member of the rural partnership must individually qualify for the bidding credit, by definition, a partnership that includes a nationwide provider as a member will not be eligible for the benefit.

101. Finally, a consortium of small businesses or rural service providers may seek an exception from the Commission's attribution rules. Under the Commission's rules, a consortium of small businesses or rural service providers is a conglomerate organization composed of two or more entities, each of which individually satisfies the definition of small business or rural service provider. A consortium must provide additional information for each member demonstrating each member's eligibility for the claimed bidding credit in order to show that the applicant satisfies the eligibility criteria for the bidding credit. The gross revenue or subscriber information of each consortium member will not be aggregated for purposes of determining the consortium's eligibility for the claimed bidding credit. This information must be provided, however, to ensure that each consortium member qualifies for the bidding credit sought by the consortium.

J. Tribal Lands Bidding Credit

102. A winning bidder that intends to use its license(s) to deploy facilities and provide services to qualifying Tribal lands that have a wireline penetration rate equal to or below 85% is eligible to receive a Tribal lands bidding credit. A tribal lands bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify. Unlike other bidding credits that are requested prior to an auction, a winning bidder applies for a Tribal lands bidding credit after the auction

when it files its FCC Form 601 post-auction application.

K. Provisions Regarding Former and Current Defaulters

103. Pursuant to the rules governing competitive bidding, each applicant must make certifications regarding whether it is a current or former defaulter or delinquent. A current defaulter or delinquent is not eligible to participate in Auction 108, but a former defaulter or delinquent may participate so long as it is otherwise qualified and makes an upfront payment that is 50% more than would otherwise be necessary. Accordingly, each applicant must certify under penalty of perjury on its FCC Form 175 that it, its affiliates, its controlling interests, and the affiliates of its controlling interests are not in default on any payment for a Commission construction permit or license (including down payments) and that they are not delinquent on any non-tax debt owed to any Federal agency. Additionally, an applicant must certify under penalty of perjury whether it (along with its controlling interests) has ever been in default on any payment for a Commission construction permit or license (including down payments) or has ever been delinquent on any non-tax debt owed to any Federal agency, subject to the exclusions described below. For purposes of making these certifications, the term controlling interest is defined in 47 CFR 1.2105(a)(4)(i).

104. Under the Commission's rule regarding applications by former defaulters, an applicant is considered a former defaulter or a former delinquent when, as of the FCC Form 175 filing deadline, the applicant or any of its controlling interests has defaulted on any Commission construction permit or license or has been delinquent on any non-tax debt owed to any Federal agency, but has since remedied all such defaults and cured all of the outstanding non-tax delinquencies. For purposes of the certification under 47 CFR 1.2105(a)(2)(xii), the applicant may exclude from consideration any cured default on a Commission construction permit or license or cured delinquency on a non-tax debt owed to a Federal agency for which any of the following criteria are met: (1) The notice of the final payment deadline or delinquency was received more than seven years before the FCC Form 175 filing deadline, (2) the default or delinquency amounted to less than \$100,000, (3) the default or delinquency was paid within two quarters (*i.e.*, six months) after receiving the notice of the final payment deadline or delinquency, or (4) the

default or delinquency was the subject of a legal or arbitration proceeding and was cured upon resolution of the proceeding. With respect to the first exclusion, notice to a debtor may include notice of a final payment deadline or notice of delinquency and may be express or implied depending on the origin of any Federal non-tax debt giving rise to a default or delinquency. Additionally, for the third exclusion, the date of receipt of the notice of a final default deadline or delinquency by the intended party or debtor will be used for purposes of verifying receipt of notice.

105. In addition to the *Auction 108 Procedures Public Notice*, applicants are encouraged to review previous guidance on default and delinquency disclosure requirements in the context of the auction short-form application process. Parties are also encouraged to consult with Auctions Division staff if they have any questions about default and delinquency disclosure requirements.

106. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission has previously adopted rules, including a provision referred to as the red light rule, that implement its obligations under the Debt Collection Improvement Act of 1996, which governs the collection of debts owed to the United States. Under the red light rule, applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission will not be processed. When adopting that rule, the Commission explicitly declared, however, that its competitive bidding rules are not affected by the red light rule. As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of its competitive bidding rules, including the provisions and certifications of 47 CFR 1.2105 and 1.2106, with regard to current and former defaults or delinquencies.

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

(or whether it may be subject to an increased upfront payment obligation). Moreover, a prospective applicant in Auction 108 should note that any long-form applications filed after the close of bidding will be reviewed for compliance with the Commission's red light rule, and such review may result in the dismissal of a winning bidder's long-form application. The Commission encourages each applicant to carefully review all records and other available Federal agency databases and information sources to determine whether the applicant, or any of its affiliates, or any of its controlling interests, or any of the affiliates of its controlling interests, owes or was ever delinquent in the payment of non-tax debt owed to any Federal agency.

L. Optional Applicant Status Identification

108. Applicants owned by members of minority groups and/or women, as defined in 47 CFR 1.2110(c)(3), and rural telephone companies, as defined in 47 CFR 1.2110(c)(4), may identify themselves regarding this status in filling out their FCC Form 175 applications. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of various groups in its auctions.

M. Modifications to FCC Form 175

1. Only Minor Modifications Allowed

109. After the initial FCC Form 175 filing deadline, an Auction 108 applicant will be permitted to make only minor amendments to its application consistent with the Commission's rules. Examples of minor changes include the deletion or addition of authorized bidders (to a maximum of three) and the revision of addresses and telephone numbers of the applicant, its responsible party, and its contact person. Major amendments to an FCC Form 175 (e.g., change of license area selection, certain changes in ownership that would constitute an assignment or transfer of control of the applicant, change in the required certifications, change in applicant's legal classification that results in a change in control, or change in claimed eligibility for a higher percentage of bidding credit) will not be permitted after the initial FCC Form 175 filing deadline. If an amendment reporting changes is a major amendment, as described in 47 CFR 1.2105(b)(2), the major amendment will not be accepted and may result in the dismissal of the application.

2. Duty To Maintain Accuracy and Completeness of FCC Form 175

110. Pursuant to 47 CFR 1.65, each applicant has a continuing obligation to maintain the accuracy and completeness of information furnished in a pending application, including a pending application to participate in Auction 108. Consistent with the requirements for prior spectrum auctions, an applicant for Auction 108 must furnish additional or corrected information to the Commission within five business days after a significant occurrence, or amend its FCC Form 175 no more than five business days after the applicant becomes aware of the need for the amendment. An applicant is obligated to amend its pending application even if a reported change may result in the dismissal of the application because it is subsequently determined to be a major modification.

3. Modifying and FCC Form 175

111. As noted above, a party seeking to participate in Auction 108 must file an FCC Form 175 electronically via the FCC's Auction Application System. During the initial filing window, an applicant will be able to make any necessary modifications to its FCC Form 175 in the Auction Application System. An applicant that has certified and submitted its FCC Form 175 before the close of the initial filing window may continue to make modifications as often as necessary until the close of that window; however, the applicant must re-certify and re-submit its FCC Form 175 before the close of the initial filing window to confirm and effect its latest application changes. After each submission, a confirmation page will be displayed stating the submission time and submission date.

112. An applicant will also be allowed to modify its FCC Form 175 in the Auction Application System, except for certain fields, during the resubmission filing window and after the release of the public notice announcing the qualified bidders for an auction. During these times, if an applicant needs to make permissible minor changes to its FCC Form 175 or must make changes in order to maintain the accuracy and completeness of its application pursuant to 47 CFR 1.65 and 1.2105(b)(4), then it must make the change(s) in the Auction Application System and re-certify and re-submit its application to confirm and effect the change(s).

113. An applicant's ability to modify its FCC Form 175 in the Auction Application System will be limited between the closing of the initial filing

window and the opening of the application resubmission filing window, and between the closing of the resubmission filing window and the release of the public notice announcing the qualified bidders for an auction. During these periods, an applicant will be able to view its submitted application, but will be permitted to modify only the applicant's address, responsible party address, and contact information (e.g., name, address, telephone number) in the Auction Application System. An applicant will not be able to modify any other pages of the FCC Form 175 in the Auction Application System during these periods. If, during these periods, an applicant needs to make other permissible minor changes to its FCC Form 175, or changes to maintain the accuracy and completeness of its application pursuant to 47 CFR 1.65 and 1.2105(b)(4), then the applicant must submit a letter briefly summarizing the changes to its FCC Form 175 via email to auction108@fcc.gov. The email summarizing the changes must include a subject line referring to Auction 108 and the name of the applicant, for example, Re: Changes to Auction 108 Auction Application of XYZ Corp. Any attachments to the email must be formatted as Adobe® Acrobat® (PDF) or Microsoft® Word documents. An applicant that submits its changes in this manner must subsequently modify, certify, and submit its FCC Form 175 application(s) electronically in the Auction Application System once it is again open and available to applicants.

114. Applicants should also note that even at times when the Auction Application System is open and available to applicants, the system will not allow an applicant to make certain other permissible changes itself (e.g., correcting a misstatement of the applicant's legal classification). If an applicant needs to make a permissible minor change of this nature, then it must submit a written request by email to the Auctions Division Chief, via auction108@fcc.gov requesting that the Commission manually make the change on the applicant's behalf. Once Commission staff has informed the applicant that the change has been made in the Auction Application System, the applicant must then re-certify and re-submit its FCC Form 175 in the Auction Application System to confirm and effect the change(s).

115. As with filing the FCC Form 175, any amendment(s) to the application and related statements of fact must be certified by an authorized representative of the applicant with authority to bind the applicant. Applicants should note

that submission of any such amendment or related statement of fact constitutes a representation by the person certifying that he or she is an authorized representative with such authority and that the contents of the amendment or statement of fact are true and correct.

116. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System. Further, as discussed above, parties submitting information related to their applications should use caution to ensure that their submissions do not contain confidential information or communicate information that would violate 47 CFR 1.2105(c) or the limited information procedures adopted for Auction 108. An applicant seeking to submit, outside of the Auction Application System, information that might reflect non-public information, such as an applicant's county selection(s), upfront payment amount, or bidding eligibility, should consider including in its email a request that the filing or portions of the filing be withheld from public inspection until the end of the prohibition on certain communications pursuant to 47 CFR 1.2105(c).

117. Questions about FCC Form 175 amendments should be directed to the Auctions Division at (202) 418-0660.

III. Preparing for Bidding in Auction 108

A. Due Diligence

118. The Commission reminds each potential bidder that it is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the licenses that it is seeking in Auction 108 and that it is required to certify, under penalty of perjury, that it has read the *Auction 108 Procedures Public Notice* and has familiarized itself with the auction procedures and the service rules for the 2.5 GHz band. The Commission makes no representations or warranties about the use of this spectrum or these licenses for particular services. Each applicant should be aware that a Commission auction represents an opportunity to become a Commission licensee, subject to certain conditions and regulations. This includes the established authority of the Commission to alter the terms of existing licenses by rulemaking, which is equally applicable to licenses awarded by auction. A Commission auction does not constitute an endorsement by the Commission of any particular service, technology, or product, nor does a Commission license

constitute a guarantee of business success.

119. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. In particular, the Commission encourages each potential bidder to perform technical analyses and/or refresh its previous analyses to assure itself that, should it become a winning bidder for any Auction 108 license, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements. The Commission urges each applicant to inspect any prospective sites for communications facilities located in, or near, the geographic area for which it plans to bid, confirm the availability of such sites, and to familiarize itself with the Commission's rules regarding the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), and any other environmental statutes that may apply.

120. As noted above, applicants must carefully consider potential encumbrances on existing licenses. The Commission notes in particular that there will be a substantial number of licenses in inventory where the amount of unassigned area or unassigned spectrum is very small. For example, there could be licenses in Channel Block 2 where as little as .333 megahertz of spectrum is unassigned. There are also a substantial number of licenses where the area with unassigned spectrum is smaller than one square mile. Each applicant should carefully research the existence of incumbent licenses and the technical and economic implications for commercial use of the 2.5 GHz band.

121. The Commission also encourages each applicant in Auction 108 to continue to conduct its own research throughout the auction in order to determine the existence of pending or future administrative or judicial proceedings that might affect its decision on continued participation in the auction. Each applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on licenses available in an auction. The due diligence considerations mentioned in the *Auction 108 Procedures Public Notice* do not constitute an exhaustive list of steps that should be undertaken prior to participating in Auction 108. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon the specific facts and circumstances related to its interests. For example, applicants should pay particular attention to the

results applications filed in the Rural Tribal Priority Window, which will determine the final inventory of licenses available for bidding in Auction 108. The Commission emphasizes again that licenses granted through applications received during the Rural Tribal Priority Window have incumbent status *vis-à-vis* licenses awarded in Auction 108. In other words, any winning bidder awarded a license in Auction 108 will not be allowed to operate within the license area of a successful Rural Tribal Priority Window applicant, even if that application remains pending today or at the time of issuance of the overlay license. In addition, the Commission reminds applicants that the tools made available to assess the available licenses in Auction 108, including the mapping tool described above, may not represent official licensing information and all information should be confirmed in ULS for any specific license or area.

122. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the licenses available in Auction 108. Each potential bidder is responsible for undertaking research to ensure that any licenses won in the auction will be suitable for its business plans and needs. Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

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

B. Licensing Considerations

1. Incumbency Issues

124. Potential applicants in Auction 108 should carefully review the new rules applicable to the 2.5 GHz band as well as the results of applications filed in the Rural Tribal Priority Window, which will determine the final license inventory for Auction 108, when

developing business plans, assessing market conditions, and evaluating the availability of equipment for 2.5 GHz operations. Each applicant should closely follow releases from the Commission concerning these issues and consider carefully the technical and economic implications for commercial use of the 2.5 GHz band.

2. International Coordination

125. Potential bidders seeking licenses for geographic areas adjacent to the Canadian and Mexican borders should be aware that the use of the 2.5 GHz frequencies they acquire in Auction 108 are subject to current and future agreements with the governments of Canada and Mexico.

126. The Commission routinely works with the United States Department of State and Canadian and Mexican government officials to ensure the efficient use of the spectrum as well as interference-free operations in the border areas near Canada and Mexico. Until such time as any adjusted agreements, as needed, between the United States, Mexico, and/or Canada can be agreed to, operations in the 2.5 GHz band must not cause harmful interference across the border, consistent with the terms of the agreements currently in force.

3. Environmental Review Requirements

127. Licensees must comply with the Commission's rules for environmental review under the NEPA, the NHPA, and any other environmental statutes that may apply. Licensees and other applicants that propose to build certain types of communications facilities for licensed service must follow Commission procedures implementing obligations under NEPA and NHPA prior to constructing the facilities. Under NEPA, a licensee or applicant must assess if certain environmentally sensitive conditions specified in the Commission's rules are relevant to the proposed facilities, and prepare an environmental assessment when applicable. If an environmental assessment is required, then facilities may not be constructed until environmental processing is completed. Under NHPA, a licensee or applicant must follow the procedures in 47 CFR 1.1320, the *Nationwide Programmatic Agreement for Collocation of Wireless Antennas* and the *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*. Compliance with section 106 of the NHPA requires Tribal consultation, and if construction of the communications facilities would have adverse effects on

historic or Tribally significant properties, an environmental assessment must be prepared.

4. Mobile Spectrum Holdings Policies

128. The Commission reminds bidders of the Commission's mobile spectrum holdings policies applicable to the 2.5 GHz band. Specifically, the Commission did not impose a pre-auction bright-line limit on acquisitions of the 2.5 GHz band. The Commission determined that "EBS white space spectrum should be considered available for purposes of the spectrum screen." In addition, the Commission eliminated the EBS white space discounts and ended the 5% exclusion of spectrum from the screen. The Commission also concluded that it would perform case-by-case review of secondary market transactions to assess the effect of educational use restrictions in existing spectrum leases in particular local markets.

C. Bidder Education

129. Before the opening of the short-form filing window for Auction 108, detailed educational information will be provided in various formats to would-be participants on the Auction 108 web page. Specifically, the Commission directs OEA to provide various materials on the pre-bidding processes in advance of the opening of the short-form application window, beginning with the release of step-by-step instructions for completing the FCC Form 175, which OEA will make available in the Education section of the Auction 108 website at www.fcc.gov/auction/108. In addition, OEA will provide an online application procedures tutorial for the auction, covering information on pre-bidding preparation, completing short-form applications, and the application review process.

130. In advance of the start of the mock auction, OEA will provide educational materials on the bidding procedures for Auction 108, including a user guide for the bidding system, bidding system file formats, and an online bidding procedures tutorial. These materials will provide detailed information on bidding features specific to the ascending clock auction format, including intra-round bidding and proxy bids. The Commission recognizes the importance of these materials to applicants' and bidders' comprehension of the bidding procedures adopted in the *Auction 108 Procedures Public Notice*. Accordingly, the educational materials shall be released as soon as reasonably possible to provide potential applicants and bidders with time to

understand them and ask questions before bidding begins.

131. The Commission believes that parties interested in participating in Auction 108 will find the interactive, online tutorials an efficient and effective way to further their understanding of the application and bidding processes. The online tutorials will allow viewers to navigate the presentation outline, review written notes, and listen to audio of the notes. Additional features of this web-based tool include links to auction-specific Commission releases, email links for contacting Commission staff, and screen shots of the online application and bidding systems. The online tutorials will be accessible in the Education section of the Auction 108 website at www.fcc.gov/auction/108. Once posted, the tutorials will remain continuously accessible.

D. Short-Form Applications: Due Before 6 p.m. ET on May 10, 2022

132. In order to be eligible to bid in Auction 108, an applicant must first follow the procedures to submit a short-form application (FCC Form 175) electronically via the Auction Application System, following the instructions set forth in the FCC Form 175 Instructions. The short-form application will become available with the opening of the initial filing window and must be submitted prior to 6 p.m. ET on May 10, 2022. Late applications will not be accepted. No application fee is required for short-form applications.

133. Applications may be filed at any time beginning at noon ET on April 27, 2022, until the filing window closes at 6 p.m. ET on May 10, 2022. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. There are no limits or restrictions on the number of times an application can be updated or amended until the initial filing deadline on May 10, 2022.

134. An applicant must always click on the CERTIFY & SUBMIT button on the Certify & Submit screen to successfully submit its FCC Form 175 and any modifications; otherwise the application or changes to the application will not be received or reviewed by Commission staff. Additional information about accessing, completing, and viewing the FCC Form 175 is provided in the FCC Form 175 Instructions. Applicants requiring technical assistance should contact FCC Auctions Technical Support using the contact information provided in Section VI.D. (Contact Information), below. In order to provide better service to the public, all calls to Technical Support are recorded.

E. Application Processing and Minor Modifications

1. Public Notice of Applicants' Initial Application Status and Opportunity for Minor Modifications

135. After the deadline for filing auction applications, the Commission will process all timely submitted applications to determine whether each applicant has complied with the application requirements and provided all information concerning its qualifications for bidding. OEA will issue a public notice with applicants' initial application status, identifying: (1) Those that are complete; and (2) those that are incomplete or deficient because of defects that may be corrected. The public notice will include the deadline for resubmitting corrected applications and an electronic copy will be sent by email to the contact address listed in the FCC Form 175 for each applicant. In addition, each applicant with an incomplete application will be sent information on the nature of the deficiencies in its application, along with the name and contact information of a Commission staff member who can answer questions specific to the application.

136. After the initial application filing deadline on May 10 2022, applicants can make only minor modifications to their applications. Major modifications (e.g., change of license area selection, change in ownership that would constitute an assignment or transfer of control of the applicant, change in the required certifications, change in applicant's legal classification that results in a change in control, or change in claimed eligibility for a higher percentage of bidding credit) will not be permitted. After the deadline for resubmitting corrected applications, an applicant will have no further opportunity to cure any deficiencies in its application or provide any additional information that may affect Commission staff's ultimate determination of whether and to what extent the applicant is qualified to participate in Auction 108.

137. Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the applicant's FCC Form 175, unless the applicant's certifying official or contact person notifies Commission staff in writing that another representative is authorized to speak on the applicant's behalf. Authorizations may be sent by email to auction108@fcc.gov.

2. Public Notice of Applicants' Final Application Status After Upfront Payment Deadline

138. After Commission staff reviews resubmitted applications and upfront payments, OEA will release a public notice identifying applicants that have become qualified bidders for the auction. A *Qualified Bidders Public Notice* will be issued before bidding in the auction begins. Qualified bidders are those applicants with submitted FCC Form 175 applications that are deemed timely filed and complete and that have made a sufficient upfront payment.

F. Upfront Payments

139. In order to be eligible to bid in Auction 108, a sufficient upfront payment and a complete and accurate FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be submitted before 6 p.m. ET on June 23, 2022. After completing its short-form application, an applicant will have access to an electronic pre-filled version of the FCC Form 159. An accurate and complete FCC Form 159 must accompany each payment. Proper completion of this form is critical to ensuring correct crediting of upfront payments. Payers using the pre-filled FCC Form 159 are responsible for ensuring that all the information on the form, including payment amounts, is accurate. Instructions for completing FCC Form 159 for Auction 108 are provided below.

1. Making Upfront Payments by Wire Transfer for Auction 108

140. Upfront payments for Auction 108 must be wired to, and will be deposited in, the U.S. Treasury.

141. Wire transfer payments for Auction 108 must be received before 6 p.m. ET on June 23, 2022. No other payment method is acceptable. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules and other specific bank wire transfer requirements, such as an in-person written request before a specified time of day) with their bankers several days before they plan to make the wire transfer, and must allow sufficient time for the transfer to be initiated and completed before the deadline. The following information will be needed:

ABA Routing Number: 021030004.
Receiving Bank: TREAS NYC, 33 Liberty Street, New York, NY 10045.
Beneficiary: FCC, 45 L Street NE, 3rd Floor, Washington, DC 20554.
Account Number: 827000001002.
Originating Bank Information (OBI Field): (Skip one space between each information item).

“AUCTIONPAY”

Applicant FCC Registration Number (FRN): (use the same FRN as used on the applicant's FCC Form 159, block 21).

Payment Type Code: (same as FCC Form 159, block 24A: “U108”).

Note: The beneficiary account number (BNF Account Number) is specific to the upfront payments for Auction 108. Do not use a BNF Account Number from a previous auction.

142. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must print and fax a completed FCC Form 159 (Revised 2/03) to the FCC at (202) 418–2843. Alternatively, the completed form can be scanned and sent as an attachment to an email to RROGWireFaxes@fcc.gov. On the fax cover sheet or in the email subject header, write “Wire Transfer—Auction Payment for Auction 108”. To meet the upfront payment deadline, an applicant's payment must be credited to the Commission's account for Auction 108 before the deadline.

143. Each applicant is responsible for ensuring timely submission of its upfront payment and for timely filing of an accurate and complete FCC Form 159. An applicant should coordinate with its financial institution well ahead of the due date regarding its wire transfer and allow sufficient time for the transfer to be initiated and completed prior to the deadline. The Commission

repeatedly has cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer. Each applicant also is responsible for obtaining confirmation from its financial institution that its wire transfer to the U.S. Treasury was successful and from Commission staff that its upfront payment was timely received and that it was deposited into the proper account. As a regulatory requirement, the U.S. Treasury screens all payments from all financial institutions before deposits are made available to specified accounts. If wires are suspended, the U.S. Treasury may direct questions regarding any transfer to the financial institution initiating the wire. Each applicant must take care to assure that any questions directed to its financial institution(s) are addressed promptly. To receive confirmation from Commission staff, contact Scott Radcliffe of the Office of Managing Director's Revenue & Receivables Operations Group/Auctions at (202) 418–7518 or Theresa Meeks at (202) 418–2945.

144. Please note the following information regarding upfront payments:

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

- Upfront payments for Auction 108 go to an account number different from the accounts used in previous FCC auctions.

145. Failure to deliver a sufficient upfront payment as instructed in the *Auction 108 Procedures Public Notice* by the upfront payment deadline will result in dismissal of the short-form application and disqualification from participation in the auction.

2. Completing and Submitting FCC Form 159

146. The following information supplements the standard instructions for FCC Form 159 (Revised 2/03) and is provided to help ensure correct completion of FCC Form 159 for upfront payments for Auction 108. Applicants need to complete FCC Form 159 carefully, because:

- Mistakes may affect bidding eligibility; and
- Lack of consistency between information provided in FCC Form 159 (Revised 2/03), FCC Form 175, long-form application (FCC Form 601), and correspondence about an application may cause processing delays.

147. Therefore, appropriate cross-references between the FCC Form 159 Remittance Advice and the short-form application (FCC Form 175) are described below.

Block No.	Required information
1	LOCKBOX #—Leave Blank.
2	Payer Name—Enter the name of the person or company making the payment. If the applicant itself is the payer, this entry would be the same name as in FCC Form 175.
3	Total Amount Paid—Enter the amount of the upfront payment associated with the FCC Form 159 (Revised 2/03).
4–8	Street Address, City, State, ZIP Code—Enter the street mailing address (not post office box number) where mail should be sent to the payer. If the applicant is the payer, these entries would be the same as FCC Form 175 from the Applicant Information section.
9	Daytime Telephone Number—Enter the telephone number of a person knowledgeable about this upfront payment.
10	Country Code—For addresses outside the United States, enter the appropriate postal country code (available from the Mailing Requirements Department of the U.S. Postal Service).
11	Payer FRN—Enter the payer's 10-digit FCC Registration Number (FRN) registered in the Commission Registration System (CORES).
21	Applicant FRN (Complete only if applicant is different than payer)—Enter the applicant's 10-digit FRN registered in CORES.
24A	Payment Type Code—Enter “U108”.
25A	Quantity—Enter the number “1”.
26A	Fee Due—Amount of Upfront Payment
27A	Total Fee—Will be the same amount as 26A.
28A	FCC Code 1—Enter the number “108” (indicating Auction 108).

Notes:

- Do not use Remittance Advice (Continuation Sheet), FCC Form 159–C, for upfront payments.
- If applicant is different from the payer, complete blocks 13 through 21 for the applicant, using the same information shown on FCC Form 175. Otherwise leave them blank.
- No signature is required on FCC Form 159 for auction payments
- Since credit card payments will not be accepted for upfront payments for an auction, leave Section E blank.

3. Upfront Payments and Bidding Eligibility

148. The Commission has authority to determine appropriate upfront payments for each license being

auctioned, taking into account such factors as the efficiency of the auction process and the potential value of similar licenses. An upfront payment is a refundable deposit made by each

applicant seeking to participate in bidding to establish its eligibility to bid on licenses. Upfront payments that are related to the inventory of licenses being auctioned protect against frivolous or

insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of bidding.

149. Applicants that are former defaulters must pay upfront payments 50% greater than non-former defaulters. For purposes of classification as a former defaulter or a former delinquent, defaults and delinquencies of the applicant itself and its controlling interests are included.

150. An applicant must make an upfront payment sufficient to obtain bidding eligibility on the licenses on which it will bid. The Commission adopts the proposals to set upfront payments based on the total potential MHz-pops of each license offered in the auction and to determine an applicant's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids in any single round, based on the amount of the upfront payment. In order to bid for a license, qualified bidders must have a current eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one license in one of the license areas selected on its FCC Form 175 for Auction 108, or

else the applicant will not become qualified to participate in the auction. The total upfront payment does not affect the total dollar amount the bidder may bid.

151. In the *Auction 108 Comment Public Notice*, the Commission proposed to require applicants to submit upfront payments based on \$0.003 per MHz-pop with a minimum of \$500 per license. Because upfront payments protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of bidding, the Commission adopts the proposal. For the 49.5-megahertz and 50.5-megahertz channel blocks, the calculation will be based on 50 megahertz, which is beneficial for the purpose of allowing switch bids because it will result in the same number of bidding units, as described below, for each of those channel blocks within a county. For the 17.5-megahertz channel block, the calculation will be based on the 16.5 megahertz of contiguous spectrum not including the 1-megahertz guard band. The Commission uses the 16.5 megahertz of contiguous spectrum and excludes the 1-megahertz guard band for comparability with the larger blocks that consist of contiguous

spectrum only. The upfront payment amount per license potentially available in Auction 108 is set forth in the Attachment A file on the Auction 108 website at www.fcc.gov/auction/108.

152. For the reasons set forth in the *Auction 108 Comment Public Notice*, the Commission also adopts the proposal to assign each license a specific number of bidding units, equal to one bidding unit per \$100 of the upfront payment, which is necessary for implementing the activity requirement described in Section IV.F. (Activity Rule) below, and facilitates the efficient conduct of the auction. The number of bidding units for a given license is fixed and does not change during the auction as prices change. Thus, in calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to bid in any single round, and submit an upfront payment amount covering that number of bidding units. In order to make this calculation, an applicant should add together the bidding units for the licenses on which it seeks to be active in any given round. Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline.

EXAMPLE: UPFRONT PAYMENTS AND BIDDING ELIGIBILITY

County	State	Channel block	Bandwidth (MHz)	Bidding units	Upfront payment
Lake	IN	2	50.5	700	\$70,000
Porter	IN	2	50.5	200	20,000

Under the clock-1 format, if a bidder wishes to bid on the 50.5-megahertz license in both of the above counties in a round, it must have selected both counties on its FCC Form 175 and purchased at least 900 bidding units (700 + 200) of bidding eligibility. If a bidder only wishes to bid on one, but not both, purchasing 700 bidding units would meet the eligibility requirement for the 50.5-megahertz license in either county. The bidder would be able to bid on the license in either county, but not both at the same time. If the bidder purchased only 200 bidding units, the bidder would have enough eligibility to bid for the license in Porter County but not for the one in Lake County.

153. If an applicant is a former defaulter, it must calculate its upfront payment for the maximum number of licenses on which it plans to bid by multiplying the number of bidding units on which it wishes to be active by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will calculate the number of bidding units a non-former defaulter would get for the upfront payment received, divide that number by 1.5, and round the result up to the nearest bidding unit.

G. Auction Registration

154. All qualified bidders for Auction 108 are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight delivery. The mailing will be

sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID® tokens that will be required to place bids.

155. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder for Auction 108 that has not received this mailing by noon on July 20, 2022, should call the Auctions Hotline at (717) 338-2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all the registration materials.

156. In the event that a SecurID® token is lost or damaged, only a person who has been designated as an authorized bidder, the contact person,

or the certifying official on the applicant's short-form application may request a replacement. To request a replacement, call the Auction Bidder Line at the telephone number provided in the registration materials or the Auction Hotline at (717) 338-2868.

H. Remote Electronic Bidding via the FCC Auction Bidding System

157. Bidders will be able to participate in Auction 108 over the internet using the FCC Auction Bidding System (bidding system). Only qualified bidders are permitted to bid.

158. Each authorized bidder must have his or her own SecurID® token, which the Commission will provide at no charge. Each applicant will be issued three SecurID® tokens. A bidder cannot bid without his or her SecurID® token.

In order to access the bidding function of the bidding system, bidders must be logged in during the bidding round using the passcode generated by the SecurID® token and a personal identification number (PIN) created by the bidder. For security purposes, the SecurID® tokens and a telephone number for bidding questions are only mailed to the contact person at the contact address listed on the FCC Form 175. Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 108. Please note that the SecurID® tokens can be recycled, and the Commission requests that bidders return the tokens to the FCC. Pre-addressed envelopes will be provided to return the tokens once the auction has ended.

159. The Commission makes no warranties whatsoever, and shall not be deemed to have made any warranties, with respect to the bidding system, including any implied warranties of merchantability or fitness for a particular purpose. In no event shall the Commission, or any of its officers, employees, or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of use, revenue, or business information, or any other direct, indirect, or consequential damages) arising out of or relating to the existence, furnishing, functioning, or use of the bidding system. Moreover, no obligation or liability will arise out of the Commission's technical, programming, or other advice or service provided in connection with the bidding system.

160. To the extent an issue arises with the bidding system itself, the Commission will take all appropriate measures to resolve such issues quickly and equitably. Should an issue arise that is outside the bidding system or attributable to a bidder, including, but not limited to, a bidder's hardware, software, or internet access problem that prevents the bidder from submitting a bid prior to the end of a round, the Commission shall have no obligation to resolve or remediate such an issue on behalf of the bidder. Similarly, if an issue arises due to bidder error using the bidding system, the Commission shall have no obligation to resolve or remediate such an issue on behalf of the bidder. Accordingly, after the close of a bidding round, the results of bid processing will not be altered absent evidence of any failure in the bidding system.

I. Mock Auction

161. All qualified bidders will be eligible to participate in a mock auction. The mock auction, which will begin on July 26, 2022, will enable qualified bidders to become familiar with the bidding system and to practice submitting bids prior to the auction. The Commission recommends that all qualified bidders, including all their authorized bidders, participate to assure that they can log in to the bidding system and gain experience with the bidding procedures. Participating in the mock auction may reduce the likelihood of a bidder making a mistake during the auction. Details regarding the mock auction will be announced in the *Qualified Bidders Public Notice* for Auction 108.

J. Auction Delay, Suspension, or Cancellation

162. At any time before or during the bidding process, OEA, in conjunction with WTB, may delay, suspend, or cancel bidding in Auction 108 in the event of a natural disaster, technical obstacle, network interruption, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. This approach has proven effective in resolving exigent circumstances in previous auctions, and the Commission finds no reason to depart from it for Auction 108. OEA will notify participants of any such delay, suspension, or cancellation by public notice and/or through the bidding system's announcement function. If the bidding is delayed or suspended, then OEA may, in its sole discretion, elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. The Commission emphasizes that OEA will exercise this authority at its discretion.

K. Fraud Alert

163. As is the case with many business investment opportunities, some unscrupulous parties may attempt to use Auction 108 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, 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.

164. Information about deceptive telemarketing investment schemes is available from the FCC, as well as the FTC and SEC. Additional sources of information for potential bidders and investors may be obtained from the following sources:

- The FCC's Consumer Call Center at (888) 225-5322 or by visiting www.fcc.gov/general/frauds-scams-and-alerts-guides.
- The FTC at (877) FTC-HELP ((877) 382-4357) or by visiting consumer.ftc.gov.
- The SEC at (202) 942-7040 or by visiting www.sec.gov/investor.

165. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Consumer League's Fraud Center at fraud.org or (202) 835-3323, Ext. 815.

IV. Bidding Procedures

166. The *Auction 108 Comment Public Notice* and the *Auction 108 Further Comment Public Notice* sought comment on three different auction formats for Auction 108: A single-round auction format with user-defined package bidding, a simultaneous multiple-round (SMR) auction format, and an ascending clock auction format. The *Auction 108 Inventory Comment Public Notice* also sought comment on the previously-detailed auction procedures in light of additions to the initial license inventory. As discussed below, there are arguments for and against each auction format. After consideration of the record, the Commission finds on balance the record supports using an ascending clock auction format for Auction 108 by which bidding will be conducted simultaneously for all licenses available in the auction and bidders will be able to bid for specific licenses. Accordingly, the Commission selects the clock-1 auction format for Auction 108. This

format will be similar to the clock phase of past Commission ascending clock auctions, but rather than offering multiple generic spectrum blocks in a category in a geographic area, it will offer only a single frequency-specific license in a category in a county. Thus, by using a supply of 1 in each category, a clock-1 auction format allows bidders to bid on frequency-specific licenses and negates the need for an assignment phase, which have been typical of past Commission ascending clock auctions.

167. In response to the *Auction 108 Comment Public Notice*, interested parties filed numerous comments that were split fairly evenly between parties that favored the single-round auction format and those that favored an SMR auction. OEA and WTB subsequently released the *Auction 108 Further Comment Public Notice*, suggesting an alternative clock auction format that would address two frequently-cited commenter concerns. Specifically, the clock-1 format would be familiar to bidders that have participated in FCC auctions previously (addressing concerns about the unfamiliarity of the single-round format) and would incorporate elements to help mitigate a drawback of an SMR auction—its likely long duration—by both potentially shortening the length of the auction and making it easier for bidders to participate in a longer auction. In response to the *Auction 108 Further Comment Public Notice*, interested parties filed comments in favor of the single-round auction format and others in favor of the multiple-round clock-1 auction. Many commenters that originally supported an SMR auction format in response to the *Auction 108 Comment Public Notice* support use of the clock-1 format as proposed in the *Auction 108 Further Comment Public Notice*. Recognizing that there are advantages and disadvantages to each auction format for each individual bidder, on the whole, the Commission finds that for Auction 108 the clock-1 format balances these competing interests.

168. The Commission directs OEA, in conjunction with WTB, to prepare and release, concurrently with this Public Notice, an updated technical guide (Auction 108 Technical Guide) that provides the mathematical details of the adopted auction design and algorithms for the clock phase of Auction 108. The information in the Auction 108 Technical Guide, which is available in the Education section of the Auction 108 website (www.fcc.gov/auction/108), supplements the decisions in the *Auction 108 Procedures Public Notice*.

A. Clock-1 Auction Design

169. Under the clock-1 format that the Commission adopts, each bidder will be able to bid for licenses in the license areas selected on its short-form application, where a specific license will be identified by a category and a county. The auction will proceed in a series of rounds, with bidding conducted simultaneously for all licenses available in the auction. Consistent with prior FCC clock auctions, for each bidding round, the bidding system will announce a clock price for each license, and a bidder will indicate its demand for licenses at the prices associated with the current round. The prices associated with the round are prices between the start-of-round price and the clock price, inclusive.

170. The clock price for a license will increase from round to round if more than one bidder indicates demand for that license. The bidding rounds will continue until, for all licenses—that is, all categories in all counties—the number of bidders demanding each license does not exceed one. Once bidding rounds stop, the bidder with demand for a license becomes the winning bidder.

B. Single Licenses in Three Bidding Categories

171. Auction 108 will offer geographic overlay licenses for unassigned spectrum in the 2.5 GHz (2496–2690 MHz) band offered in up to three channel blocks of spectrum—49.5 megahertz, 50.5 megahertz, and 17.5 megahertz blocks—licensed on a county basis. For bidding in this clock auction, in the counties where available, the Commission adopts bidding categories as follows: The 49.5 megahertz channel block is bidding category 1 (C1); the 50.5 megahertz channel block is bidding category 2 (C2); and the 17.5 megahertz channel block is bidding category 3 (C3). Therefore, the combination of a bidding category and a county would define a single specific license, and bidding for a category and a county under the clock-1 auction format would constitute license-by-license bidding.

C. Bidding Rounds

172. Auction 108 will consist of sequential bidding rounds, each followed by the release of round results. The Commission will conduct bidding simultaneously for all licenses—all categories in all counties available in the auction. In the first bidding round of Auction 108, a bidder will indicate, for each category and county, whether it demands the license at the minimum

opening bid price. Before each subsequent bidding round, the bidding system will announce a start-of-round price and a clock price for each license, and during the round, qualified bidders will indicate the licenses for which they wish to bid at the prices associated with the current round. Bidding rounds will be open for predetermined periods of time. Bidders will be subject to activity and eligibility rules that govern the pace at which they participate in the auction.

173. For each category and county—that is, each license—the clock price will increase from round to round if more than one bidder indicates demand for that license. The bidding rounds will continue until, for every license, demand does not exceed one. At that point, the bidder still indicating demand for a license will be the winning bidder.

174. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of bidding. Details on viewing round results, including the location and format of downloadable results files for each round, will be released concurrent with or prior to that public notice.

175. The Commission will conduct Auction 108 over the internet. A bidder will be able to submit its bids using the bidding system's *upload* function, which allows bid files in a comma-separated values (CSV) text format to be uploaded.

176. The bidding system will allow a bidder to submit bids only for licenses in license areas (*i.e.*, counties) the bidder selected on its FCC Form 175 and for which the bidder has sufficient bidding eligibility.

177. During each round of the bidding, a bidder will be able to modify its bids placed in the current bidding round. It can do so by uploading a new file of all its bids, including the modifications, which would replace bids previously submitted in the round. The system will take the last bid file submission as that bidder's bids for the round. The Commission urges bidders to verify their bids in each round. Information on how to do so will be made available in educational materials that OEA will provide, including a bidding system user guide and an online bidding procedures tutorial.

178. The Commission adopts the proposal that OEA retain the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. This will allow OEA to change the amount of time for bidding rounds, the amount of time

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

D. Stopping Rule

179. For Auction 108, the Commission will employ a simultaneous stopping rule approach, which means all licenses remain available for bidding until bidding stops on every license. Specifically, bidding will close for all licenses after the first round in which demand does not exceed one for any license. Consequently, under this approach, it is not possible to determine in advance how long Auction 108 will last.

E. Availability of Bidding Information

180. The Commission adopts the proposal to make public after each clock phase bidding round, for each license, the aggregate demand, the posted price of the last completed round, and the clock price for the next round. The identities of bidders making specific bids will not be disclosed until after the close of bidding in the auction.

181. Each bidder will have access to additional information related to its own bidding and bid eligibility. Specifically, after the bids of a round have been processed, the bidding system will inform each bidder of the licenses it currently demands (its processed demand), whether it has proxy instructions for those licenses, and its eligibility for the next round.

F. Activity Rule

182. *Activity Requirement.* For the reasons set forth in the *Auction 108 Comment Public Notice*, the Commission adopts the proposal to employ an activity rule that requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. For this clock auction, a bidder's activity in a round for purposes of the activity rule will be the sum of the bidding units associated with the bidder's demands as applied by the auction system during bid processing. Bidders are required to be active on a specific percentage (the *activity requirement percentage*) of their current bidding eligibility during each round of the auction. Failure to maintain the requisite activity level will result in a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place bids in subsequent rounds of the auction.

183. The Commission adopts the proposal to require that bidders maintain a fixed, high level of activity in each round of Auction 108 in order to maintain bidding eligibility. The

clock auction requires a high level of certainty about bidder demand in order to set accurate prices and provide reliable information to bidders. Consistent with past practice, bidders must be active on between 90% and 100% of their bidding eligibility in all clock rounds, with the specific percentage within this range to be set for each round by OEA. Thus, the activity rule will be satisfied when a bidder has bidding activity on blocks with bidding units that total 90% to 100% of its current eligibility in the round. OEA The Commission will set the activity requirement percentage initially at 95%. If the activity rule is met, then the bidder's eligibility will not change for the next round. If the activity rule is not met in a round, then the bidder's eligibility will be reduced to an amount that brings the bidder into compliance with the rule. Bidding activity will be based on the bids that are applied by the FCC auction bidding system. That is, if a bidder bids to reduce its demand for a license, but the FCC auction bidding system cannot apply the request because demand for that license would fall below one, then the bidder's activity would reflect its unreduced demand.

184. OEA retains the discretion to change the activity requirement percentage during the auction. The bidding system will announce any such changes in advance of the round in which they would take effect, giving bidders adequate notice to adjust their bidding strategies.

185. *Contingent Bidding Limit.* Because a bidder's eligibility for the next round is calculated based on the bidder's demands as applied by the auction system during bid processing, a bidder's eligibility may be reduced even if the bidder submitted bids with activity that exceeds the required activity for the round. To help a bidder avoid potentially having its eligibility reduced as a result of submitted bids that could not be applied during bid processing, the Commission adopts procedures to allow a bidder to submit bids with associated bidding activity greater than its current bidding eligibility. However, the Commission emphasizes that even under these additional procedures, the bidder's activity as applied by the auction system during bid processing will not exceed the bidder's current bidding eligibility. That is, even if a bidder submits bids with associated bidding units exceeding 100% of its current bidding eligibility, its processed activity cannot exceed its eligibility.

186. Under these procedures, after Round 1, a bidder may submit bids with bidding units totaling up to a *contingent*

bidding limit greater than or equal to the bidder's current bidding eligibility for the round times a *contingent bidding percentage* equal to or greater than 100%. The Commission adopts an initial contingent bidding percentage of 120%, which will apply starting in Round 2. The Commission finds that 120% provides a useful amount of flexibility to a bidder trying to guard against loss of eligibility when requesting a reduction in its demand. This limit will be subject to change in subsequent rounds within a range of 100% to 140%. If it appears that the contingent bidding limit is being misused, OEA may use its discretion to change the contingent bidding limit percentage. In any bidding round, the auction bidding system will advise the bidder of its current bidding eligibility, its required bidding activity, and its contingent bidding limit. The Auction 108 Technical Guide provides examples of use of the contingent bidding limit, and bidders are encouraged to review them.

187. As with the activity requirement percentage, OEA will retain the discretion to change the contingent bidding percentage during the auction and will announce any such changes in advance of the round in which they would take effect.

188. For Auction 108, the Commission will not provide for activity rule waivers to preserve a bidder's eligibility. The Commission notes that the contingent bidding limit, which permits a bidder to submit bids with bidding activity greater than its eligibility, within the precise limits set forth above, and allowing bidders to submit proxy instructions will address some of the circumstances under which a bidder risks losing bidding eligibility and otherwise could wish to use a bidding activity waiver, while minimizing any potential adverse impacts on bidder incentives to bid sincerely and on the price setting mechanism of the clock auction. This approach not to allow waivers is consistent with the ascending clock auction procedures used in other FCC clock auctions. The clock auction relies on precisely identifying the point at which demand decreases to equal supply to determine winning bidders and final prices. Allowing waivers would create uncertainty with respect to the exact level of bidder demand and would interfere with the basic clock price-setting and winner determination mechanism. Moreover, uncertainty about the level of demand would affect the way bidders' requests to reduce demand are processed by the bidding system, as addressed below.

G. Acceptable Bids

1. Minimum Opening Bids

189. As is typical for each auction, the Commission sought comment on the use of a minimum opening bid amount and/or reserve price, as mandated by 47 U.S.C. 309(j). The Commission will establish minimum opening bid amounts for Auction 108. The bidding system will not accept bids lower than the minimum opening bids for each license. Based on the Commission's experience in past auctions, setting minimum opening bid amounts judiciously is an effective tool for accelerating the competitive bidding process.

190. The Commission establishes the minimum bid amounts in Auction 108 using the total potential MHz-pops of each license offered in the auction, rather than on available white space in each block. The Commission bases these calculations on \$0.006 per MHz-pop, with a minimum of \$500 per license. Consistent with the calculations for upfront payments and bidding units adopted in the *Auction 108 Procedures Public Notice*, for the 49.5-megahertz and 50.5-megahertz blocks, the Commission bases the calculation on 50 megahertz. For the 17.5-megahertz channel block, the calculation will be based on the 16.5 megahertz of contiguous spectrum not including the 1-megahertz guard band. Additionally, when calculating minimum bid amounts, the Commission rounds the results of calculations as follows: Results below \$1,000 will be rounded down to the nearest \$100; results between \$1,000 and \$10,000 will be rounded down to the nearest \$1,000; results between \$10,000 and \$100,000 will be rounded down to the nearest \$10,000; and results above \$100,000 will be rounded down to the nearest \$100,000. The rounding procedures will lessen the differences between minimum bid amounts for licenses in counties with similar population instead of reflecting relatively small differences in total potential MHz-pops that are not necessarily representative of the available white space.

191. The minimum opening bid amounts for each license offered in Auction 108 are set forth in the Attachment A file on the Auction 108 website at www.fcc.gov/auction/108.

2. Clock Price Increments

192. The Commission adopts the procedures regarding clock price increments described in the *Auction 108 Further Comment Public Notice*. Therefore, after bidding in the first round and before each subsequent

round, for each license, the FCC auction bidding system will announce the start-of-round price and the clock price for the upcoming round—that is, the lowest price and the highest price at which bidders can indicate their demand for the license during the round. As long as aggregate demand for the license exceeds one, the start-of-round price will be equal to the clock price from the prior round. If aggregate demand equaled one at a price in a previous round, then the start-of-round price for the next round will be equal to the price at which aggregate demand equaled one. If aggregate demand was zero in the previous round, then the start-of-round price for the next round will not increase.

193. The Commission will set the clock price for a license for a round by adding a percentage increment to the start-of-round price. The Commission will set the initial increment percentage at 10% and OEA may adjust within a range of 5% to 30% inclusive as rounds continue. The Commission recognizes that an increment larger than the initial 10% may be useful in managing the length of the auction, and OEA may increase the percentage increment during the auction, but OEA will take bidding activity into account before deciding to do so and will announce any change in advance. To ensure that an increase in the percentage increment does not result in an unduly large increase for a license, the total dollar amount of the increment (the difference between the clock price and the start-of-round price) will be capped at a certain amount. The Commission will set this cap on the increment initially at \$10 million and OEA may adjust the cap as rounds continue. The 5% to 30% increment range and cap will allow us to set a percentage that manages the auction pace and takes into account bidders' needs to evaluate their bidding strategies while moving the auction along quickly.

3. Intra-Round Bids

194. As described in the *Auction 108 Further Comment Public Notice*, in any round after the first round, the Commission will permit a bidder to make intra-round bids by indicating a point between the start-of-round price and the clock price at which its demand for a license changes. In placing an intra-round bid for a license, a bidder will indicate a specific price and the changed quantity it demands (either zero or one) if the price for the license should increase beyond that price. For example, if a bidder has processed demand for a license at the start-of-round price of \$200, but no longer

wants the license if the price increases by more than \$10, the bidder would indicate a bid quantity of zero at a price of \$210. Similarly, if the bidder wishes to reduce its demand to zero if the price increases at all above \$200, the bidder would indicate a bid quantity of zero at the start-of-round price of \$200.

195. Intra-round bids are optional; a bidder may choose to express its demands only at the start-of-round price or the clock price. Using intra-round bidding will allow the auction system to use relatively large percentage increments, thereby speeding up the auction, without running the risk that a jump in the clock price will overshoot the market clearing price—the point at which only one bidder demands the license—because bidders can specify a price lower than the clock price.

196. Intra-round bid amounts will be limited to multiples of \$10 for prices below \$10,000; to multiples of \$100 for prices between \$10,000 and \$100,000, inclusive; and to multiples of \$1,000 for prices above \$100,000.

4. Proxy Bids

197. The Commission adopts the proposal to provide each bidder with the option to use proxy bidding under the clock-1 format. Accordingly, a bidder will be allowed to submit a proxy instruction to the bidding system to *reduce* its demand for a license to zero at a price higher than the current round's clock price. Proxy instructions to *increase* a bidder's demand for a license at a given price will not be permitted.

198. Under these procedures, if a proxy instruction has been submitted, the bidding system will automatically submit a proxy bid to maintain the bidder's demand for the license in every subsequent round as long as the clock price for the round is less than the proxy instruction price. In the first round in which the clock price is greater than or equal to the proxy instruction price, the bidding system will submit a proxy bid on behalf of the bidder to reduce the bidder's demand for that license to zero at the proxy instruction price. For example, if a bidder has processed demand for a license with a clock price of \$1,000, but the bidder is willing to purchase the license for a price up to \$1,800, the bidder could submit a proxy instruction to reduce its demand for the license to 0 at \$1,800. In that case, the bidding system will submit proxy bids to maintain the bidder's demand for the license in each subsequent round as long as the clock price is less than \$1,800.

199. In the case that a bid to reduce demand, placed according to proxy

instructions or submitted by the bidder in the round, is not applied during bid processing, the bidding system will automatically generate a proxy instruction at the bid price and, in the following rounds, submit proxy bids on behalf of the bidder according to that proxy instruction. For example, suppose that the start-of-round price for a license is \$10,000, the clock price is \$12,000, and a bidder with processed demand for the license submits a bid to reduce its demand to 0 at price \$11,500. If the bid is not applied during bid processing (e.g., because there were no other bids for the license in the round), in the following round the bidding system will submit a proxy bid on behalf of the bidder to reduce demand for the license to 0 at price \$11,500. The proxy instruction preserves in the bidding system the bidder's interest in retaining demand for the license at a price no higher than \$11,500, which may help avoid having the license sold later in the auction to another bidder at a price less than what the initial bidder is willing to pay.

200. In any round, a bidder can remove or modify any existing proxy instructions or proxy bids for the round by uploading a new bid file, including the modifications, which would replace any bids and proxy instructions previously submitted. The system will take the last bid file submission as that bidder's bids and proxy instructions.

201. As is the case for intra-round bid amounts, proxy instruction prices will be limited to multiples of \$10 for prices below \$10,000; to multiples of \$100 for prices between \$10,000 and \$100,000, inclusive; and to multiples of \$1,000 for prices above \$100,000. Proxy instructions will not be publicly released either during or after the auction.

5. Bid Types

202. Under the clock-1 auction format adopted for Auction 108, as in other FCC spectrum clock auctions, a bidder will indicate in each round the licenses it demands at the prices associated with the round. Bidders will be permitted to make two types of bids: Simple bids and switch bids.

203. A simple bid indicates a desired quantity (in this auction, one or zero) at a price. A bidder that is willing to maintain its demand for a license at the new clock price would bid for the license at the clock price, indicating that it is willing to pay up to that price, if need be, for the license. A bidder that wishes to change the quantity it demands for a license (relative to its processed demand from the previous round) would express the price (either

the clock price or an intra-round price) at which it wishes to change its demand.

204. A switch bid allows the bidder to request to move its demand for a license from C1 to C2, or vice versa, within the same county at a price for the from category (either the clock price or an intra-round price). Switch bids are allowed only in counties with both an available category 1 license and an available category 2 license.

205. Bids to maintain demand will always be applied by the auction bidding system during bid processing. Simple bids to change demand and switch bids will not necessarily be applied during bid processing.

6. Missing Bids

206. Under the clock-1 auction format, a bidder is required to indicate its demands in every round or have a proxy instruction in place, even if its demands at the new round's prices are unchanged from the previous round. If a bidder does not submit a new bid for a license for which it had processed demand from the previous round and does not have a proxy instruction in place, the system will consider that a missing bid.

207. Missing bids are treated by the auction bidding system as requests to reduce demand to a quantity of zero for the license. If these requests are applied, then a bidder's bidding activity, and its bidding eligibility for the next round, may be reduced. Unlike in previous FCC clock auctions for spectrum licenses, under the clock1 format for Auction 108, a bidder is permitted to enter proxy instructions. Thus, a bidder that is unable to indicate its demands in every round can avoid having missing bids by entering appropriate proxy instructions.

H. Bid Processing

208. The Commission adopts bid processing procedures that the auction bidding system will use, after each bidding round, to process bids to change demand to determine the *processed demand* of each bidder for each license and a *posted price* for each license that will serve as the start-of-round price for the next round.

1. No Excess Supply Rule for Bids To Reduce Demand

209. Under the clock-1 auction format, the FCC auction bidding system will not allow a bidder to reduce its demand for a license if the reduction would cause aggregate demand to fall below one. Therefore, if a bidder has been bidding for a specific license but submits a simple bid to reduce its demand to zero for the license if the

price should increase above the price in its bid, the FCC auction bidding system will treat the bid as a request to reduce demand that will be applied only if the no excess supply rule would be satisfied. Similarly, if a bidder submits a switch bid to move its demand from the C1 license to the C2 license in the same county, the FCC auction bidding system will treat the bid as a request that will be applied only if the no excess supply rule would be satisfied for C1 in the county, and vice versa.

2. Eligibility Rule for Bids To Increase Demand

210. The bidding system will not allow a bidder to increase its demands for licenses if the total number of bidding units associated with the bidder's demands exceeds the bidder's bidding eligibility for the round. Therefore, if a bidder submits a simple bid to add a license for which it did not have processed demand in the previous round, the FCC auction bidding system will treat the bid as a request to increase demand that will be applied only if that would not cause the bidder's processed activity to exceed its eligibility.

3. Processed Demand

211. The Commission adopts the procedures described in the *Auction 108 Further Comment Public Notice* to determine the order in which the bidding system will process bids after a round ends. After a round ends, the bidding system will first consider and apply all bids to maintain demand, and then it will process bids to change demand in order of price point, where the price point represents the percentage of the bidding interval for the round. The bidding system will process bids to change demand in ascending order of price point, first considering intra-round bids in order of price point and then bids at the clock price. The system will consider bids at the lowest price point across all licenses, then look at bids at the next price point across all licenses, and so on. As it considers each submitted bid during bid processing, the FCC auction bidding system will determine whether there is excess demand for a license at that point in the processing in order to determine whether a bidder's request to reduce demand for that license can be applied. Likewise, the auction bidding system will evaluate the activity associated with the bidder's most recently determined demands at that point in the processing to determine whether a request to increase demand can be applied.

212. Because in any given round some bidders may request to increase demand

for licenses while others may request reductions, the price point at which a bid is considered by the auction bidding system can affect whether it is applied. In addition, bids that were not applied because demand would fall below one or because the bidder's activity (as applied by the auction system) would exceed its eligibility will be held in a queue and considered, again in price point order, if there should be excess demand or if the bidder's activity (as applied by the auction system) is reduced sufficiently later in the processing after other bids are processed.

213. Therefore, once a round closes, the auction system will process bids to change demand by first considering the bid submitted at the lowest price point and determining whether that bid can be applied given bidders' demands as determined at that point in the bid processing. If the bid can be applied, the licenses that the bidder holds at that point in the processing will be adjusted, and aggregate demand for the license will be recalculated accordingly. If the bid cannot be applied, the unfulfilled bid will be held in a queue to be considered later during bid processing for that round. The FCC auction bidding system will then consider the bid submitted at the next lowest price point, applying it or not given the most recently determined demands of bidders. Any unfulfilled requests will again be held in the queue, and aggregate demand will again be recalculated. Every time a bid is applied, the unfulfilled bids held in the queue will be reconsidered, in the order of the original price points of the bids (and by pseudo-random number, in the case of tied price points). The auction bidding system will not carry over unfulfilled bid requests to the next round, however. The bidding system will advise bidders of the status of their bids when round results are released.

4. Price Determination

214. As described in the *Auction 108 Further Comment Public Notice*, the FCC auction bidding system further will determine, based on aggregate demand, the posted price for each license for the round that will serve as the start-of-round price for the next round. The price for a license will increase from round to round as long as there is excess demand for the license but will not increase if only a single bidder demands the license.

215. If, at the end of a round, the aggregate demand for a license exceeds the supply of one, the posted price will equal the clock price for the round. If a reduction in demand was applied

during the round and caused demand to fall to one, the posted price will be the price at which the reduction was applied. If aggregate demand is zero, or aggregate demand is one and no bid to reduce demand was applied for the license, then the posted price will equal the start-of-round price for the round. The range of acceptable bid amounts for the next round will be set by adding the percentage increment to the posted price.

216. Under the clock-1 auction format, if a bid to reduce demand is not applied, it is because there is not excess demand for the license and, therefore, the posted price will not increase. Hence, a bidder that makes a bid to reduce demand that cannot be applied will not face a price for the license that is higher than its bid price.

217. After the bids of the round have been processed, if the stopping rule has not been met, the FCC auction bidding system will announce clock prices to indicate a range of acceptable bids for the next round. Each bidder will be informed of the licenses for which it has processed demand and of the aggregate demand for each license.

I. Winning Bids

218. Under the clock-1 auction format, a bidder with processed demand for a license at the time the stopping rule is met will become the winning bidder for the license. The final price for a license will be the posted price for the final round.

V. Post-Auction Procedures

219. The public notice announcing the close of the bidding and auction results will be released within several days after bidding has ended in Auction 108. The *Auction 108 Procedures Public Notice* will also establish the deadlines for submitting down payments, final payments, and the long-form applications (FCC Form 601) for the auction.

A. Down Payments

220. The Commission's rules provide that, unless otherwise specified by public notice, within 10 business days after the release of the auction closing public notice for Auction 108, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission to 20% of the net amount of its winning bids (less any bidding credits, if applicable).

B. Final Payments

221. Each winning bidder will be required to submit the balance of the net

amount for each of its winning bids within 10 business days after the deadline for submitting down payments.

C. Long-Form Application (FCC Form 601)

222. The Commission's rules provide that, within 10 business days after release of the auction closing public notice, winning bidders must electronically submit a properly completed post-auction application (FCC Form 601), including the applicable filing fee, for the license(s) they won through the auction.

223. A winning bidder claiming eligibility for a small business bidding credit or a rural service provider bidding credit must demonstrate its eligibility for the bidding credit sought in its FCC Form 601 post-auction application. Further instructions on these and other filing requirements will be provided to winning bidders in the auction closing public notice for Auction 108.

224. Winning bidders organized as bidding consortia must comply with the FCC Form 601 post-auction application procedures set forth in 47 CFR 1.2107(g). Specifically, license(s) won by a consortium must be applied for as follows: (a) An individual member of the consortium or a new legal entity comprising two or more individual consortium members must file for licenses covered by the winning bids; (b) each member or group of members of a winning consortium seeking separate licenses will be required to file a separate FCC Form 601 for its/their respective license(s) in their legal business name; (c) in the case of a license to be partitioned or disaggregated, the member or group filing the applicable FCC Form 601 shall include the parties' partitioning or disaggregation agreement with the FCC Form 601; and (d) if a designated entity credit is sought (either small business or rural service provider), the applicant must meet the applicable eligibility requirements in the Commission's rules for the credit.

D. Ownership Disclosure Information Report (FCC Form 602)

225. Within 10 business days after release of the auction closing public notice for Auction 108, each winning bidder must also comply with the ownership reporting requirements in 47 CFR 1.913, 1.919, and 1.2112 by submitting an ownership disclosure information report for wireless telecommunications services (FCC Form 602) with its FCC Form 601 post-auction application.

226. If a winning bidder already has a complete and accurate FCC Form 602 on file in the FCC's Universal Licensing System (ULS), then it is not necessary to file a new report, but the winning bidder must certify in its FCC Form 601 application that the information on file with the Commission is complete and accurate. If the winning bidder does not have an FCC Form 602 on file, or if the form on file is not complete and accurate, then the winning bidder must submit a new one.

227. When a winning bidder submits an FCC Form 175, ULS automatically creates an ownership record. This record is not an FCC Form 602, but it may be used to pre-fill the FCC Form 602 with the ownership information submitted on the winning bidder's FCC Form 175 application. A winning bidder must review the pre-filled information and confirm that it is complete and accurate as of the filing date of the FCC Form 601 post-auction application before certifying and submitting the FCC Form 602. Further instructions will be provided to winning bidders in the auction closing public notice.

E. Tribal Lands Bidding Credit

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

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

amount of the credit is calculated, applicants should review the Commission's rulemaking proceeding regarding Tribal lands bidding credits and related public notices.

F. Default and Disqualification

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

231. The percentage of the applicable bid to be assessed as an additional payment for defaults in a particular auction is established in advance of the auction. For the reasons set forth in the *Auction 108 Comment Public Notice*, the Commission adopts the proposal to set the additional default payment for Auction 108 at 15% of the applicable bid for winning bids.

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

G. Refund of Remaining Upfront Payment Balance

233. If a refund is due, the Bidder must request a refund in writing with the information listed below and to the email listed below. All refunds of upfront payment balances will be returned to the payer of record as identified on the FCC Form 159, or on the wire transfer, unless the payer submits written authorization instructing otherwise. Bidders are encouraged to use the Refund Information icon found on the *Auction Application Manager* page or the Refund Form link available on the *Auction Application Submit*

Confirmation page in the FCC Auction Application System to access the form. After the required information is completed on the blank form, the form should be printed, signed, and submitted to the Commission by mail, fax, or email as instructed below.

234. If you have elected not to access the Refund Form through the *Auction Application Manager* page, the Commission is requesting that all information listed below be supplied in writing.

Name, address, contact and phone number of Bank
ABA Number (capable to accept ACH payments)
Account Number to Credit
Name of Account Holder
FCC Registration Number (FRN)

The refund request must be submitted by fax to the Revenue & Receivables Operations Group/Auctions at (202) 418-2843, by email to RROGWireFaxes@fcc.gov.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Scott Radcliffe at (202) 418-7518 or Theresa Meeks at (202) 418-2945.

VI. Procedural Matters

A. Paperwork Reduction Act Analysis

235. The Office of Management and Budget (OMB) has approved the information collections in the Application to Participate in an FCC Auction, FCC Form 175. The *Auction 108 Procedures Public Notice* does not contain new or substantively modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. Therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198. The Commission will be submitting a non-substantive change request to OMB concerning OMB 3060-0600 related to the certification requirement for Auction 108 applicants adopted in the *Auction 108 Procedures Public Notice*, and the Commission will not require Auction 108 applicants to make this certification on FCC Form 175 until OMB has approved the non-substantive change request.

B. Congressional Review Act

236. The Commission has determined, and Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is non-major

under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the *Auction 108 Procedures Public Notice* to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

C. Supplemental Final Regulatory Flexibility Analysis

237. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) was incorporated in the *Auction 108 Comment Public Notice* released in January 2021. In February 2022, a Second Supplemental Initial Regulatory Flexibility Analysis (Second Supplemental IRFA) was incorporated in the *Auction 108 Further Comment Public Notice*, and a Third Supplemental Initial Regulatory Flexibility Analysis (Third Supplemental IRFA) was incorporated in the *Auction 108 Revised Inventory Public Notice*. The Commission sought public comment on the proposals in all three public notices, including comments on the three supplemental IRFAs. No comments were filed addressing the Supplemental IRFA, Second Supplemental IRFA, or Third Supplemental IRFA. The *Auction 108 Procedures Public Notice* establishes the procedures to be used for Auction 108. The Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) reflects actions taken in the *Auction 108 Procedures Public Notice*, and supplements the Final Regulatory Flexibility Analyses completed by the Commission in the *2.5 GHz Report and Order* and other Commission orders pursuant to which Auction 108 will be conducted. The present FRFA conforms to the RFA.

238. *Need for, and Objectives of, the Rules.* The *Auction 108 Procedures Public Notice* resolves all open issues, and addresses comments filed in response to the *Auction 108 Comment Public Notice*, the *Auction 108 Further Comment Public Notice*, and the *Auction 108 Revised Inventory Public Notice*. The *Auction 108 Procedures Public Notice* implements auction procedures for those entities that seek to bid in Auction 108 to acquire new flexible-use geographic overlay licenses in the 2.5 GHz band. Auction 108 will offer the single largest contiguous portion of available mid-band spectrum below 3 GHz, and the licenses made available in Auction 108 will help extend 5G service beyond the most populated areas. The *Auction 108 Procedures Public Notice* adopts procedural rules and terms and conditions governing Auction 108, and

the post-auction application and payment processes, as well as sets the minimum opening bid amounts for new flexible-use overlay licenses in the 2.5 GHz band that will be offered in Auction 108.

239. To promote the efficient and fair administration of the competitive bidding process for all Auction 108 participants, the Commission adopts the following procedures for Auction 108:

- A requirement that any applicant seeking to participate in Auction 108 certify in its short-form application, under penalty of perjury, that it has read the public notice adopting procedures for Auction 108 and that it has familiarized itself with those procedures and the requirements for a license and operating facilities in the 2.5 GHz band;
- provision of discretionary authority to OEA, in conjunction with WTB, to delay, suspend, or cancel bidding in Auction 108 for any reason that affects the ability of the competitive bidding process to be conducted fairly and efficiently;
- establishment of bidding credit caps for eligible small businesses, very small businesses, and rural service providers in Auction 108;
- designation of AT&T, T-Mobile, and Verizon Wireless as nationwide providers for purposes of the prohibition of certain communications;
- use of anonymous bidding/limited information procedures which will not make public until after bidding has closed: (1) The license areas that an applicant selects for bidding in its short-form application (FCC Form 175), (2) the amount of any upfront payment made by or on behalf of an applicant for Auction 108, (3) any applicant's bidding eligibility, and (4) any other bidding-related information that might reveal the identity of the bidder placing a bid;
- establishment of an additional default payment of 15% under 47 CFR 1.2104(g)(2) in the event that a winning bidder defaults or is disqualified after the auction;
- a specific upfront payment amount for each license available in Auction 108;
- establishment of a bidder's initial bidding eligibility in bidding units based on that bidder's upfront payment through assignment of a specific number of bidding units for each license;
- establishment of minimum opening bid amounts based on \$0.006 per MHz-pop, with a minimum of \$500 per license;
- use of an ascending clock auction format for Auction 108 under which each qualified bidder will indicate in successive clock bidding rounds its demand for the single frequency-

specific license in each category in each county. Categories are determined based on the framework set forth in the *2.5 GHz Report and Order*, in which the 49.5 megahertz block is bidding category 1 (C1); the 50.5 megahertz block is bidding category 2 (C2); and the 17.5 megahertz block is bidding category 3 (C3);

- use of a simultaneous stopping rule for Auction 108, under which all licenses remain available for bidding until bidding stops on every license;
- retention by OEA of discretion to adjust the bidding schedule as necessary in order to manage the pace of Auction 108;
- permission for bidders to make two types of bids: Simple bids and switch bids. A simple bid indicates a desired quantity (one or zero) at a price (either the clock price or an intra-round price). A switch bid allows the bidder to request to move its demand for a license from C1 to C2, or vice versa, within the same county at a price for the from category (either the clock price or an intra-round price);
- use of information procedures which would make public after each round of Auction 108, for each category in each county, the aggregate demand, the posted price of the last completed round, and the clock price for the next round;
- use of an activity rule that would require bidders to be active on between 90% and 100% of their bidding eligibility in all clock rounds with the activity requirement percentage initially set at 95%;
- use of a contingent bidding limit that would allow a bidder to submit bids with associated bidding activity greater than its current bidding eligibility, and establishment of an initial contingent bidding percentage at 120%, which would be subject to change in subsequent rounds within a range of 100% to 140%;
- a specific minimum opening bid amount for licenses available in Auction 108;
- an option to permit a bidder to submit a proxy instruction to reduce its demand for a license to zero at a price higher than the current round's clock price and a requirement that bidders indicate their demands in every round or submit appropriate proxy instructions;
- establishment of acceptable bid amounts, including clock price increments and intra-round bids, along with a methodology for calculating such amounts; and
- establishment of a methodology for processing bids and requests to reduce and increase demand subject to the no

excess supply rule for bids to reduce demand and the eligibility rule for bids to increase demand.

240. The procedures for the conduct of Auction 108 constitute the more specific implementation of the competitive bidding rules contemplated by parts 1 and 27 of the Commission's rules and the underlying rulemaking orders, including the *2.5 GHz Report and Order*, and relevant competitive bidding orders, and are fully consistent therewith.

241. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* There were no comments filed that specifically address the information in the Supplemental IRFA, Second Supplemental IRFA, or Third Supplemental IRFA. One commenter, Mile One styled a proposal for the Commission to facilitate "pairing infrastructure providers and small innovators in commercial market trial programs" as a comment to the *Auction 108 Comment Public Notice* Supplemental IRFA. The substance of this proposal, however, does not specifically address the information in the Supplemental IRFA or the procedures and policies proposed in the *Auction 108 Comment Public Notice* and is outside of the scope of the procedures established in the *Auction 108 Further Comment Public Notice* and the *Auction 108 Revised Inventory Public Notice*.

242. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.* Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the SBA and to provide a detailed statement of any changes made to the proposed procedures as a result of those comments. The Chief Counsel did not file any comments in response to the procedures that were proposed in the *Auction 108 Comment Public Notice*, *Auction 108 Further Comment Public Notice*, or *Auction 108 Revised Inventory Public Notice*.

243. *Description and Estimate of the Number of Small Entities to Which the Rules Will Apply.* The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules and policies adopted in the *Auction 108 Procedures Public Notice*. The RFA generally defines the term small entity as having the same meaning as the terms small business, small organization, and small governmental jurisdiction. In addition, the term small business has the same

meaning as the term small business concern under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated, (2) is not dominant in its field of operation, and (3) satisfies any additional criteria established by the SBA.

244. As noted above, a regulatory flexibility analysis was incorporated into the *2.5 GHz Report and Order*. That order provides the underlying authority for the procedures proposed in the *Auction 108 Comment Public Notice*, *Auction 108 Further Comment Public Notice*, and *Auction 108 Revised Inventory Public Notice*, and that are adopted in the *Auction 108 Procedures Public Notice* for Auction 108. In the *2.5 GHz Report and Order* Regulatory Flexibility Analysis, the Commission described in detail the small entities that might be significantly affected. In the *Auction 108 Procedures Public Notice*, in the Supplemental IRFA, the Commission incorporates by reference the descriptions and estimates of the number of small entities from the regulatory flexibility analysis in the *2.5 GHz Report and Order*.

245. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* The Commission designed the auction application process to minimize reporting and compliance requirements for small businesses and other applicants. In the first part of the Commission's two-phased auction application process, parties desiring to participate in an auction file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications, and to having reviewed the *Auction 108 Procedures Public Notice*. Eligibility to participate in bidding is based on an applicant's short-form application and certifications, as well as its upfront payment. In the second phase of the process, winning bidders file a more comprehensive long-form application. Thus, an applicant that fails to become a winning bidder does not need to file a long-form application or provide the additional showings and more detailed demonstrations required of a winning bidder.

246. Applicants that wish to participate in Auction 108 are required to certify that they have read the *Auction 108 Procedures Public Notice* and the procedures adopted in the *Auction 108 Procedures Public Notice* for Auction 108, and are familiar with the procedures and requirements for obtaining a license and operating facilities in the 2.5 GHz band. The certification requirement allows

applicants to educate themselves about the procedures for participation in Auction 108, and their obligation to stay abreast of relevant information before bidding in Auction 108 begins, and throughout the entire Auction 108 process. Adoption of this requirement may help small entities and other applicants avoid, among other things, rule violations or technical error that could prevent them from becoming a qualified bidder or obtaining a license after placing a winning bid. Moreover, the requirement will ensure that small entity applicants are aware of the detailed educational materials, such as interactive, online tutorials and technical guides, made available by the Commission to enhance the understanding of the pre-bidding and bidding processes, and should minimize the need for small entity applicants to hire outside engineers, legal counsel, or other auction experts.

247. Some of the resources that the Commission makes available to small entities and other applicants are discussed above. In light of all of the information, resources, and guidance made available to potential and actual participants at no cost, the Commission does not expect that the processes and procedures adopted in the *Auction 108 Procedures Public Notice* will require small entities to hire attorneys, engineers, consultants, or other professionals to participate in Auction 108 and comply with the procedures they adopt. Although, the Commission cannot quantify the cost of compliance with the procedures adopted for Auction 108, they do not believe that the cost of compliance will unduly burden small entities that choose to participate in the auction. The Commission notes that the processes and procedures are consistent with existing Commission policies and procedures used in prior auctions. Thus, some small entities may already be familiar with such procedures and have the processes and procedures in place to facilitate compliance resulting in minimal incremental costs to comply. For those small entities that may be new to the Commission's auction process, the various resources that will be made available, including, but not limited to, the mock auction, remote electronic bidding, and access to hotlines for both technical and auction assistance, should help facilitate participation without the need to hire professionals. These resources are in addition to the resources discussed above that small entities and other applicants will be able to access. By providing these resources as well as the resources

discussed below, the Commission expects small entities that use the available resources to experience lower participation and compliance costs.

248. *Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

249. The Commission has taken steps to minimize any economic impact of its auction procedures on small entities through, among other things, the many free resources the Commission provides to potential auction participants. As mentioned above, consistent with the past practices in prior auctions, small entities that are potential participants will have access to detailed educational information and Commission personnel to help guide their participation in Auction 108, which should alleviate any need to hire professionals. For example, small entities and other would-be participants will also be provided with various materials on the pre-bidding process in advance of the short-form application filing window, which includes step-by-step instructions on how to complete FCC Form 175. The Commission has taken steps to ensure that the application system is simple to use, and that FCC Form 175 is easy to complete. For example, the application will pre-fill ownership information that an applicant has previously provided in an FCC Form 175 for prior auctions or in an FCC Form 602 filing.

250. In addition, small entities will have access to the web-based, interactive online tutorials produced by Commission staff to familiarize themselves with auction procedures, filing requirements, bidding procedures, and other matters related to an auction. The Commission has also made available resources to assist applicants in conducting due diligence research regarding potential encumbrances in the 2.5 GHz band, including a mapping tool to help identify and view existing licenses and Rural Tribal Priority Window applications in the

Commission's Universal Licensing System (ULS) database.

251. After the initial application stage, auction participants whose applications have been deemed incomplete have the opportunity to correct certain errors. An applicant whose application is deemed incomplete will receive a letter from the Commission identifying the specific errors in their application and providing contact information for a specific FCC staff member who has been assigned to provide assistance. Additionally, after the application process is complete and the Commission has identified the applicants who will be qualified to bid in Auction 108, all qualified bidders for Auction 108 will automatically be registered for the auction, and registration materials will be distributed prior to the auction by overnight delivery. Applicants are not required to take any further steps until bidding commences.

252. Prior to the start of bidding, eligible bidders will be given an opportunity to become familiar with auction procedures and the bidding system by participating in a mock auction. Eligible bidders will have access to a user guide for the bidding system, bidding file formats, and an online bidding procedures tutorial in advance of the mock auction. Further, the Commission will conduct Auction 108 electronically over the internet using a web-based auction system that eliminates the need for small entities and other bidders to be physically present in a specific location. These mechanisms are made available to facilitate participation in Auction 108 by all eligible bidders and may result in significant cost savings for small entities that use them. Moreover, the adoption of bidding procedures in advance of the auction, consistent with statutory directive, is designed to ensure that the auction will be administered predictably and fairly for all participants, including small businesses.

253. Small entities and other auction participants may seek clarification of, or guidance on, complying with competitive bidding rules and procedures, reporting requirements, and using the bidding system at any stage of the auction process. Additionally, an FCC Auctions Hotline will provide small entities one-on-one access to Commission staff for information about the auction process and procedures. Further, the FCC Auctions Technical Support Hotline is another resource that provides technical assistance to applicants, including small entities, on issues such as access to or navigation

within the electronic FCC Form 175 and use of the bidding system.

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

255. Another step taken to minimize the economic impact for small entities participating in Auction 108 is the Commission's adoption of bidding credits for small businesses and rural service providers. In accordance with the service rules applicable to the 2.5 GHz band licenses to be offered in Auction 108, bidding credit discounts will be available to eligible small businesses and small business consortia on the following basis: (1) A bidder with attributed average annual gross revenues that do not exceed \$55 million for the preceding five years is eligible to receive a 15% discount on its overall payment; or (2) a bidder with attributed average annual gross revenues that do not exceed \$20 million for the preceding five years is eligible to receive a 25% discount on its overall payment. Eligible applicants can receive only one of the available small business bidding credits—not both.

256. An eligible rural service provider may request a 15% discount on its overall payment using a rural service provider bidding credit. To be eligible for a rural service provider bidding credit, an applicant must: (1) Be a service provider that is in the business of providing commercial communications services and, together with its controlling interests, affiliates, and the affiliates of its controlling interests, has fewer than 250,000 combined wireless, wireline, broadband, and cable subscribers; and (2) serve predominantly rural areas. Rural areas are defined as counties with a population density of 100 or fewer persons per square mile. Eligible applicants can request either a small business bidding credit or a rural service provider bidding credit, but not both.

257. The total bidding credit discount that may be awarded to an eligible small business is capped at \$25 million and there is a \$10 million cap on the total bidding credit discount that may be awarded to an eligible rural service provider. In addition, to create parity among eligible small businesses and rural service providers competing against each other in smaller markets, the Commission adopts a \$10 million cap on the overall amount of bidding credits that any winning designated entity may apply to winning licenses in markets with a population of 500,000 or less. Based on the technical characteristics of the 2.5 GHz band and their analysis of past auction data, the Commission anticipates that the caps will allow the majority of small businesses to take full advantage of the bidding credit program, thereby lowering the relative costs of participation for small businesses. While eligible entities will have the opportunity to compete at auction without being unduly constrained, the caps are reasonable enough to ensure that ineligible entities are not encouraged to undercut the Commission's rules, thereby achieving the Commission's dual statutory goals of benefitting designated entities and at the same time preventing unjust enrichment.

258. A Tribal lands bidding credit will also be available to winning bidders that intend to deploy facilities and provide services to qualifying Tribal lands that have a wireline penetration rate equal to or below 85 percent. The Tribal lands bidding credit is in addition to, and separate from, any other bidding credit winning bidders may qualify to claim. Therefore, small entities that are eligible for the small or rural bidding credit can also claim the Tribal lands bidding credit, provided they meet the requirements of 47 CFR 1.2107 and 1.2110(f).

259. These procedures for the conduct of Auction 108 constitute the more specific implementation of the competitive bidding rules contemplated by parts 1 and 27 of the Commission's rules and the underlying rulemaking orders, including the *2.5 GHz Report and Order* and relevant competitive bidding orders, and are fully consistent therewith.

260. *Report to Congress.* The Commission will send a copy of the *Auction 108 Procedures Public Notice*, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Auction 108 Procedures Public Notice*, including the Supplemental FRFA to

the Chief Counsel for Advocacy of the SBA.

Federal Communications Commission.

Marlene Dortch,

Secretary.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R1-ES-2020-0153;
FF09E21000 FXES1111090FEDR 223]

RIN 1018-BE76

Endangered and Threatened Wildlife and Plants; Threatened Species Status for Streaked Horned Lark With Section 4(d) Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), affirm the listing of the streaked horned lark (*Eremophila alpestris strigata*), a bird subspecies from Washington and Oregon, as a threatened species under the Endangered Species Act of 1973, as amended (Act). We also revise the rule issued under section 4(d) of the Act ("4(d) rule") for this bird. This final rule maintains this species as a threatened species on the List of Endangered and Threatened Wildlife and continues to extend the protections of the Act to the species.

DATES: This rule is effective May 13, 2022.

ADDRESSES: This final rule is available on the internet at <https://www.regulations.gov> under Docket No. FWS-R1-ES-2020-0153 and at <https://www.fws.gov/oregonfwo/>. Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at <https://www.regulations.gov> under Docket No. FWS-R1-ES-2020-0153.

FOR FURTHER INFORMATION CONTACT: Paul Henson, State Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266; telephone 503-231-6179. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States

should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. On February 28, 2018, the Center for Biological Diversity filed suit against the Department of the Interior and the Service on the 2013 listing and 4(d) rules for the streaked horned lark (78 FR 61452; October 3, 2013). The plaintiff challenged the adequacy of our significant portion of the range analysis, and the 4(d) rule's exception to the take prohibition for agricultural activities in the Willamette Valley. The court did not vacate the rules but remanded them to us for reconsideration. On April 13, 2021, we published a proposed rule (86 FR 19186) that reflected an updated assessment of the status of the subspecies and proposed revisions to the current 4(d) rule. Under the Act, we are required to make a final determination on our proposal within 1 year.

What this document does. With this final rule, we affirm the listing of the streaked horned lark as a threatened species, and we revise the 4(d) rule for the species.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that the streaked horned lark faces threats from the ongoing loss and degradation of suitable habitat (Factor A), as well as land management activities and related effects, and recreation (Factor E), combined with the synergistic effects of small population size and climate change (Factor E), such that it is likely to become an endangered species within the foreseeable future.

Peer review and public comment. The purpose of peer review is to ensure that our listing determinations and 4(d) rules are based on scientifically sound data, assumptions, and analyses. The Service prepared the Species Status Assessment for the Streaked Horned Lark (SSA report) (U.S. Fish and Wildlife Service 2021a, entire) and sought peer review on the report in accordance with our joint policy on peer review published in