

information to perform the necessary analyses of the potential for harmful interference to their facility. The Commission will require this form to be filed electronically thirty days after the issuance of a public notice.

*OMB Number:* 3060-0171.

*Title:* Section 73.1125 Station main studio location.

*Form Number:* None.

*Type of Review:* Extension of currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 135.

*Estimated hours per response:* 0.5–5 hours (0.5 hours respondent-notification; 2 hours respondent, 1 hour contract attorney, 2 hours consulting engineer-explanatory letter).

*Frequency of response:* Reporting, on occasion.

*Cost to respondents:* \$12,550.

*Estimated total annual burden:* 83 hours.

*Needs and Uses:* Section 73.1125(a) requires AM, FM or TV licensees to locate their main studio at any point that is within either the principal community contour of any station licensed to its community of license or 25 miles from the reference coordinates of the center of its community of license. If the station relocates its main studio from one point to another within the principal community contour or from a point outside the principal community contour to one within it, the licensee is required to notify the FCC pursuant to Section 73.1125(d)(1). In addition, where the main studio is already authorized at a location outside the locations specified in (a), and the licensee desires to specify a new location also located outside those locations, written authority must be sought and received from the Commission prior to relocation of the main studio. This written authority is sought by the filing an explanatory letter with the Commission. The data is used by FCC staff to assure that the station main studio is located within the principal community contour of any station licensed to the community of license or 25 miles from the reference coordinates of the center of its community of license. The explanatory letter is used by FCC staff to determine whether the circumstances are sufficient to warrant a waiver of the Commission's main studio rules.

*OMB Number:* 3060-0215.

*Title:* Section 73.3527 Local Public Inspection File of Noncommercial Educational Stations.

*Form Number:* None.

*Type of Review:* Extension of currently approved collection.

*Affected Public:* Not for-profit institutions.

*Number of Respondents:* 2,515 noncommercial radio/television licensees recordkeepers.

*Estimated time per response:* 104 hours per year.

*Frequency of response:*

Recordkeeping.

*Cost to respondents:* \$0.

*Total annual burden:* 261,575.

*Needs and Uses:* Section 73.3527 requires that each licensee/permittee of a noncommercial broadcast station maintain a file for public inspection at its main studio or at another accessible location in its community of license. The contents of the file vary according to type of service and status. The contents include, but are not limited to, copies of certain applications tendered for filing, a statement concerning petitions to deny filed against such applications, copies of ownership reports and annual employment reports, statements certifying compliance with filing announcements in connection with renewal applications, a list of donors supporting specific programs, etc.

In addition, Section 73.3527(a)(7) requires that each broadcast licensee of a noncommercial educational station place in a public inspection file a list of community issues addressed by the station's programming. This list is kept on a quarterly basis and contains a brief description of how each issue was treated. This rule also specifies the length of time, which varies by document type, that each record must be retained in the public file. The data is used by the public and FCC to evaluate information about the licensee's performance and to ensure that station is addressing issues concerning the community to which it is licensed to serve.

*OMB Approval No.:* 3060-0664.

*Title:* Certification of Completion of Construction for a Multipoint Distribution Service Station.

*Form No.:* FCC 304-A.

*Type of Review:* Revision of currently approved collection.

*Respondents:* Businesses or other for-profit.

*Number of Respondents:* 500.

*Estimated Hours Per Response:* 0.5 hours.

*Frequency of Response:* On occasion.

*Cost to Respondents:* \$0.

*Estimated Total Annual Burden:* 250 hours *Needs and Uses:* The FCC 304A will be used to certify that the facilities as authorized in the FCC 304 have been completed and that the station is now operational, ready to provide service to the public. Each license will specify as

a condition that upon the completion of construction, the licensee must file with the Commission an FCC 304A, certifying that the facilities as authorized have been completed and that the station is now operational and ready to provide service to the public. The conditional license shall be automatically forfeited upon the expiration of the construction period specified in the license unless within 5 days after that date an FCC 304A has been filed with the Commission. The Commission will require this form to be filed electronically thirty days after the issuance of a public notice.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

[FR Doc. 01-18438 Filed 7-24-01; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC-01-41-C (Auction No. 41); DA 01-1592]

### Narrowband PCS Spectrum Auction Scheduled for October 3, 2001; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedural Issues

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the procedures and minimum opening bids for the upcoming auction of Personal Communications Services (PCS) licenses in the 900 MHz band (Narrowband PCS), scheduled for October 3, 2001 (Auction No. 41).

**DATES:** Auction No. 41 is scheduled for October 3, 2001.

#### FOR FURTHER INFORMATION CONTACT:

Auctions and Industry Analysis Division: Howard Davenport, Legal Branch, or Lyle Ishida, Auctions Operations Branch, at (202) 418-0660; Lisa Stover, Auctions Operations Branch, at (717) 338-2888. Commercial Wireless Division: Gary Oshinsky, Policy and Rules Branch, at (202) 418-7167, or JoAnn Epps, Licensing and Technical Analysis Branch, at (202) 418-0620. Media Contact: Meribeth McCarrick at (202) 418-0654.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction No. 41 Procedures Public Notice* released July 9, 2001. The complete text of the *Auction No. 41 Procedures Public Notice*, including attachments, is available for inspection and copying during normal business hours in the

FCC Reference Center (Room CY-A257), 445 12th Street, SW, Washington, D.C. 20554. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW, Washington, D.C. 20036, (202) 857-3800. It is also available on the Commission's web site at <http://www.fcc.gov>.

List of Attachments available at the FCC:

Attachment A—Narrowband PCS  
Attachment B—FCC Auction Seminar Registration Form  
Attachment C—Electronic Filing and Review of the FCC Form 175  
Attachment D—Guidelines for Completion of FCC Form 175 and Exhibits  
Attachment E—Auction—Specific Instructions for FCC Remittance Advice (FCC Form 159-February 2000 edition)  
Attachment F—Accessing the FCC Network to File FCC Form 175  
Attachment G—Minimum Acceptable Bids, Bid Increments, and the Smoothing Formula  
Attachment H—Summary Listing of Document from the Commission and the Wireless Telecommunications Bureau Addressing Application of the Anti-Collusion Rules

## I. General Information

### A. Introduction

1. By the *Auction No. 41 Procedures Public Notice*, the Wireless Telecommunications Bureau ("Bureau") announces the procedures and minimum opening bids for the upcoming auction of Personal Communications Services ("PCS") licenses in the 900 MHz band ("Narrowband PCS"), scheduled for October 3, 2001 (Auction No. 41). On June 12, 2001, in accordance with the Balanced Budget Act of 1997, the Bureau released *Auction No. 41*

*Comment Public Notice*, 66 FR 32810 (June 18, 2001), seeking comment on reserve prices or minimum opening bids and the procedures to be used in Auction No. 41. In addition, on June 21, 2001, the Bureau released a public notice that corrected Attachment A of the *Auction No. 41 Comment Public Notice*, 66 FR 34680 (June 29, 2001). The Bureau received one comment in response to the *Auction No. 41 Comment Public Notice* and one comment in response to the *Auction No. 41 Comment Public Notice*. No reply comments were submitted.

#### i. Background of Proceeding

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

3. Subsequently, in the *Narrowband Second Report and Order and Second Further Notice of Proposed Rule Making*, 65 FR 35843 (June 6, 2000), the Commission adopted modifications to its service rules for narrowband PCS. Specifically, the Commission: (i) Adopted Major Trading Areas ("MTAs") for future licensing of narrowband PCS;

(ii) eliminated the restriction, which only applied to 100 kilohertz of the 3 megahertz blocks allocated for narrowband PCS, that limited eligibility for acquiring narrowband PCS response channels to existing paging licensees; (iii) modified the construction and minimum coverage requirement for narrowband PCS spectrum by allowing licensees to meet a "substantial service" alternative; (iv) adopted subpart Q of part 1 of the Commission rules to apply to narrowband PCS; and (v) eliminated the narrowband PCS spectrum aggregation limit, finding that it is not necessary to prevent an undue concentration of licenses. In the *Third Narrowband Report and Order and Order on Reconsideration*, 66 FR 29911 (June 4, 2001), the Commission modified its channel band plan to allow for the licensing of narrowband PCS spectrum for 8 nationwide licenses and seven licenses in each of the 51 MTAs. Further, the Commission channelized and licensed the one megahertz of narrowband spectrum that had been held in reserve and re-channelized 712 kilohertz of previously channelized spectrum for which licenses had not been auctioned. With that action, the Commission resolved the remaining issues concerning narrowband PCS in preparation for auctioning licenses for the remaining narrowband PCS spectrum.

#### ii. Licenses To Be Auctioned

4. The licenses available in Auction No. 41 include 365 Personal Communications Service (PCS) licenses in the 900 MHz band ("narrowband PCS"). Eight (8) licenses will be offered on a nationwide basis and seven (7) licenses will be offered in each of 51 Major Trading Areas (MTAs), for a total of 357 MTA licenses. This table describes the licenses that will be auctioned:

| Channel No.                | Channel description                     | Frequency bands                       | Bandwidth (kHz) |
|----------------------------|-----------------------------------------|---------------------------------------|-----------------|
| <b>Nationwide Licenses</b> |                                         |                                       |                 |
| 18 .....                   | One 100 kHz unpaired channel .....      | 940.65–940.75 MHz .....               | 100             |
| 19 .....                   | One 50 kHz/50 kHz paired channel .....  | 901.3–901.35, 930.5–930.55 MHz .....  | 100             |
| 20 .....                   | One 50 kHz/50 kHz paired channel .....  | 901.9–901.95, 930.75–930.8 MHz .....  | 100             |
| 21 .....                   | One 50 kHz/150 kHz paired channel ..... | 901.5–901.55, 930–930.15 MHz .....    | 200             |
| 22 .....                   | One 50 kHz/150 kHz paired channel ..... | 901.6–901.65, 930.15–930.3 MHz .....  | 200             |
| 23 .....                   | One 50 kHz/100 kHz paired channel ..... | 901.45–901.5, 940.55–940.65 MHz ..... | 150             |
| 24 .....                   | One 50 kHz/100 kHz paired channel ..... | 901.55–901.6, 940.3–940.4 MHz .....   | 150             |
| 25 .....                   | One 50 kHz/100 kHz paired channel ..... | 901.85–901.9, 940.45–940.55 MHz ..... | 150             |
| Nationwide Subtotal.       |                                         |                                       | 1,150 kHz       |
| <b>MTA Licenses</b>        |                                         |                                       |                 |
| 26 .....                   | One 50 kHz unpaired channel .....       | 901.35–901.4 MHz .....                | 50              |

| Channel No.    | Channel description                       | Frequency bands                      | Bandwidth (kHz) |
|----------------|-------------------------------------------|--------------------------------------|-----------------|
| 27 .....       | One 50 kHz unpaired channel .....         | 901.4–901.45 MHz .....               | 50              |
| 28 .....       | One 50 kHz unpaired channel .....         | 940.4–940.45 MHz .....               | 50              |
| 29* .....      | One 50 kHz/50 kHz paired channel .....    | 901.95–902.0, 930.8–930.85 MHz ..... | 100             |
| 30 .....       | One 50 kHz/100 kHz paired channel .....   | 901.65–901.7, 930.3–930.4 MHz .....  | 150             |
| 31* .....      | One 50 kHz/150 kHz paired channel .....   | 901.7–901.75, 930.85–931 MHz .....   | 200             |
| 32* .....      | One 12.5 kHz/100 kHz paired channel ..... | 901.8375–901.85, 940.9–941 MHz ..... | 112.5           |
| MTA Sub-total. |                                           |                                      | 712.5           |
| Grand Total    |                                           |                                      | 1,862.5         |

\*Narrowband PCS channels 29, 31, and 32 in MTA002 (Los Angeles-San Diego) will be available subject to protection of incumbent licenses held by Paging Systems, Inc. under call signs WPOI469, WPOI470, WPOI471, and WPOI472. See In the Matter of License Communications Services, Inc. *et al.*, *Memorandum Opinion and Order*, 62 FR 55348 October 24, 1997).

## B. Rules and Disclaimers

### i. Relevant Authority

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

6. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, "terms") contained in this Public Notice; the *Auction No. 41 Comment Public Notice*; the *Part 1 Fifth Report and Order*, 65 FR 52401 (August 29, 2000) (as well as prior Commission proceedings regarding competitive bidding procedures); the *Narrowband PCS R&O/Further Notice*, 62 FR 27507 (May 20, 1997); the *Narrowband Second Report and Order and Second Further Notice of Proposed Rule*; and the *Third Narrowband Report and Order and Order on Reconsideration*.

7. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Internet node via anonymous ftp at <ftp://fcc.gov> or the FCC Auctions World Wide Web site at <http://www.fcc.gov/wtb/auctions>. Additionally, documents may be obtained for a fee, by calling the Commission's copy contractor, International Transcription Service, Inc. ("ITS"), at (202) 314–3070. When

ordering documents from ITS, please provide the appropriate FCC number (for example, FCC 01–135 for the *Third Narrowband Report and Order and Order on Reconsideration*).

### ii. Prohibition of Collusion

8. To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements. Note that in Auction No. 41, applicants that apply to bid for a nationwide license would be precluded from communicating with all other applicants. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. Bidders competing for licenses in the same geographic license areas are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he or she is authorized to represent in the auction. Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or consulting firm), a violation could similarly occur. In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.

9. However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an

investigation when warranted. The Commission's anti-collusion rules allow applicants to form certain agreements during the auction, provided the applicants have not applied for licenses covering the same geographic areas. If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application pursuant to § 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other applicants for licenses covering the same geographic areas. By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with § 1.2105(c).

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

11. A summary listing of documents from the Commission and the Bureau addressing the application of the anti-collusion rules may be found in Attachment H of the *Auctions No. 41 Procedures Public Notice*.

### iii. Due Diligence

12. Potential bidders are advised that there is one incumbent licensee already licensed and operating in MTA002 on channels that will be subject to the upcoming auction. Specifically,

narrowband PCS channels 29, 31, and 32 in MTA002 (Los Angeles-San Diego) will be available subject to protection of currently operational incumbent licenses held by Paging Systems, Inc. under the following call signs:

WPOI469 930.80–930.85 MHz (channel 29)

WPOI470 940.95–940.975 MHz (channel 32)

WPOI471 940.90–940.95 MHz (channel 32)

WPOI472 930.90–930.95 MHz (channel 31)

13. MTA licensees must protect such incumbents from harmful interference. These limitations will restrict the ability of such MTA licensees to use the above-referenced channels in portions of MTA002.

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

15. Potential bidders also should be aware that certain applications (including those for modification), petitions for rulemaking, requests for special temporary authority (“STA”) waiver requests, petitions to deny, petitions for reconsideration, and applications for review may be pending before the Commission and relate to particular applicants or incumbent licensees. In addition, certain decisions reached in the narrowband proceeding may be subject to judicial appeal and may be the subject of additional reconsideration or appeal. We note that resolution of these matters could have an impact on the availability of spectrum in Auction No. 41. In addition, although the Commission will continue to act on pending applications, requests and petitions, some of these matters may not be resolved by the time of the auction.

16. Potential bidders are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses available in Auction No. 41.

17. Potential bidders may obtain information about licenses available in Auction No. 41 through the Bureau’s licensing databases on the World Wide Web at <http://www.fcc.gov/wtb/uls>. Potential bidders should direct questions regarding the search

capabilities to the FCC Technical Support hotline at (202) 414–1250 (voice) or (202) 414–1255 (TTY), or via e-mail at [ulscomm@fcc.gov](mailto:ulscomm@fcc.gov). The hotline is available to assist with questions Monday through Friday, from 7:00 AM to 10 PM ET, Saturday, 8:00 AM to 7 PM ET, and Sunday, 12:00 noon to 6 PM ET. In order to provide better service to the public, *all calls to the hotline are recorded*. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the database. Potential bidders are strongly encouraged to physically inspect any sites located in, or near, the MTA for which they plan to bid.

#### iv. Bidder Alerts

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

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

20. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 41 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a “cold call” from a telemarketer, or is made in

response to an inquiry prompted by a radio or television infomercial.

- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.

- The amount of investment is less than \$25,000.

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

21. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific proposals regarding Auction No. 41 may also call the FCC Consumer Center at (888) CALL–FCC ((888) 225–5322).

#### i. National Environmental Policy Act (“NEPA”) Requirements

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

environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

### C. Auction Specifics

#### i. Auction Date

23. The auction will begin on Wednesday, October 3, 2001. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

24. The Commission announces that bidding for Auction No. 41 will be temporarily suspended October 8, 2001, in observance of the federal holiday.

#### ii. Auction Title

25. Auction No. 41—Narrowband PCS

#### iii. Bidding Methodology

26. The bidding methodology for Auction No. 41 will be simultaneous multiple round bidding. Bidding will be permitted only from remote locations, either telephonically or electronically (by computer via the Internet or the Bureau's wide area network).

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

27. These are important dates relating to Auction No. 41:

Auction Seminar \_\_\_\_\_ August 15, 2001  
Short-Form Application (FCC Form 175) \_\_\_\_\_ August 24, 2001; 6:00 p.m. ET

Upfront Payments (via wire transfer) \_\_\_\_\_ September 13, 2001; 6 p.m. ET

Mock Auction \_\_\_\_\_ September 28, 2001  
Auction Begins \_\_\_\_\_ October 3, 2001

#### v. Requirements for Participation

28. Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically by 6:00 p.m. ET, August 24, 2001.
- Submit a sufficient upfront payment and a FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, September 13, 2001.
- Comply with all provisions outlined in this public notice.

#### vi. General Contact Information

29. The following is a list of general contract information relating to Auction No. 41:

#### General Auctions Information:

General Auction Questions Seminar

Registration:

FCC Auctions Hotline, (888) 225-5322,  
Press Option #2, or direct (717)  
338-2888, Hours of service: 8 a.m.–  
5:30 p.m. ET

#### Auction Legal Information:

Auction Rules, Policies, Regulations  
Auctions and Industry Analysis  
Division, Legal Branch (202) 418–  
0660

#### Licensing Information:

Rules, Policies, Regulations, Licensing  
Issues, Due Diligence, Incumbency  
Issues

Commercial Wireless Division, (202)  
418-0620

#### Technical Support:

Electronic Filing, Automated Auction  
System

FCC Auctions Technical Support  
Hotline, (202) 414-1250 (Voice),  
(202) 414-1255 (TTY), Hours of  
service: Monday through Friday 7  
a.m. to 10:00 p.m. ET, Saturday,  
8:00 a.m. to 7:00 p.m., Sunday,  
12:00 noon to 6:00 p.m.

#### Payment Information:

Wire Transfers, Refunds  
FCC Auctions Accounting Branch,  
(202) 418-1995, (202) 418-2843  
(Fax)

#### Telephonic Bidding:

Will be furnished only to qualified  
bidders

#### FCC Copy Contractor:

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

#### Press Information:

Meribeth McCarrick (202) 418-0654

#### FCC Forms:

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

#### FCC Internet sites:

<http://www.fcc.gov>, [http://  
www.fcc.gov/wtb/auctions](http://www.fcc.gov/wtb/auctions)

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

30. Guidelines for completion of the short-form (FCC Form 175) are set forth in Attachment D of the *Auction No. 41 Procedures Public Notice*. The short-form application seeks the applicant's name and address, legal classification, status, small or very small business bidding credit eligibility, identification of the license(s) sought, the authorized bidders and contact persons. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license and, as discussed in section II.E (Provisions Regarding Defaulters and Former Defaulters), that they are not in default on any payment for Commission licenses (including down payments) or delinquent on any

non-tax debt owed to any Federal agency.

#### A. License Selection

31. The Bureau has modified Form 175 for Auction No. 41. In Auction No. 41, Form 175 will include a mechanism that allows an applicant to filter the licenses by License Area (Nationwide or MTA), Market, and/or Channel Number to create customized lists of licenses. The applicant will make selections for one or more of the filter criteria and the system will produce a list of licenses satisfying the specified criteria. The applicant may apply for all the licenses in the customized list by using the "Save all filtered licenses" option; select and save individual licenses separately from the list; or create a second customized list without selecting any of the licenses from the first list. Applicants also will be able to select licenses from one customized list and then create a second customized list to select additional licenses.

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

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

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

33. Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the licenses being auctioned, including any agreements relating to post-auction market structure. See 47 CFR 1.2105(a)(2)(viii) and 1.2105(c)(1). Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid. See 47 CFR 1.2105(a)(2)(ix). As discussed, if an applicant has had discussions, but has not reached a joint bidding agreement by the short-form deadline, it would not include the

names of parties to the discussions on its applications and may not continue discussions with applicants for the same geographic license area(s) after the deadline. Where applicants have entered into consortia or joint bidding arrangements, applicants must submit an "Exhibit B" to the FCC Form 175.

34. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for licenses in the same geographic license area provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, bidders are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.

#### D. Eligibility

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

35. In the *Narrowband Second Report and Order and Second Further Notice of Proposed Rule Making*, the Commission adopted bidding credits on a "tiered" basis to all small businesses in the narrowband PCS service.

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

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

its winning bids for narrowband PCS licenses.

37. Bidding credits are not cumulative; qualifying applicants receive either the 15 percent or the 25 percent bidding credit, but not both.

##### ii. Tribal Land Bidding Credit

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

##### iii. Applicability of Part 1 Attribution Rules

39. *Controlling interest standard.* On August 14, 2000, the Commission released the *Part 1 Fifth Report and Order*, in which the Commission, *inter alia*, adopted a "controlling interest" standard for attributing to auction applicants the gross revenues of their investors and affiliates in determining small business eligibility for future auctions. The Commission observed that the rule modifications adopted in the various part 1 orders would result in discrepancies and/or redundancies between certain of the new part 1 rules and existing service-specific rules, and the Commission delegated to the Bureau the authority to make conforming edits to the Code of Federal Regulations (CFR) consistent with the rules adopted in the part 1 proceeding. Part 1 rules that superseded inconsistent service-specific rules will control in Auction No. 41. *Accordingly, the "controlling interest" standard as set forth will be in effect for Auction No. 41, even if conforming edits to the CFR are not made prior to the auction.*

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

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

41. *Attribution for small and very small business eligibility.* In determining which entities qualify as small or very small businesses, the Commission will consider the gross revenues of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests. The Commission

does not impose specific equity requirements on controlling interest holders. Once the principals or entities with a controlling interest are determined, only the revenues of those principals or entities, the affiliates of those principals or entities, the applicant and its affiliates, will be counted in determining small business eligibility.

42. A consortium of small or very small businesses is a "conglomerate organization formed as a joint venture between or among mutually independent business firms," each of which *individually* must satisfy the definition of small or very small business in § 1.2110(f). Thus, each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, and the affiliates of its controlling interests. We note that although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for small or very small business credits, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

##### iv. Supporting Documentation

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

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

45. *Small or very small business eligibility (Exhibit C).* Entities applying to bid as small or very small businesses (or consortia of small or very small businesses) will be required to disclose on Exhibit C to their FCC Form 175 short-form applications, *separately and in the aggregate*, the gross revenues for the preceding three years of each of the following: (i) The applicant, (ii) its affiliates, (iii) its controlling interests, and (iv) the affiliates of its controlling interests. Certification that the average

annual gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, a schedule of gross revenues for *each* of the preceding three years, as well as a statement of total average gross revenues for the three-year period. If the applicant is applying as a consortium of small or very small businesses, this information must be provided for each consortium member.

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

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

47. "Former defaulters"—i.e., applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—are eligible to bid in Auction No. 41, provided that they are otherwise qualified. However, as discussed *infra* in section III.D.iii, former defaulters are required to pay upfront payments that are fifty percent

more than the normal upfront payment amounts.

*F. Installment Payments*

48. Installment payment plans will not be available in Auction No. 41.

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

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

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

50. After the short-form filing deadline (August 24, 2001), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (e.g., change their license selections or proposed service areas, change the certifying official or change control of the applicant or change bidding credits). See 47 CFR 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants should make these changes on-line, and submit a letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Suite 4-A760 Washington, DC 20554, briefly summarizing the changes. Questions about other changes should be directed to Howard Davenport of the Auctions and Industry Analysis Division at (202) 418-0660.

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

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

### III. Pre-Auction Procedures

#### A. Auction Seminar

52. On Wednesday, August 15, 2001, the FCC will sponsor a free seminar for Auction No. 41 at the Federal Communications Commission, located at 445 12th Street, SW, Washington, DC. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC Automated Auction System, and the narrowband PCS and auction rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

53. To register, complete the registration form, Attachment B of the *Auction No. 41 Procedures Public Notice* and submit it by Monday, August 13, 2001. Registrations are accepted on a first-come, first-served basis.

#### B. Short-Form Application (FCC Form 175)—Due August 24, 2001

54. In order to be eligible to bid in this auction, applicants must first submit a FCC Form 175 application. This application must be submitted electronically and received at the Commission no later than 6 p.m. ET on August 24, 2001. Late applications will not be accepted.

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

#### i. Electronic Filing

56. Applicants must file their FCC Form 175 applications electronically. Applications may generally be filed at any time beginning at noon ET on August 15, 2001, until 6:00 p.m. ET on August 24, 2001. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on August 24, 2001.

57. Applicants must press the "SUBMIT Application" button on the "Submission" page of the electronic form to successfully submit their FCC Form 175s. Any form that is not submitted will not be reviewed by the FCC. Information about accessing the FCC Form 175 is included in Attachment C of the *Auction No. 41 Procedures Public Notice*. Technical support is available at (202) 414-1250 (voice) or (202) 414-1255 (text telephone (TTY)); the hours of service Monday through Friday, from 7 A.M. to 10 P.M. ET, Saturday, 8 A.M. to 7 P.M. ET, and Sunday, 12 noon to 6 P.M. ET. In order to provide better service to the

public, *all calls to the hotline are recorded.*

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

ii. Completion of the FCC Form 175

59. Applicants should carefully review 47 CFR 1.2105, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment D of the *Auction No. 41 Procedures Public Notice*. Applicants are encouraged to begin preparing the required attachments for FCC Form 175 prior to submitting the form. Attachments C and D *Auction No. 41 Procedures Public Notice* provide information on the required attachments and appropriate formats.

iii. Electronic Review of FCC Form 175

60. The FCC Form 175 electronic review system may be used to locate and print applicants' FCC Form 175 information. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. For this reason, it is important that applicants do not include their Taxpayer Identification Numbers (TINs) on any exhibits to their FCC Form 175 applications. There is no fee for accessing this system. See Attachment C of the *Auction No. 41 Procedures Public Notice* for details on accessing the review system.

C. Application Processing and Minor Corrections

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

62. As described more fully in the Commission's rules, after the August 24, 2001, short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (e.g., change their license selections, change the certifying official, change control of the applicant, or change bidding credit eligibility).

D. Upfront Payments—Due September 13, 2001

63. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by a FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6:00 p.m. ET on September 13, 2001.

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 41 go to a lockbox number different from the lockboxes used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.

• Failure to deliver the upfront payment by the September 13, 2001, deadline will result in dismissal of the application and disqualification from participation in the auction.

i. Making Auction Payments by Wire Transfer

64. Wire transfer payments must be received by 6:00 p.m. ET on September 13, 2001. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261  
Receiving Bank: Mellon Pittsburgh  
BNF: FCC/AC 910-0180  
OBI Field: (Skip one space between each information item)  
"Auctionpay"  
Taxpayer Identification No.: (same as FCC Form 159, block 12)  
Payment Type Code (same as FCC Form 15, block 24A: A41U)  
FCC Code 1 (same as FCC Form 159, block 28A: "41")  
Payer Name (same as FCC Form 159, block 2)  
Lockbox No. # 358420

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

65. Applicants must fax a completed FCC Form 159 (Revised 2/00) to Mellon Bank at (412) 209-6045 at least one hour before placing the order for the wire transfer (but on the same business day).

On the cover sheet of the fax, write "Wire Transfer—Auction Payment for Auction Event No. 41." Bidders should confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

i. FCC Form 159

66. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/00) must be faxed to Mellon Bank in order to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/00) is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment E of the *Auction No. 41 Procedures Public Notice*. An electronic version of the FCC Form 159 is available after filing the FCC Form 175. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

iii. Amount of Upfront Payment

67. In the *Part 1 Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making*, 62 FR 13540 (March 21, 1997) the Commission delegated to the Bureau the authority and discretion to determine appropriate upfront payment(s) for each auction. In addition, in the *Part 1 Fifth Report and Order*, the Commission ordered that "former defaulters," *i.e.*, applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, be required to pay upfront payments fifty percent greater than non-'former defaulters."

68. In the *Auction No. 41 Comment Public Notice*, we proposed translating bidders' upfront payments to bidding units to define a bidder's maximum eligibility. In order to bid on a license, otherwise qualified bidders who applied for that license on Form 175 must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all licenses for which the applicant has applied on Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold high bids at any given time.

69. In the *Auction No. 41 Comment Public Notice*, the Bureau proposed upfront payments on a license-by-

license basis using the following formula:

$\$.00002 * \text{kHz} * \text{License Area}$

Population with a minimum of \$1,000 per license.

Moir & Hardman and Space Data addressed whether the Bureau should adopt its proposed formula for calculating upfront payments for Narrowband PCS. Both contend that the proposed upfront payments are excessively high and recommend that they be significantly reduced. No other comments or reply comments were received.

70. Upon careful consideration of the comments received, the Bureau has decided to exercise its discretion to adjust the upfront payments. The revised figures are approximately one-half of the original proposal. The new formula for upfront payments is:

$\$.00001 * \text{kHz} * \text{License Area}$

Population with a minimum of \$1,000 per license.

The specific upfront payments and bidding units for each license are set forth in Attachment A of the *Auction No. 41 Comment Public Notice*.

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

#### EXAMPLE: UPFRONT PAYMENTS AND BIDDING FLEXIBILITY

| Market No.   | Ch. No. | Market name                | Population | Bidding units | Upfront payment |
|--------------|---------|----------------------------|------------|---------------|-----------------|
| MTA009 ..... | 30      | Philadelphia .....         | 8,927,748  | 13,000        | \$13,000        |
| MTA010 ..... | 30      | Washington-Baltimore ..... | 7,777,875  | 12,000        | 12,000          |

If a bidder wishes to bid on both licenses in a round, it must have selected both on its FCC Form 175 and purchased at least 25,000 bidding units (13,000 + 12,000). If a bidder only wishes to bid on one, but not both, purchasing 13,000 bidding units would meet the requirement for either license. The bidder would be able to bid on either license, *but not both at the same time*. If the bidder purchased only 12,000 bidding units, it would have enough eligibility for the Washington-Baltimore license but not for the Philadelphia license.

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

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

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

73. The Commission will use wire transfers for all Auction No. 41 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed be supplied to the FCC. Applicants can provide the information electronically during the initial short-form filing window after the form has been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Tim Dates or Gail Glasser, at (202) 418-2843 by September 13, 2001. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call (202) 418-1995.

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

#### E. Auction Registration

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

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

76. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Thursday, September 27, 2001 should contact the Auctions Hotline at (717) 338-2888. Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

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

#### F. Remote Electronic Bidding

78. This is the first auction that the Commission will conduct over the Internet. Telephonic bidding and access via the Bureau's wide area network will also be available, as in prior auctions. Qualified bidders are permitted to bid telephonically or electronically, *i.e.*, over the Internet or the Bureau's wide area network. In either case, each authorized bidder must have its own Remote Security Access SecurID card,

which the FCC will provide at no charge. Each applicant with less than three authorized bidders will be issued two SecurID cards, while applicants with three authorized bidders will be issued three cards. For security purposes, the SecurID cards and the instructions for using them are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID card is tailored to a specific auction, therefore, SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 41. The telephonic bidding phone number will be supplied in the first Federal Express mailing of the confidential bidder identification number. Your bidding preference—electronic or telephonic—is specified on the FCC Form 175.

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

#### G. Mock Auction

80. All qualified bidders will be eligible to participate in a mock auction on Friday, September 28, 2001. The mock auction will enable applicants to become familiar with the electronic system prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

### IV. Auction Event

81. The first round of bidding for Auction No. 41 will begin on Wednesday, October 3, 2001. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

#### A. Auction Structure

##### i. Simultaneous Multiple Round Auction

82. In the *Auction No. 41 Comment Public Notice*, we proposed to award all licenses in Auction No. 41 in a single, simultaneous multiple round auction. We received no comments on this issue. Therefore, we conclude that it is operationally feasible and appropriate to auction the narrowband PCS licenses through a single, simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction. This approach, we believe, allows bidders to take advantage of any

synergies that exist among licenses and is administratively efficient.

##### ii. Maximum Eligibility and Activity Rules

83. In the *Auction No. 41 Comment Public Notice*, we proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder. We received no comments on this issue.

84. For Auction No. 41 we adopt this proposal. The amount of the upfront payment submitted by a bidder determines the initial maximum eligibility (in bidding units) for each bidder. Note again that upfront payments are not attributed to specific licenses, but instead will be translated into bidding units to define a bidder's initial maximum eligibility (see "Amount of Upfront Payment" in Part III.D.iii). The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid and hold high bids. As there is no provision for increasing a bidder's maximum eligibility during the course of an auction (as described under "Auction Stages" in Part IV.A.iii), prospective bidders are cautioned to calculate their upfront payments carefully. The total upfront payment does not affect the total dollars a bidder may bid on any given license.

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

86. A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. A bidder is considered active on a license in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits an acceptable bid in the current round (see "Bid Increments and Minimum Accepted Bids" in Part IV.B.(iii)). The minimum required activity level is expressed as a percentage of the bidder's maximum bidding eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions (as set forth under "Auction Stages" in Part IV.A.iii and "Stage Transitions" in Part IV.A.iv), we adopt them for Auction No. 41.

##### iii. Auction Stages

87. In the *Auction No. 41 Comment Public Notice*, we proposed to conduct the auction in three stages and employ an activity rule. We further proposed that, in each round of Stage One, a bidder desiring to maintain its current eligibility would be required to be active on licenses encompassing at least 80 percent of its current bidding eligibility. In each round of Stage Two, a bidder desiring to maintain its current eligibility would be required to be active on at least 90 percent of its current bidding eligibility. Finally, we proposed that a bidder in Stage Three, in order to maintain eligibility, would be required to be active on 98 percent of its current bidding eligibility. We received no comments on this proposal.

88. We adopt our proposals for the activity rules. Here are the activity levels for each stage of the auction. The FCC reserves the discretion to further alter the activity percentages before and/or during the auction.

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

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

*Stage Three:* During the third stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver

is used). In this stage, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and valid bids during the current round) by fifty-fortyninths (<sup>50/49</sup>).

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

89. Because the foregoing procedures have proven successful in maintaining proper pace in previous auctions, we adopt them for Auction No. 41.

#### iv. Stage Transitions

90. In the *Auction No. 41 Comment Public Notice*, we proposed that the auction would generally advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is below 10 percent for three consecutive rounds of bidding in each Stage. We further proposed that the Bureau would retain the discretion to change stages unilaterally by announcement during the auction. This determination, we proposed, would be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. We received no comments on this subject.

91. We adopt our proposal. Thus, the auction will start in Stage One and it will advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when, in each of three consecutive rounds of bidding, the high bid has increased on 10 percent or less of the licenses being auctioned (as measured in bidding units). In addition, the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the

percentage increase in revenue. We believe that these stage transition rules, having proven successful in prior auctions, are appropriate for use in Auction No. 41.

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

92. In the *Auction No. 41 Comment Public Notice*, we proposed that each bidder in the auction would be provided five activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. We received no comment on this issue.

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

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

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

96. Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding system)

during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver triggered during a round in which there are no new valid bids or withdrawals will not keep the auction open.

#### vi. Auction Stopping Rules

97. For Auction No. 41, the Bureau proposed to employ a simultaneous stopping rule. Under this rule, bidding will remain open on all licenses until bidding stops on every license. The auction will close for all licenses when one round passes during which no bidder submits a new acceptable bid on any license, applies a proactive waiver, or withdraws a previous high bid. After the first such round, bidding closes simultaneously on all licenses.

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

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

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

bidders will be required to maintain a higher level of bidding activity), increasing the number of bidding rounds per day, and/or adjusting the amount of the minimum bid increments for the licenses.

101. We received no comments on the subject, therefore, we adopt all of the proposals concerning the auction stopping rules. Auction No. 41 will begin under the simultaneous stopping rule and the Bureau will retain the discretion to invoke the other versions of the stopping rule. We believe that these stopping rules are most appropriate for Auction No. 41, because our experience in prior auctions demonstrates that the auction stopping rules balance the interests of administrative efficiency and maximum bidder participation.

vii. Auction Delay, Suspension, or Cancellation

102. In the *Auction No. 41 Comment Public Notice*, we proposed that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair conduct of competitive bidding.

103. Because this approach has proven effective in resolving exigent circumstances in previous auctions, we adopt our proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

*B. Bidding Procedures*

i. Round Structure

104. The initial bidding schedule will be announced in the public notice

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

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

ii. Reserve Price or Minimum Opening Bid

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

107. In the *Auction No. 41 Comment Public Notice*, the Bureau proposed to establish minimum opening bids for Auction No. 41 and to retain discretion to lower the minimum opening bids. Specifically, for Auction No. 41, the Bureau proposed the following license-by-license formula for calculating minimum opening bids:

$\$.00004 * \text{kHz} * \text{License Area}$   
Population with a minimum of \$1,000 per license.

In the alternative, the Bureau sought comment on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price. Moir & Hardman and Space Data addressed whether the Bureau should adopt its proposed formula for calculating minimum opening bids for Narrowband PCS. Both contend that the proposed minimum opening bids are excessively high and recommend that they be significantly reduced. No other comments or reply comments were received.

108. As in the case of the amount of upfront payments, the Bureau is persuaded by the comments that a downward revision to minimum opening bids is appropriate. Accordingly, the Bureau has lowered the amount of minimum opening bids, and they are now approximately one-half of the original proposal. The revised minimum opening bid figures were determined using the following formula:

$\$.00002 * \text{kHz} * \text{License Area}$   
Population with a minimum of \$1,000 per license.

The specific minimum opening bids for each license are set forth in Attachment A of the *Auction No. 41 Procedures Public Notice*.

109. The minimum opening bids that we adopt are reducible at the discretion of the Bureau. We emphasize, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureau will not entertain any requests to reduce the minimum opening bid on specific licenses.

iii. Bid Increments and Minimum Accepted Bids

110. In the *Auction No. 41 Comment Public Notice*, we proposed to use a smoothing methodology to calculate minimum acceptable bids. We further proposed to retain the discretion to change the minimum acceptable bids and bid increments if circumstances so dictate. We received no comment on this issue.

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

112. We adopt our proposal of initially setting the weighing factor at 0.5, the minimum percentage increment at 0.1 (10 percent of the license value), and the maximum at 0.2 (20 percent of the license value). The Bureau retains the discretion to change the minimum acceptable bids and bid increments if it determines that circumstance so dictate. The Bureau will do so by announcement in the Automated Auction System. Under its discretion, the Bureau may also implement an absolute dollar floor for the bid increment to further facilitate a timely close of the auction. The Bureau may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant. The Bureau also retains the discretion to use alternate methodologies, such as a flat percentage increment for all licenses, for Auction No. 41 if circumstances warrant.

#### iv. High Bids

113. At the end of each round, the Automated Auction System determines the standing high bid for each license based on the gross dollar amounts of the bids received for each license.

114. In the case of tied high bids, an implementation of the Lecuyer pseudo-random generator will be used to determine the standing high bid. A random number will be assigned to each bid. The tie bid having the highest random number will become the standing high bid. As noted in the *Auction No. 41 Comment Public Notice*, we have adopted this method of breaking ties for this auction because, unlike prior auctions, bidders in Auction No. 41 will be able to bid via the Internet. Breaking ties by reference to the timing of the bids, as in prior auctions, is inappropriate in Auction No. 41 because bidders may access the Internet at widely varying speeds.

#### v. Bidding

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

116. Please note that all bidding will take place remotely either through the Automated Auction System or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone.

Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 41.

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

118. The FCC Automated Auction System requires each bidder to be logged in during the bidding round using the bidder identification number provided in the registration materials, and the generated SecurID code. Bidders are strongly encouraged to print bid confirmations *after* they submit their bids.

119. In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts. For each license, the Automated Auction System interface will list the nine acceptable bid amounts in a drop-down box. Bidders may use the drop-down box to select from among the nine acceptable bid amounts. The Automated Auction System also includes an import function that allows bidders to upload text files containing their bid information.

120. Once there is a standing high bid on a license, the Automated Auction System will calculate a minimum acceptable bid for that license for the following round. The difference between the minimum acceptable bid and the standing high bid for each license will define the *bid increment*. The nine acceptable bid amounts for each license consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

121. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. The additional bid amounts for licenses that have not yet received a bid are calculated using the difference between the minimum opening bid times one plus the minimum percentage increment, rounded, and the minimum opening bid. Therefore, when the minimum percentage increment equals 0.1, the first additional bid amount will be

approximately ten percent higher than the minimum opening bid; the second, twenty percent; the third, thirty percent; etc.

122. In the case of a license for which the standing high bid has been withdrawn, the minimum acceptable bid will equal the second highest bid received for the license. The additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid. See Attachment G of the *Auction No. 41 Procedures Public Notice* for more detail on the calculation of the various bid amounts.

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

#### vi. Bid Removal and Bid Withdrawal

124. In the *Auction No. 41 Comment Public Notice*, we proposed bid removal and bid withdrawal rules. With respect to bid withdrawals, we proposed limiting each bidder to withdrawals in no more than two rounds during the course of the auction. The two rounds in which withdrawals are utilized, we proposed, would be at the bidder's discretion. We received no comments on this issue.

125. *Procedures*. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bid" function in the bidding system, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is subsequently removed does not count toward the bidder's activity requirement. This procedure, about which we received no comments, will enhance bidder flexibility during the auction. Therefore, we adopt these procedures for Auction No. 41.

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

127. In previous auctions, we have detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While we continue to recognize the important role that bid withdrawals play in an auction, *i.e.*, reducing risk associated with efforts to secure various licenses in combination, we conclude that, for Auction No. 41, adoption of a limit on their use to two rounds is the most appropriate outcome. By doing so we believe we strike a reasonable compromise that will allow bidders to use withdrawals. Our decision on this issue is based upon our experience in prior auctions, particularly the PCS D, E and F block auctions, and 800 MHz SMR auction, and is in no way a reflection of our view regarding the likelihood of any speculation or "gaming" in this auction.

128. The Bureau will therefore limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals during the auction will still be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market. If a high bid is withdrawn, the minimum accepted bid in the next round will be the prior round's second highest bid price, which may be less than, or equal to, in the case of tie bids, the amount of the withdrawn bid. The additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid. The Commission will serve as a "place holder" on the license until a new acceptable bid is submitted on that license.

129. *Calculation.* Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the net high bid in the same or subsequent auction(s). In the case of multiple bid withdrawals on a single license, within the same or subsequent auctions(s), the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or

any of the intervening subsequent withdrawn bids, in either the same or subsequent auctions(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any withdrawal payments if there is a subsequent higher bid in the same or subsequent auction(s). This policy allows bidders most efficiently to allocate their resources as well as to evaluate their bidding strategies and business plans during an auction while, at the same time, maintaining the integrity of the auction process. The Bureau retains the discretion to scrutinize multiple bid withdrawals on a single license for evidence of anti-competitive strategic behavior and take appropriate action when deemed necessary.

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

#### vii. Round Results

131. In the *Auction No. 41 Comment Public Notice*, we proposed disclosing all information relating to the bids during Auction No. 41 after each round of bidding closes, including all bids and withdrawals placed in each round, the identity of the bidder placing each bid or withdrawal, and the net and gross amounts of each bid or withdrawal. We received no comments concerning this proposal. Accordingly, the Bureau adopts the proposal in the *Auction No. 41 Comment Public Notice*.

132. Bids placed during a round will not be published until the conclusion of that bidding period. After a round closes, the Bureau will post the results of the round for public access. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 41 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of

the bidders against which they are bidding.

#### viii. Auction Announcements

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

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

134. As noted in Part II.H., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and certain revision of exhibits. Filers must make these changes on-line, and submit a letter summarizing the changes to: Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission 445 12th Street, SW., Room 4-A760, Washington, DC 20554.

A separate copy of the letter should be mailed to Howard Davenport, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4-A435, Washington, DC 20554. Questions about other changes should be directed to Howard Davenport at (202) 418-0660.

#### V. Post-Auction Procedures

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

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

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

### B. Long-Form Application

137. Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 601) and required exhibits for each license won through Auction No. 41. Winning bidders that are small or very small businesses must include an exhibit demonstrating their eligibility for small and very small business bidding credits. See 47 CFR 1.2112(b). Further filing instructions will be provided to auction winners at the close of the auction.

### C. Tribal Land Bidding Credit

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

139. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal land bidding credit after winning the auction when it files its long-form application (FCC Form 601). When filing the long-form application, the winning bidder will be required to advise the Commission whether it intends to seek a tribal land bidding credit, for each market won in the auction, by checking the designated box(es). After stating its intent to seek a tribal land bidding credit, the applicant will have 90 days from the close of the long-form filing window to amend its application to select the specific tribal lands to be served and provide the required tribal government certifications. Licensees receiving a tribal land bidding credit are subject to performance criteria as set forth in 47 CFR 1.2110(f).

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

### D. Default and Disqualification

141. Any high bidder that defaults or is disqualified after the close of the

auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at their final bid. See 47 CFR 1.2109(b) and (c). In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant. See 47 CFR 1.2109(d).

### E. Refund of Remaining Upfront Payment Balance

142. All applicants that submitted upfront payments but were not winning bidders for a license in Auction No. 41 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

143. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions and a Taxpayer Identification Number (TIN). Send refund request to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Michelle Bennett, 445 12th Street, SW., Room 1-C864, Washington, DC 20554.

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

**Note:** Refund processing generally takes up to two weeks to complete. Bidders with

questions about refunds should contact Tim Dates or Gail Glasser at (202) 418-1995.

Federal Communications Commission.

**Margaret Wiener,**

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

[FR Doc. 01-18581 Filed 7-24-01; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC-01-31-B (Auction No. 31); DA 01-1546]

### Auction of Licenses for the 747-762 and 777-792 MHz Bands (Auction No. 31) Is Postponed

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the postponement of the upcoming auction of licenses in the 747-762 and 777-792 MHz band (Auction No. 31), previously scheduled to begin on September 12, 2001. The postponement is necessary to allow for resolution of pending petitions for reconsideration and clarification of the Commission's Third Report and Order.

#### FOR FURTHER INFORMATION CONTACT:

Howard Davenport or Bill Huber, Auctions Legal Branch at (202) 418-0660.

**SUPPLEMENTARY INFORMATION:** This is a summary of a Public Notice released July 11, 2001 (*700 MHz Postponement Public Notice*). The complete text of the *700 MHz Postponement Public Notice* is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 445 12th Street, SW, Room CY-B400, Washington, DC 20554, (202) 314-3070. The *700 MHz Postponement Public Notice* is also available on the Internet at the Commission's web site: <http://www.fcc.gov/wtb/documents.html>.

The auction of licenses in the 747-762 and 777-792 MHz bands (Auction No. 31), previously scheduled to begin on September 12, 2001, will be delayed pending Commission resolution of petitions for reconsideration and clarification of the Commission's Third Report and Order in WT Docket No. 99-168, CS Docket No. 98-120, and MM Docket No. 00-39. See Third Report and Order, 66 FR 10204 (February 14, 2001). Upon release of the Commission's order