

mottling of teeth, dentine incisor dysplasia, increased serum, urine and bone fluoride levels in males and females and incisor odontoblast and incisor ameloblast degeneration in males.

EPA concluded in the cryolite RED, that the NTP studies utilizing sodium fluoride in lieu of cryolite satisfy the guideline study requirements for both the rodent chronic feeding study and the rat carcinogenicity study. Fluoride has been identified as the residue of toxicological concern in cryolite and synthetic cryolite, and these compounds act as free fluoride.

A 1-year chronic dog feeding study (MRID 42575101) was conducted with cryolite at dose levels of 0, 3,000, 10,000, and 30,000 ppm, representing 0, 95, 366, and 1,137 mg/kg/day in males and 0, 105, 387, and 1,139 mg/kg/day in females (in terms of fluoride the doses are 0, 51, 198, and 614 mg F/kg/day for males and 0, 57, 209 and 615 mg F/kg/day for females). The NOAEL was less than 3,000 ppm (95 mg/kg/day in males and 105 mg/kg/day in females). The LOAEL was 3,000 ppm based on increases in emesis, nucleated cells in males, renal lesions and a decrease in urine specific gravity in females.

6. *Animal metabolism.* As noted in the RED, cryolite behaves toxicologically as free fluoride. That is, dissociation produces free fluoride ions which are assimilated into bone. There are numerous references in the open literature concerning the metabolism of cryolite and other fluoride salts. The National Research Council concluded in their 1993 comprehensive report titled *Health Effects of Ingested Fluoride*, that fluoride is readily absorbed by the gut and rapidly becomes associated with teeth and bones. The remaining fluoride is eliminated almost exclusively by the kidneys with the rate of renal clearance related directly to urinary pH.

7. *Metabolite toxicology.* The active moiety of cryolite is free fluoride, which does not further metabolize.

8. *Endocrine disruption.* No effects similar to those produced by naturally occurring estrogens, or other endocrine effects have been noted.

### C. Aggregate Exposure

1. *Dietary exposure.* A tier 3, partially refined, chronic DEEM™ analysis has been conducted for cryolite. In this assessment, the most highly exposed population subgroup was determined to be children 1–6 years old, at 0.0067 mg/kg/day, or 5.9% of the toxicological endpoint used for risk assessment. The estimated dietary exposure in this assessment for cryolite is below EPA's level of concern for chronic exposure for

all population subgroups. Grapes and grape products are the largest contributors to dietary exposure estimates for all population subgroups. Lettuce was also a significant source of exposure for adult populations.

i. *Food.* No acute endpoints have been identified for cryolite. For the chronic dietary exposure assessment, EPA has determined that the dose to be used for risk assessment for exposure to fluoride is 0.114 mg F/kg/day, per the 1996 Cryolite RED. This value is used for all population subgroups, and is derived from a maximum acceptable amount of fluoride in drinking water recommended to the EPA by the Surgeon General as providing an adequate margin of safety for avoiding skeletal fluorosis (1996 Cryolite RED). Tolerance level residues were assumed in this assessment for all crops. The tolerance expression currently used in the Code of Federal Regulations (40 CFR 180.145) for all cryolite tolerances is described as "the combined residues of the insecticidal fluorine compounds cryolite and synthetic cryolite (sodium aluminum fluoride) in or on the following agricultural commodities." For this assessment, the cryolite tolerances have all been converted into ppm as fluoride and the toxic endpoint is also expressed as ppm fluoride.

Estimates of percent crop-treated data were incorporated into the assessment where they were available, or could be reasonably translated from related crops, but 100% crop-treated (%CT) was assumed for cranberries, mint, and berries. The estimates of percent crop-treated were taken from BEAD estimates in the 1996 RED. Experimental processing factors were used for mint, oil, grape raisins, grape juice, juice concentrate; and for citrus juices, juice concentrates, and citrus peel. For all other commodities DEEM™ default process factors were used.

ii. *Drinking water.* The cryolite RED concludes that use of cryolite should have negligible impacts on fluoride levels in ground and surface water. However, fluoride is intentionally supplemented to drinking water for prevention of dental caries, and may also be present at natural background levels. Levels of fluoride in/on food from the agricultural use of cryolite plus fluoride levels in U.S. drinking water supplies, results in a daily intake of fluoride of approximately 0.064 mg/kg/day for the most highly exposed population subgroup, children 1–6 years old. This is 56% of the dose used for chronic risk assessment (0.114 mg/kg/day), which represents a level, which provides no known or anticipated adverse health effect as determined by

the Surgeon General. For the U.S. population, the exposure estimate is 0.060 mg/kg/day (53% of the dose used for risk assessment).

2. *Non-dietary exposure.* Non-dietary exposure to cryolite is anticipated to be negligible.

### D. Cumulative Effects

EPA has not determined, that any pesticidal substance has a common mechanism of toxicity with cryolite.

### E. Safety Determination

1. *U.S. population.* For the U.S. population, the combined exposure estimate to fluoride from the agricultural use of cryolite plus drinking water is 0.060 mg/kg/day.

2. *Infants and children.* Levels of fluoride in/on food from the agricultural use of cryolite plus fluoride levels in U.S. drinking water supplies results in a daily intake of fluoride of approximately 0.064 mg/kg/day for the most highly exposed population subgroup, children 1–6 years old.

### F. International Tolerances

No Canadian, Codex or other international tolerances currently exist for cryolite.

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## FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–02–31–B (Auction No. 31); DA 02–659]

### Auction No. 31, Auction of Licenses in the 747–762 and 777–792 Mhz Bands Scheduled for June 19, 2002; Further Modification of Package Bidding Procedures and Other Procedures

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document modifies package bidding procedures and other procedural issues in the 747–762 and 777–792 MHz Bands to commence on June 19, 2002.

**DATES:** Auction No. 31 is scheduled for June 19, 2002.

**FOR FURTHER INFORMATION CONTACT:** Legal questions: Howard Davenport (202) 418–0660 or e-mail [hdavenport@fcc.gov](mailto:hdavenport@fcc.gov) For general auction questions: Craig Bomberger (202) 418–0660 or e-mail [cbomberger@fcc.gov](mailto:cbomberger@fcc.gov) or Kathy Garland (717) 338–2888 or e-mail [kgarland@fcc.gov](mailto:kgarland@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction No. 31 Further*

*Procedures Public Notice* released March 19, 2002 as modified by an erratum dated April 16, 2002. The complete modified text of the *Auction No. 31 Further Procedures Public Notice*, including attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. The *Auction No. 31 Further Procedures Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

## I. General Information

### A. Introduction

1. By the *Auction No. 31 Further Procedures Public Notice*, the Wireless Telecommunications Bureau ("Bureau") announces the procedures, minimum opening bids, and aggregate reserve price for the upcoming auction of licenses in the 747-762 and 777-792 MHz ("Upper 700 MHz") bands scheduled for June 19, 2002 ("Auction No. 31"). In a series of prior public notices, the Bureau sought comment on and announced various Auction No. 31 procedures. In the present public notice, the Bureau sets forth a single set of procedures, minimum opening bids, and an aggregate reserve price

consolidating prior Auction No. 31 procedures public notices.

#### i. Background of Proceeding

2. Historically, the 746-806 MHz band has been used exclusively by television stations (Channels 60-69). In the Balanced Budget Act of 1997, Congress directed the Commission to reallocate this spectrum for public safety and commercial use by December 31, 1997, and to commence competitive bidding for commercial licenses on the reallocated spectrum after January 1, 2001. Incumbent analog television broadcasters, however, may continue operations until December 31, 2006, and, under certain circumstances, may be able to extend their operations beyond that date.

3. In the *Upper 700 MHz First Report and Order*, 65 FR 3139 (January 20, 2000), the Commission adopted service rules for the commercial use of the Upper 700 MHz bands that enable the broadest possible use of this spectrum, consistent with sound spectrum management. In its service rules, the Commission divided the Upper 700 MHz bands into one 20-megahertz block (consisting of paired 10 megahertz blocks) and one 10-megahertz block (consisting of paired 5 megahertz blocks). The Commission will license the blocks in the Upper 700 MHz bands over six 700 MHz band Economic Area Groupings ("EAGs"). All operations in the Upper 700 MHz bands will be generally regulated under the framework of part 27's technical, licensing, and operating rules.

4. In subsequent proceedings, the Commission provided guidance on its review of applications for approval of voluntary agreements accelerating the transition of incumbent analog television licensees and opening these bands for new 700 MHz licensee use, and several potential mechanisms to advance the spectrum clearing process. In connection with three-way spectrum clearing agreements (which would provide for TV incumbents on television Channels 59-69 to agree with new 700 MHz wireless licensees to relocate to lower band TV channels that, in turn, would be voluntarily cleared by the lower band TV incumbents), the Commission also provided guidance on interference issues that may arise from a proposal to relocate a broadcast operation to a channel below Channel 59, and adopted various procedural changes in order to streamline the process of reviewing regulatory requests needed to effectuate private band-clearing agreements.

#### ii. Licenses To Be Auctioned

5. Twelve licenses in the Upper 700 MHz bands will be available in Auction No. 31. These licenses consist of one 20 megahertz license (consisting of paired 10 megahertz blocks) and one 10 megahertz license (consisting of paired 5 megahertz blocks) in each of six 700 MHz band EAGs. These licenses are listed in Attachment A of the *Auction No. 31 Further Procedures Public Notice* and are shown in the table here.

UPPER 700 MHz BAND LICENSES

|              | Pacific     | Central/mountain | Great lakes | Southeast   | Mid-atlantic | Northeast   |
|--------------|-------------|------------------|-------------|-------------|--------------|-------------|
| 10 MHz ..... | WX-EAG706-C | WX-EAG705-C      | WX-EAG704-C | WX-EAG703-C | WX-EAG702-C  | WX-EAG701-C |
| 20 MHz ..... | WX-EAG706-D | WX-EAG705-D      | WX-EAG704-D | WX-EAG703-D | WX-EAG702-D  | WX-EAG701-D |

6. Bidders may bid on individual licenses. In addition, bidders will be permitted to create and bid on up to twelve different packages of their own choosing during the course of the auction. Bidders will not be required to identify or create their packages before the start of the auction, but may create their packages as the auction progresses.

7. In the *Auction No. 31 Further Modifications Comment Public Notice*, 67 FR 6925 (February 14, 2002), the Bureau sought comment regarding the potential inclusion in Auction No. 31 of 24 additional licenses from the 698-746 MHz band (the "Lower 700 MHz" band). The licenses available for auction

in the Lower 700 MHz band consist of 24 licenses to use spectrum in the 700 MHz band EAGs (four in each of the six EAGs) and 734 licenses to use spectrum in Metropolitan Statistical Areas/Rural Statistical Areas ("MSA/RSAs"). The Bureau sought comment on any potential advantages or disadvantages of enabling bidders in Auction No. 31 to create and bid on packages containing 700 MHz band EAG licenses from both the Upper and Lower 700 MHz bands. The Bureau also sought comment on this issue in a public notice regarding the auction of licenses from the Lower 700 MHz band ("Auction No. 44").

8. Commenters were divided on whether to include the 24 Lower 700 MHz band EAG licenses in Auction No. 31. Commenters favoring the inclusion of the Lower 700 MHz band EAG licenses in Auction No. 31 tended to focus on separating the Lower 700 MHz band EAG licenses from the 734 Lower 700 MHz band MSA/RSA licenses rather than on combining the 24 Lower 700 MHz band EAG licenses with the 12 Upper 700 MHz band EAG licenses. Commenters opposing inclusion tended to focus on the possibility that

continuing rule making proceedings in the Lower 700 MHz band might delay auction of those licenses and any other licenses grouped with them, including the Upper 700 MHz band licenses.

9. After careful review of the comments, the Bureau concludes that it will not include the 24 Lower 700 MHz EAG licenses in Auction No. 31 with the Upper 700 MHz EAG licenses. The Bureau is not persuaded that grouping the MSA/RSA licenses in an auction with the Lower 700 MHz EAG licenses will create a disadvantage to small businesses and rural telephone companies. We do not agree with those commenters that believe that separating the 734 MSAs/RSAs from the 24 EAGs would provide greater opportunities for small businesses and rural telephone companies. Larger entities that do not qualify for bidding credits would continue to be eligible to participate in an auction of the 734 MSA/RSA licenses. In the *Lower 700 MHz Report and Order*, 67 FR 5491 (February 6, 2002), the Commission adopted MSAs/RSAs as the licensing area for a portion of the Lower 700 MHz band to promote opportunities for a wide variety of applicants, including small and rural wireless providers, to obtain spectrum. However, the Commission did not decide to restrict eligibility for these licenses to small and rural service providers. Because the Commission adopted licensing rules for the Lower 700 MHz band that provide for open eligibility, the Bureau declines to consider license groupings for the purpose of discouraging participation in the auction by any particular class of bidders. We disagree with those commenters who suggest that grouping the MSA/RSA licenses with the EAG licenses in the Lower 700 MHz band may discourage many smaller carriers from participating in Auction No. 44. The Commission has sought to provide small businesses with an opportunity to successfully compete against larger, well-financed bidders by defining three tiers of small-businesses that are eligible for bidding credits. As the Commission noted in the *Lower 700 MHz Report & Order*, the use of a third small entity definition may result in the dissemination of licenses among an even wider range of small business entities, consistent with its obligations under section 309(j)(3)(B) of the Act.

#### B. Rules and Disclaimers

##### i. Relevant Authority

10. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to the Upper 700 MHz bands contained in title

47, part 27 of the Code of Federal Regulations, and those relating to application and auction procedures, contained in title 47, part 1 of the Code of Federal Regulations.

11. Prospective bidders also must be thoroughly familiar with the procedures, terms and conditions (collectively, "Terms") contained in the Commission's rulemakings regarding the Upper 700 MHz bands, including the *Reallocation and Reconsideration*, 63 FR 6669 (February 10, 1998) and 63 FR 63798 (November 17, 1998); *Upper 700 MHz First Report and Order*; the *Upper 700 MHz Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 65 FR 42960 (July 12, 2000); the *Upper 700 MHz Third Report and Order*, 66 FR 10204 (February 14, 2001); and the *Upper 700 MHz Third Report and Order Reconsideration*, 66 FR 51594 (October 10, 2001); as well as the Commission's rulemakings regarding competitive bidding, such as the *Part 1 Fifth Report and Order*, 65 FR 52323 (August 29, 2001).

12. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at <http://wireless.fcc.gov/auctions>. Additionally, documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554 or may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com). When ordering documents from Qualex, please provide the appropriate FCC number (for example, FCC 00-5 for the *700 MHz First Report & Order*).

##### ii. Prohibition of Collusion

13. To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for the same geographic license area from communicating with each other during the auction about bids, bidding

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

14. However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted. In Auction No. 31, for example, the rule would apply to any applicants bidding for the same 700 MHz Band EAG. Therefore, applicants that apply to bid for "all markets" are precluded from communicating with all other applicants until after the down payment deadline. However, applicants may enter into bidding agreements *before* filing their FCC Form 175, as long as they disclose the existence of the agreement(s) in their Form 175. If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application pursuant to § 1.2105(c) of the Commission's rules, even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other applicants for licenses covering the same geographic areas. By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with § 1.2105(c).

15. In addition, § 1.65 of the Commission's rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any

substantial change that may be of decisional significance to that application. Thus, §§ 1.65 and 1.2105 require an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders therefore are required to make such notification to the Commission immediately upon discovery.

16. A summary listing of documents from the Commission and the Bureau addressing the application of the anti-collusion rules may be found in Attachment I of the *Auction No. 31 Further Procedures Public Notice*.

iii. Interference Protection of Television Services

17. Licensees operating on the spectrum associated with Channels 60, 61, 62, 65, 66, and 67 must comply with the co-channel and adjacent channel provisions of § 27.60 of the Commission's rules. For example, a licensee operating on any portion of the 10 megahertz block (i.e., between 752 MHz and 762 MHz) that coincides with Channel 61 will have to provide co-channel protection to television stations operating on Channel 61 and adjacent channel protection to television stations operating on Channels 60 and 62 (including digital television ("DTV") stations); and any licensee operating on any portion of the 10 megahertz block that coincides with Channel 62 will have to provide co-channel protection to television stations operating on Channel 62 and adjacent channel protection to television stations operating on Channels 61 and 63. Licensees operating on spectrum between 747 MHz and 752 MHz (Channel 60), in addition to providing co-channel protection to Channel 60 television stations, will have to provide adjacent channel protection to television stations operating on both Channel 61 and 59. New Upper 700 MHz licensees will also have to comply with any additional technical requirements or interference protection requirements that may be adopted in the future as a result of pending and future rulemaking proceedings. These interference obligations will remain in force until the end of the DTV transition period, at which time analog TV and DTV broadcasters will be required to vacate both the Upper and Lower 700 MHz bands.

(a) Negotiations With Incumbent Broadcast Licensees

18. The Commission has established a policy of facilitating voluntary clearing of the 700 MHz bands to allow for the introduction of new wireless services and to promote the transition of

incumbent analog television licensees to DTV service. The Commission established its policies on voluntary clearing for the Upper 700 MHz Band in a series of orders. The Commission initially stated that it would "consider specific regulatory requests needed to implement voluntary agreements" between incumbent broadcasters and new licensees to clear the Upper 700 MHz Band early, if consistent with public interest. Subsequently, the Commission established a rebuttable presumption favoring the grant of requests that would both result in certain specific benefits and avoid specific detriments. These policies were later extended to "three-way" band clearing arrangements, in which non-Channel 59-69 broadcasters were also potential parties. Subsequently, the Commission provided certain additional flexibility to facilitate voluntary agreements for early clearing and granted a request for relief from two specific DTV-related requirements. In considering such requests, the Commission will consider whether grant of the request would result in public interest benefits, such as making new or expanded public safety or other wireless services available to consumers or deploying wireless service to rural or other underserved communities. The Commission intends to weigh these benefits against any likely public interest costs, such as the loss of any of the four stations in the designated market area with the largest audience share, the loss of the sole service licensed to the local community, the loss of a community's sole service on a channel reserved for noncommercial educational broadcast service, or a negative effect on the pace of the DTV transition in the market. For example, the Commission would consider the availability of the licensee's former analog programming within the service area, through simulcast of the programming on the licensee's DTV channel or distribution of the programming on cable or DBS, or the availability of similar broadcast services within the service area (e.g., whether the lost service is the only network service, the only source for local service, or the only source for otherwise unique broadcast service).

(b) Canadian and Mexican Border Regions

19. There are currently separate agreements with Canada and Mexico covering TV broadcast use of the UHF 470-806 MHz band. Such agreements do not reflect the additional use or services adopted in the *700 MHz First Report & Order* for 746-764 and 776-

794 MHz bands. While the Commission staff has been involved in discussions with both countries regarding coordination of interference criteria for the use of these bands in the border areas for the additional services, agreements have yet to be reached. Therefore, until such agreements have been finalized, the Commission found it necessary to adopt certain interim requirements for licenses in these bands along the Canada and Mexico borders. Accordingly, licenses issued for these bands within 120 km of the borders were made subject to whatever future agreements the United States developed with those two countries. Because the existing agreements for the protection of TV stations in those countries are still in effect and must be recognized until they are replaced or modified to reflect the new uses, the Commission decided that licenses in the border areas will be granted on the condition that harmful interference may not be caused to, but must accept interference from, UHF TV transmitters in Canada and Mexico. Furthermore, the Commission pointed out that modifications may be necessary to comply with whatever provisions are ultimately specified in future agreements with Canada and Mexico regarding the use of these bands.

iv. Due Diligence

20. Potential bidders are reminded that there are a number of incumbent broadcast television licensees already licensed and operating in the 746-764 and 776-794 MHz bands (television Channels 60-62 and 65-67) that will be subject to the upcoming auction. As discussed previously in greater detail, the Commission made clear that geographic area licensees operating on the spectrum associated with Channels 60, 61, 62, 65, 66, and 67 must comply with the co-channel and adjacent channel provision of § 27.60 of the Commission's rules. In addition, geographic area licensees operating fixed stations in the 746-764 MHz band must comply with the relevant provisions for "base stations" in §§ 27.60 and 90.309 of the Commission's rules; and licensees operating fixed stations in the 776-794 MHz band must comply with the relevant provisions for "control stations" in those sections of the rules.

21. These limitations may restrict the ability of such geographic licensees to use certain portions of the electromagnetic spectrum or provide service to certain regions in their geographic license areas. To aid potential bidders, the Bureau will shortly issue a Due Diligence Announcement listing incumbent

licensees operating in these bands. The Commission makes no representations or guarantees that the matters listed in this Due Diligence Announcement are the only pending matters that could affect spectrum availability in these services.

22. 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. 31.

23. 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 this 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. 31. 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. To aid potential bidders, the Bureau will issue shortly a Due Diligence Announcement listing matters pending before the Commission that relate to licenses or applications in these services. The Commission makes no representations or guarantees that the listed matters are the only pending matters that could affect spectrum availability in these services.

24. In addition, potential bidders may research the licensing database for the Media Bureau on the Internet in order to determine which frequencies are already licensed to incumbent licensees. 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 EAG for which they plan to bid.

25. Licensing records for the Media Bureau are contained in the Media Bureau's Consolidated Data Base System

(CDBS) and may be researched on the Internet at <http://wireless.fcc.gov/mb/databases/>. Potential bidders may query the database online and download a copy of their search results if desired. Detailed instructions on using Search for Station Information, Search for Ownership Report Information and Search for Application Information and downloading query results are available online by selecting the CDBS Public Access (main) button at the bottom of the Electronic Filing and Public Access list section. The database searches return either station or application data. The application search provides an application link that displays the complete electronically filed application in application format. An AL/TC search under the application search link permits searching for Assignment of License/Transfer of Control groups using the AL/TC group lead application. For further details, click on the *Help* file.

26. Potential bidders should direct questions regarding the search capabilities of CDBS to the Media Bureau help line at (202) 418-2662, or via e-mail at [mbinfo@fcc.gov](mailto:mbinfo@fcc.gov).

#### v. Bidder Alerts

27. 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.

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

29. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 31 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.

30. 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. 31 may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225-5322).

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

31. 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

32. The auction will begin on Wednesday, June 19, 2002. 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 and packages will be conducted on each business day until bidding has stopped on all licenses and packages.

#### ii. Auction Title

33. Auction No. 31—Upper 700 MHz Band

#### iii. Bidding Methodology

34. The bidding methodology for Auction No. 31 will be simultaneous multiple round with package bidding (SMR-PB). The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network, which requires access to a 900 number telephone service, will be available as well for a fee of \$2.30 per minute. Qualified bidders are permitted to bid telephonically or electronically.

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

35. These are important dates relating to Auction No. 31:

Auction Seminar—April 30, 2002  
Short-Form Application (FCC FORM 175)—May 8, 2002; 6 p.m. ET  
Upfront Payments (via wire transfer)—May 28, 2002; 6 p.m. ET  
Mock Auction—June 13–14, 2002  
Auction Begins—June 19, 2002

#### v. Requirements For Participation

36. Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically by 6 p.m. ET, May 8, 2002.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. ET, May 28, 2002.
- Comply with all provisions outlined in this public notice.
- Comply with all rules set forth in the Commission's order in WT Docket No. 99–168, Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to part 27 of the Commission's Rules.

#### iv. General Contact Information

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

General Auction 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 p.m. ET, Saturday, 8:00 a.m. to 7 p.m., Sunday, 12 noon to 6 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—Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, (202) 863–2893, (202) 863–2898 (Fax), [qualexint@aol.com](mailto:qualexint@aol.com) (e-mail)  
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>  
FCC Internet Sites—<http://www.fcc.gov>, <http://wireless.fcc.gov/auctions>, <http://wireless.fcc.gov/uls>

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

38. Guidelines for completion of the short-form (FCC Form 175) are set forth in Attachment E of the *Auction No. 31 Further 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.D (Provisions Regarding Defaulters and Former Defaulters), that they are not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency.

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

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

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

40. Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the licenses being auctioned, including any agreements relating to post-auction market structure. Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid. As previously 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.

41. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for licenses in the same geographic license area provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more

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

#### C. Eligibility

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

42. Bidding credits are available to small and very small businesses, or consortia, thereof, as defined in 47 CFR 27.502. A bidding credit represents the amount by which a bidder's winning bids are discounted. The size of a 700 MHz band 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 700 MHz band licenses ("small business");
- 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 700 MHz band licenses ("very small business").

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

43. To encourage the growth of wireless services in federally recognized tribal lands the Commission has implemented a tribal land bidding credit. See Section V.D. of the *Auction No. 31 Further Procedures Public Notice*.

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

44. *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. 31. Accordingly, the "controlling interest" standard as set forth in the part 1 rules will be in effect for Auction No. 31, even if conforming edits to the CFR are not made prior to the auction.

45. *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.

46. *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.

47. A consortium of small or very small businesses is a "conglomerate organization formed as a joint venture between or among mutually independent business firms," each of which *individually* must satisfy the definition of small or very small business in §§ 1.2110(f), 27.502. 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

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

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

50. *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.

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

51. Each applicant must certify on its FCC Form 175 application that it is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency. In

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

52. "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. 31, 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.

#### E. Installment Payments

53. Installment payment plans will not be available in Auction No. 31.

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

54. 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.

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

55. After the short-form filing deadline (May 8, 2002), 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 modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division, at the following address: [auction31@fcc.gov](mailto:auction31@fcc.gov). The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 31. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

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

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

57. 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

58. On Tuesday, April 30, 2002, the FCC will sponsor a free seminar for Auction No. 31 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, the FCC Automated Auction System, and the 700 MHz band service and auction rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

59. To register, complete the registration form attached as

Attachment C of the *Auction No. 31 Further Procedures Public Notice* and submit it by Friday, April, 26, 2002. Registrations are accepted on a first-come, first-served basis.

#### B. Short-Form Application (FCC Form 175)—Due May 8, 2002

60. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be submitted electronically and received at the Commission no later than 6 p.m. ET on May 8, 2002. Late applications will not be accepted.

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

#### i. Electronic Filing

62. Applicants must file their FCC Form 175 applications electronically. Applications may generally be filed at any time beginning at noon ET on April 30, 2002, until 6 p.m. ET on May 8, 2002. 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 May 8, 2002.

63. 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 D of the *Auction No. 31 Further Procedures Public Notice*.

64. 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*.

65. Applicants can also contact Technical Support via e-mail at [betacomm@fcc.gov](mailto:betacomm@fcc.gov).

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

66. 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 E of the *Auction No. 31 Further Procedures Public Notice*. Applicants are encouraged to begin preparing the required attachments for FCC Form 175 prior to submitting the form.

Attachments D and E to the *Auction No. 31 Further Procedures Public Notice* provide information on the required attachments and appropriate formats.

iii. Electronic Review of FCC Form 175

67. 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. Attachment D of the *Auction No. 31 Further Procedures Public Notice* provides details on accessing the review system.

C. Application Processing and Minor Corrections

68. 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.

69. As described more fully in the Commission's rules, after the May 8, 2002, 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 May 28, 2002

70. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6 p.m. ET on May 28, 2002.

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. 31 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 May 28, 2002, deadline will result in dismissal of the application and disqualification from participation in the auction.

i. Making Auction Payments by Wire Transfer

71. Wire transfer payments must be received by 6 p.m. ET on May 28, 2002. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261.  
Receiving Bank: Mellon Pittsburgh.  
Beneficiary: FCC/Account # 910–0171.

OBI Field: (Skip one space between each information item).

“AUCTIONPAY”

FCC Registration Number (FRN): (same as FCC Form 159, block 11 and/or 21).

Payment Type Code: (same as FCC Form 159, block 24A: A31U).

FCC Code 1: (same as FCC Form 159, block 28A: “31”).

Payer Name: (same as FCC Form 159, block 2).

Lockbox No.: # 358430.

**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.

72. 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. 31.” Bidders should confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

iii. FCC Form 159

73. 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 F of the *Auction No. 31 Further 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

74. 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.” For purposes of this calculation, the “applicant” includes the applicant itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by § 1.2110 of the Commission's rules (as amended in the *Part 1 Fifth Report and Order*).

75. The amount of the upfront payment will determine the number of bidding units on which a bidder can bid, where each license is associated with a fixed number of bidding units. A bidder's maximum eligibility will be established by translating its upfront payment to bidding units (one dollar equals one bidding unit). 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. 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 (i) its initial eligibility, the bidding units reflected in its upfront payment; and (ii) its current eligibility, the bidding units reflected in its upfront payment less the number of bidding units by which its eligibility has been reduced. As an upper bound on the upfront payment, an applicant could add together the

upfront payments for all licenses on which it seeks to bid (either individually or in a package) 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.

76. The specific upfront payments and bidding units for each license are set forth in Attachment A of the *Auction No. 31 Further Procedures Public Notice*.

77. 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.

#### EXAMPLE: UPPER 700 MHZ BANDS UPFRONT PAYMENTS AND BIDDING FLEXIBILITY

| License or package                            | Bidding units | Upfront payment |
|-----------------------------------------------|---------------|-----------------|
| Package A (WX-EAG701-C and WX-EAG701-D) ..... | 42,000,000    | \$42,000,000    |
| WX-EAG702-C .....                             | 14,000,000    | 14,000,000      |

If a bidder wishes to bid on both Package A and license WX-EAG702-C in a round, it must have selected WX-EAG701-C, WX-EAG701-D, and WX-EAG702-C on its FCC Form 175 and purchased at least 56,000,000 bidding units (14,000,000 + 28,000,000 + 14,000,000). If a bidder only wishes to bid on either Package A or license WX-EAG702-C, but not both, purchasing 42,000,000 bidding units would meet the requirement for either Package A or license WX-EAG702-C. The bidder would be able to bid on either Package A or license WX-EAG702-C, *but not both at the same time*. If the bidder purchased only 14,000,000 bidding units, it would have enough eligibility for license WX-EAG702-C or license WX-EAG701-C but not for Package A or license WX-EAG701-D.

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

78. The Commission will use wire transfers for all Auction No. 31 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 May 28, 2002. 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

FCC Registration Number (FRN)

Taxpayer Identification Number

Correspondent Bank (if applicable)

ABA Number

Account Number

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.)

Eligibility for refunds is discussed in Section V.F.

#### E. Auction Registration

79. Approximately ten days before the auction, the FCC will issue a public

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

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

81. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Wednesday, June 12, 2002, should contact the Auctions Hotline at (717) 338-2888. Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

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

call technical support prior to arriving at the FCC.

#### F. Electronic Bidding

83. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network, which requires access to a 900 number telephone service, will be available as well. Qualified bidders are permitted to bid telephonically or electronically, *i.e.*, over the Internet or the FCC's Wide Area Network at \$2.30 per minute. In either case, each authorized bidder must have its own Remote Security Access SecurID card, which the FCC will provide at no charge. Any applicant with only one authorized bidder will be issued two SecurID cards, while applicants with two or three authorized bidders will be issued three cards. For security purposes, the SecurID cards and the FCC Automated Auction System User Manual are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID card is tailored to a specific auction, therefore, SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 31. The telephonic bidding phone number will be supplied in the first overnight mailing, which also includes the confidential bidder identification number. Each applicant should indicate its bidding preference 'electronic or telephonic' on the FCC Form 175.

84. Please note that the SecurID cards can be recycled, and 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

85. All qualified bidders will be eligible to participate in a mock auction on Thursday, June 13, 2002, and Friday, June 14, 2002. The mock auction will enable applicants to become familiar with the FCC Automated Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

#### IV. Auction Event

86. The first round of bidding for Auction No. 31 will begin on Wednesday, June 19, 2002. 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 With Package Bidding

87. We will auction the twelve Upper 700 MHz band licenses in a single, simultaneous multiple-round auction with package bidding. Unless otherwise announced, bids will be accepted on all licenses and packages in each round of the auction. This approach, we believe, will allow bidders in this auction to take advantage of any synergies that exist among licenses and will lead to the most efficient outcome consistent with our objectives under section 309(j) of the Communications Act of 1934.

88. The simultaneous multiple round auction with package bidding auction format (SMR-PB) differs in several important ways from our traditional simultaneous multiple round auction (SMR). Briefly and generally, the most important structural changes follow. Bids are allowed on groups of licenses as well as on individual licenses. All bids in the auction, not just those from the current round, are considered when

determining the provisionally winning set of bids in each round. However, the bids of a bidder in one round are considered mutually exclusive of its bids from any other round “that is, all bids from a single bidder in the provisionally winning set must be from the same round. A major implication of these changes is that bids which are not part of the provisionally winning set in a given round can become part of the provisionally winning set in later rounds.

89. As a consequence of these basic structural changes, the SMR-PB rules on activity and eligibility, minimum acceptable bids, bid withdrawals, and many other auctions specifics are very different from the rules under the traditional SMR format. In addition to the complete descriptions in this Public Notice, Attachments G and H of the Auction No. 31 Further Procedures Public Notice summarize the SMR-PB requirements.

##### ii. Maximum Eligibility

90. The amount of the upfront payment submitted by a bidder will determine the initial maximum eligibility (as measured in bidding units) for each bidder. Note again that each license is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 31 Further Procedures Public Notice* on a bidding unit per dollar basis. The bidding units associated with a package are defined as the sum of the bidding units associated with the individual licenses comprising the package. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to be active during any given round. As there is no provision for increasing a bidder's maximum eligibility during the course of an auction, prospective bidders are cautioned to calculate their upfront payments carefully. The total upfront payment does not affect the dollar amount a bidder may bid on licenses.

##### iii. Activity and Eligibility Rules

91. In order to ensure that the auction closes within a reasonable period of time, an activity rule is in place that requires bidder participation throughout the auction. The activity rule requires each bidder to have active bids in each round that account for a specified fraction of the bidder's current eligibility, as measured in bidding units. Failure to adhere to the rule results in the use of an activity rule waiver or the reduction of current eligibility (*see* Section IV.A.iv, “Activity Rule Waivers and Reducing Eligibility”).

92. In earlier SMR auctions, a bidder's activity in a round was determined by summing the bidding units associated with licenses on which the bidder was active. A bidder was considered active on a license in the current round if it was either the high bidder at the end of the previous bidding round (and did not withdraw the high bid in the current round), or if it submitted an acceptable bid in the current round (and did not subsequently remove the bid). In a package-bidding auction, calculating activity levels in a round is not as straightforward because a bidder can submit bids on different packages that contain one or more of the same licenses.

93. *Bidding activity* is one measure that is used to determine a bidder's activity in a round for a package-bidding auction. We define a bidder's bidding activity in a round to be the maximum number of bidding units the bidder can win considering new bids placed and provisionally winning bids renewed in that round. Thus, when a bidder submits bids in a round the system will determine the set of bids, among the bidder's new bids and renewed provisionally winning bids, that contains the most bidding units and has no overlap among the licenses. To illustrate this, suppose a bidder submits the following bids in round *t*:

#### BIDS PLACED IN ROUND *t*

| License/package             | Bidding units |
|-----------------------------|---------------|
| Package A .....             | 56,000,000 bu |
| WX-EAG701-C (14,000,000 bu) |               |
| WX-EAG702-C (14,000,000 bu) |               |
| WX-EAG703-C (14,000,000 bu) |               |
| WX-EAG704-C (14,000,000 bu) |               |
| Package B .....             | 42,000,000 bu |
| WX-EAG701-C (14,000,000 bu) |               |
| WX-EAG701-D (28,000,000 bu) |               |

This set of bids contains five distinct licenses. The sum of the bidding units associated with these five licenses is 84,000,000. However, since both packages contain license WX-EAG701-C, this bidder can not win both packages at the same time. The maximum number of bidding units that the bidder can win would be the 56,000,000 associated with Package A, so the bidder's bidding activity is 56,000,000 bidding units.

94. A bidder is also considered to be active if the bidder has provisionally winning bids from the previous round. Auction rules state that a bidder's bids made in different rounds will be considered mutually exclusive, so the bidding units associated with provisionally winning bids must be viewed independently from the bidding units associated with current round bids. We define a bidder's eligibility

activity in a round to be the greater of (i) its bidding activity in the round and (ii) the bidding units associated with the bidder's provisionally winning bids from the prior round. To illustrate how eligibility activity will be calculated in a round we continue with our example. Suppose this bidder has the following provisionally winning bids from round  $t-1$ :

#### PROVISIONALLY WINNING BIDS FROM ROUND $t-1$

| License/package                            | Bidding units |
|--------------------------------------------|---------------|
| License: WX-EAG701-C (14,000,000 bu) ..... | 14,000,000 bu |
| License: WX-EAG701-D (28,000,000 bu) ..... | 28,000,000 bu |

The number of bidding units associated with this bidder's provisionally winning bids is 42,000,000. Recall that the bidder's bidding activity for the round is 56,000,000 bidding units. The eligibility activity for this bidder in round  $t$  is therefore 56,000,000, the greater of its bidding activity (56,000,000 bidding units) and the bidding units associated with its bids in the provisionally winning set (42,000,000 bidding units).

95. We have established an eligibility activity requirement of one-half. Accordingly, in each round of the auction, a bidder desiring to maintain its current eligibility and not use an activity rule waiver is required to have eligibility activity equal to at least half of its current eligibility. A bidder that fails to meet this eligibility activity requirement in a given round and also has no remaining activity rule waivers will have its current eligibility reduced for the next round to a level consistent with the eligibility activity requirement. The bidder's new current eligibility will be its eligibility activity in the current round multiplied by the reciprocal of the eligibility activity requirement ( $1/\text{eligibility activity requirement}$ )—in this case, two ( $1/(1/2)$ ). Thus, a bidder's eligibility in the current round will be the lesser of: (i) its eligibility in the previous round or (ii) the product of its eligibility activity in the previous round and the reciprocal of the eligibility activity requirement.

96. The Bureau has reserved the right, however, to increase to two-thirds the proportion of current eligibility on which bidders must be active to retain their current eligibility. The two-thirds limit will ensure that bidders retain the flexibility to switch from bidding on a 20 MHz license or package to a 30 MHz package with the equivalent population. Any such change will be announced to bidders prior to the beginning of the

round in which the change takes effect. In the event that the Bureau exercises its ability to change the eligibility activity requirement to two-thirds, the new current eligibility for a bidder not meeting the requirement and having no remaining activity rule waivers will be its eligibility activity in the current round multiplied by  $\frac{3}{2}$  (the reciprocal of the eligibility activity requirement).

97. In the previous example, the bidder has eligibility activity in the current round of 56,000,000 bidding units. If this bidder's current eligibility is 168,000,000 bidding units and the eligibility activity requirement is one-half, the bidder's required activity level is 84,000,000 bidding units ( $168,000,000 * \frac{1}{2} = 84,000,000$ ). Since the bidder's eligibility activity is less than the required activity level, and if the bidder has no remaining activity rule waivers, its current eligibility will be reduced so that the bidder will be in compliance with the activity requirement. Therefore, the bidder's current eligibility for the next round will be 112,000,000 bidding units ( $56,000,000 * (1/\frac{1}{2}) = 112,000,000$ ).

98. Because a bidder's bids from all prior rounds are considered in determining provisionally winning bids, it is possible for a bidder to become a provisional winner for a license or package even though it does not have sufficient eligibility to place a new bid on that license or package. In such a case, the bidder will be awarded the license or package at the end of the auction if it has made the winning bid, but it will not be permitted to place any new bids on the license or package during the auction.

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

99. Each bidder in the auction will 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 eligibility 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 flexibility to the bidders, while safeguarding the integrity of the auction.

100. In contrast to our traditional SMR auction format, bidders will not have the ability to apply waivers proactively. In our SMR auction format, proactive waivers are a means by which bidders can keep the auction open without bidding. For Auction No. 31, we have adopted a two-round simultaneous stopping rule. Thus, after one round with no new bids, the auction will not close. For more information, *see* Section IV.A.vi. "Stopping Rules," *infra*.

101. The FCC Automated Auction System assumes that bidders with insufficient eligibility activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any round where a bidder's eligibility 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.

102. A bidder with insufficient eligibility 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 Automated Auction System. In this

case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in the previous section. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

#### v. Auction Stages and Stage Transitions

103. Our SMR auctions generally are conducted in two or three stages, in which the activity requirement is increased between stages. In this SMR-PB auction, we have adopted a single stage with a one-half activity requirement, although we retain the discretion during the auction to increase to two-thirds the proportion of bidding units on which bidders must be active to retain their current eligibility. Any such change will be announced to bidders prior to the beginning of the round in which the change takes effect.

#### vi. Auction Stopping Rules

104. For Auction No. 31, we have adopted a two-round simultaneous stopping rule. A two-round simultaneous stopping rule means that all licenses remain open until two consecutive rounds have occurred in which no new bids are accepted. After a round with no new bids, bidders will receive a message warning that if no new bids are placed in the next round the auction will close. After the second consecutive round with no new bids, bidding closes simultaneously on all licenses and packages. Thus, unless circumstances dictate otherwise, bidding will remain open on all licenses until bidding stops on every license and package.

105. For purposes of the stopping rule, renewed bids are not considered new bids; in other words, a round in which the only bids that are placed are renewed bids is considered a round with no new bids for purposes of the stopping rule.

106. The computer software used to determine the provisionally winning set of bids is run at the end of every round of the auction but the last round (*i.e.*, the second consecutive round with no new bids). Because ties are broken randomly, this means that if there were ties for the provisionally winning set in the previous round, running the software at the conclusion of the next round may well result in a different provisionally winning set, even if there was no bidding activity in the round. Consequently, a provisionally winning bid on a license or package may not be a provisionally winning bid one round later, even if there are no bids in the intervening round. Bidders have the option of using the last and best bidding

procedure in order to avoid being in a tied set (*see* Section IV.B.v, "Last and Best Bids").

107. As in previous auctions, the Bureau has retained the discretion to keep an auction open even if no new bids are submitted. The activity rule would apply as usual, and a bidder with insufficient eligibility activity will either lose bidding eligibility or use a remaining activity rule waiver. The Bureau has reserved the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule"). The Bureau would exercise this option only in certain circumstances, such as, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or 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, for example, by increasing the number of bidding rounds per day, and/or by increasing the amount of the minimum acceptable bids for the limited number of licenses where there is still a high level of bidding activity. Any such change will be announced to bidders before it takes effect.

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

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

### B. Bidding Procedures

#### i. Round Structure

109. The Commission will use an automated auction system to conduct the simultaneous multiple round with package bidding auction format. 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. 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.

110. The Bureau will release an additional public notice by April 30, 2002, explaining the round results process and providing sufficient information on our solving and tie-breaking procedures such that participants and interested observers will be able to replicate the FCC's official round results.

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

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

112. Congress mandated that the Commission's objectives when designing competitive bidding methodologies include "recovery for the public of a portion of the value of the public spectrum resource." Section 309(j) of the Communications Act, as amended, calls upon the Commission to prescribe methods by which a reasonable reserve price will be required and/or a minimum opening bid established for licenses subject to auction, unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. Among other factors, the Bureau must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on the spectrum being auctioned. The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.

113. The Bureau has adopted minimum opening bids for each license in Auction No. 31, and the Bureau further established that the minimum

opening bids for packages will be the sum of the minimum opening bids for the licenses comprising the package.

114. Given the complexities resulting from the presence of incumbents and the clearance process, the Bureau specifically sought comment on an aggregate reserve in Auction No. 31 equal to \$2.6 billion in gross bids. As the Bureau noted in the *Auction No. 31 Further Modifications Comment Public Notice*, Congress previously estimated that the Upper 700 MHz band licenses, which consist of the previously auctioned 700 MHz guard bands licenses and the licenses in Auction No. 31, will generate \$2.6 billion in net revenue. The prior 700 MHz guard bands auctions generated nearly \$541 million in net revenue. To assure that net revenues in Auction No. 31 together with prior net revenues will be commensurate with Congress's expectations, the Bureau suggested establishing an aggregate reserve price for Auction No. 31 of \$2.6 billion in gross bids. The Bureau notes that there are unavoidable uncertainties in estimating the gross bids required to assure particular net revenues.

115. The Bureau adopts the suggested public aggregate reserve price equal to \$2.6 billion in gross bids. The unique complexities of the spectrum clearance process make establishing an aggregate reserve price for Auction No. 31 appropriate.

116. In addition to the aggregate reserve price of \$2.6 billion, we will maintain the previously-established minimum opening bids on licenses and packages. No license or package will be sold if it has not received a bid at the minimum opening bid amount. Furthermore, at the end of Auction No. 31, if the total gross revenue of the provisionally winning set does not equal or exceed \$2.6 billion, there will be no winning bids and no licenses will be sold.

117. However, the aggregate reserve will be considered satisfied and licenses will be awarded to the winning bidders if total gross revenue exceeds \$2.6 billion, even if some individual licenses remain unsold. The FCC will retain any unsold licenses. For the purposes of calculating the total gross revenue of the winning set, any FCC-held licenses will be treated as having received a bid at a small amount below the minimum opening bid amount. Therefore, in the event that there are unsold licenses while the aggregate reserve is met, actual gross payments to the Treasury from winning bidders will be less than total gross revenues, since the latter figure includes FCC "bid" amounts for the unsold licenses. During the course

of the auction, the Bureau will not entertain any requests to reduce the aggregate reserve price.

118. The specific minimum opening bids for each license are set forth in Attachment A of the *Auction No. 31 Further Procedures Public Notice*. The minimum opening bids that we have adopted are reducible at the discretion of the Bureau. The Bureau emphasizes, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureau will not entertain any requests to reduce the minimum opening bid on specific licenses.

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

119. In the *Auction No. 31 Further Modifications Comment Public Notice*, the Bureau sought comment on two potential changes, Options 1 and 2, to the previously-adopted procedures for calculating minimum acceptable bids. In the previously-adopted procedures, the minimum acceptable bid for any particular license or package would be the greatest of: (i) The applicable minimum opening bid; (ii) the bidder's previous high bid on that license/package plus x%, where the Bureau would specify the value of x in each round; and (iii) the bidder's previous high bid on that particular license/package plus an amount based on the increase in the bidder's previous high bid needed to create a tie with the provisional winners. If the bidder has not bid on a license or an already constructed package, the bidder's previous high bid for purposes of calculating part (iii) would be the applicable minimum opening bid. As Option 1, the Bureau proposed completely replacing part (iii) of the minimum acceptable bid calculation with a formula based on "current price estimates." In addition, as a second part of Option 1, the Bureau proposed considering all bids submitted during the auction both when calculating current price estimates and when determining the provisionally winning set of bids. The Bureau proposed a much more modest change to part (iii) as Option 2. The Bureau proposed changing the mathematical formula applicable only when determining minimum acceptable bids on packages created and bid on in the same round.

120. The "current price estimate" is a measure, developed by the Bureau, which utilizes information from all current and past bids on a license and packages containing that license, to approximate a "price" for each license

in every round of the auction. The precise methodology used to calculate price estimates is described in Attachment B of the *Auction No. 31 Further Procedures Public Notice*. Until a bid is placed on a license or on a package containing that license, by any bidder in any round, the current price estimate is the FCC bid amount, which is slightly below the minimum opening bid. If a bid on a single license is part of the provisionally winning set of bids in a round, then the current price estimate for that license in that round will be equal to the provisionally winning bid. Generally, however, if a license is part of a package bid in the provisionally winning set, the current price estimate for an individual license is calculated using all of the bids placed that involve that license, since those bids together yield information on how bidders value that license. The set of current price estimates, one for each license, is then used as the basis for determining minimum acceptable bids for the next round, under part (iii) of the minimum acceptable bid rule. Specifically, for individual licenses, the part (iii) minimum acceptable bid amount is the current price estimate of the license plus z%. For packages, it is the sum of the current price estimates for the licenses comprising that package, plus z% of the sum. Initially, the Bureau will set z at five, but retains the discretion to adjust the amount during the course of the auction, including setting z at less than zero, in order to control the pace of the auction.

121. The Bureau adopts Option 1. Thus, the minimum acceptable bid for any license or package will be the greatest of: (i) The minimum opening bid; (ii) the bidder's own previous high bid on a license or package plus x%, where the Bureau will specify the value of x in each round; and (iii) the current price estimate of the license plus z%, or for a package, the sum of the current price estimates for the licenses in the package plus z%, where the Bureau will specify the value of z in each round. The result will be rounded to the nearest thousand dollars. Initially, the Bureau will set x at ten, but retains the discretion to adjust the amount during the course of the auction.

122. The Bureau retains an exception to part (iii) for calculating the minimum acceptable bid for a "global" package—a package consisting of all of the licenses available in the auction. After the first round of the auction, part (iii) of the minimum acceptable bid rule for a global package will always be the revenue generated by the provisionally winning bid set in the previous round plus w%, rounded to the nearest

thousand dollars. The Bureau makes this distinction in order to retain the ability to ensure that bids for the global package will continue to increase even if we employ a percentage  $z$  that does not guarantee that outcome. Initially, the Bureau will set  $w$  at five, but retains the discretion to adjust the amount during the course of the auction.

123. Under our normal SMR auction design, we define a bid increment for a license as the difference between the minimum acceptable bid and the standing high bid. Under these package bidding procedures, we do not have standing high bids. Therefore, bid increments cannot be defined and used in the same manner. Minimum acceptable bids will be calculated as previously set forth. To maintain consistency with our simultaneous multiple round auction design, we will still sometimes refer to the minimum acceptable bid as being a bid of one bid increment.

124. For bids higher than the minimum acceptable bid—*i.e.*, multi-increment bids—we are defining the amount of the additional bid increments as  $v\%$  of the minimum acceptable bid, rounded to the nearest thousand dollars, where the minimum acceptable bid is determined as previously discussed. Initially, the Bureau will set  $v$  at ten, but retains the discretion to adjust the amount during the course of the auction. Thus, when  $v$  equals ten, bidders will be able to place multi-increment bids of the minimum acceptable bid plus approximately 10%, 20%, etc., with the maximum bid being approximately equal to the minimum acceptable bid plus 80%.

125. We retain the discretion to change the minimum acceptable bid, and to do so on a license-by-license and package-by-package basis, if circumstances so dictate. We will notify bidders of any such change before it takes effect.

126. As described in the *Auction No. 31 Further Modifications Comment Public Notice*, the adoption of Option 1 also involves a change in the number of rounds of bids being considered when determining the provisionally winning set. In contrast to the prior procedures in which two rounds of bids were considered, we now will consider every bid made in every round of the auction (except for bids that are placed and subsequently removed during the same round). Additionally, a set of “FCC” bids on each license in the auction at some small dollar amount less than the respective minimum opening bid will also be considered.

#### iv. Renewed Bids

127. For each bidder, we will treat the bids it makes in different rounds as mutually exclusive. If a bidder does not want a bid from the previous round (including a provisionally winning bid) to be considered mutually exclusive with bids made in the current round, it can renew the bid in the current round.

128. Without regard to the minimum acceptable bid requirement, a bidder may “renew” in the current round the highest previous bid it made on any license or package; that is, it may resubmit the bid without increasing the amount bid. Renewed bids will be treated as being made in the current round.

129. Renewed provisionally winning bids confer bidding activity, while non-renewed provisional winners count toward eligibility activity. No eligibility or bidding activity will be conferred for renewing a non-provisionally winning bid. All bidding, including renewals of non-provisionally winning bids, is limited by initial eligibility, however.

#### v. Last and Best Bids

130. Bidders that wish to drop out of the auction or that believe they are about to lose their bidding eligibility will have the opportunity before they drop out to make “last and best” bids on any licenses or packages for which they remain eligible. This is a limited exception to the minimum acceptable bid rule and to click box bidding. If a bidder chooses this option, it will not be permitted to make any further bids during the auction.

131. A bidder may make up to two sets of last and best bids. The two sets of last and best bids must be submitted in a single round, but will be treated as mutually exclusive, as are bids placed in separate rounds. Once last and best bids are placed, the bidder will not be permitted to place new bids or renew previous bids in any subsequent round. If a bidder chooses to submit last and best bids, then, for the remainder of the auction, those bids will be considered, as will all of the bidder’s previous rounds of bidding.

132. The last and best bid amount for any license or package is any amount, in thousand dollar increments, greater than or equal to the bidder’s previous high bid on the license or package and less than or equal to the eighth increment above the minimum acceptable bid for that license or package in the current round. Also, if the bidder has never placed a bid on a package or license, the lower bound on the last and best bid amount is equal to the minimum opening bid for that package or license.

133. Each set of last and best bids may consist of bids on any or all of the licenses selected on the Form 175 and any or all of the packages created by the bidder, consistent with the activity and eligibility rules and the twelve package limitation. Bidding activity for each of the sets of last and best bids must not exceed current eligibility, as determined at the beginning of the round in which these bids are placed. In other words, eligibility for the second set of last and best bids will not be recalculated based on eligibility activity associated with the first set of bids. Last and best bids are considered to be new bids in the round in which they are placed. However, a last and best bid equal to the bidder’s previous high bid will be considered as a renewed bid.

#### vi. Winning and Provisionally Winning Bids

134. The winning bids are the set of “consistent” bids (bids that (i) do not overlap and (ii) are made or renewed by an individual bidder in the same round) that maximizes total revenue when the auction closes, provided that the aggregate reserve has been met. The provisionally winning bids are the set of consistent bids that maximizes total revenue in a particular round. When determining winning and provisionally winning bids, all bids made in every round throughout the course of the auction (except for bids that are placed and subsequently removed during the same round) will be considered. In addition, each license is treated as having a bid placed by the FCC at some small amount less than the minimum opening bid. This procedure will ensure that a bid on a license or package at the minimum opening bid always beats the FCC bid.

135. Since there can be more than one set of consistent bids that produces the maximum revenue, a procedure for randomly selecting among these tied sets is used when determining the provisionally winning bids. This tie breaking procedure involves two steps: The assignment of a selection number to each bid, and the determination of, among all tied bid sets, the set that produces the maximum sum of selection numbers.

136. A bid’s selection number is the sum of  $n$  pseudo-random numbers where  $n$  is the number of licenses comprising the bid’s package. Each pseudo-random number is generated by invoking a well-documented and well-tested routine developed by Pierre L’Ecuyer. A bid’s selection number as well as the beginning seed numbers used to produce it will be released at the close of each round.

137. Once the selection numbers have been generated for each bid, the second step of the tie breaking procedure will decide the provisionally winning bids. Computer software is used to determine, among all tied bid sets, the set that produces the maximum sum of selection numbers. Thus, the set of provisionally winning bids is the set of consistent bids that maximizes revenue and maximizes the sum of selection numbers. Each bid will be assigned a new selection number in every round. The solver will not be run after the last round of the auction. See Section IV.A.vi, "Auction Stopping Rules," for more information on the close of the auction.

138. The procedure we are adopting for last and best bids, described in Section IV.B.v, allows bidders to reduce the likelihood that their final bid on a license or package will be part of a randomly broken tied set. Generally, in the case of a tie, the bidder(s) whose bid is not chosen has the opportunity in the next round to continue bidding. However, if the bidder believes that the minimum acceptable bid is too high and so would ordinarily cease bidding on that license or package, it may use the last and best bid(s) procedure to make final bids on licenses and packages, which may be as little as \$1,000 more than the bidder's highest previous bid on each license or package.

#### vii. Packages

139. In addition to bidding on individual licenses, bidders will be permitted to create and bid on up to twelve different packages of their own choosing during the course of the auction. Bidders will not be required to identify or create their packages before the start of the auction, but may create their packages as the auction progresses. A bidder may modify or delete a package it has created up until the point where it has bid on the package and the round has closed. If the bidder submits a bid on a package and subsequently removes the bid during the same round, the bidder has the option of also deleting or modifying the package. However, once a bidder bids on a package and the round closes, the package may not be modified or deleted and counts as one of the bidder's twelve allowable packages. A bid on an individual license does not count as a bid on a package; packages consist of two or more licenses.

#### viii. Bidding

140. During a bidding round, a bidder may submit new bids or renewed bids for as many licenses and packages as it wishes, subject to its eligibility, its FCC

Form 175 license selection, and the twelve package limitation; remove bids placed in the current bidding round; or permanently reduce eligibility. Bidders also have the option of making multiple submissions in each bidding round. If a bidder submits multiple bids for a single license or package in the same round, the system overwrites any previous bid with the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with licenses for which the bidder has removed its bid do not count towards the bidder's bidding activity at the close of the round.

141. Bidding is constrained by the eligibility and activity rules, which determine both minimum and maximum permissible levels of bidding, as measured in bidding units. As previously discussed, minimum bidding, as measured in bidding units, is constrained by the activity rules. In each round, a bidder desiring to maintain its current eligibility and not use an activity rule waiver must be active, based on eligibility activity, on licenses associated with enough bidding units to meet the activity requirement for the current round. For more details, please refer to Section IV.A.iii. "Activity and Eligibility Rules."

142. Maximum bidding, as measured in bidding units, is constrained by the eligibility rules. Bidding activity for a round, defined as the maximum number of bidding units a bidder can win considering new bids and renewed provisionally winning bids placed in that round, cannot exceed current eligibility. That is, when a bidder submits a set of bids in a round, the system will not accept the set of bids if it determines that the bidding activity generated by those bids exceeds the bidder's current eligibility. Bidding in a round is further limited by the requirement that a bidder's *bidding exposure* in a round must be less than or equal to its initial eligibility. Bidding exposure is the maximum number of bidding units a bidder can win considering all the bids (new, renewed provisionally winning or non-provisionally winning) placed in the round. Similarly, when a bidder submits a set of bids in a round, the system will not accept the set of bids if it determines that the bidding exposure generated by those bids exceeds the bidder's initial eligibility. In either case, if a set of bids is rejected, the system will notify the bidder that its bids have not been accepted and report which rule is in violation.

143. Bidders are permitted only to bid on the specific licenses they selected on their FCC Form 175. Any packages they

create must be comprised entirely of licenses selected on their Form 175. The bid submission screens are customized using the bidder's Form 175 information, and will not permit bidding on non-selected licenses (or packages of those licenses).

144. Please note that all bidding will take place remotely either through the FCC Automated Auction System or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round.) There will be no on-site bidding during Auction No. 31.

145. The 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.

146. In each round, eligible bidders will be able to place new bids on a given license or package in any of nine different amounts. Bidders must use the drop-down box to select bids from among the nine acceptable new bid amounts; to renew any bids (if applicable); or to remove any bids made within that same round.

147. Finally, bidders are cautioned in selecting their bid amounts because, as explained in the following section, bidders are not permitted to withdraw bids from prior rounds, even if mistakenly or erroneously made. As explained previously, when determining winning and provisionally winning bids, we consider all bids made throughout the course of the auction.

#### ix. Bid Removal and Bid Withdrawal

148. Bid "removal" is the voiding of a bid made in the current round. For the reasons set forth, we permit only the removal of bids placed in the current round. The withdrawal or cancellation of bids made in previous rounds is prohibited.

149. At any time 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 the current round. This is not the same as withdrawing a bid, which, in our SMR system, can occur in rounds subsequent to the round in which the high bid was placed. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Once a

round closes, a bidder may no longer remove a bid.

150. At the close of the auction, if a bid is declared the winner and the bidder does not pay the amount due, it is liable for a default payment as set forth in the Commission's Rules.

151. We stated the following in the *Auction No. 31 Package Bidding Procedures Public Notice*, and it still holds true.

We believe that by making bids placed in different rounds mutually exclusive, we have limited a bidder's exposure risk when changing strategies. Moreover, the bid withdrawal procedure was designed to allow bidders to back out of failed aggregations—to avoid winning some licenses that are worth less to them than the amount bid without the other licenses they need to implement their business plan. Therefore, since bidders may make package bids on all combinations of licenses with significant complementarities, the use of withdrawals to mitigate such risk is no longer necessary. Moreover, while there is no offsetting benefit from allowing bid withdrawals, there would still be potential harm. Withdrawals may be used strategically to provide incorrect price signals during the auction and lead other bidders to place inefficient bids. Also, when withdrawals are permitted, one cannot ensure that the auction will proceed at an acceptable pace. Moreover, the harm associated with withdrawals is likely to be more severe in auctions with package bidding since a single withdrawal of a bid (on either an individual license or a package) can affect the entire provisionally winning set. Accordingly, we will *not* permit bidders to withdraw their provisionally winning bids.

#### x. Round Results

152. Bids placed during a round will not be published until the conclusion of that bidding period. After a round closes, the Bureau will compile reports of all bids made in that round, the set of bids considered when determining the current provisionally winning bids, current price estimates, new minimum acceptable bids for all bidders, current provisionally winning bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 31 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.

153. The Bureau will release an additional public notice by April 30, 2002, detailing round results reports formats, explaining the round results process and providing sufficient information on our solving and tie-breaking procedures such that

participants and interested observers will be able to replicate the FCC's official round results.

154. In the *Auction No. 31 Package Bidding Procedures Public Notice*, the Bureau stated in a footnote that we would "make available a bidder aid for bidders to be able to determine for themselves what bid amount would have been necessary to beat the other bids and become a provisional winner in the prior round." This bidder's aid tool was intended to calculate the "shortfall and deficit" amounts which have been superseded by current price estimates in part (iii) of the minimum acceptable bid rule. The Bureau will not provide such a bidder aid, nor will it provide the FCC Auction Tracking Tool software.

#### xi. Auction Announcements

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

#### xii. Default

156. The Commission adopted a special rule for calculating default payments in connection with package bidding in the Upper 700 MHz band. In the event a winning bidder defaults on payments due after an auction closes or is disqualified after the auction, a default payment will be assessed. The default payment will consist of a deficiency portion and an additional 25% payment. The special default rule is modeled on the default rule used in other auctions. However, there are substantial differences, perhaps most significantly in the amount of the additional payment. The default rule used in other auctions sets the additional payment at three percent (3%) of the lesser of the subsequent winning bid and the defaulted bid. In contrast, the default rule for use with package bidding in the Upper 700 MHz bands sets the additional payment at twenty-five percent (25%) of the lesser of the subsequent winning bid and the defaulted bid.

157. The deficiency portion will make up any loss to the Commission that results when defaulted bid(s) are replaced by subsequent winning bid(s). If the subsequent winning bid(s) exceed the defaulted bid(s), no deficiency portion will be assessed. Even in the absence of a deficiency portion, however, an additional 25% payment will be due. Where a defaulting bidder held winning bids on individual licenses (*i.e.*, not as part of a package), and in a subsequent auction the licenses

are also won individually, the deficiency portion will be calculated by subtracting the subsequent winning bid from the defaulted bid. The deficiency portion for such bids will be calculated on a license-by-license basis (*i.e.*, in the event of defaults on multiple bids, the differences between the amounts originally bid and the amounts subsequently bid will not be aggregated to determine a net amount owed).

158. Where a defaulting bidder won licenses in package(s), and in a subsequent auction the licenses are won either (a) in the same package(s), or (b) in smaller packages or as individual licenses that correlate to the defaulted package(s), the deficiency portion will be determined on a package-by-package basis. In the event a defaulting bidder defaults on more than one such bid, the differences between the amount originally bid and the amount(s) subsequently bid will not be aggregated to determine a net amount owed. Thus, in this situation, the deficiency portion will be calculated in a manner analogous to where the licenses are sold individually. However, with regard to each individual package, where the licenses are subsequently sold individually or as part of smaller packages, the amounts received in the subsequent auction will be aggregated in order to determine any deficiency.

159. Where a defaulting bidder or bidders won licenses either individually or as part of packages, and in a subsequent auction the licenses are won as larger packages or different packages (not including the situation described in the preceding paragraph), the deficiency portion will be calculated by subtracting the aggregate amount originally bid for the licenses from the aggregate amount bid in the subsequent auction for the licenses. Thus, in this situation, the deficiency portion will not be calculated on a bid-by-bid basis.

160. If, in a situation requiring that bids be aggregated in order to determine the deficiency portion of the default payments for the bids, there are multiple defaulting bidders, the default payment (both the deficiency portion and the additional 25% payment portion) will be allocated to the defaulting bidders in proportion to their share of the aggregated default bids.

161. In the event that a bidding credit applies to any applicable bid(s), the Bureau will assess the deficiency portion of the default payment using the lesser of the difference between gross bids and the difference between net bids. (In the event that a bidder does not have a bidding credit, the bidder's gross bid and net bid are the same.) In other words, the Bureau will compare (i) the

sum of the gross defaulted Auction No. 31 bid(s) minus the gross subsequent winning bid(s) and (ii) the sum of the net defaulted Auction No. 31 bid(s) minus the net subsequent winning bid(s). The Bureau will impose the lesser of (i) and (ii) as the deficiency portion.

162. As noted at the outset, the default payment consists of the deficiency portion and an additional 25% payment. The additional payment will be 25% of the lesser of the subsequent winning bid(s) and the defaulted bid(s). The Bureau will use the same gross or net bid(s) that it used to calculate the deficiency portion when assessing the additional 25% payment. That is, the Bureau will compare the defaulted and subsequent bid(s) according to the methods described for calculation of the deficiency portion of the default payment when determining whether the defaulted bid(s) or the subsequent winning bid(s) is the lesser amount. Should there be no difference between the gross or net bid(s) for purposes of assessing the deficiency portion, the Bureau will assess the additional 25% payment using the lesser of the gross or net bid(s).

## V. Post-Auction Procedures

### A. Down Payments

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

164. 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).

### B. Auction Discount Voucher

165. On June 8, 2000, the Commission awarded Qualcomm, Inc. a transferable Auction Discount Voucher ("ADV") in the amount of \$125,273,878.00. This ADV may be used by Qualcomm or its transferee, in whole or in part, to adjust a winning bid in any spectrum auction prior to June 8, 2003, subject to terms and conditions set forth in the Commission's Order. Qualcomm transferred \$10,848,000.00 of the ADV to a winning bidder in FCC Auction No. 35 and the transferee used its portion of the ADV to adjust one of its winning bids in Auction No. 35. The remaining portion of Qualcomm's ADV could be

used to adjust winning bids in another FCC auction, including Auction No. 31.

### C. Long-Form Application

166. 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. 31. 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.

### D. Tribal Land Bidding Credit

167. 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.

168. 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).

169. 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 auctions Web site at <http://wireless.fcc.gov/auctions> by clicking on the *Tribal Land Credits* link.

### E. Default and Disqualification

170. 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 27.501(b). 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* Section IV.B.xii for more detail on the default rule for this auction.

### F. Refund of Remaining Upfront Payment Balance

171. All applicants that submitted upfront payments but were not winning bidders for a license in Auction No. 31 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. 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.

172. At the end of the auction, those bidders who are eligible for a refund 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, Taxpayer Identification Number (TIN), and FCC Registration Number (FRN). Send refund request to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Gail Glasser or Tim Dates, 445 12th Street, SW, Room 1-C863, Washington, DC 20554.

173. 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.

**Magaret Wiener,**

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

[FR Doc. 02-9988 Filed 4-23-02; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL MARITIME COMMISSION

### Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

*Agreement No.:* 011677-005.

*Title:* United States Australasia Agreement.

*Parties:*

Australia New Zealand Direct Line  
Contship Containerlines  
Hamburg-Sud, d/b/a Columbus Line  
P&O Nedlloyd Limited  
Wallenius Wilhelmsen Lines AS  
CMA CGM, S.A.

*Synopsis:* The proposed agreement modification extends the current share period for the parties' Trade Participation Arrangement through December 31, 2002, and revises the overcarriage and undercarriage thresholds.

*Agreement No.:* 011785-001.

*Title:* The COSCON/KL/YMUK Asia/ U.S. East and Gulf Coast/Mediterranean Vessel Sharing Agreement.

*Parties:*

COSCO Container Lines Company,  
Limited  
Kawasaki Kisen Kaisha, Ltd.  
Yangming (U.K.) Ltd.

*Synopsis:* The proposed agreement modification adds ports in North Europe in the Hamburg/Gibraltar range, the United Kingdom, and Scandinavia to the geographic scope of the agreement.

Dated: April 19, 2002.

By Order of the Federal Maritime Commission.

**Bryant L. VanBrakle,**  
*Secretary.*

[FR Doc. 02-10063 Filed 4-23-02; 8:45 am]

BILLING CODE 6730-01-P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

#### Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Greating Marine Inc., 2225 W. Commonwealth Ave., Suite #316, Alhambra, CA 91803, Officers: Eugene Yu Chiang, Operation Manager (Qualifying Individual), Ho The Chang, President

Hana Logistics, Inc. 1123 E. Dominguez Street Carson, CA 90746 Officers: Jung Hyun Oh, President (Qualifying Individual), Helen Jun, Secretary  
Skytech International, Inc., 145-38 157th Street, Jamaica, NY 11434, Officer: Yun Seok Lee, President, Qualifying Individual

West Point International Shipping Co., 509 Summerbreeze Drive, Newark, DE 19702, Mary O. Atupulazi, Sole Proprietor

Dart Express (NYC) Inc., 177-14 149th Road, Jamaica, NY 11434, Officers: Kwok Keung Wong, Vice President (Qualifying Individual), Joseph Pang, Director

Kasy Logistics Co., Ltd., 8050 Florence Avenue, Suite 30, Downey, CA 90240, Officers: Paul Kee-Nui Leung, Chief Financial Officer (Qualifying Individual), Ying Chen, CEO  
Willmar International, Inc., 975 Navajo Drive, Bluffton, OH 45817, Officer: William T. Martin, President (Qualifying Individual)

Crescent Ocean Services, LLC dba Crescent Ocean Services, 5100 South Dawson Street, Suite 200, Seattle, WA 98118, Officer: Christopher J. Clark, General Manager (Qualifying Individual)

Worldwide Logistics Partner Inc. dba WWLP Inc., 720 Industrial Drive, Suite 109, Cary, IL 60013, Officers: Mitesh P. Kamdar, Director (Qualifying Individual), Jim Ehrbar, Vice President of Sales

A.N.I. Cargo Services Inc., 6931 NW 87th Avenue, Miami, FL 33178, Officers: Stephen Chang, President (Qualifying Individual), Allan Grant, Vice President

DLS Freight Services (SFO) Ltd. dba DLS Logistic Service, 840 Hinckley Road, Suite #110, Burlingame, CA 94010, Officers: Elaine Pan, CFO (Qualifying Individual), Iris Meng, President

Global Brilliant Logistics Corp., 343 N. Wood Dale, Suite 102, Wood Dale, IL 60191, Officer: Veronica Knycha, President (Qualifying Individual)

#### Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

R.S. Logistics Inc., 700 Plaza Drive, Secaucus, NJ 07094, Officers: Gregory Shiu, Vice President (Qualifying Individual), Ling Wan, Director  
A Customs Brokerage, Inc., 656 South Drive, Miami Springs, FL 33166, Officers: Gilda Castillo, Vice President (Qualifying Individual), Gabriel T. Rodriguez, President

GPS Logistics, Inc., 175-18 147th Avenue, Jamaica, NY 11434, Officers: Paul Fitzpatrick, President (Qualifying Individual), Peter T.C. Chow, Secretary

Annex Global Logistics Inc., 808 South Hindry Avenue, Suite E, Inglewood, CA 90301, Officer: Charles Wong, President (Qualifying Individual)

Klasman-Varnak USA, Inc., 14 Laurel Hill Terrace, Kearny, NJ 07032, Officers: Kemal M. Guler, Vice President (Qualifying Individual), Vilmaz Nalcakar, President

Trans Caribbean Cargo International, Inc., 1601 NW 70th Avenue, Suite 101, Miami, FL 33126, Officers: Lt. Col. Lawrence H. London, CEO (Qualifying Individual), Ian Davis, President

Dated: April 19, 2002.

**Bryant L. VanBrakle,**  
*Secretary.*

[FR Doc. 02-10062 Filed 4-23-02; 8:45 am]

BILLING CODE 6730-01-P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the