

Needs and Uses: 47 CFR 73.3523 requires an applicant for a construction permit to obtain approval from the FCC to dismiss or withdraw its application when that application is mutually exclusive with a renewal application. This request for approval must contain a copy of any written agreement and an affidavit stating that it has not received any consideration (pre-Initial Decision), or it has not received any consideration in excess of legitimate and prudent expenses (post-Initial Decision) for the dismissal/withdrawal of its application. In addition, within 5 days of the applicant's request for approval, each remaining competing applicant and the renewal applicant must submit an affidavit certifying that it has not paid any consideration (pre-Initial Decision), or that it has not paid consideration in excess of legitimate and prudent expenses (post-Initial Decision) for the dismissal/ withdrawal of a competing application. The FCC staff uses the data to ensure that an application was filed under appropriate circumstances and not to extract payments prohibited by the Commission.

OMB Control Number: 3060-0561.

Title: Section 76.913, Assumption of Jurisdiction by the Commission.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: State, local or tribal government.

Number of Respondents: 10.

Estimated Time per Response: 8 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 80 hours.

Total Annual Cost: None.

Needs and Uses: 47 CFR section 76.913 permits a local franchising authority (LFA) that is unable to meet certification standards to petition the FCC to regulate the basic service cable rates of its franchisee. The FCC uses this information collected under this control number to identify situations where the Commission should exercise jurisdiction over basic service and equipment rates in place of local franchising authority. Without this information, the basic cable rates of some franchising areas, which are not subject to effective competition, would remain unregulated in contravention of the goals of the 1992 Cable Act.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

[FR Doc. 03-29350 Filed 11-24-03; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC-03-55-B (Auction No. 55); DA 03-3235]

Auction of Licenses in the 900 MHz Specialized Mobile Radio ("SMR") Service Scheduled for February 11, 2004; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of licenses in the 900 MHz SMR Service. This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for the auction.

DATES: Auction No. 55 is scheduled to begin on February 11, 2004.

FOR FURTHER INFORMATION CONTACT:

Auctions and Industry Analysis

Division: Legal questions: Robert Krinsky at (202) 418-0660. General auction questions: Lyle Ishida at (202) 418-0660 or Linda Sanderson at (717) 338-2888. *Media Contact:* Press inquiries: Chelsea Fallon at (202) 418-7991. *Commercial Wireless Division:* Legal questions: Evan Baranoff at (202) 418-7142. Technical questions: Bettye Woodward at (202) 418-1345 or Gary Devlin at (717) 338-2618.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 55 Procedures Public Notice* released on October 17, 2003. The complete text of the *Auction No. 55 Procedures Public Notice*, including attachments, as well as related Commission 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 C-A257, Washington, DC, 20554. The *Auction No. 55 Procedures Public Notice* and related Commission documents 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. When ordering documents from Qualex, please provide the appropriate FCC document number (for example, FCC 95-395 for the *900 MHz Second Order on Reconsideration and Order*). The *Auction No. 55 Procedures Public Notice* and related documents are also

available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/55/>.

I. General Information

A. Introduction

1. The *Auction No. 55 Procedures Public Notice* announces the procedures and minimum opening bids for the upcoming auction of licenses in the SMR Service scheduled for February 11, 2004 (Auction No. 55). On September 17, 2003, in accordance with the Balanced Budget Act of 1997, the Bureau released a public notice seeking comment on reserve prices or minimum opening bids and the procedures to be used in Auction No. 55. The Bureau received no comments in response to the *Auction No. 55 Comment Public Notice*, 68 FR 55955 (September 29, 2003).

i. Background of Proceeding

2. On April 17, 1995, the Commission released the *900 MHz Second Report and Order and Second Further Notice of Proposed Rule Making*, 60 FR 21987 (May 4, 1995), in which it adopted final service rules and requested comment on proposed auction rules for licensing 900 MHz SMR spectrum. On September 14, 1995, the Commission released the *900 MHz Second Order on Reconsideration and Seventh Report and Order*, 60 FR 48913 (September 21, 1995), adopting final auction rules for the 900 MHz SMR service. In 1996, the Commission concluded an auction of 900 MHz SMR licenses in Auction No. 7.

ii. Licenses To Be Auctioned

3. Auction No. 55 will offer 60 licenses based on Major Trading Areas ("MTAs"). The MTAs are based on the Rand McNally 1992 Commercial Atlas and Marketing Guide, 123rd Edition. The Commission Rand McNally and Company has authorized interested parties to use MTAs under a blanket license agreement, which covers certain services, including the 900 MHz SMR Service. The Commission uses 51 MTAs, which include the 47 established by Rand McNally, with the following exceptions and additions: Alaska is separated from the Seattle MTA and is licensed separately, Guam and the Northern Marianas Islands are licensed as a single MTA-like area; Puerto Rico and the U.S. Virgin Islands are licensed in a single MTA-like area; and American Samoa is licensed as a single MTA-like area. The spectrum to be auctioned was previously associated with licenses that have been cancelled or terminated. A complete list of the licenses available in Auction No. 55 is included in

Attachment A of the *Auction No. 55 Procedures Public Notice*.

4. The following table contains the channel block/frequency cross-reference

for the 896–901 MHz and 935–940 MHz bands:

Channel block	Channel Nos.	Frequency (MHz)	Channel block	Channel Nos.	Frequency (MHz)
A	1–10	896.00625–896.13125 935.00625–935.13125	B	21–30	896.25625–896.38125 935.25625–935.38125
C	41–50	896.50625–896.63125 935.50625–935.63125	D	61–70	896.75625–896.88125 935.75625–935.88125
E	81–90	897.00625–897.13125 936.00625–936.13125	F	101–110	897.25625–897.38125 936.25625–936.38125
G	121–130	897.50625–897.63125 936.50625–936.63125	H	141–150	897.75625–897.88125 936.75625–936.88125
I	161–170	898.00625–898.13125 937.00625–937.13125	J	181–190	898.25625–898.38125 937.25625–937.38125
K	201–210	898.50625–898.63125 937.50625–937.63125	L	221–230	898.75625–898.88125 937.75625–937.88125
M	241–250	899.00625–899.13125 938.00625–938.13125	N	261–270	899.25625–899.38125 938.25625–938.38125
O	281–290	899.50625–899.63125 938.50625–938.63125	P	301–310	899.75625–899.88125 938.75625–938.88125
Q	321–330	900.00625–900.13125 939.00625–939.13125	R	341–350	900.25625–900.38125 939.25625–939.38125
S	361–370	900.50625–900.63125 939.50625–939.63125	T	381–390	900.75625–900.88125 939.75625–939.88125

Note: For Auction No. 55, Licenses Are Not Available in Every Market or for Each Channel Block Listed in the Table. In One Case, a License Is Available for Only Part of a Market. See Attachment A To Determine Which Licenses Will Be Offered.

B. Rules and Disclaimers

i Relevant Authority

5. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to the 900 MHz SMR Service contained in title 47, part 90, of the Code of Federal Regulations, and those relating to application and auction procedures, contained in title 47, part 1, of the Code of Federal Regulations. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, "terms") contained in the *Auction No. 55 Procedures Public Notice*; the *Auction No. 55 Comment Public Notice*; and the *Second Order on Reconsideration and Seventh Report and Order*, 60 FR 48913 (September 21, 1995) (as well as prior and subsequent Commission proceedings regarding competitive bidding procedures).

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

Commission rules and with all public notices pertaining to this auction.

ii. Prohibition of Collusion

7. To ensure the competitiveness of the auction process, § 1.2105(c) of the Commission's rules prohibits applicants for any of the same geographic license areas from communicating with each other during the auction about bids, bidding strategies, or settlements unless such applicants have identified each other on their FCC Form 175 applications as parties with whom they have entered into agreements under § 1.2105(a)(2)(viii). Thus, applicants for any of the same geographic license areas must affirmatively avoid all discussions with each other that affect, or in their reasonable assessment have the potential to affect, bidding or bidding strategy. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. For purposes of this prohibition, § 1.2105(c)(7)(i) defines applicant as including all controlling interests in the entity submitting a short-form application to participate in the auction, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application, and all officers and directors of that entity.

8. Applicants for licenses in any of 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 applicants 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. 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.

9. The Commission's anti-collusion rules allow applicants to form certain agreements during the auction, provided the applicants have not applied for licenses covering the same geographic areas. In addition, applicants that apply to bid for all markets will be precluded from communicating with all other applicants until after the down payment deadline. However, all 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), 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 any of the same geographic areas. By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with § 1.2105(c).

10. Section 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, § 1.65 requires auction applicants that engage in communications of bids or bidding strategies that result in a bidding agreement, arrangement or understanding not already identified on their short-form applications to promptly disclose any such agreement, arrangement or understanding to the Commission by amending their pending applications. In addition, § 1.2105(c)(6) requires all auction applicants to report prohibited discussions or disclosures regarding bids or bidding strategy to the Commission in writing immediately but in no case later than five business days after the communication occurs, even if the communication does not result in an agreement or understanding regarding bids or bidding strategy that must be reported under § 1.65.

11. A summary listing of documents issued by the Commission and the Bureau addressing the application of the anti-collusion rules may be found in Attachment G of the *Auction No. 55 Procedures Public Notice*.

iii. Interference Protection for Incumbent Licensees

12. Incumbent SMR systems in the 900 MHz MTA blocks are entitled to co-channel protection by MTA licensees. Among other licensing and technical rules, MTA licensees will be required to afford interference protection to incumbent SMR systems, on a fixed separation basis as provided in § 90.621. Secondary sites for which applications were filed on or before August 9, 1994, are also afforded complete co-channel protection.

13. Incumbents may modify or add sites so long as they do not exceed their existing 40 dBu signal strength contour. In fact, incumbent systems are not allowed to expand beyond existing

service areas unless they obtain the MTA license for the relevant channels.

14. Potential bidders seeking licenses for MTAs that border Canada or Mexico are subject to coordination arrangements with those respective countries.

iv. Due Diligence

15. Potential applicants are reminded that there are a number of incumbent licensees operating on 900 MHz SMR channels that are subject to the upcoming auction. Incumbent licenses were originally granted in 1986 in 46 "Designated Filing Areas" ("DFAs"). Incumbent systems are entitled to protection from co-channel interference within their 40 dBu signal strength contour by any new entrant who obtains a 900 MHz SMR MTA license at the auction. We therefore caution potential bidders in formulating their bidding strategies to investigate and consider the extent to which 900 MHz SMR channel blocks are occupied by incumbents.

16. Potential applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses available in Auction No. 55.

17. Potential applicants 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, incumbent licensees, or the licenses available in Auction No. 55. In addition, certain judicial proceedings that may relate to particular applicants or incumbent licensees, or the licenses available in Auction No. 55, may be commenced, or may be pending, or may be subject to further review. We note that resolution of these matters could have an impact on the availability of spectrum in Auction No. 55. 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.

18. In addition, potential applicants may research the licensing database for the Wireless Telecommunications 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 applicants are strongly encouraged to physically inspect any sites located in, or near, the service area for which they plan to bid.

19. Potential bidders may obtain information about licenses available in Auction No. 55 through the Bureau's licensing database on the World Wide Web at <http://wireless.fcc.gov/uls>. Potential applicants may query the database online and download a copy of their search results if desired. Detailed instructions on using License Search (including frequency searches and the GeoSearch capability) and downloading query results are available online by selecting the "?" button at the upper right-hand corner of the License Search screen.

20. Potential applicants should direct questions regarding the search capabilities to the FCC Technical Support hotline at (202) 414-1250 (voice) or (202) 414-1255 (TTY), or via e-mail at ulscomm@fcc.gov. The hotline is available to assist with questions Monday through Friday, from 8 a.m. to 6 p.m. ET. In order to provide better service to the public, *all calls to the hotline are recorded*.

v. Bidder Alerts

21. 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.

22. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 55 to deceive and defraud unsuspecting investors.

23. 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. 55 may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225-5322).

vi. National Environmental Policy Act Requirements

24. 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.

C. Auction Specifics

i. Auction Date

25. The auction will begin on Wednesday, February 11, 2004. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

ii. Auction Title

26. Auction No. 55—900 MHz Specialized Mobile Radio Service.

iii. Bidding Methodology

27. The bidding methodology for Auction No. 55 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. As a contingency plan, bidders may also dial in to the FCC Wide Area Network. Qualified bidders are permitted to bid telephonically or electronically.

iv. Pre-Auction Dates and Deadlines

28. The following is a list of important dates related to Auction No. 55:

Auction Seminar	December 3, 2003
Short-Form Application (FCC FORM 175) Filing Window Opens.	December 3, 2003; 12 p.m. ET
Short-Form Application (FCC FORM 175) Filing Window Deadline.	December 15, 2003; 6 p.m. ET

Upfront Payments (via wire transfer).	January 15, 2004; 6 p.m. ET
Mock Auction	February 6, 2004
Auction Begins	February 11, 2004

v. Requirements For Participation

29. Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically by 6 p.m. ET, December 15, 2003.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. ET, January 15, 2004.
- Comply with all provisions outlined in the *Auction No. 55 Procedures Public Notice*.

vi. General Contact Information

30. The following is a list of general contact information related to Auction No. 55:

GENERAL AUCTION INFORMATION

General Auction Questions
Seminar Registration

AUCTION LEGAL INFORMATION

Auction Rules, Policies, Regulations

LICENSING INFORMATION

Rules, Policies, Regulations

Licensing Issues

Due Diligence

Incumbency Issues

TECHNICAL SUPPORT

Electronic Filing

FCC Automated Auction System

PAYMENT INFORMATION

Wire Transfers

Refunds

TELEPHONIC BIDDING

FCC FORMS

FCC INTERNET SITES

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,

Monday through Friday

Auctions and Industry Analysis Division

Legal Branch (202) 418-0660

Commercial Wireless Division

(202) 418-0620

FCC Auctions Technical Support Hotline

(202) 414-1250 (Voice),

(202) 414-1255 (TTY)

Hours of service: 8 a.m.—6 p.m. ET,

Monday through Friday

FCC Auctions Accounting Branch

(202) 418-0578

(202) 418-2843 (Fax)

Will be furnished only to qualified bidders

(800) 418-3676 (outside Washington, DC)

(202) 418-3676 (in the Washington Area)

<http://www.fcc.gov/formpage.html>

<http://www.fcc.gov>

<http://wireless.fcc.gov/auctions>

<http://wireless.fcc.gov/uls>

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

31. Guidelines for completion of the short-form (FCC Form 175) are set forth in Attachment D of the *Auction No. 55 Procedures Public Notice*.

A. License Selection

32. In Auction No. 55, FCC Form 175 will include a mechanism that allows an applicant to create customized lists of licenses. The applicant will select the filter criteria and the system will produce a list of licenses satisfying the

specified criteria. The applicant may apply for all the licenses in the list (by using the "Save all filtered licenses" option) or select and save individual licenses separately from the list.

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

33. 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.

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

34. 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 that 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.

35. 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, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.

D. Eligibility

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

36. A bidding credit represents the amount by which a bidder's winning bids are discounted. The size of the bidding credit depends on the average of the aggregated annual gross revenues for each of the preceding three years of the bidder, its affiliates, its controlling interests, and the affiliates of its controlling interests.

37. For Auction No. 55, bidding credits will be available to small businesses or consortia thereof, as follows:

- A bidder with attributed average annual gross revenues of not more than \$15 million for the preceding three years will receive a 10 percent discount on its winning bids;
- A bidder with attributed average annual gross revenues of not more than \$3 million for the preceding three years will receive a 15 percent discount on its winning bids.

Small business bidding credits are not cumulative; a qualifying applicant receives the 10 percent or 15 percent bidding credit on its winning bid, but only one credit per license.

ii. Tribal Land Bidding Credit

38. To encourage the growth of wireless services in federally recognized tribal lands the Commission has implemented a tribal land bidding credit. See section V.F. of the *Auction No. 55 Procedures Public Notice*.

iii. Attribution Rules

39. *Attribution for small business eligibility.* In determining which entities qualify as 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.

40. Each member of a consortium of small businesses must disclose its gross revenues along with those of its affiliates, its controlling interests, and the affiliates of its controlling interests.

iv. Supporting Documentation

41. 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 a small business (or consortia of small businesses) for this auction.

42. 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.

43. *Small business eligibility (Exhibit C).* Entities applying to bid as small businesses (or consortia of 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 businesses, this information must be provided for each consortium member.

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

44. Each applicant must certify on its FCC Form 175 application under penalty of perjury that the applicant, its controlling interests, its affiliates, and the affiliates of its controlling interests, as defined by § 1.2110, are not in default on any payment for Commission licenses (including down payments) and 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 interests, as defined by § 1.2110, have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. Applicants must include this statement as Exhibit D of the FCC Form 175.

45. "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. 55, provided that they are otherwise qualified. However, as discussed *infra* in section III.D.iii, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

F. Installment Payments

46. Installment payment plans will not be available in Auction No. 55.

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

47. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(c)(2), may attach an exhibit

(Exhibit E) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of "designated entities" in its auctions. Applicants wishing to submit additional information may do so on Exhibit F (Miscellaneous Information) to the FCC Form 175.

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

48. After the short-form filing deadline (6 p.m. ET on December 15, 2003), 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, change the certifying official, 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: auction55@fcc.gov. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 55. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

49. A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338-2850.

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

50. Section 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. 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

51. On Wednesday, December 3, 2003, the FCC will sponsor a free seminar for Auction No. 55 at the Federal Communications Commission, located at 445 12th Street, SW., Washington, DC. The seminar will provide attendees with information about pre-auction procedures, auction conduct, the FCC Automated Auction System, auction rules, and the 900 MHz SMR service rules. A registration form is attached as Attachment B of the *Auction No. 55 Procedures Public Notice*.

B. Short-Form Application (FCC Form 175)—Due December 15, 2003

52. 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 December 15, 2003. Late applications will not be accepted.

53. There is no application fee required when filing an FCC Form 175.

i. Electronic Filing

54. Applicants must file their FCC Form 175 applications electronically. Applications may generally be filed at any time beginning at noon ET on December 3, 2003, until 6 p.m. ET on December 15, 2003. 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 December 15, 2003.

55. Applicants must press the "SUBMIT Application" button on the "Submission" page of the electronic form to successfully submit their FCC Form 175s. Any form that is not submitted will not be reviewed by the FCC. Information about accessing the FCC Form 175 is included in Attachment C of the *Auction No. 55 Procedures Public Notice*. Technical support is available at (202) 414-1250 (voice) or (202) 414-1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8 a.m. to 6 p.m. ET. In order to provide better service to the public, *all calls to the hotline are recorded*.

ii. Completion of the FCC Form 175

56. Instructions for completing the FCC Form 175 are in Attachment D of the *Auction No. 55 Procedures Public Notice*.

iii. Electronic Review of FCC Form 175

57. The FCC Form 175 electronic review system may be used to locate and print applicants' FCC Form 175 information. There is no fee for accessing this system. See Attachment C of the *Auction No. 55 Procedures Public Notice* for details on accessing the review system.

58. Applicants may also view other applicants' completed FCC Form 175 after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. NOTE: Applicants should not include sensitive information (i.e., TIN/EIN) on any exhibits to their FCC Form 175 applications.

C. Application Processing and Minor Corrections

59. 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.

D. Upfront Payments—Due January 15, 2004

60. 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 January 15, 2004. For specific instructions regarding upfront payments, see section III.D of the *Auction No. 53 Procedures Public Notice*. Failure to deliver the upfront payment by the January 15, 2004, deadline will result in dismissal of the application and disqualification from participation in the auction.

i. Making Auction Payments by Wire Transfer

61. Wire transfer payments must be received by 6 p.m. ET on January 15, 2004. 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.

62. Applicants must fax a completed FCC Form 159 (Revised 2/03) 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. 55." In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account by the deadline. Applicants are responsible for obtaining confirmation from their financial institution that Mellon Bank has timely received their upfront payment and deposited it in the proper account. Detailed instructions for completion of FCC Form 159 are included in Attachment E of the *Auction No. 55 Procedures Public Notice*.

ii. Amount of Upfront Payment

63. In the *Part 1 Order* 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 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*).

64. The upfront payment determines the number of bidding units on which a bidder may place bids. In order to bid on a license, otherwise qualified bidders that applied for that license on Form 175 must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all licenses for which the applicant has applied on Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold high bids at any given time.

65. In the *Auction No. 55 Comment Public Notice*, the Bureau proposed upfront payments on a license-by-

license basis using the following formula:

5% (five percent) of the net amount of the winning bid in Auction No. 7 for the corresponding license (same MTA and channel block).

66. We received no comments on this issue. Therefore, the Bureau adopts its proposed formula for determining upfront payments. The specific upfront payments and bidding units for each license are set forth in Attachment A of the *Auction No. 55 Procedures Public Notice*.

67. In calculating its upfront payment amount, an applicant should determine the *maximum* number of bidding units on which it may wish to be active (bidding units associated with licenses on which the bidder has the standing high bid from the previous round and licenses on which the bidder places a bid in the current round) in any single round, and submit an upfront payment covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all licenses on which it seeks to bid in any given round. Applicants should check their calculations carefully, as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

EXAMPLE: UPFRONT PAYMENTS AND BIDDING FLEXIBILITY

Market No.	Market name	Bidding units	Upfront payment
MTA005	Detroit	54,000	\$54,000
MTA007	Dallas-Fort Worth	42,000	42,000

If a bidder wishes to bid on both licenses in a round, it must have selected both on its FCC Form 175 and purchased at least 96,000 bidding units (54,000 + 42,000). If a bidder only wishes to bid on one, but not both, purchasing 54,000 bidding units would meet the requirement for either license. The bidder would be able to bid on either license, *but not both at the same time*. If the bidder purchased only 42,000 bidding units, it would have enough eligibility for the Dallas-Fort Worth license but not for the Detroit license.

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

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

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

69. The Commission will use wire transfers for all Auction No. 55 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.

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 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: Gail Glasser, at (202) 418-2843 by January 15, 2004. 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 Gail Glasser at (202) 418-0578.

E. Auction Registration

70. 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.

71. 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) and the other containing the SecurID cards, both of which are required to place bids. These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.

72. 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, February 4, 2004, should contact the Auctions Hotline at (717) 338-2888. Each applicant is responsible for ensuring it has received all of the registration material.

73. Qualified bidders should note that lost bidder identification numbers or SecurID cards can be replaced only by appearing *in person* at the FCC 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. Remote Electronic Bidding

74. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. As a contingency plan, bidders may also dial in to the FCC Wide Area Network. Each applicant should indicate its bidding preference—electronic or telephonic—on the FCC Form 175. In either case, each authorized bidder must have its own SecurID card, which the FCC will provide at no charge. 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. SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 55. The telephonic bidding phone number will be supplied in the first overnight mailing, which also includes the confidential bidder identification number.

75. The SecurID cards can be recycled, and we encourage bidders to return the cards to the FCC.

G. Mock Auction

76. All qualified bidders will be eligible to participate in a mock auction on Friday, February 6, 2004. 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

77. The first round of bidding for Auction No. 55 will begin on Wednesday, February 11, 2004. The initial bidding schedule will be announced in a public notice listing the qualified bidders.

A. Auction Structure

i. Simultaneous Multiple Round Auction

78. In the *Auction No. 55 Comment Public Notice*, we proposed to award all licenses in Auction No. 55 in a simultaneous multiple round auction. We received no comments on this issue. We conclude that it is operationally feasible and appropriate to auction the 900 MHz SMR licenses through a simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction. This approach allows bidders to take advantage of synergies that exist among licenses and is administratively efficient.

ii. Maximum Eligibility and Activity Rules

79. In the *Auction No. 55 Comment Public Notice*, we proposed that the amount of the upfront payment submitted by a bidder would determine the initial (maximum) eligibility (as measured in bidding units) for each bidder. We received no comments on this issue.

80. For Auction No. 55 we adopt this proposal. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid and hold high bids in a round. As there is no provision for increasing a bidder's eligibility after the upfront payment deadline, applicants are cautioned to calculate their upfront payments carefully. The total upfront payment does not affect the total dollar amount a bidder may bid on any given license.

81. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific

percentage of their current eligibility during each round of the auction.

82. A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. A bidder is considered active on a license in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits a bid in the current round (see "Minimum Acceptable Bids and Bid Increments" in section IV.B.iii.). The minimum required activity is expressed as a percentage of the bidder's current bidding eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions (as set forth under "Auction Stages" in section IV.A.iii and "Stage Transitions" in section IV.A.iv), we adopt them for Auction No. 55.

iii. Auction Stages

83. In the *Auction No. 55 Comment Public Notice*, we proposed to conduct the auction in three stages and employ an activity rule. We further proposed that, in each round of Stage One, a bidder desiring to maintain its current eligibility would be required to be active on licenses encompassing at least 80 percent of its current bidding eligibility. In each round of Stage Two, a bidder desiring to maintain its current eligibility would be required to be active on at least 90 percent of its current bidding eligibility. Finally, we proposed that a bidder in Stage Three, in order to maintain its current eligibility, would be required to be active on 98 percent of its current bidding eligibility. We received no comments on this proposal.

84. We adopt our proposals for the activity rules and stages. The following are the activity levels for each stage of the auction. The Bureau reserves the discretion to further alter the activity percentages before and/or during the auction.

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

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

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

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

iv. Stage Transitions

85. In the *Auction No. 55 Comment Public Notice*, we proposed that the auction would generally advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is below 20 percent for three consecutive rounds of bidding in each Stage. We further proposed that the Bureau would retain the discretion to change stages unilaterally by announcement during the auction. This determination, we proposed, would be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the

percentage increase in revenue. We received no comments on this issue.

86. We adopt our proposal. Thus, the auction will start in Stage One and will generally advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when, in each of three consecutive rounds of bidding, the high bid has increased on 20 percent or less of the licenses being auctioned (as measured in bidding units). In addition, the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue.

v. Activity Rule Waivers and Reducing Eligibility

87. Each bidder will be provided three activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required level. An activity rule waiver applies to an entire round of bidding and not to a particular license.

88. The FCC Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any round where a bidder's activity level is below the minimum required unless: (i) there are no activity rule waivers available; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements. If a bidder has no waivers remaining and does not satisfy the required activity level, the current eligibility will be permanently reduced, possibly eliminating the bidder from the auction.

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

permitted to regain its lost bidding eligibility.

90. Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the FCC Automated Auction System) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver triggered during a round in which there are no new bids or withdrawals will not keep the auction open. **Note:** Once a proactive waiver is submitted during a round, that waiver cannot be unsubmitted.

vi. Auction Stopping Rules

91. For Auction No. 55, the Bureau proposed to employ a simultaneous stopping rule. The Bureau also sought comment on a modified version of the stopping rule. The modified version of the stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder.

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

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

94. We adopt the proposals concerning the auction stopping rules. Auction No. 55 will begin under the simultaneous stopping rule, and the Bureau will retain the discretion to invoke the other versions of the stopping rule.

vii. Auction Delay, Suspension, or Cancellation

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

B. Bidding Procedures

i. Round Structure

96. 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. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will also be included in the qualified bidders public notice.

97. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The 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 or Minimum Opening Bid

98. In the *Auction No. 55 Comment Public Notice*, the Bureau proposed to establish minimum opening bids for Auction No. 55 and to retain discretion to lower the minimum opening bids. Specifically, for Auction No. 55, the Bureau proposed the following license-by-license formula for calculating minimum opening bids:

5% (five percent) of the net amount of the winning bid in Auction No. 7 for the corresponding license (same MTA and channel block).

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

100. No comments were received. Therefore, the Bureau adopts its proposed minimum opening bids for Auction No. 55. The minimum opening bids we adopt for Auction No. 55 are reducible at the discretion of the Bureau. We emphasize, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureau will not entertain requests to reduce the minimum opening bid on specific licenses.

101. The specific minimum opening bids for each license available in Auction No. 55 are set forth in Attachment A of the *Auction No. 55 Procedures Public Notice*.

iii. Minimum Acceptable Bids and Bid Increments

102. In Auction No. 55 we will use a smoothing methodology to calculate minimum acceptable bids. The smoothing methodology is designed to vary the increment for a given license between a maximum and minimum percentage based on the bidding activity on that license. This methodology allows the increments to be tailored to the activity on a license, decreasing the time it takes for licenses receiving many bids to reach their final prices. The formula used to calculate this increment is included as Attachment F of the *Auction No. 55 Procedures Public Notice*. We will initially set the weighting factor at 0.5, the minimum percentage increment at 0.1 (10%), and the maximum percentage increment at 0.2 (20%). Hence, at these initial settings, the percentage increment will fluctuate between 10% and 20% depending upon the number of bids for the license.

103. In each round, each eligible bidder will be able to place a bid on a particular license for which it applied in any of nine different amounts. The FCC Automated Auction System will list the nine bid amounts for each license.

104. Once there is a standing high bid on a license, the FCC Automated Auction System will calculate a minimum acceptable bid for that license for the following round, as described in Attachment F of the *Auction No. 55 Procedures Public Notice*. The difference between the minimum acceptable bid and the standing high bid for each license will define the bid

increment—*i.e.*, bid increment = (minimum acceptable bid) – (standing high bid). The nine acceptable bid amounts for each license consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

105. At the start of the auction and until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. Corresponding additional bid amounts will be calculated using bid increments defined as the difference between the minimum opening bid times one plus the percentage increment, rounded as described in Attachment F of the *Auction No. 55 Procedures Public Notice*, and the minimum opening bid—*i.e.*, bid increment = (minimum opening bid)(1 + percentage increment) {rounded} – (minimum opening bid). At the start of the auction and until a bid has been placed on a license, the nine acceptable bid amounts for each license consist of the minimum opening bid and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the minimum opening bid plus the bid increment, the third bid amount equals the minimum opening bid plus two times the bid increment, etc.).

106. In the case of a license for which the standing high bid has been withdrawn, the minimum acceptable bid will equal the second highest bid received for the license. The additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid.

107. The Bureau retains the discretion to change the minimum acceptable bids and bid increments and the methodology for determining the minimum acceptable bids and bid increments if it determines that circumstances so dictate. The Bureau will do so by announcement in the FCC Automated Auction System. The Bureau may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant.

iv. High Bids

108. At the end of each bidding round, the high bids will be determined based on the highest gross bid amount received for each license. A high bid from a previous round is sometimes

referred to as a “standing high bid.” A “standing high bid” will remain the high bid until there is a higher bid on the same license at the close of a subsequent round. Bidders are reminded that standing high bids count towards bidding activity.

109. A Sybase® SQL pseudo-random number generator based on the L'Ecuyer algorithms will be used to select a high bid in the event of identical high bids on a license in a given round (*i.e.*, tied bids). The tied bid having the highest random number will become the standing high bid. The remaining bidders, as well as the high bidder, will be able to submit a higher bid in a subsequent round. If no bidder submits a higher bid in a subsequent round, the high bid from the previous round will win the license. If any bids are received on the license in a subsequent round, the high bid will once again be determined on the highest gross bid amount received for the license.

v. Bidding

110. During a round, a bidder may submit bids for as many licenses as it wishes (subject to its eligibility), withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with licenses for which the bidder has removed or withdrawn its bid do not count towards the bidder's activity at the close of the round.

111. All bidding will take place remotely either through the FCC Automated Auction System or by telephonic bidding. Telephonic bidders are reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, five to ten minutes are necessary to complete a bid submission.

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

113. In order to access the bidding function of the FCC Automated Auction System, bidders must be logged in during the bidding round using the bidder identification number provided in the registration materials, and the

password generated by the SecurID card. Bidders are strongly encouraged to print bid confirmations for each round after they have completed all of their activity for that round.

114. For each license, the FCC Automated Auction System interface will list the nine acceptable bid amounts in a drop-down box. Bidders may use the drop-down box to select from among the nine bid amounts. The FCC Automated Auction System also includes an import function that allows bidders to upload text files containing bid information and a Type Bids function that allows bidders to enter specific licenses for filtering.

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

vi. Bid Removal and Bid Withdrawal

116. In the *Auction No. 55 Comment Public Notice*, we proposed bid removal and bid withdrawal procedures. With respect to bid withdrawals, we proposed limiting each bidder to withdrawals in no more than two rounds during the course of the auction. The two rounds in which withdrawals are used, we proposed, would be at the bidder's discretion. We received no comments on this issue.

117. *Procedures.* Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the “remove bid” function in the bidding system, a bidder may effectively “unsubmit” any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is removed does not count toward bidding activity.

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

Note: Once a withdrawal is submitted during a round, that withdrawal cannot be unsubmitted.

119. The Bureau will limit the number of rounds in which bidders may

place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals during the auction will be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market.

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

121. In instances in which bids have been withdrawn on a license that is not won in the same auction, the Commission will assess an interim withdrawal payment equal to 3 percent of the amount of the withdrawn bids. The 3 percent interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the license. The *Part 1 Fifth Report and Order* provides specific examples showing application of the bid withdrawal payment rule.

vii. Round Results

122. Bids placed during a round will not be made public until the conclusion of that bidding period. After a round closes, the Bureau will compile reports of all bids placed, bids withdrawn, current high bids, new minimum acceptable bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities for Auction No. 55 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

viii. Auction Announcements

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

V. Post-Auction Procedures*A. Down Payments and Withdrawn Bid Payments*

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

125. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction No. 55 to 20 percent of the net amount of its winning bids (gross bids less any applicable small business bidding credits). In addition, by the same deadline, all bidders must pay any bid withdrawal payments due under 47 CFR 1.2104(g), as discussed in "Bid Removal and Bid Withdrawal," section IV.B.vi. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

B. Final Payments

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

C. Auction Discount Voucher

127. On June 8, 2000, the Commission awarded Qualcomm, Inc., a transferable Auction Discount Voucher ("ADV") in the amount of \$125,273,878.00. Subject to the terms and conditions set forth in the Commission's Order, Qualcomm or its transferee could use this ADV, in whole or in part, to adjust a winning bid in any spectrum auction prior to June 8, 2003. On April 28, 2003, the Bureau granted Qualcomm an additional year, until June 8, 2004, to use the remaining amount of its ADV. The remaining \$48,240,547.95 of Qualcomm's ADV could be used to adjust winning bids in any FCC Auction, including Auction No. 55.

D. Long-Form Application (FCC Form 601)

128. 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. 55. Winning bidders that are small businesses must include an exhibit demonstrating their eligibility for 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.

E. Ownership Disclosure Information Report (FCC Form 602)

129. At the time it submits its long-form application (FCC Form 601), each winning bidder also must comply with the ownership reporting requirements as set forth in 47 CFR 1.913, 1.919, and 1.2112. Effective December 10, 2002, electronic filing of the Ownership Disclosure Information Report (FCC Form 602) became mandatory. Accordingly, forms filed manually will not be accepted. Winning bidders without a current Form 602 already on file with the Commission must submit a properly completed Form 602 at the time they submit their long-form applications. Further filing instructions will be provided to auction winners at the close of the auction.

F. Tribal Land Bidding Credit

130. 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.

131. 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).

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

G. Default and Disqualification

133. Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required

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

H. Refund of Remaining Upfront Payment Balance

134. All applicants that submit upfront payments but are not winning bidders for a license in Auction No. 55 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from the applicant after any applicable bid withdrawal payments have been paid. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

135. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request. 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, 445 12th Street, SW., Room 1-C863, Washington, DC 20554.

136. 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 Gail Glasser at (202) 418-0578.

Federal Communications Commission.

Gary Michaels,

Chief, Legal Branch, Auctions and Industry Analysis Division.

[FR Doc. 03-29449 Filed 11-24-03; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL MARITIME COMMISSION

[Docket No. 03-14]

Revocation of Licenses and Order To Discontinue Operations in U.S.—Foreign Trades for Failure To Comply With the Requirements of the Ocean Shipping Reform Act of 1998; Notice of Show Cause Proceeding

November 20, 2003.

Notice is given that, on November 17, 2003, the Federal Maritime Commission ("Commission") served an Order to Show Cause ("Order") on fourteen (14) non-vessel-operating common carrier ("NVOCC")/ocean transportation intermediaries ("OTIs").

Commission regulations require that each NVOCC in the United States must be licensed and, among other requirements, file a Form FMC-1 indicating the location of its electronically published tariff. The 14 NVOCCs listed in the Commission's Order each maintain an OTI license issued by the Commission, but have otherwise failed to establish or maintain an electronically published tariff and to maintain a current Form FMC-1 on file with the Commission. The Commission now proposes to revoke the licenses of these NVOCCs for said failures, and to direct them to cease and desist from operating in the U.S.-foreign trades.

The Order directs the 14 NVOCCs to show cause why the Commission should not revoke their respective licenses for failure to comply with sections 8 and 19 of the Shipping Act of 1984, 46 U.S.C. app. § 1707 and § 1718, as amended, and 46 CFR part 515.

The Order's full text may be viewed on the Commission's Home page at <http://www.fmc.gov>, or at the Office of the Secretary, Room 1046, 800 N. Capitol Street, NW., Washington, DC. Any person having an interest and desiring to intervene in this proceeding shall file a petition for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72, and the procedural schedule set forth in the

Commission's November 17, 2003 Order.

Bryant L. VanBrakle,
Secretary.

[FR Doc. 03-29415 Filed 11-24-03; 8:45 am]

BILLING CODE 6730-01-P

GENERAL SERVICES ADMINISTRATION

Office of Governmentwide Policy; Revision of a Standard Form by the Department of the Treasury

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Notice.

SUMMARY: The Department of the Treasury revised SF 3881, ACH Vendor/Miscellaneous Payment Enrollment to:

Remove the CTP checkbox and the OMB expiration; and
Authorize form for local reproduction. This was due to low demand in the Federal Supply Service.

You can obtain the updated form in two ways:

On the internet. Address: [http://w3.gsa.gov/web/c/newform.nsf/MainMenu?OpenForm](http://w3.gsa.gov/web/c/newform.nsf/w3.gsa.gov/web/c/newform.nsf/MainMenu?OpenForm) or;

From GSA, Forms-MCF, Attn.: Barbara Williams, (202) 501-0581.

FOR FURTHER INFORMATION CONTACT: Ms. Lois Holland (202) 622-1563. This contact is for information about completing the form only.

DATES: Effective November 25, 2003.

Dated: November 18, 2003.

Barbara M. Williams,
Deputy Standard and Optional Forms Management Officer, General Services Administration.

[FR Doc. 03-29362 Filed 11-24-03; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice; correction.

SUMMARY: The Office of the Secretary, HHS, published a notice in the **Federal Register** of November 10, 2003, concerning a finding of scientific misconduct regarding Dr. Gelband. The document contained a typographical error.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 301-443-5330.

Correction

In the **Federal Register** of November 10, 2003, in FR Doc. 03-28197, on page 63799 in the first column at letter "B" replace the first sentence to read: "Hypertension 2000 paper #2: Figure 1A merited retraction."

Dated: November 18, 2003.

Lawrence J. Rhoades,

Acting Director, Office of Research Integrity.

[FR Doc. 03-29335 Filed 11-24-03; 8:45 am]

BILLING CODE 4150-31-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 2002E-0099, 2002E-0184, and 2003E-0255]

Determination of Regulatory Review Period for Purposes of Patent Extension; XIGRIS

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for XIGRIS and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of three applications to the Director of Patents and Trademarks, Department of Commerce, for the extension of three patents which claim that human biological product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD-013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240-453-6699.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the