

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary,*

*Office of the Secretary,*

*Office of Managing Director.*

[FR Doc. 2010-3840 Filed 2-24-10; 8:45 am]

**BILLING CODE 6712-01-S**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection Being Reviewed by the Federal Communications Commission, Comments Requested

02/19/2010.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology and (e) ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number.

**DATES:** Persons wishing to comment on this information collection should submit comments by April 26, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should

advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395-5167, or via e-mail at Nicholas\_A\_Fraser@omb.eop.gov and to Cathy Williams, Federal Communications Commission (FCC), via e-mail at Cathy.Williams@fcc.gov and to PRA@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection send an e-mail to PRA@fcc.gov or contact Cathy Williams on (202) 418-2918.

#### SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-1084.

Title: Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers (CARE).

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 2,242 respondents; 492,906 responses.

Estimated Time per Response: 1 minute (.017 hours) to 20 minutes (.33 hours).

Frequency of Response: Recordkeeping requirement; Annual reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 1-4, 201, 202, 222, 258, and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. §§ 151-154, 201, 202, 222, 258, and 303(r).

Total Annual Burden: 40,885 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: Confidentiality is not an issue as individuals and/or households are not required to provide personally identifiable information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: In the 2005 Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers (2005 Report and Order), CG Docket No. 02-386, FCC 05-29, which was released on February 25, 2005, the Commission adopted rules governing the exchange of customer account information between local exchange carriers (LECs) and interexchange carriers (IXCs). The

Commission concluded that mandatory, minimum standards are needed in light of record evidence demonstrating that information needed by carriers to execute customer requests and properly bill customers is not being consistently provided by all LECs and IXCs. Specifically, the 2005 Report and Order requires LECs to supply customer account information to IXCs when: (1) the LEC places an end user on, or removes an end user from, an IXC's network; (2) an end user presubscribed to an IXC makes certain changes to her account information via her LEC; (3) an IXC requests billing name and address information for an end user who has usage on an IXC's network but for whom the IXC does not have an existing account; and (4) a LEC rejects an IXC-initiated PIC order. The 2005 Report and Order requires IXCs to notify LECs when an IXC customer informs an IXC directly of the customer's desire to change IXCs. In the accompanying Further Notice of Proposed Rulemaking, the Commission sought comment on whether to require the exchange of customer account information between LECs. In December 2007, The Commission declined to adopt mandatory LEC-to-LEC data exchange requirements.

Federal Communications Commission.

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[FR Doc. 2010-3839 Filed 2-24-10; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 09-205; DA 10-18]

### Auction of Lower and Upper Paging Bands Licenses Scheduled for May 25, 2010; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 87

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the procedures and minimum opening bids for the upcoming auction of Lower and Upper Bands Licenses (Auction 87). This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for the auction.

**DATES:** Applications to participate in Auction 87 must be filed prior to 6 p.m. Eastern Time (ET) on March 16, 2010.

Bidding for licenses in Auction 87 is scheduled to begin on May 25, 2010.

**FOR FURTHER INFORMATION CONTACT:**

*Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* For legal questions: Scott Mackoul at (202) 418-0660. For general auction questions: Roy Knowles or Barbara Sibert at (717) 338-2868. *Mobility Division:* For licensing information and service rule questions: Michael Connelly (legal) or Melvin Spann (technical) at 202-418-0620. To request materials in accessible formats (Braille, large print, electronic files or audio format) for people with disabilities, send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction 87 Procedures Public Notice*, which was released on January 22, 2010. The complete text of the *Auction 87 Procedures Public Notice*, including attachments, as well as related Commission documents, are available for public inspection and copying from 8 a.m. to 4:30 p.m. ET Monday through Thursday and from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The *Auction 87 Procedures Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-488-5300, facsimile 202-488-5563, or Web site: <http://www.BCPIWEB.com>, using document number DA 10-18 for the *Auction 87 Procedures Public Notice*. The *Auction 87 Procedures Public Notice* and related documents are also available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/87/>. Due to the large number of licenses in Auction 87, the complete list of licenses available for this auction has been provided in electronic format only, available as separate "Attachment A" files at <http://wireless.fcc.gov/auctions/87/>. A paper copy of the complete list of licenses and any other documents relating to Auction 87 may also be purchased from the Commission's duplicating contractor, BCPI.

**I. General Information**

**A. Introduction**

1. The Wireless Telecommunications Bureau (Bureau) announces the procedures and minimum opening bid amounts for the upcoming auction of

9,603 licenses for lower and upper paging bands spectrum. This auction, which is designated as Auction 87, is scheduled to commence on May 25, 2010. On November 30, 2009, the Bureau released a public notice seeking comment on competitive bidding procedures to be used in Auction 87. Interested parties submitted 1 comment and 1 reply comment in response to the *Auction 87 Comment Public Notice*, 74 FR 67221, December 18, 2009.

**i. Licenses to be Offered in Auction 87**

2. Auction 87 will offer 9,603 paging licenses consisting of 7,752 licenses in the lower paging bands (35 MHz, 43 MHz, 152 and 158 MHz, 454 and 459 MHz) and 1,851 licenses in the upper paging bands (929 MHz and 931 MHz). Auction 87 will include licenses that remained unsold from a previous auction, licenses on which a winning bidder in a previous auction defaulted, and licenses for spectrum previously associated with licenses that cancelled or terminated. In a few cases, the available license does not cover the entire geographic area due to an excluded area or previous partitioning.

3. Attachment A of the *Auction 87 Procedures Public Notice* provides a summary of the licenses available in Auction 87. Due to the large number of licenses in Auction 87, the complete list of licenses available for this auction will be provided in electronic format only, available as separate Attachment A files at <http://wireless.fcc.gov/auctions/87/>. Tables containing the block/frequency cross-reference list for the paging bands are included in Attachment B of the *Auction 87 Procedures Public Notice*.

**B. Rules and Disclaimers**

**i. Relevant Authority**

4. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules set forth in Title 47, Part 1, Subpart Q of the Code of Federal Regulations, including all amendments and clarifications; rules relating to the lower and upper paging bands and emerging technologies contained in Title 47, Part 22 and Part 90 of the Code of Federal Regulations; and rules relating to applications, environment, practice and procedure contained in Title 47, Part 1, Subpart I of the Code of Federal Regulations. Prospective applicants must also be thoroughly familiar with the procedures, terms and conditions (collectively, terms) contained in this Public Notice and in the Commission's decisions in proceedings regarding competitive bidding procedures, application

requirements, and obligations of Commission licensees.

5. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time, and will issue public notices to convey any new or supplemental 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. Prohibited Communications and Compliance With Antitrust Laws**

6. To ensure the competitiveness of the auction process, 47 CFR 1.2105(c) prohibits auction applicants for licenses in any of the same geographic license areas from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications (FCC Form 175) as parties with whom they have entered into agreements pursuant to 47 CFR 1.2105(a)(2)(viii).

**a. Entities Subject to Section 1.2105**

7. The prohibited communication provisions of 47 CFR 1.2105(c) will apply to any applicants that submit short-form applications seeking to participate in a Commission auction and select licenses in the same or overlapping markets. In Auction 87, the rule would prohibit any applicants that have selected any of the same licenses or licenses with overlapping markets in their short form applications from communicating absent a disclosed agreement.

8. Under the terms of the rule, applicants that have applied for licenses covering the same or overlapping markets—unless they have identified each other on their short form applications as parties with whom they have entered into agreements under 47 CFR 1.2105(a)(2)(viii)—must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy, which may include communications regarding the post-auction market structure. This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.

9. For purposes of this prohibition, 47 CFR 1.2105(c)(7)(i) defines applicant as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, 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.

10. Information concerning applicants' license selections will not be available to the public. Therefore, the Commission will inform each applicant by letter of the identity of each of the other applicants that has applied for licenses covering any of the same or overlapping geographic areas as the licenses that it has selected in its short-form application.

11. Entities and parties subject to 47 CFR 1.2105(c)'s prohibition on certain communications should take special care in circumstances where their employees may receive information directly or indirectly from a competing applicant relating to any competing applicant's bids or bidding strategies. In situations where 47 CFR 1.2105(c)(7)(i) views the same person as the applicant with respect to two different entities filing competing applications, under Bureau precedent the bids and bidding strategies of one applicant are necessarily conveyed to the other and, absent a disclosed bidding agreement, an apparent violation of the rule occurs. The Bureau has not addressed situations where employees who do not qualify as the applicant (e.g., are not officers or directors) receive information regarding a competing applicant's bids or bidding strategies and thus has not ruled on whether that information might be deemed to be necessarily conveyed to the applicant. The Bureau notes that the exception to 47 CFR 1.2105(c) providing that non-controlling interest holders may have interests in more than one competing bidder without violating the rule, provided specified conditions are met (including a certification that no prohibited communications have occurred or will occur), does not extend to controlling interest holders.

**b. Prohibition Applies Until Down Payment Deadline**

12. 47 CFR 1.2105(c)'s prohibition on certain communications take effect at the short-form application filing deadline and continue until the down payment deadline after the auction.

**c. Prohibited Communications**

13. Applicants for the upcoming Auction 87 and other parties that may be engaged in discussion with such applicants are cautioned on the need to comply with 47 CFR 1.2105(c). The rule prohibits not only a communication about an applicant's own bids or bidding strategy, but also a communication of another applicant's

bids or bidding strategy. While 47 CFR 1.2105(c) does not prohibit business negotiations among auction applicants, applicants must remain vigilant so as not to communicate directly or indirectly information that affects, or could affect, bids or bidding strategy, or the negotiation of settlement agreements.

14. The Commission remains vigilant about communications taking place in other situations. For example, the Commission has warned that prohibited communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly.

15. Applicants are hereby placed on notice that disclosure of information relating to bidder interests and bidder identities that has not yet been made public by the Commission at the time of disclosure may violate the provisions of 47 CFR 1.2105(c) that prohibit certain communications. This is so even though similar types of information were revealed prior to and during other Commission auctions subject to different information procedures. Bidders should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become a conduit for the communication of prohibited bidding information. For example, where limited information disclosure procedures are in place, as for Auction 87, a qualified bidder's statement to the press that it has lost bidding eligibility and stopped bidding in the auction could give rise to a finding of a violation of 47 CFR 1.2105(c). Similarly, an applicant's public statement of intent not to participate in Auction 87 bidding could also violate the rule.

16. Applicants selecting licenses for any of the same or overlapping geographic license areas must not communicate directly or indirectly about bids or bidding strategy. Accordingly, such applicants are encouraged not to use the same individual as an authorized bidder. A violation of 47 CFR 1.2105(c) 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 such applicants. Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or engineering firm or consulting firm), a violation similarly could occur. In such a case, at a

minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the 47 CFR 1.2105(c) prohibition on certain communications.

17. A violation of 47 CFR 1.2105(c) could occur in other contexts, such as an individual serving as an officer for two or more applicants. Moreover, the Commission has found a violation of the rule where a bidder used the Commission's bidding system to disclose its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets, and has placed auction participants on notice that the use of its bidding system to disclose market information to competitors will not be tolerated and will subject bidders to sanctions.

18. In addition, when completing short-form applications, applicants should avoid any statements or disclosures that may violate 47 CFR 1.2105(c), particularly in light of the limited information procedures in effect for Auction 87. Specifically, applicants should avoid including any information in their short-form applications that might convey information regarding their license selection, such as using applicant names that refer to licenses being offered, referring to certain licenses or markets in describing bidding agreements, or including any information in attachments that may otherwise disclose applicants' license selections.

**d. Disclosure of Bidding Agreements and Arrangements**

19. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form applications. If parties agree in principle on all material terms prior to the short-form application filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application, even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the short-form application filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiations, discussions, or communications with any other applicants for licenses covering any of the same or overlapping geographic

areas after the short-form application filing deadline.

e. Section 1.2105(c) Certification

20. By electronically submitting a short-form application following the electronic filing procedures set forth in Attachment C of the *Auction 87 Procedures Public Notice*, each applicant certifies its compliance with 47 CFR 1.2105(c). However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that prohibited behavior has occurred, nor will it preclude the initiation of an investigation when warranted. The Commission has stated that it intends to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring. Any applicant found to have violated 47 CFR 1.2105(c) may be subject to sanctions.

f. Antitrust Laws

21. Applicants are also reminded that, regardless of compliance with the Commission's rules, they remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. Compliance with the disclosure requirements of 47 CFR 1.2105(c) will not insulate a party from enforcement of the antitrust laws. For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submits a short-form application.

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

g. Duty To Report Prohibited Communications; Reporting Procedure

23. 47 CFR 1.2105(c)(6) provides that any applicant that makes or receives a communication that appears to violate 47 CFR 1.2105(c) must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. The Commission has clarified that each applicant's obligation to report any such communication continues beyond the five-day period after the communication

is made, even if the report is not made within the five day period.

24. In addition, 47 CFR 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 of any substantial change that may be of decisional significance to that application. Thus, 47 CFR 1.65 requires an auction applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. Applicants are therefore required by 47 CFR 1.65 to report to the Commission any communications of bids or bidding strategies that result in a bidding arrangement, agreement, or understanding after the short-form filing application deadline.

25. The Commission recently amended 47 CFR 1.65(a) and 1.2105(c) to require applicants in competitive bidding proceedings to furnish additional or corrected information within five days of a significant occurrence, or to amend their short-form applications no more than five days after the applicant becomes aware of the need for amendment. The Commission made this change to facilitate the auction process, by making the information available promptly to all participants and enabling the Bureau to act expeditiously on those changes when such action is necessary.

26. Parties reporting communications pursuant to 47 CFR 1.65 or 1.2105(c)(6) must take care to ensure that any such reports of prohibited communications do not themselves give rise to a violation of 47 CFR 1.2105(c). For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection.

27. The Commission recently amended 47 CFR 1.2105(c) to minimize the risk of inadvertent dissemination by requiring parties to file only a single report and to file that report with Commission personnel expressly charged with administering the Commission's auctions. Pursuant to the amended rule, any reports required by 47 CFR 1.2105(c) must be filed consistent with the instructions set forth in the *Auction 87 Procedures Public Notice*. For Auction 87, such reports should be filed with the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available. Specifically, any such reports

should be submitted by e-mail at the following address: [auction87@fcc.gov](mailto:auction87@fcc.gov), or delivered to the following address: Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room 6423, Washington, DC 20554. Parties submitting such a report should include a cover sheet to avoid the inadvertent dissemination of information contained in the report.

28. A party seeking to report such prohibited communications should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection. Such parties are also encouraged to consult with the Auctions and Spectrum Access Division staff if they have any questions about the procedures for submitting such reports. Applicants must be aware that failure to comply with the Commission's rules can result in enforcement action.

h. Winning Bidders Must Disclose Terms of Agreements

29. Applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in any bidding consortia, joint ventures, partnerships, and other arrangements entered into relating to the competitive bidding process.

i. Additional Information Concerning Rule Prohibiting Certain Communications

30. A summary listing of documents issued by the Commission and the Bureau addressing the application of 47 CFR 1.2105(c) may be found in Attachment E of the *Auction 87 Procedures Public Notice*.

iii. Incumbency Issues

31. There are pre-existing paging incumbent licenses, including public safety entities licensed under either 47 U.S.C. 337 or 47 CFR 1.925. Incumbent (non-geographic) paging licensees operating under their existing authorizations are entitled to full protection from co-channel interference. Geographic area licensees are likewise afforded co-channel interference protection from incumbent licensees. Adjacent geographic area licensees are obligated to resolve possible interference concerns of adjacent geographic area licensees by negotiating a mutually acceptable agreement with the neighboring geographic licensee.

a. International Coordination

32. Potential bidders seeking licenses for geographic areas adjacent to the

Canadian and Mexican border should be aware that the use of some or all of the channels they acquire in the auction could be restricted as a result of current or future agreements with Canada or Mexico. Licensees on the lower paging channels must submit an FCC Form 601 to obtain authorization to operate stations north of Line A or east of Line C because these channels are subject to the *Above 30 Megacycles per Second Agreement* with Industry Canada. Although the upper paging channels do not require coordination with Canada, the *U.S.-Canada Interim Coordination Considerations for the Band 929–932 MHz, as amended*, assigns specific 929 MHz and 931 MHz frequencies to the United States for licensing along certain longitudes above Line A, and assigns other specific 929 MHz and 931 MHz frequencies to Canada for licensing along certain longitudes along the U.S.-Canada border. In addition, the 929 MHz and 931 MHz frequencies assigned to Canada are unavailable for use by U.S. licensees above Line A as set out in the agreement.

b. Quiet Zones

33. Paging licensees must individually apply for and receive a separate license for each transmitter if the proposed operation would affect the radio quiet zones set forth in the Commission's rules.

iv. Due Diligence

34. Potential bidders are reminded that there are a number of incumbent licensees already licensed and operating on frequencies that will be subject to the upcoming auction. Geographic area licensees in accordance with the Commission's rules must protect such incumbents from harmful interference. These limitations may restrict the ability of such geographic area licensees to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license areas.

35. The Bureau cautions potential applicants formulating their bidding strategies to investigate and consider the extent to which these frequencies are occupied. For example, there are incumbent operations already licensed and operating in the bands that must be protected. These limitations may restrict the ability of paging licensees to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license areas. Bidders should become familiar with the status of these operations and applicable Commission rules, orders and any pending proceedings related to the service, in order to make reasoned, appropriate decisions about their

participation in this auction and their bidding strategy.

36. Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the licenses being offered in this auction. The Commission makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that a Commission auction represents an opportunity to become a licensee subject to certain conditions and regulations. The auction does not constitute an endorsement by the Commission of any particular service, technology, or product, nor does a Commission license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

37. Potential bidders are strongly encouraged to conduct their own research prior to the beginning of bidding in Auction 87 in order to determine the existence of any pending legislative, administrative, or judicial proceedings that might affect their decision regarding participation in the auction. Participants in Auction 87 are strongly encouraged to continue such research throughout the auction. In addition, potential bidders should perform technical analyses sufficient to assure themselves that, should they prevail in competitive bidding for a specific license, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements as well as other applicable Federal, state, and local laws.

38. Applicants should also be aware that certain pending and future proceedings, including rulemaking proceedings or petitions for rulemaking, applications (including those for modification), requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal oppositions, and applications for review, before the Commission may relate to particular applicants or incumbent licensees or the licenses available in Auction 87. Pending and future judicial proceedings may also relate to particular applicants or incumbent licensees, or to the licenses available in Auction 87. Prospective bidders are responsible for assessing the likelihood of the various possible outcomes, and considering their potential impact on spectrum licenses available in this auction.

39. Applicants should perform due diligence to identify and consider all proceedings that may affect the spectrum licenses being auctioned and that could have an impact on the availability of spectrum for Auction 87. In addition, although the Commission may continue to act on various pending applications, informal objections, petitions, and other requests for Commission relief, some of these matters may not be resolved by the beginning of bidding in the auction.

40. 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 being offered.

41. Potential bidders may research the Bureau's licensing database on the Internet in order to determine which frequencies are already licensed to incumbent licensees. Applicants may obtain information about licenses available in Auction 87 through the Bureau's online licensing databases at <http://wireless.fcc.gov/uls>. Applicants may query the database online and download a copy of their search results if desired.

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

43. Potential applicants are strongly encouraged to physically inspect any prospective sites located in, or near, the geographic area for which they plan to bid, and also to familiarize themselves with the environmental review obligations described in the *Auction 87 Procedures Public Notice*.

v. Use of Integrated Spectrum Auction System

44. The Commission will make available a browser-based bidding system to allow bidders to participate in Auction 87 over the Internet using the Commission's Integrated Spectrum Auction System (ISAS or FCC Auction System). The Commission makes no warranty whatsoever with respect to the

FCC Auction System. In no event shall the Commission, or any of its officers, employees or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning or use of the FCC Auction System that is accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming or other advice or service provided in connection with the FCC Auction System.

vi. Environmental Review Requirements

45. Licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other federal environmental statutes. The construction of a wireless antenna facility is a federal action, and the licensee must comply with the Commission's environmental rules for each such facility.

C. Auction Specifics

i. Auction Start Date

46. Bidding in Auction 87 will begin on Tuesday, May 25, 2010, as announced in the *Auction 87 Comment Public Notice*. 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. Bidding Methodology

47. The bidding methodology for Auction 87 will be simultaneous multiple round (SMR) bidding. The Commission will conduct this auction over the Internet using the FCC Auction System, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically via the Internet or by telephone. All telephone calls are recorded.

iii. Pre-Auction Dates and Deadlines

48. The following dates and deadlines apply:

Auction Tutorial Available (via Internet).	March 4, 2010.
Short-Form Application (FCC Form 175) Filing Window Opens.	March 4, 2010; 12 noon ET.
Short-Form Application (FCC Form 175) Filing Window Deadline.	March 16, 2010; prior to 6 p.m. ET.
Upfront Payments (via wire transfer).	April 23, 2010; 6 p.m. ET.

Mock Auction .....	May 21, 2010.
Auction Begins .....	May 25, 2010.

iv. Requirements for Participation

49. Those wishing to participate in this auction must: (1) Submit a short-form application (FCC Form 175) electronically prior to 6 p.m. ET, March 16, 2010, following the electronic filing procedures set forth in Attachment C of the *Auction 87 Procedures Public Notice*; (2) submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. ET, April 23, 2010, following the procedures and instructions set forth in Attachment D of the *Auction 87 Procedures Public Notice*; and (3) comply with all provisions outlined in the *Auction 87 Procedures Public Notice* and applicable Commission rules.

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

A. General Information Regarding Short-Form Applications

50. An application to participate in an FCC auction, referred to as a short-form application or FCC Form 175, provides information used in determining whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or permits. The short-form application is the first part of the Commission's two-phased auction application process. In the first phase of this process, parties desiring to participate in the auction must file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on the applicants' short-form applications and certifications as well as their upfront payments. In the second phase of the process, winning bidders must file a more comprehensive long-form application (FCC Form 601) and have a complete and accurate ownership disclosure information report (FCC Form 602) on file with the Commission.

51. Entities seeking licenses available in Auction 87 must file short-form applications electronically via the FCC Auction System prior to 6 p.m. ET on March 16, 2010, following the procedures prescribed in Attachment C of the *Auction 87 Procedures Public Notice*. Applicants filing short-form applications are subject to the Commission's rule prohibiting certain communications beginning on the deadline for filing. The information provided in its short-form application will be used in determining, among

other things, if the applicant is eligible for a bidding credit.

52. Applicants bear full responsibility for submitting accurate, complete and timely short-form applications. All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license. Applicants should read the instructions set forth in Attachment C carefully and should consult the Commission's rules to ensure that, in addition to the materials all the information that is required under the Commission's rules is included with their short-form applications.

53. An entity may not submit more than one short-form application for a single auction. If a party submits multiple short-form applications, only one application may become qualified to bid.

54. Applicants also should note that submission of a short-form application (and any amendments thereto) constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. An applicant cannot change the certifying official to its application. 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.

B. License Selection

55. An applicant must select the licenses on which it wants to bid from the *Eligible Licenses* list on its short-form application. To assist applicants in identifying licenses of interest that will be available in Auction 87, the FCC Auction System includes a filtering mechanism that allows an applicant to filter the *Eligible Licenses* list.

56. Applicants will not be able to change their license selections after the short-form application filing deadline. Applicants interested in participating in this auction must have selected license(s) available in Auction 87 by the short-form application deadline. Applicants must confirm their license selections before the deadline for submitting short-form applications. The FCC Auction System will not accept bids from an applicant on licenses that the applicant has not selected on its short-form application.

### C. Disclosure of Bidding Arrangements

57. Applicants will be required to identify in their short-form applications all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the licenses being auctioned, including any agreements relating to post-auction market structure.

58. Applicants will also be required to certify under penalty of perjury in their short-form applications that they have not entered and will not enter into any explicit or implicit agreements, arrangements, or understandings of any kind with any parties, other than those identified in the application, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid. If an applicant has had discussions, but has not reached an agreement by the short-form application filing deadline, it should not include the names of parties to the discussions on its application and it may not continue such discussions with any applicants after the deadline.

59. While 47 CFR 1.2105(c) of the rules does 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. Further, as discussed above, compliance with the disclosure requirements of 47 CFR 1.2105(c) will not insulate a party from enforcement of the antitrust laws.

### D. Ownership Disclosure Requirements

60. All applicants must comply with the uniform ownership disclosure standards set forth in Title 47, Part 1 of the Code of Federal Regulations, and provide information required by 47 CFR 1.2105 and 1.2112. Specifically, in completing the short-form application, applicants will be required to fully disclose information on the real party or parties-in-interest and ownership structure of the applicant. The ownership disclosure standards for the short-form application are prescribed in 47 CFR 1.2105 and 1.2112. Each applicant is responsible for information submitted in its short-form application being complete and accurate.

61. An applicant's most current ownership information on file with the Commission, if in an electronic format compatible with the short-form application (FCC Form 175) (such as information submitted with an ownership disclosure information report (FCC Form 602) or in a short-form application (FCC Form 175) filed for a

previous auction using ISAS) will automatically be entered into the applicant's short-form application. An applicant is responsible for ensuring that the information submitted in its short-form application for Auction 87 is complete and accurate. Accordingly, applicants should carefully review any information automatically entered to confirm that it is complete and accurate as of the Auction 87 deadline for filing the short-form application. If any information that was entered automatically needs to be changed, applicants must do so directly in the short-form application.

### E. Designated Entity Provisions

62. Eligible applicants in Auction 87 may claim small business bidding credits. Applicants should review carefully the Commission's decisions regarding the designated entity provisions.

#### i. Bidding Credits for Small Businesses

63. A bidding credit represents an amount by which a bidder's winning bid will be discounted. For Auction 87, bidding credits will be available to small businesses and consortia thereof.

#### a. Bidding Credit Eligibility Criteria

64. The level of bidding credit is determined as follows: (1) A bidder with attributed average annual gross revenues that do not exceed \$15 million for the preceding three years will receive a 25 percent discount on its winning bid; and (2) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years will receive a 35 percent discount on its winning bid. Bidding credits are not cumulative. A qualifying applicant may claim either a 25 percent or 35 percent bidding credit on its winning bid.

#### b. Revenue Disclosure on Short-Form Application

65. An entity applying as a small business must provide gross revenues for the preceding three years of each of the following: (1) The applicant, (2) its affiliates, (3) its controlling interests, (4) the affiliates of its controlling interests, and (5) the entities with which it has an attributable material relationship. Certification that the average annual gross revenues of such entities and individuals for the preceding three years do not exceed the applicable limit is not sufficient. Additionally, if an applicant is applying as a consortium of small businesses, this information must be provided for each consortium member.

### ii. Attributable Interests

#### a. Controlling Interests

66. Controlling interests of an applicant include individuals and entities with either *de facto* or *de jure* control of the applicant. Typically, ownership of greater than 50 percent of an entity's voting stock evidences *de jure* control. *De facto* control is determined on a case-by-case basis.

67. Applicants should refer to 47 CFR 1.2110(c)(2) and Attachment C of the *Auction 87 Procedures Public Notice* to understand how certain interests are calculated in determining control. For example, pursuant to 47 CFR 1.2110(c)(2)(ii)(F), officers and directors of an applicant are considered to have controlling interest in the applicant.

#### b. Affiliates

68. Affiliates of an applicant or controlling interest include an individual or entity that: (1) Directly or indirectly controls or has the power to control the applicant; (2) is directly or indirectly controlled by the applicant; (3) is directly or indirectly controlled by a third party that also controls or has the power to control the applicant; or (4) has an identity of interest with the applicant. The Commission's definition of an affiliate of the applicant encompasses both controlling interests of the applicant and affiliates of controlling interests of the applicant. For more information regarding affiliates, applicants should refer to 47 CFR 1.2110(c)(5) and Attachment C of the *Auction 87 Procedures Public Notice*.

#### c. Material Relationships

69. The Commission requires the consideration of certain leasing and resale (including wholesale) relationships—referred to as material relationships—in determining designated entity eligibility for bidding credits. Material relationships fall into two categories: Impermissible and attributable.

70. An applicant or licensee has an impermissible material relationship when it has agreements with one or more other entities for the lease or resale (including under a wholesale agreement) of, on a cumulative basis, more than 50 percent of the spectrum capacity of any of its licenses. If an applicant or a licensee has an impermissible material relationship, it is, as a result, (i) ineligible for the award of designated entity benefits, and (ii) subject to liability for unjust enrichment on a license-by-license basis.

71. An applicant or licensee has an attributable material relationship when



it has one or more agreements with any individual entity for the lease or resale (including under a wholesale agreement) of, on a cumulative basis, more than 25 percent of the spectrum capacity of any individual license held by the applicant or licensee. The attributable material relationship will cause the gross revenues of that entity and its attributable interest holders to be attributed to the applicant or licensee for the purposes of determining the applicant's or licensee's (i) eligibility for designated entity benefits and (ii) liability for unjust enrichment on a license-by-license basis.

72. The Commission grandfathered material relationships in existence before the release of the *Designated Entity Second Report and Order*, 71 FR 26245, May 5, 2006, meaning that those preexisting relationships alone would not cause the Commission to examine a designated entity's ongoing eligibility for benefits or its liability for unjust enrichment. The Commission did not, however, grandfather preexisting material relationships for determinations of an applicant's or licensee's designated entity eligibility for future auctions or in the context of future assignments, transfers of control, spectrum leases, or other reportable eligibility events. Rather, the occurrence of any of those eligibility events after the release date of the *Designated Entity Second Report and Order* triggers a reexamination of the applicant's or licensee's designated entity eligibility, taking into account all existing material relationships, including those previously grandfathered.

#### d. Gross Revenue Exceptions

73. The Commission has also made other modifications to its rules governing the attribution of gross revenues for purposes of determining designated entity eligibility. For example, the Commission has clarified that, in calculating an applicant's gross revenues under the controlling interest standard, it will not attribute the personal net worth, including personal income, of its officers and directors to the applicant.

74. The Commission has also exempted from attribution to the applicant the gross revenues of the affiliates of a rural telephone cooperative's officers and directors, if certain conditions specified in 47 CFR 1.2110(b)(3)(iii) are met. An applicant claiming this exemption must provide, in an attachment, an affirmative statement that the applicant, affiliate and/or controlling interest is an eligible rural telephone cooperative within the meaning of 47 CFR 1.2110(b)(3)(iii), and

the applicant must supply any additional information as may be required to demonstrate eligibility for the exemption from the attribution rule. Applicants seeking to claim this exemption must meet all of the conditions.

#### e. Bidding Consortia

75. A consortium of small businesses is a conglomerate organization composed of two or more entities, each of which individually satisfies the definition of a small business. Thus, each member of a consortium of small businesses that applies to participate in Auction 87 must individually meet the criteria for small businesses. Each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, the affiliates of its controlling interests, and any entities having an attributable material relationship with the member. Although the gross revenues of the consortium members will not be aggregated for purposes of determining the consortium's eligibility as a small business, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

#### F. Tribal Lands Bidding Credit

76. To encourage the growth of wireless services in federally recognized tribal lands, the Commission has implemented a tribal lands bidding credit. Applicants do not provide information regarding tribal lands bidding credits on their short-form applications. Instead, winning bidders may apply for the tribal lands bidding credit after the auction when they file their more detailed, long-form applications.

#### G. Provisions Regarding Former and Current Defaulters

77. Current defaulters are not eligible to participate in Auction 87, but former defaulters can participate so long as they are otherwise qualified and, make upfront payments that are fifty percent more than the normal upfront payment amounts. An applicant is considered a current defaulter when it, its affiliates, its controlling interests, or the affiliates of its controlling interests, are in default on any payment for any Commission license (including down payments) or are delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for short-form applications. An applicant is considered a former defaulter when it, its affiliates, its controlling interests, or the affiliates of its controlling interests, have

defaulted on any Commission license or been delinquent on any non-tax debt owed to any Federal agency, but have since remedied all such defaults and cured all of the outstanding non-tax delinquencies.

78. On the short-form application, an applicant must certify under penalty of perjury that it, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by 47 CFR 1.2110, are not in default on any payments for Commission licenses (including down payments) and that they are not delinquent on any non-tax debt owed to any Federal agency. Each applicant must also state under penalty of perjury whether or not it, its affiliates, its controlling interests, and the affiliates of its controlling interests, have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. Prospective applicants 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. These statements and certifications are prerequisites to submitting an application to participate in an FCC auction.

79. Applicants are encouraged to review the Bureau's previous guidance on default and delinquency disclosure requirements in the context of the short-form application process. For example, it has been determined that to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for purposes of 47 CFR 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline. Therefore, with respect to regulatory or application fees, the provisions of 47 CFR 1.2105(a) and 1.2106(a) regarding default and delinquency in connection with competitive bidding are limited to circumstances in which the relevant party has not complied with a final Commission payment deadline. Parties are also encouraged to coordinate with the Commission's Office of Managing Director or the Bureau's Auctions and Spectrum Access Division staff if they have any questions about default and delinquency disclosure requirements.

80. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission has adopted rules, including a provision referred to as the red light rule, that implement the Commission's



obligations under the Debt Collection Improvement Act of 1996, which governs the collection of claims owed to the United States. Under the red light rule, the Commission will not process applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission. In the same rulemaking order, the Commission explicitly declared, however, that the Commission's competitive bidding rules are not affected by the red light rule. As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of the Commission's competitive bidding rules, including the provisions and certifications of 47 CFR 1.2105 and 1.2106, with regard to current and former defaults or delinquencies.

81. Applicants are reminded, however, that the Commission's Red Light Display System, which provides information regarding debts owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of 47 CFR 1.2105. Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant's red light status is not necessarily determinative of its eligibility to participate in an auction or of its upfront payment obligation.

#### *H. Minor Modifications to Short-Form Applications*

82. Applicants are not permitted to make major modifications to their short-form applications (e.g., change their license selections, change control of the applicant, change the certifying official, or change their size to claim eligibility for a higher bidding credit) after the short-form application deadline. Thus, any change in control of an applicant, resulting from a merger, for example, will be considered a major modification to the applicant's short-form application, which will consequently be dismissed.

83. Applicants are, however, permitted to make minor changes to their short-form applications after the filing deadline. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons.

#### *I. Maintaining Current Information in Short-Form Applications*

84. 47 CFR 1.65 requires an applicant to maintain the accuracy and completeness of information furnished

in its pending application and to notify the Commission of any substantial change that may be of decisional significance to that application. The Commission recently amended 47 CFR 1.65(a) to require applicants in competitive bidding proceedings to furnish additional or corrected information within five days of a significant occurrence, or to amend their short-form applications no more than five days after the applicant becomes aware of the need for amendment. Changes that cause a loss of or reduction in eligibility for a bidding credit should be reported immediately. If an amendment reporting substantial changes is a major amendment, as defined by 47 CFR 1.2105, the major amendment will not be accepted and may result in the dismissal of the short-form application.

85. After the short-form filing deadline, applicants may make only minor changes to their short-form applications.

### **III. Pre-Auction Procedures**

#### *A. Online Auction Tutorial—Available March 4, 2010*

86. On Thursday, March 4, 2010, the Commission will post an educational auction tutorial on the Auction 87 web page for prospective bidders to familiarize themselves with the auction process. This online tutorial will provide information about pre-auction procedures, completing short-form applications, auction conduct, the FCC Auction Bidding System, auction rules, and paging rules. The tutorial will also provide an avenue to ask questions of FCC staff concerning the auction, auction procedures, filing requirements, and other matters related to this auction.

87. The Auction 87 online tutorial replaces the live bidder seminars that have been offered for most previous auctions. The Bureau believes parties interested in participating in Auction 87 will find this interactive, online tutorial a more efficient and effective way to further their understanding of the auction process.

88. The auction tutorial will be accessible from the FCC's Auction 87 web page at <http://wireless.fcc.gov/auctions/87/> through an Auction Tutorial link. Once posted, this tutorial will remain available for reference in connection with the procedures outlined in the *Auction 87 Procedures Public Notice* and accessible anytime.

#### *B. Short-Form Applications—Due Prior to 6 p.m. ET on March 16, 2010*

89. In order to be eligible to bid in this auction, applicants must first follow the

procedures set forth in Attachment C of the *Auction 87 Procedures Public Notice* to submit a short-form application (FCC Form 175) electronically via the FCC Auction System. This application must be received at the Commission prior to 6 p.m. ET on March 16, 2010. Late applications will not be accepted.

#### *C. Application Processing and Minor Corrections*

90. After the deadline for filing short-form applications, the Commission will process all timely submitted applications to determine which are complete, and subsequently will issue a public notice identifying (1) those applications that are complete, (2) those applications that are rejected, and (3) those applications that are incomplete because of minor defects that may be corrected. The public notice will include the deadline for resubmitting corrected applications.

91. After the March 16, 2010, short-form filing deadline, applicants may make only minor corrections to their applications. Applicants will not be permitted to make major modifications to their applications (e.g., change their license selections, change control of the applicant, change certifying official, or change their size to claim eligibility for a higher bidding credit).

92. Applicants should be aware the Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the applicant's short-form application, unless the applicant's certifying official or contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on its behalf. Authorizations may be submitted by e-mail at the following address: [auction87@fcc.gov](mailto:auction87@fcc.gov).

#### *D. Upfront Payments—Due April 23, 2010*

93. In order to be eligible to bid in this auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing its short-form application, an applicant will have access to an electronic version of the FCC Form 159 that can be printed and sent by fax to U.S. Bank in St. Louis, Missouri. All upfront payments must be made as instructed in this Public Notice and must be received in the proper account at U.S. Bank before 6 p.m. ET on April 23, 2010.

#### *i. Making Upfront Payments by Wire Transfer*

94. Wire transfer payments must be received by 6 p.m. ET on April 23, 2010.

No other payment method is acceptable. 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.

95. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must fax a completed FCC Form 159 (Revised 2/03) to U.S. Bank at (314) 418-4232. On the fax cover sheet, applicants should write Wire Transfer—Auction Payment for Auction 87. In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account before the deadline. The applicant is responsible for obtaining confirmation from its financial institution that U.S. Bank has timely received its upfront payment and deposited it in the proper account.

96. Please note the following information regarding upfront payments: (1) All payments must be made in U.S. dollars; (2) all payments must be made by wire transfer; (3) upfront payments for Auction 87 go to a lockbox number different from the lockboxes used in previous FCC auctions; and (4) failure to deliver a sufficient upfront payment as instructed by the April 23, 2010, deadline will result in dismissal of the short-form application and disqualification from participation in the auction.

#### ii. FCC Form 159

97. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be faxed to U.S. Bank to accompany each upfront payment. Proper completion of FCC Form 159 is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment D of the *Auction 87 Procedures Public Notice*. An electronic pre-filled version of the FCC Form 159 is available after submitting the short-form application. Payors using the pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed electronically, but must be filed with U.S. Bank by fax.

#### iii. Upfront Payments and Bidding Eligibility

98. The Commission has delegated to the Bureau the authority and discretion to determine appropriate upfront payments for each auction. Upfront

payments help deter frivolous or insincere bidding, and provide the Commission with a source of funds in the event that the bidder incurs liability during the auction.

99. Applicants that are former defaulters must pay upfront payments 50 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 47 CFR 1.2110.

100. Applicants must make upfront payments sufficient to obtain bidding eligibility on the licenses on which they will bid. The Bureau proposed, in the *Auction 87 Comment Public Notice*, that the amount of the upfront payment would determine a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids. Under the Bureau's proposal, in order to bid on a particular license, a qualified bidder must have selected the license on its short-form application and must have a current eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, therefore, an applicant's total upfront payment must be enough to establish at least 500 bidding units of eligibility, 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 the applicant selected on its short-form application, but only enough to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold provisionally winning bids at any given time.

101. In the *Auction 87 Comment Public Notice*, the Bureau proposed to make the upfront payments equal to the minimum opening bids. The Bureau further proposed that each license be assigned a specific number of bidding units equal to the upfront payment listed for the license, on a bidding unit for dollar basis. The bidding unit level for each license will remain constant throughout the auction. The Bureau received no comments on this issue. The Bureau adopts its proposed upfront payments. The upfront payment and bidding units for each license will be \$500 and 500 bidding units.

102. In the *Auction 87 Comment Public Notice*, the Bureau noted the presence of pre-existing site-based incumbent licenses within some of the geographic areas available in Auction 87. The Bureau did not specifically address incumbency in its discussion of upfront payments. However, in its

discussion of the proposed minimum opening bid amounts, the Bureau noted it had not attempted to adjust minimum opening bid amounts for licenses based on precise levels of incumbency within particular geographic areas, and has instead proposed a formula intended to reflect overall incumbency levels within the paging service areas being offered.

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

104. Applicants that are former defaulters must calculate their upfront payment for all licenses by multiplying the number of bidding units on which they wish to be active 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.

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

105. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information listed below be supplied. Applicants can provide the information electronically during the initial short-form application filing window after the form has been submitted.

#### E. Auction Registration

106. Approximately ten days before the auction, the Bureau will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants with submitted short-form applications that are deemed complete and upfront payments that are sufficient to make them eligible to bid.

107. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the short-form application and will include the SecurID® tokens that will be required to

place bids, the Integrated Spectrum Auction System (ISAS) Bidder's Guide, and the Auction Bidder Line phone number.

108. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder that has not received this mailing by noon on Wednesday, May 19, 2010, should call (717) 338-2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

109. Only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacements for lost or damaged SecurID® tokens.

#### *F. Remote Electronic Bidding*

110. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Only qualified bidders are permitted to bid. Each applicant should indicate its bidding preference—electronic or telephonic—on its short-form application. In either case, each authorized bidder must have its own SecurID® token, which the Commission will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. For security purposes, the SecurID® tokens, the telephonic bidding telephone number, and the Integrated Spectrum Auction System (ISAS) Bidder's Guide are only mailed to the contact person at the contact address listed on the short-form application. Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 87.

#### *G. Mock Auction—May 21, 2010*

111. All qualified bidders will be eligible to participate in a mock auction on Friday, May 21, 2010. The mock auction will enable applicants to become familiar with the FCC Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

### **IV. Auction Event**

112. The first round of bidding for Auction 87 will begin on Tuesday, May 25, 2010. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is to

be released approximately 10 days before the start of the auction.

#### *A. Auction Structure*

##### *i. Simultaneous Multiple Round Auction*

113. The Bureau will auction all licenses in Auction 87 in a single auction using the Commission's standard simultaneous multiple-round auction format. This type of auction offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses. A bidder may bid on, and potentially win, any number of licenses. Typically, bidding remains open on all licenses until bidding stops on every license.

##### *ii. Information Available to Bidders Before and During the Auction*

114. In the *Auction 87 Comment Public Notice*, the Bureau proposed to withhold, until after the close of bidding, public release of (1) bidders' license selections on their short-form applications (FCC Form 175), (2) the amounts of bidders' upfront payments and bidding eligibility, and (3) information that may reveal the identities of bidders placing bids and taking other bidding-related actions. The Bureau sought comment on the proposal to implement anonymous bidding and on any alternatives, particularly in light of the large number of licenses available in Auction 87.

115. The Bureau received one comment on its proposal to use anonymous bidding procedures for Auction 87. Because the Bureau finds that the competitive benefits associated with anonymous bidding support adoption of such procedures, the Bureau adopts the limited information procedures proposed in the *Auction 87 Comment Public Notice*. Thus, after the conclusion of each round, the Bureau will disclose all relevant information about the bids placed and/or withdrawn except the identities of the bidders performing the actions and the net amounts of the bids placed or withdrawn. As in past auctions conducted with limited information procedures, the Bureau will indicate, for each license, the minimum acceptable bid amount for the next round and whether the license has a provisionally winning bid. After each round, the Bureau will also release, for each license, the number of bidders that placed a bid on the license. Furthermore, the Bureau will indicate whether any proactive waivers were submitted in each round, and the Bureau will release the stage transition

percentage—the percentages of licenses (as measured in bidding units) on which there were new bids—for the round. In addition, bidders can log in to the FCC Auction System to see, after each round, whether their own bids are provisionally winning. The Bureau will provide descriptions and/or samples of publicly available and bidder-specific (non-public) results files prior to the start of the auction.

116. The Bureau, however, retains the discretion not to use limited information procedures if the Bureau, after examining the level of potential competition as expressed in the license selection on the short-form applications filed for Auction 87, determines that the circumstances indicate that limited information procedures would not be an effective tool for deterring anti-competitive behavior. For example, if only two applicants become qualified to participate in the bidding, limited information procedures would be ineffective in preventing bidders from knowing the identity of the competing bidder and, therefore, limited information procedures would not serve to deter attempts at signaling and retaliatory bidding behavior.

117. *Other Issues.* Information disclosure procedures established for this auction will not interfere with the administration of or compliance with the Commission's prohibition of certain communications. 47 CFR 1.2105(c)(1) provides that, after the short-form application filing deadline, all applicants for licenses in any of the same or overlapping geographic license areas are prohibited from disclosing to each other in any manner the substance of bids or bidding strategies until after the down payment deadline, subject to specified exceptions.

118. In Auction 87, the Commission will not disclose information regarding license selection or the amounts of bidders' upfront payments and bidding eligibility. As in the past, the Commission will disclose the other portions of applicants' short-form applications through its online database, and certain application-based information through public notices.

119. To assist applicants in identifying other parties subject to 47 CFR 1.2105(c), the Bureau will notify separately each applicant in Auction 87 whether applicants with short-form applications to participate in pending auctions, including but not limited to Auction 87, have applied for licenses in any of the same or overlapping geographic areas as that applicant. Specifically, after the Bureau conducts its initial review of applications to participate in Auction 87, it will send to

each applicant in Auction 87 a letter that lists the other applicants that have pending short-form applications for licenses in any of the same or overlapping geographic areas. The list will identify the other applicants by name but will not list their license selections. As in past auctions, additional information regarding other applicants that is needed to comply with 47 CFR 1.2105(c)—such as the identities of other applicants' controlling interests and entities with a greater than ten percent ownership interest—will be available through the publicly accessible online short-form application database.

120. When completing short-form applications, applicants should avoid any statements or disclosures that may violate the Commission's prohibition of certain communications, pursuant to 47 CFR 1.2105(c), particularly in light of the Commission's procedures regarding the availability of certain information in Auction 87. While applicants' license selections will not be disclosed until after Auction 87 closes, the Commission will disclose other portions of short-form applications through its online database and public notices. Accordingly, applicants should avoid including any information in their short-form applications that might convey information regarding license selections. For example, applicants should avoid using applicant names that refer to licenses being offered, referring to certain licenses or markets in describing bidding agreements, or including any information in attachments that may otherwise disclose applicants' license selections.

121. If an applicant is found to have violated the Commission's rules or antitrust laws in connection with its participation in the competitive bidding process, the applicant may be subject to various sanctions, including forfeiture of its upfront payment, down payment, or full bid amount and prohibition from participating in future auctions.

122. The Bureau hereby warns applicants that the direct or indirect communication to other applicants or the public disclosure of non-public information (e.g., bid withdrawals, proactive waivers submitted, reductions in eligibility) could violate the Commission's anonymous bidding procedures and 47 CFR 1.2105(c). To the extent an applicant believes that such a disclosure is required by law or regulation, including regulations issued by the Securities and Exchange Commission, the Bureau strongly urges that the applicant consult with the Commission staff in the Auctions and

Spectrum Access Division before making such disclosure.

### iii. Eligibility and Activity Rules

123. The Bureau will use upfront payments to determine initial (maximum) eligibility (as measured in bidding units) for Auction 87. The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. As noted earlier, each license is assigned a specific number of bidding units set forth in the complete list of licenses available for Auction 87, available as separate Attachment A files at <http://wireless.fcc.gov/auctions/87/>. Bidding units for a given license do not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific licenses. Rather, a bidder may place bids on any of the licenses selected on its short-form application as long as the total number of bidding units associated with those licenses does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. At a minimum, an applicant's upfront payment must cover the bidding units for at least one of the licenses it selected on its short-form application. The total upfront payment does not affect the total dollar amount a bidder may bid on any given license.

124. In order to ensure that an 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 minimum percentage of their current bidding eligibility during each round of the auction.

125. A bidder's activity level in a round is the sum of the bidding units associated with any licenses covered by new and provisionally winning bids. A bidder is considered active on a license in the current round if it is either the provisionally winning bidder at the end of the previous bidding round and does not withdraw the provisionally winning bid in the current round, or if it submits a bid in the current round.

126. The minimum required activity is expressed as a percentage of the

bidder's current eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions, the Commission adopts them for Auction 87. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

### iv. Auction Stages

127. In the *Auction 87 Comment Public Notice*, the Bureau proposed to conduct the auction in two stages and employ an activity rule. Under the Bureau's proposal a bidder desiring to maintain its current bidding eligibility would be required to be active on licenses representing at least 80 percent of its current bidding eligibility, during each round of Stage One, and at least 95 percent of its current bidding eligibility in Stage Two. The Commission received no comments on this proposal.

128. The Bureau has the discretion to further alter the activity requirements before and/or during the auction as circumstances warrant, and also has other mechanisms by which it may influence the speed of an auction. The Bureau finds that two stages for an activity requirement adequately balances the desire to conclude the auction quickly with giving sufficient time for bidders to consider the status of the bidding and to place bids. Therefore, the Bureau adopts the two stages for Auction 87.

### v. Stage Transitions

129. In the *Auction 87 Comment Public Notice*, the Bureau proposed that it would advance the auction to the next stage (i.e., from Stage One to Stage Two) after considering a variety of measures of auction activity. The Bureau received no comments on this issue therefore the Bureau adopts its proposal for stage transitions. Thus, the auction will start in Stage One. The Bureau will regulate the pace of the auction by announcement. The Bureau retains the discretion to transition the auction to Stage Two, to add an additional stage with a higher activity requirement, not to transition to Stage Two, and to transition to Stage Two with an activity requirement that is higher or lower than 95 percent. This determination will be based on a variety of measures of auction activity, including, but not limited to, the number of new bids and the percentages of licenses (as measured in bidding units) on which there are new bids.

## vi. Activity Rule Waivers

130. In the *Auction 87 Comment Public Notice*, the Bureau proposed that each bidder in the auction be provided with three activity rule waivers. The Bureau received no comments on this issue and therefore adopts its proposal to provide bidders with three activity rule waivers. More detail on activity rule waivers can be found in the *Auction 87 Procedures Public Notice*.

## vii. Auction Stopping Rules

131. For Auction 87, the Bureau proposed to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all licenses remain available for bidding until bidding closes simultaneously on all licenses. More specifically, bidding will close simultaneously on all licenses after the first round in which no bidder submits any new bids, applies a proactive waiver, or withdraws any provisionally winning bids.

132. The Bureau also sought comment on alternative versions of the simultaneous stopping rule for Auction 87. The Bureau received no comment on its proposals, and therefore adopts the simultaneous stopping rule and its alternatives versions as options.

## viii. Auction Delay, Suspension, or Cancellation

133. In the *Auction 87 Comment Public Notice*, the Bureau proposed that, by public notice or by announcement during the auction, it may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. The Bureau received no comment on this issue therefore the Bureau adopts the proposed rules regarding auction delay, suspension, or cancellation.

## B. Bidding Procedures

## i. Round Structure

134. The initial schedule of bidding rounds 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.

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

## ii. Reserve Price and Minimum Opening Bids

136. Section 309(j) of the Communications Act of 1934, as amended, calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when applications for FCC licenses are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest.

137. In the *Auction 87 Comment Public Notice*, the Bureau did not propose to establish a separate reserve price for the licenses to be offered in Auction 87. The Bureau, however, did propose to establish minimum opening bids for each license, reasoning that a minimum opening bid, which has been used on other auctions, is an effective bidding tool for accelerating the competitive bidding process. Specifically, for Auction 87, the Bureau proposed to set the minimum opening bid for each license available in Auction 87 at \$500. In the *Auction 87 Comment Public Notice*, the Bureau noted the presence of pre-existing site-based incumbent licenses within some of the geographic areas available in Auction 87. In its discussion of the proposed minimum opening bid amounts, the Bureau noted that it had not attempted to adjust minimum opening bid amounts for licenses based on precise levels of incumbency within particular geographic areas, and have instead proposed a formula intended to reflect overall incumbency levels within the paging areas being offered.

138. The Bureau sought comment on its proposal for minimum opening bids and, in the alternative, on whether, consistent with Section 309(j), the public interest would be served by having no minimum opening bids. A commenter expressed concern about the minimum opening bids for licenses in Auction 87 and appeared to be concerned about setting minimum opening bids at the same level that certain paging licenses were won in previous auctions (*i.e.*, \$500) and that the proposed minimum opening bid amounts may make it difficult for bidders to maintain the required activity

level. In reply, another commenter disagreed and suggested that the success of Auctions 40 and 48 confirm that the minimum opening bid levels proposed will have the desired result of producing a time-efficient auction that places spectrum in the hands of those that value it most.

139. The Bureau finds that the proposed minimum opening bids will promote an appropriate auction pace and avoid unnecessarily prolonging Auction 87. The Bureau therefore adopts its proposal to set the minimum opening bid for each license available in Auction 87 at \$500.

## iii. Bid Amounts

140. In the *Auction 87 Comment Public Notice*, the Bureau proposed that in each round, eligible bidders be able to place a bid on a given license using one or more pre-defined bid amounts. Under the proposal, the FCC Auction System interface will list the acceptable bid amounts for each license. The Commission received no comment on this issue. Based on the Commission's experience in prior auctions, the Bureau adopts this proposal for Auction 87.

## a. Minimum Acceptable Bids

141. Under the Bureau's proposed procedures, the first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a license will be equal to its minimum opening bid amount until there is a provisionally winning bid on the license. After there is a provisionally winning bid for a license, the minimum acceptable bid will be a certain percentage higher. That is, the minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount times one plus the minimum acceptable bid percentage. If, for example, the minimum acceptable bid percentage is 10 percent, the minimum acceptable bid amount will equal (provisionally winning bid amount) \* (1.10), rounded. In the case of a license for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the license.

142. For Auction 87, the Bureau proposed to use a minimum acceptable bid percentage of 10 percent. This means that the minimum acceptable bid amount for a license will be approximately 10 percent greater than the provisionally winning bid amount for the license.

143. The Bureau received no comments on this proposal. Therefore, the Bureau adopts its proposal to begin

the auction with a minimum acceptable bid increment percentage of 0.10.

#### b. Additional Bid Amounts

144. Any additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage, which need not be the same as the percentage used to calculate the minimum acceptable bid amount. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded. If, for example, the bid increment percentage is 5 percent, the calculation is (minimum acceptable bid amount) \* (1 + 0.05), rounded, or (minimum acceptable bid amount) \* 1.05, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) \* 1.10, rounded; etc. The Bureau will round the results using the Commission's standard rounding procedures for auctions.

145. The Bureau sought comment on whether to start with eight additional bid amounts (for a total of nine bid amounts), or with fewer or no additional bid amounts, in the event that anonymous bidding is implemented for Auction 87. If additional bid amounts are available in Auction 87, the Bureau proposed to use a bid increment percentage of 5 percent.

146. The Bureau received no comments on this proposal. Therefore, the Bureau adopts its proposal to begin the auction with a bid increment percentage of 0.05 and have eight additional bid amounts per license (for a total of nine bid amounts). The Bureau retains the discretion to change the minimum acceptable bid amounts, the additional bid amounts, the number of acceptable bid amounts, and the parameters of the formulas used to calculate minimum acceptable bid amounts and additional bid amounts if it determines that circumstances so dictate. Further, the Bureau retains the discretion to do so on a license-by-license basis.

#### iv. Provisionally Winning Bids

147. At the end of each bidding round, a provisionally winning bid will be determined based on the highest bid amount received for each license. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same license at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids. Bidders are reminded that provisionally

winning bids count toward activity for purposes of the activity rule.

148. In the *Auction 87 Comment Public Notice*, the Bureau proposed to use a random number generator to select a single provisionally winning bid in the event of identical high bid amounts being submitted on a license in a given round (*i.e.*, tied bids). No comments were received on this proposal. Hence, the Bureau adopts the proposal.

#### v. Bidding

149. All bidding will take place remotely either through the FCC Auction System or by telephonic bidding. There will be no on-site bidding during Auction 87. Please note that 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. The length of a call to place a telephonic bid may vary; please allow a minimum of ten minutes.

150. A bidder's ability to bid on specific licenses is determined by two factors: (1) The licenses selected on the bidder's short-form application and (2) the bidder's eligibility. The bid submission screens will allow bidders to submit bids on only those licenses the bidder selected on its short-form application.

151. In order to access the bidding function of the FCC Auction System, bidders must be logged in during the bidding round using the passcode generated by the SecurID® token and a personal identification number created by the bidder. Bidders are strongly encouraged to print a round summary for each round after they have completed all of their activity for that round.

152. In each round, eligible bidders will be able to place bids on a given license in one or more pre-defined bid amounts. For each license, the FCC Auction System will list the acceptable bid amounts in a drop-down box. Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC Auction System also includes an upload function that allows bidders to upload text files containing bid information.

153. Until a bid has been placed on a license, the minimum acceptable bid amount for that license will be equal to its minimum opening bid amount. Once there are bids on a license, minimum acceptable bids for a license will be determined.

154. During a round, an eligible bidder may submit bids for as many licenses as it wishes (provided that the

bidder has enough eligibility), remove bids placed in the current bidding round, withdraw provisionally winning bids from previous rounds, or permanently reduce eligibility. If a bidder submits multiple bids for the exact same 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 current activity.

155. Finally, bidders are cautioned to select their bid amounts carefully because, as explained below, bidders that withdraw a provisionally winning 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

156. In the *Auction 87 Comment Public Notice*, the Commission proposed bid removal and bid withdrawal procedures. The Bureau sought comment on permitting a bidder to remove a bid before the close of the round in which the bid was placed. With respect to bid withdrawals, the Commission proposed limiting each bidder to withdrawals of provisionally winning bids on licenses in no more than one round during the course of the auction. The round in which withdrawals are used would be at each bidder's discretion.

157. The Bureau received no comments on this issue. Therefore, the Bureau adopts its proposal.

158. *Bid Removal*. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the remove bids function in the FCC Auction 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. If a bid is placed on a license during a round, it will count towards the activity for that round, but when that bid is then removed during the same round it was placed, the activity associated with it is also removed, *i.e.*, a bid that is removed does not count toward bidding activity.

159. *Bid Withdrawal*. Once a round closes, a bidder may no longer remove a bid. However, in a later round, a bidder may withdraw provisionally winning bids from previous rounds for licenses using the withdraw bids function in the FCC Auction System. A provisionally winning bidder that withdraws its provisionally winning bid from a previous round during the

auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Once a withdrawal is submitted during a round, that withdrawal cannot be unsubmitted even if the round has not yet ended.

160. If a provisionally winning bid is withdrawn, the minimum acceptable bid amount will equal the amount of the second highest bid received for the license, which may be less than, or in the case of tied bids, equal to, the amount of the withdrawn bid. The Commission will serve as a placeholder provisionally winning bidder on the license until a new bid is submitted on that license.

161. *Calculation of Bid Withdrawal Payment.* Generally, the Commission imposes payments on bidders that withdraw provisionally winning 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 winning bid in the same or subsequent auction(s). If there are multiple bid withdrawals on a single license and no subsequent higher bid is placed and/or the license is not won in the same auction, 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 subsequent intervening withdrawn bid, in either the same or subsequent auction(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any final withdrawal payment if there is a subsequent higher bid in the same or subsequent auction(s).

162. 47 CFR 1.2104(g)(1) sets forth the payment obligations of a bidder that withdraws a provisionally winning bid on a license during the course of an auction, and provides for the assessment of interim bid withdrawal payments. In the *Auction 87 Comment Public Notice*, the Bureau proposed to establish the percentage at ten percent for Auction 87 and sought comment on the proposal. The Bureau received no comments on this issue and adopts its proposal.

#### vii. Round Results

163. Limited information about the results of a round will be made public after the conclusion of the round. Specifically, after a round closes, the Bureau will make available for each license, its current provisionally winning bid amount, the minimum acceptable bid amount for the following

round, the amounts of all bids placed on the license during the round, and whether the license is FCC held. The system will also provide an entire license history detailing all activity that has taken place on a license with the ability to sort by round number. The reports will be publicly accessible. Moreover, after the auction, the Bureau will make available complete reports of all bids placed during each round of the auction, including bidder identities.

#### viii. Auction Announcements

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

#### V. Post-Auction Procedures

165. Shortly after bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, long-form applications, final payments, and ownership disclosure information reports.

##### A. Down Payments

166. Within ten business days after release of the auction closing public 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 87 to 20 percent of the net amount of its winning bids (gross bids less any applicable small business bidding credit).

##### B. Final Payments

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

##### C. Long-Form Application (FCC Form 601)

168. Within ten business days after release of the auction closing public notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 601) for the license(s) they won through Auction 87. Winning bidders claiming eligibility for a small business bidding credit must demonstrate their eligibility for the bidding credit. Further filing instructions will be provided to winning bidders in the auction closing public notice.

169. Winning bidders organized as bidding consortia must comply with the long-form application procedures

established in the *CSEA/Part 1 Report and Order* 71 FR 6992, February 10, 2006. Specifically, each member (or group of members) of a winning consortium seeking separate licenses will be required to file a separate long-form application for its respective license(s). If the license is to be partitioned or disaggregated, the member (or group) filing the long-form application must provide the relevant partitioning or disaggregation agreement in its long-form application. In addition, if two or more consortium members wish to be licensed together, they must first form a legal business entity, and any such entity must meet the applicable designated entity criteria.

##### D. Ownership Disclosure Information Report (FCC Form 602)

170. Within ten business days after release of the auction closing public notice, each winning bidder must also comply with the ownership reporting requirements in 47 CFR 1.913, 1.919, and 1.2112 by submitting an ownership disclosure information report (FCC Form 602) with its long-form application.

171. If an applicant already has a complete and accurate FCC Form 602 on file in the Commission's Universal Licensing System (ULS), it is not necessary to file a new report, but applicants must verify that the information on file with the Commission is complete and accurate. If the applicant does not have an FCC Form 602 on file, or if it is not complete and accurate, the applicant must submit one.

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

##### E. Tribal Lands Bidding Credit

173. 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 wireline penetration rate equal to or below 85 percent is eligible to receive a tribal lands bidding credit as set forth in 47 CFR 1.2107 and 1.2110(f). A tribal



lands bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

174. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal lands bidding credit after the auction when it files its long-form application (FCC Form 601). When initially filing the long-form application, the winning bidder will be required to advise the Commission whether it intends to seek a tribal lands bidding credit, for each license won in the auction, by checking the designated box(es). After stating its intent to seek a tribal lands bidding credit, the applicant will have 180 days from the close of the long-form application 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 lands bidding credit are subject to performance criteria as set forth in 47 CFR 1.2110(f)(3)(vii).

#### *F. Default and Disqualification*

175. Any winning 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). The payments include both a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

176. The percentage of the applicable bid to be assessed as an additional payment for defaults in a particular auction is established in advance of the auction. Accordingly, in the *Auction 87 Comment Public Notice*, the Bureau proposed to set the additional default payment for this auction at 10 percent of the applicable bid. The Bureau received no comments on this proposal and therefore adopts the proposal.

177. Finally, in the event of a default, the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at its final bid amount. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, 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.

#### *G. Refund of Remaining Upfront Payment Balance*

178. After the auction, applicants that are not winning bidders or are winning bidders whose upfront payment exceeded the total net amount of their winning bids may be entitled to a refund of some or all of their upfront payment. 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. Bidders should not request a refund of their upfront payments before the Commission releases a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, long-form applications, and final payments. More detailed information on refunds is available in the *Auction 87 Procedures Public Notice*.

Federal Communications Commission.

**William W. Huber,**

*Associate Chief, Auctions and Spectrum Access Division, WTB.*

[FR Doc. 2010-3875 Filed 2-24-10; 8:45 am]

**BILLING CODE 6712-01-P**

## **FEDERAL ELECTION COMMISSION**

### **Sunshine Act Notice**

**AGENCY:** Federal Election Commission.

**DATE AND TIME:** Wednesday, February 24, 2010, at 11:30 a.m.

**PLACE:** 999 E Street, NW., Washington, DC.

**STATUS:** This meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:** Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

\* \* \* \* \*

**DATE AND TIME:** Thursday, February 25, 2010, at 10 a.m.

**PLACE:** 999 E Street, NW., Washington, DC (Ninth Floor).

**STATUS:** This meeting will be open to the public.

### **Items To Be Discussed**

Correction and Approval of Minutes.

Notice of Proposed Rulemaking on FEC Standards of Conduct.

**DRAFT ADVISORY OPINION 2010-01:** Nevada State Democratic Party by its counsel, Marc E. Elias and Graham M. Wilson.

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Darlene Harris, Acting Commission Secretary, at (202) 694-1040, at least 72 hours prior to the hearing date.

#### **PERSON TO CONTACT FOR INFORMATION:**

Judith Ingram, Press Officer, Telephone: (202) 694-1220.

Signed:

**Darlene Harris,**

*Acting Secretary of the Commission.*

[FR Doc. 2010-3589 Filed 2-24-10; 8:45 am]

**BILLING CODE 6715-01-M**

## **FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

### **Sunshine Act Notice**

February 17, 2010.

**TIME AND DATE:** 10 a.m., Thursday, March 4, 2010.

**PLACE:** The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following in open session: *Secretary of Labor v. Wolf Run Mining Company*, Docket No. WEVA 2008-804. (Issues include whether a violation of a safeguard notice issued by the Secretary may be designated as "significant and substantial.")

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

#### **CONTACT PERSON FOR MORE INFORMATION:**

Jean Ellen (202) 434-9950/(202) 708-9300 for TDD Relay/1-800-877-8339 for toll free.

**Jean H. Ellen,**

*Chief Docket Clerk.*

[FR Doc. 2010-3995 Filed 2-23-10; 4:15 pm]

**BILLING CODE P**