

Crossing Airport, within the boundary of Glen Canyon National Recreation, Halls Crossing, San Juan Counties, UT, Comment Period Ends: April 30, 2001, Contact: Dennis Ossenkop (206) 227-2611. Revision of FR Notice Published on 02/09/2001: CEQ Review Period Ending 03/30/2001 has been Extended to 04/30/2001.

Dated: April 17, 2001.

**Joseph C. Montgomery,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 01-9865 Filed 4-19-01; 8:45 am]

**BILLING CODE 6560-50-U**

## ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6617-4]

### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564-7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 14, 2000 (65 FR 20157).

### Draft EISs

ERP No. D-AFS-J65329-MT Rating EC2, Maudlow—Toston Post-Fire Salvage Sale, Harvesting Burnt Timber, Implementation, Helena National Forest, Townsend Ranger District, Broadway County, MT.

**Summary:** The EPA expressed concerns about the limited range of alternatives analysis, the cumulative effects analysis, and the lack of information on project hydrologic/aquatics monitoring. The FEIS should address these issues and the needed mitigation measures.

ERP No. D-BLM-G70005-NM Rating LO,

Sierra and Otero Counties Resource Management Plan Amendment and Federal Fluid Minerals Leasing and Development, Implementation, Sierra and Otero Counties, NM.

**Summary:** EPA expressed lack of objections to the selection of the preferred alternative; however, EPA suggested that the final EIS include information on the pre-drilling analysis to be conducted before receiving permit approval as described in the application to drill (APD).

### Final EISs

ERP No. F-BLM-K67051-NV, Marigold Mine Expansion Project, Implementation, COE Section 404 Permit, Special-Use-Permit, Humboldt County, NV.

**Summary:** EPA is pleased that mercury air emissions will be significantly lower than those estimated in the DEIS and that the preferred alternative reduces surface disturbance, including direct impacts to Trout Creek. However, EPA continues to express concerns that impacts to air water quality and mitigation measures remain unclear; and that the bond for closure and post-closure activities is not included in the FEIS for public review and that the project should additional control technology to reduce mercury emissions.

ERP No. F-COE-G11035-00, Programmatic—Fort Bliss Mission and Real Property Master Plan, Revised Land Use and Enhance Management of the Land, Airspace and Infrastructure, El Pasco County, TX and Dona Ana and Otero Counties, NM.

**Summary:** EPA has reviewed the FEIS and has no further comments to offer.

ERP No. F-COE-K40242-CA, Adoption—CA—125 South Route Location, Adoption and Construction, between CA-905 on Otay Mesa to CA-54 in Spring Valley, Funding and COE Section 404 Permit, San Diego County, CA.

**Summary:** The Army Corps of Engineers announced its intent to adopt the Federal Highway Administration's Final EIS for the project in connection with a Clean Water Act Section 404 permit application currently pending with the Corps. EPA believes it is incumbent upon the Corps to address the serious inadequacies identified by EPA in FHWA's FEIS, especially in providing an analysis of the potential environmental impacts associated with full build-out of the proposed arterial facilities and any projects that could not proceed "but for" the construction of State Route 125 South. As noted in EPA's comment letter to FHWA on its FEIS, EPA believes that the FEIS is fundamentally flawed in several major respects and thus does not provide full public disclosure under NEPA. To ensure that agencies and the public have an opportunity to consider the full range of the project's impacts (including indirect and cumulative impacts), EPA strongly recommends that the Corps circulate for public review and comment the Environmental Assessment (EA) being prepared in connection with the proposed Clean

Water Act Section 404 permit action now pending with the Corps.

ERP No. F-UAF-G11039-TX, Brooks City Base Project, To Improve Mission Effectiveness and Reduce Cost of Quality Installation Support, Implementation, Brooks Air Force Base, Bexar County, TX.

**Summary:** EPA review of the FEIS finds that the document adequately responded to the our comments offered on the Draft Statement. EPA has no other comments to offer.

Dated: April 17, 2001.

**Joseph C. Montgomery,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 01-9866 Filed 4-19-01; 8:45 am]

**BILLING CODE 6560-50-U**

## FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC-39-B (Auction No. 39); DA 01-746]

### Auction of Licenses for the VHF Public Coast and Location and Monitoring Services Spectrum Scheduled for June 6, 2001

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the procedures and minimum opening bids for the upcoming auction of 16 VHF Public Coast licenses and 241 multilateration Location and Monitoring Services licenses scheduled for June 6, 2001.

**DATES:** Auction No. 39 is scheduled for June 6, 2001.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Burnley, Legal Branch or Lyle Ishida, Auctions Operations Branch (202) 418-0660; Linda Sanderson, Auction Operations Branch at (717) 338-2888. Keith Fickner, Policy and Rules Branch at (202) 418-7308 or Kim Kleppinger, Licensing and Technical Analysis Branch at (717) 338-2666. Meribeth McCarrick, Media Contact at (202) 418-0654.

**SUPPLEMENTARY INFORMATION:** This is a summary of a Public Notice released March 26, 2001. The complete text of this Notice, including Attachments A through I, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257) 445 12th Street, SW., Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th

Street, NW., Washington, DC 20036, (202) 857-3800. It is also available on the Commission's web site at <http://www.fcc.gov>.

Attachment A—Licenses to be Auctioned  
Attachment B—FCC Auction Seminar Registration Form  
Attachment C—Electronic Filing and Review of the FCC Form 17  
Attachment D—Guidelines for Completion of FCC Form 175 and Exhibits  
Attachment E—Instructions for FCC Remittance Advice (FCC Form 159)  
Attachment F—FCC Bidding Preference/Remote Software Order Form  
Attachment G—Exponential Smoothing Formula and Calculation  
Attachment H—Accessing the FCC Network to File FCC Form 175  
Attachment I—Summary of Documents Addressing the Anti-Collusion Rules

## I. General Information

### A. Introduction

1. By Public Notice, DA 01-746 released March 26, 2001 (“*Auction No. 39 Public Notice*”) the Wireless Telecommunications Bureau (“Bureau”) announces the procedures and minimum opening bids for the upcoming auction of VHF Public Coast and Location and Monitoring Service (“LMS”) spectrum (Auction No. 39) scheduled for June 6, 2001. On February 23, 2001, in accordance with the

Balanced Budget Act of 1997, the Bureau released a Public Notice seeking comment on reserve prices or minimum opening bids and the procedures to be used in Auction No. 39. The Bureau received one comment and one reply comment in response to the *Auction No. 39 Comment Public Notice*, 66 FR 13531 (March 6, 2001).

#### i. Background of Proceeding

2. Auction No. 39 will be the second auction each for VHF Public Coast and LMS spectrum. The initial VHF Public Coast licenses were awarded in Auction No. 20, which ended on December 14, 1998. The initial LMS licenses were awarded in Auction No. 21, which ended on March 5, 1999.

##### a. VHF Public Coast.

3. In July 1998, the Commission restructured the licensing framework that governs VHF Public Coast stations. Pursuant to the *Public Coast Third Report and Order*, 63 FR 40059 (July 27, 1998), site-specific licensing has been replaced with a geographic-based system. Service and operational requirements for VHF Public Coast Stations are contained in Part 80 of the Commission's Rules.

##### b. LMS.

4. In 1995, the Commission established rules governing the

licensing of the LMS in the 902-928 MHz frequency band. LMS refers to advanced radio technologies designed to support the nation's transportation infrastructure and to facilitate the growth of Intelligent Transportation Systems. The Commission created a new subpart M in part 90 of the Commission's rules for Transportation Infrastructure Radio Services, which includes LMS and like services. Additional information can be found in section I.A.1 of the *Auction No. 39 Public Notice*.

#### ii. Licenses To Be Auctioned

5. The licenses available in this auction consist of the following licenses that remained unsold in Auctions No. 20 and No. 21.

##### a. VHF Public Coast Licenses.

6. Sixteen licenses will be available in geographic areas known as VHF Public Coast Areas (VPCs). There are two categories of VPCs: maritime VPCs and inland VPCs. All of the VHF Public Coast licenses to be offered in Auction No. 39 are inland VPC licenses. Inland VPCs are identical to the Commerce Department's Economic Areas, no part of which is within 100 miles of a major waterway. Each VPC license has seven 25 kHz channel pairs, adding up to 350 kHz.

Inland VPCs	Channel pairs (total kHz available)
Inland Border VPCs: VPCs 10, 11 .....	24, 26, 27, 28, 85, 86, 87 (350 kHz).
Inland Non-Border VPCs:	
VPCs 12-15, 23, 26, 38 .....	24, 26, 27, 28, 85, 86, 87 (350 kHz).
VPCs 16, 18, 19, 20, 21, 22, 40 .....	24, 26, 27, 28, 84, 86, 87 (350 kHz).

##### b. LMS Licenses.

7. Three blocks of spectrum are allocated for LMS systems:

- (i) Block A—904.000-909.750 MHz and 927.750-928.000 MHz.
- (ii) Block B—919.750-921.750 MHz and 927.500-927.750 MHz.
- (iii) Block C—921.750-927.250 MHz and 927.250-927.500 MHz.

8. A geographic licensing area is comprised of each of these spectrum blocks. LMS spectrum is licensed in 176 Economic Areas (EAs). In Auction No. 39, 241 LMS licenses will be available: 117 licenses will be auctioned in Block A, 61 licenses will be auctioned in Block B, and 63 licenses will be auctioned in Block C.

9. A list of licenses available in Auction No. 39 is included in Attachment A of the Public Notice.

### B. Rules and Disclaimers

#### i. Relevant Authority

##### a. VHF Public Coast.

10. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to the VHF Public Coast Service, contained in title 47, part 80 of the Code of Federal Regulations, and those relating to application and auction procedures, contained in title 47, part 1 of the Code of Federal Regulations.

11. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, “Terms”) contained in this public notice; the *Auction No. 39 Comment Public Notice*; the *Public Coast Third Report and Order*; *Public Coast Second Report and Order*, 62 FR 37533 (July 14, 1997); and part 1, subpart Q, of the Commission's rules concerning competitive bidding proceedings.

##### b. LMS.

12. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to the Location and Monitoring Service,

contained in title 47, part 90 of the Code of Federal Regulations, and those relating to application and auction procedures, contained in title 47, part 1 of the Code of Federal Regulations.

13. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, “Terms”) contained in this public notice; the *Auction No. 39 Comment Public Notice*; the *LMS Second Report and Order*; 63 FR 40659 (July 30, 1998), *Memorandum Opinion and Order and Further Notice of Proposed Rule Making*; 62 FR 52078 (October 6, 1997), part 90, subpart M of the Commission's rules concerning Transportation Infrastructure Radio Service; subpart X of the Commission's rules concerning Competitive Bidding Procedures; and part 1, subpart Q of the Commission's rules concerning Competitive Bidding Proceedings.

14. The terms contained in the Commission's rules, relevant orders,

and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission rules and with all, public notices and pronouncements, including orders on delegated authority or by the Commission relevant to one or more of the licenses or otherwise pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Internet node via anonymous ftp at <ftp://www.fcc.gov> or the FCC Auctions World Wide Web site at <http://www.fcc.gov/wtb/auctions>. Additionally, documents may be obtained for a fee, by calling the Commission's copy contractor, International Transcription Service, Inc. ("ITS"), at (202) 314-3070. When ordering documents from ITS, please provide the appropriate FCC number (for example, FCC 98-151 for the *Public Coast Third Report and Order*, and FCC 98-157 for the *LMS Second Report and Order*). See also Due Diligence section, *infra*.

#### ii. Prohibition of Collusion

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

16. However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted. In Auction No. 39, for example, the rule would apply to any VHF Public Coast applicants bidding for the same VPC, and to any LMS applicants bidding for the same EA. Therefore, applicants that apply to bid for any license in a VPC or EA would be precluded from communicating after filing the FCC Form 175 short-form application with any other applicant for a license in the same VPC or EA. However, applicants may enter into bidding agreements before filing their FCC Form 175, as long as they disclose the existence of the agreement(s) in their FCC Form 175. If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application under § 1.2105(c) of the Commission's rules, even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other applicants for the same geographic license areas. By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with § 1.2105(c). In addition, § 1.65 of the Commission's rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, § 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules immediately upon learning of such violation.

17. A summary listing of documents from the Commission and the Bureau addressing the application of the anti-collusion rules may be found in Attachment I of the Public Notice.

#### iii. Due Diligence

18. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license

constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

##### a. VHF Public Coast.

19. Potential bidders are reminded that there are a number of incumbent VHF Public Coast Station licensees and Private Land Mobile Radio (PLMR) licensees already operating in the 156-162 MHz band. Such incumbents must be protected from harmful interference by VHF Public Coast Station geographic area licensees in accordance with the Commission's rules. These limitations may restrict the ability of such VPC geographic area licensees to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license areas.

20. In addition, potential bidders seeking licenses for geographic areas that are near the Canadian border should be aware of agreements between the United States and Canada that affect the assignment and use of VHF frequencies in certain parts of inland border VPCs. Potential bidders are solely responsible for investigating and evaluating the degree to which these matters may affect spectrum availability in areas where they seek inland border VPC licenses.

21. Potential bidders may obtain information regarding incumbent VHF Public Coast licensees through the Bureau's licensing databases on the World Wide Web at <http://www.fcc.gov/wtb>. In particular, information can be searched online by selecting "Databases" and then "Search the Wireless Databases Online" (<http://gulfoss2.fcc.gov/cgi-bin/ws.exe/genmen/index.htm>), or by selecting "Download the WTB Databases" (<http://www.fcc.gov/wtb/databases.html>). Information on previously auctioned licenses can be obtained at <http://www.fcc.gov/wtb/uls>.

##### b. LMS.

22. Potential bidders are reminded that LMS operates in the 902-928 MHz frequency band. This band is allocated for primary use by Federal Government radio location systems. Next, in order of priority, are Industrial, Scientific and Medical devices. Federal Government fixed and mobile and LMS systems are secondary to these uses. The remaining uses of the 902-928 MHz band include licensed amateur radio operations and unlicensed equipment under part 15 of the Commission's rules, both of which are secondary to all other uses of the band. Part 15 low power devices include, but are not limited to, those used for automatic meter reading, inventory control, package tracking and

shipping control, alarm services, local area networks, internet access, and cordless telephones. The amateur radio service is used by technically inclined private citizens to engage in self-training, information exchange, and radio experimentation. In the *LMS Report and Order*, 60 FR 15248 (March 23, 1995), the Commission recognized the important contribution to the public provided by part 15 technologies and amateur radio operators and sought to develop a band plan that would maximize the ability of these services to coexist with LMS systems.

23. The Commission adopted the *LMS Report and Order* with an eye toward minimizing potential interference within and among the various users of the 902–928 MHz band. The Commission's band plan accordingly permits secondary operations across the entire band by users of unlicensed part 15 devices and amateur licensees. At the same time, the band plan separates non-multilateration from multilateration LMS systems in all but one subband so as to avert interference. The *LMS Report and Order* also established limitations on LMS systems' interconnection with the public switched network and set forth a number of technical requirements intended to ensure successful coexistence of all the services authorized to operate in the band.

24. Potential bidders may obtain information about LMS licenses through the Bureau's licensing databases on the World Wide Web at <http://www.fcc.gov/wtb/uls..>

25. Potential bidders should also be aware that certain applications (including those for modification), petitions for rulemaking, waiver requests, requests for special temporary authority ("STA"), petitions to deny, petitions for reconsideration, and applications for review may be pending before the Commission that relate to particular incumbent multilateration LMS licensees.

26. Potential bidders should direct questions regarding the search capabilities to the FCC Technical Support hotline at (202) 414–1250 (voice) or (202) 414–1255 (TTY) or via e-mail at [ulscomm@fcc.gov](mailto:ulscomm@fcc.gov). The hotline is available to assist with questions Monday through Friday, from 7 a.m. to 10 p.m. ET, Saturday, 8 a.m. to 7 p.m. ET, and Sunday, 12 noon to 6 p.m. ET. In order to provide better service to the public, *all calls to the hotline are recorded*. 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.

27. Further, potential bidders are strongly encouraged to physically inspect any sites located in, or near, the geographic area for which they plan to bid.

28. Finally, potential bidders are strongly encouraged to conduct their own research prior to Auction No. 39 in order to determine the existence of pending proceedings that might affect their decisions regarding participation in the auction. Participants in Auction No. 39 are strongly encouraged to continue such research during the auction.

#### iv. Bidder Alerts

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

30. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific proposals regarding Auction No. 39 may also call the FCC Consumer Center at (888) CALL–FCC ((888) 225–5322).

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

1. Licensees must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). For more detailed information, please refer to section I.B.5 of the *Auction No. 39 Public Notice*.

#### C. Auction Specifics

##### i. Auction Date

32. The auction will begin on Wednesday, June 6, 2001. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

##### ii. Auction Title

33. Auction No. 39—VHF Public Coast and Location and Monitoring Service

##### iii. Bidding Methodology

34. The bidding methodology for Auction No. 39 will be simultaneous multiple round bidding. Bidding will be permitted only from remote locations, either electronically (by computer) or telephonically.

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

35. The following are important events and deadlines related to Auction No. 39:

Auction Seminar—April 24, 2001  
Short-Form Application (FCC FORM 175)—May 4, 2001; 6 p.m. ET  
Upfront Payments (via wire transfer)—May 18, 2001; 6 p.m. ET  
Orders for Remote Bidding Software—May 21, 2001; 6 p.m. ET  
Mock Auction—June 4, 2001  
Auction Begins—June 6, 2001

##### v. Requirements For Participation

36. Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically by 6 p.m. ET, May 4, 2001.
- Submit a sufficient upfront payment and a FCC Remittance Advice Form (FCC Form 159) by 6 p.m. ET, May 18, 2001.
- Comply with all provisions outlined in this public notice.

##### iv. General Contact Information

37. The following is a list of general contact information relating to Auction No. 39:

General Auction Information—General Auction Questions; Seminar Registration; Orders for Remote Bidding Software; FCC Auctions Hotline; (888) 225–5322, Press Option #2, or direct (717) 338–2888, Hours of service: 8 a.m.–5:30 p.m. ET  
Auction Legal Information—Auctions and Industry Analysis Division—Auction Rules, Policies, Regulations—Legal Branch (202) 418–0660  
Licensing Information—Rules, Policies, Regulations; Licensing Issues; Due Diligence; Incumbency Issues; Public Coast—Public Safety and Private Wireless Division—(202) 418–0680; LMS—Commercial Wireless Division—(202) 418–0620  
Technical Support—Electronic Filing Assistance; Software Downloading; FCC Auctions Technical Support Hotline, (202) 414–1250 (Voice), (202) 414–1255 (TTY), Hours of service: Monday through Friday 7 a.m. to 10

p.m. ET, Saturday, 8 a.m. to 7 p.m. ET, Sunday, 12 noon to 6 p.m. ET

Payment Information—Wire Transfers; Refunds; FCC Auctions Accounting Branch, (202) 418–1995, (202) 418–2843 (Fax)

Telephonic Bidding—Will be furnished only to qualified bidders

FCC Copy Contractor—Additional Copies of Commission Documents, International Transcription Services, Inc., 445 12th Street, SW Room CY–B400, Washington, DC 20554, (202) 314–3070

Press Information, FCC Forms—Meribeth McCarrick (202) 418–0654 (800) 418–3676 (outside Washington, DC), (202) 418–3676 (in the Washington Area) <http://www.fcc.gov/formpage.html>

FCC Internet Sites—  
<http://www.fcc.gov>  
<ftp://ftp.fcc.gov>  
<http://www.fcc.gov/wtb/auctions>

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

38. Guidelines for completion of the short-form application (FCC Form 175) are set forth in Attachment D to the public notice. The short-form application seeks the applicant's name and address, legal classification, status, small and very small business bidding credit eligibility, identification of the license(s) sought, the authorized bidders and contact persons. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license and, as discussed in section II.D., that they are not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency.

### A. License Selection

39. Progeny suggests that the Commission allow bidders to select all of the available LMS licenses without selecting all available VHF Public Coast licenses. This would be accomplished on the FCC Form 175 through the use of two separate boxes that would allow bidders to select all LMS licenses offered in the auction, or all VHF Public Coast licenses offered in the auction. Progeny also suggests that, because some bidders may desire to bid on both sets of licenses, the Commission should permit bidders to specify both "ALL" boxes. Progeny contends that otherwise the Commission would be creating collusion problems that would not otherwise exist in a normal one-service auction. We agree and will adopt

mechanisms consistent with these proposals for Auction No. 39.

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

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

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

41. Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the licenses being auctioned, including any agreements relating to post-auction market structure. *See* 47 CFR 1.2105(a)(2)(viii) and 1.2105(c)(1). Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid. *See* 47 CFR 1.2105(a)(2)(ix). As discussed, if an applicant has had discussions, but has not reached a joint bidding agreement by the short-form deadline, it would not include the names of parties to the discussions on its applications and may not continue discussions with applicants for the same geographic license area(s) after the deadline. Where applicants have entered into consortia or joint bidding arrangements, applicants must submit an Exhibit B to the FCC Form 175.

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

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

### D. Eligibility

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

43. Bidding credits are available to small and very small businesses, or consortia thereof, as defined in 47 CFR 80.1252(b)(1)(2) and (5) for VHF Public Coast, and 47 CFR 90.1103(b)(1)(2) for LMS. A bidding credit represents the amount by which a bidder's winning bids are discounted. The size of the bidding credit depends on the average annual gross revenues for the preceding three years of the bidder, together with its affiliates and controlling interests of the bidder and its affiliates:

- A bidder with average annual gross revenues of not more than \$15 million for the preceding three years receives a 25 percent discount on its winning bids for VHF Public Coast and LMS licenses;
- A bidder with average annual gross revenues of not more than \$3 million for the preceding three years receives a 35 percent discount on its winning bids for VHF Public Coast and LMS licenses.

44. Bidding credits are not cumulative; qualifying applicants receive either the 25 percent or the 35 percent bidding credit, but not both.

#### ii. Tribal Land Bidding Credit

45. To encourage the growth of wireless services in federally recognized tribal lands the Commission has implemented a tribal land bidding credit. *See* section V.C of the *Auction No. 39 Public Notice*.

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

##### a. Controlling Interest Standard.

46. On August 14, 2000, the Commission released the *Part 1 Fifth Report and Order*, 65 FR 52323 (August 29, 2000), in which the Commission, *inter alia*, adopted a "controlling interest" standard for attributing to auction applicants the gross revenues of their investors and affiliates in determining small business eligibility for future auctions. The Commission observed that the rule modifications adopted in the various Part 1 orders would result in discrepancies and/or

redundancies between certain of the new Part 1 rules and existing service-specific rules, and the Commission delegated to the Bureau the authority to make conforming edits to the Code of Federal Regulations (CFR) consistent with the rules adopted in the Part 1 proceeding. Part 1 rules that supersede inconsistent service-specific rules will control in Auction No. 39. *Accordingly, the "controlling interest" standard as set forth will be in effect for Auction No. 39, even if conforming edits to the CFR are not made prior to the auction.*

*b. Control.*

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

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

*c. Attribution for Small and Very Small Business Eligibility.*

48. In determining which entities qualify as small or very small businesses, the Commission will consider the gross revenues of the applicant, its controlling interest holders, the affiliates of the applicant, and their controlling interest holders. The Commission does not impose specific equity requirements on controlling interest holders. Once principals or entities with a controlling interest are determined, only the revenues of those principals or entities, the applicant and their affiliates will be counted in determining small business eligibility.

49. A consortium of small or very small businesses is a "conglomerate organization formed as a joint venture between or among mutually independent business firms," each of which *individually* must satisfy the definition of small or very small business in § 80.1252(b) or § 90.1103(b) of the Commission's rules. Thus, each consortium member must disclose its gross revenues along with those of its affiliates, controlling interests, and controlling interests' affiliates. We note that although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for small or very small business credits, this information must be provided to ensure that each

individual consortium member qualifies for any bidding credit awarded to the consortium.

*iv. Application Showing*

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

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

52. Entities applying to bid as small or very small businesses (or consortia of small or very small businesses) will be required to disclose on Exhibit C to their FCC Form 175 short-form applications, *separately and in the aggregate*, the gross revenues for the preceding three years of each of the following: (i) the applicant, (ii) the applicant's affiliates, (iii) the applicant's controlling interest holders, and (iv) the affiliates of the applicant's controlling interest holders. Certification that the average annual gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its affiliates, its controlling interest holders, and their affiliates a schedule of gross revenues for *each* of the preceding three years, as well as a statement of total average gross revenues for the three-year period. If the applicant is applying as a consortium of very small or small businesses, this information must be provided for each consortium member.

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

53. Each applicant must certify on its FCC Form 175 application that it is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must attach to its FCC Form 175 application a statement made under penalty of perjury indicating whether or not the

applicant has ever been in default on any Commission licenses or has ever been delinquent on any non-tax debt owed to any federal agency. Applicants must include this statement as Exhibit D of the FCC Form 175. If any of an applicant's controlling interests holders or their affiliates, as defined by § 1.2110 of the Commission's rules (as recently amended in the *Part 1 Fifth Report and Order*) have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, the applicant must include such information as part of the same attached statement. Prospective bidders are reminded that the statement must be made under penalty of perjury and, further, submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

54. "Former defaulters"—*i.e.*, applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—are eligible to bid in Auction No. 39, provided that they are otherwise qualified. However, as discussed in section III.D.3 of the *Auction No. 39 Public Notice*, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

*F. Unjust Enrichment Payments*

55. Auction No. 39 bidders should also note that unjust enrichment provisions apply to winning bidders that use bidding credits and subsequently assign or transfer control of their licenses to an entity not qualifying for the same level of bidding credit.

*G. Installment Payments*

56. Installment payment plans will not be available in Auction No. 39.

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

57. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(c)(3), may attach an exhibit (Exhibit E) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of "designated entities" in its auctions. Applicants wishing to submit additional information may do

so on Exhibit F (Miscellaneous Information) to the FCC Form 175.

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

58. After the short-form filing deadline (May 4, 2001), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (e.g., change their license selections or proposed service areas, change the certifying official or change control of the applicant or change bidding credits). See 47 CFR 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants should make these changes on-line, and submit a letter to Louis Sigalos, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Suite 4-A668 Washington, DC 20554, briefly summarizing the changes. Questions about other changes should be directed to Kenneth Burnley of the Auctions and Industry Analysis Division at (202) 418-0660.

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

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

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

#### *A. Auction Seminar*

60. On Tuesday, April 24, 2001, the FCC will sponsor a free seminar for Auction No. 39 at the Federal Communications Commission, located at 445 12th Street, SW, Washington, DC. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC remote bidding software, and the VHF Public Coast and LMS spectrum and auction rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

61. To register, complete the registration form attached to the *Auction No. 39 Public Notice* as Attachment B

and submit it by Friday, April 20, 2001. Registrations are accepted on a first-come, first-served basis.

#### *B. Short-Form Application (FCC Form 175)—Due May 4, 2001*

62. In order to be eligible to bid in this auction, applicants must first submit a FCC Form 175 application. This application must be submitted electronically and received at the Commission no later than 6 p.m. ET on May 4, 2001. Late applications will not be accepted.

63. There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment. See section III.D of the *Auction No. 39 Public Notice*.

#### *i. Electronic Filing*

64. Applicants must file their FCC Form 175 applications electronically. Applications may generally be filed at any time beginning at noon on April 24, 2001, until 6 p.m. ET on May 4, 2001. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times during the filing window until the May 4, 2001 deadline.

65. Applicants must press the "SUBMIT Application" button on the "Submission" page of the electronic form to successfully submit their FCC Forms 175. Any form that is not submitted will not be reviewed by the FCC. Information about accessing the FCC Form 175 is included in Attachment C. Technical support is available at (202) 414-1250 (voice) or (202) 414-1255 (text telephone (TTY)); the hours of service Monday through Friday, from 7 a.m. to 10 p.m. ET, Saturday, 8 a.m. to 7 p.m. ET, and Sunday, 12 noon to 6 p.m. ET. In order to provide better service to the public, *all calls to the hotline are recorded*. You can also use the Form 175 "Support" feature to obtain contact information.

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

66. Applicants should carefully review 47 CFR 1.2105, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment D of the public notice. Applicants are encouraged to begin preparing the required attachments for FCC Form 175 prior to submitting the form. Attachments C and D to the public notice provide information on the required attachments and appropriate formats.

#### *iii. Electronic Review of FCC Form 175*

67. The FCC Form 175 electronic Search feature may be used to locate and print applicants' FCC Form 175 information. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. For this reason, it is important that applicants do not include their Taxpayer Identification Numbers (TINs) on any exhibits to their FCC Form 175 applications. There is no fee for accessing this system. See Attachment C of the *Auction No. 39 Public Notice* for details on accessing the review system.

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

68. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (i) Those applications accepted for filing (including FCC account numbers and the licenses for which they applied); (ii) those applications rejected; and (iii) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications. As described more fully in the Commission's rules, after the May 4, 2001, short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications.

#### *D. Upfront Payments—Due May 18, 2001*

69. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 (Revised 2/00) that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6 p.m. ET on May 18, 2001.

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 39 go to a lockbox number different from the lockboxes used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the May 18, 2001, deadline



will result in dismissal of the application and disqualification from participation in the auction.

i. Making Auction Payments by Wire Transfer

70. Wire transfer payments must be received by 6 p.m. ET on May 18, 2001. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261

Receiving Bank: Mellon Pittsburgh

BNF: FCC/AC 910-0171

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

"Auctionpay"

Taxpayer Identification No.: (same as FCC Form 159, block 12)

Payment Type Code (enter "A39U")  
FCC Code 1 (same as FCC Form 159, block 24A: "39")

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

Lockbox No. # 358430

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

71. Applicants must fax a completed FCC Form 159 (Revised 2/00) to Mellon Bank at (412) 209-6045 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer—Auction Payment for Auction Event No. 39." Bidders should confirm timely receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

ii. FCC Form 159

72. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/00) must be faxed to Mellon Bank in order to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/00) is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment E to the public notice. An electronic version of the FCC Form 159 is available after filing the FCC Form 175. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

iii. Amount of Upfront Payment

73. In the *Auction No. 39 Comment Public Notice*, the Bureau proposed upfront payments for Auction No. 39 using the following formula:

- *VHF Public Coast*: Inland VPC Licenses: \$.0075 \* MHz \* Pops (the result rounded up to the nearest hundred for results less than \$10,000) with a minimum upfront payment of \$2,500 per license.

- *LMS*:

- Block A: \$.0004 \* MHz \* Pops (the result rounded up to the nearest hundred for results less than \$10,000) with a minimum upfront payment of \$1,000 per license.

- Block B: \$.0005 \* MHz \* Pops (the result rounded up to the nearest hundred for results less than \$10,000) with a minimum upfront payment of \$1,000 per license.

- Block C: \$.0005 \* MHz \* Pops (the results rounded up to the nearest hundred for results less than \$10,000 and to the nearest thousand for results greater than \$10,000) with a minimum upfront payment of \$1,000 per license.

74. Only one commenter addressed whether the Bureau should adopt its proposed formulae for calculating upfront payments for VHF Public Coast and LMS. Havens contends that the proposed formulae for calculating upfront payments for LMS is reasonable given the shared nature, encumbrances, issues and formative stage of LMS. In addition, Havens contends that proposed upfront payments for VHF Public Coast licenses should not exceed 50 percent of the initial upfront payments in the first VHF Public Coast auction, *i.e.*, Auction No. 20. Havens contends that the markets that remain are worth less than one half the value of those sold in Auction No. 20.

75. We adopt our proposed formulae for calculating upfront payments for VHF Public Coast and LMS. Upon review of prices for licenses awarded in the previous VHF Public Coast and LMS auctions, we find that the proposed upfront payments are appropriate when compared with the final prices of awarded licenses and bids received prior to the highest bids which were subsequently withdrawn (*e.g.*, second highest bids). For more detailed information, please refer to section III.D.3 of the *Auction No. 39 Public Notice*.

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

76. The Commission will use wire transfers for all Auction No. 39 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed be supplied to the FCC.

Applicants can provide the information electronically during the initial short-form filing window after the form has been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Tim Dates or Gail Glasser, at (202) 418-2843 by May 4, 2001. The refund will be returned to the payer of record as identified on the FCC Form 159, unless otherwise indicated by such payer. For additional information, please call (202) 418-1995.

Name of Bank

ABA Number

Contact and Phone Number

Account Number to Credit

Name of Account Holder

Correspondent Bank (if applicable)

ABA Number

Account Number

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

Eligibility for refunds is discussed in Part V.E.

D. Auction Registration

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

78. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, each containing a portion of the confidential identification codes required to place bids. These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.

79. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Friday, June 1, 2001, should contact the Auctions Hotline at (717) 338-2888. Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

80. Qualified bidders should note that lost login codes, passwords or bidder identification numbers can be replaced only by appearing *in person* at the FCC



Auction Headquarters located at 445 12th St., SW, Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacement codes. Qualified bidders requiring replacement codes must call technical support prior to arriving at the FCC to arrange preparation of new codes.

#### *E. Remote Electronic Bidding Software*

81. Qualified bidders are allowed to bid electronically or telephonically. If choosing to bid electronically, each bidder must purchase their own copy of the remote electronic bidding software. Electronic bids will only be accepted from those applicants purchasing the software. However, the software may be copied by the applicant for use by its authorized bidders at different locations. The price of the FCC's remote bidding software is \$175.00 and must be ordered by Monday, May 21, 2001. For security purposes, the software is only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that auction software is tailored to a specific auction, so software from prior auctions will not work for Auction No. 39. If bidding telephonically, the telephonic bidding phone number will be supplied in each Federal Express mailing containing the confidential login codes. Qualified bidders that do not purchase the software may only bid telephonically. To indicate your bidding preference, a FCC Bidding Preference/Remote Software Order Form can be accessed when submitting the FCC Form 175. Bidders should print this form, complete it, and fax it to (717) 338-2850. A manual copy of this form is also included as Attachment F in the public notice.

#### *F. Mock Auction*

82. All qualified bidders will be eligible to participate in a mock auction on Monday, June 4, 2001. Details will be announced by public notice.

### **IV. Auction Event**

83. The first round of bidding for Auction No. 39 will begin on Wednesday, June 6, 2001. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

#### *A. Auction Structure*

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

84. In the *Auction No. 39 Comment Public Notice*, we proposed to award all licenses in Auction No. 39 in a single, simultaneous multiple-round auction. We received no comment on this issue. Therefore, we conclude that it is operationally feasible and appropriate to auction the Public Coast and LMS licenses through a single, simultaneous multiple-round auction. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction.

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

85. In the *Auction No. 39 Comment Public Notice*, we proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder. We received no comments on this issue.

86. For Auction No. 39 we will adopt this proposal. The amount of the upfront payment submitted by a bidder determines the initial maximum eligibility (in bidding units) for each bidder. Note again that upfront payments are not attributed to specific licenses, but instead will be translated into bidding units to define a bidder's initial maximum eligibility. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid and hold high bids.

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

88. A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. A bidder is considered active on a license in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits an acceptable bid in the current round (see "Minimum Accepted Bids" in part IV.B.(3)). The minimum required activity level is expressed as a percentage of the bidder's maximum bidding eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions as set

forth under "Auction Stages" in section IV.A.(4) and "Stage Transitions" in section IV.A.(5) of the *Auction No. 39 Public Notice*, we adopt them for Auction No. 39.

##### *iii. Activity Rule Waivers and Reducing Eligibility*

89. In the *Auction No. 39 Comment Public Notice*, we proposed that each bidder in the auction would be provided five activity rule waivers that may be used in any round during the course of the auction. We received no comment on this issue.

90. Based upon our experience in previous auctions, we adopt our proposal that each bidder be provided five activity rule waivers that may be used in any round during the course of the auction.

##### *iv. Auction Stages*

91. In the *Auction No. 39 Comment Public Notice*, we proposed to divide the auction in two stages and employ an activity rule. We further proposed that, in each round of Stage One, a bidder desiring to maintain its current eligibility would be required to be active on licenses encompassing at least 80 percent of its current bidding eligibility. In each round of Stage Two, a bidder desiring to maintain its current eligibility would be required to be active on at least 98 percent of its current bidding eligibility. We received no comment on this issue.

92. We conclude that the auction will be composed of two stages, which are each defined by an increasing activity rule. We will adopt our proposals for the activity rules. Listed are the activity levels for each stage of the auction. The FCC reserves the discretion to further alter the activity percentages before and/or during the auction.

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

*Stage Two:* In each round of Stage Two, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. Failure to maintain the required activity level will result in

a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). In this final stage, reduced eligibility for the next round will be calculated by multiplying the sum of bidding units of the bidder's standing high bids and valid bids during the current round by ten-ninths (50/49).

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

Because the foregoing procedures have proven successful in maintaining proper pace in previous auctions, we adopt them for Auction No. 39.

#### v. Stage Transitions

93. In the *Auction No. 39 Comment Public Notice*, we proposed that the auction would generally advance to the next stage (Stage Two) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is approximately 30 percent or below for three consecutive rounds of bidding. However, we further proposed that the Bureau would retain the discretion to change stages unilaterally by announcement during the auction. We received no comments on this subject.

94. We adopt our proposal. Thus, the auction will start in Stage One. Under the FCC's general guidelines, the auction will start in Stage One and it will advance to the next stage (Stage Two) when, in each of three consecutive rounds of bidding, the high bid has increased on approximately 30 percent or less of the licenses being auctioned (as measured in bidding units). However, the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue.

#### vi. Auction Stopping Rules

95. For Auction No. 39, the Bureau proposed to employ a simultaneous stopping rule. Under this rule, bidding

will remain open on all licenses until bidding stops on every license. The auction will close for all licenses when one round passes during which no bidder submits a new acceptable bid on any license, applies a proactive waiver, or withdraws a previous high bid. After the first such round, bidding closes simultaneously on all licenses.

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

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

98. In addition, we proposed that the Bureau reserve the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the Bureau invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. We proposed to exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage (where bidders will be required to maintain a higher level of bidding activity), increasing the number of bidding rounds per day, and/or adjusting the amount of the minimum bid increments for the licenses. We received no comment on this issue.

99. Thus, we adopt all of the proposals concerning the auction stopping rules. Auction No. 39 will begin under the simultaneous stopping rule, and the Bureau will retain the discretion to invoke the other versions of the stopping rule. We believe that

these stopping rules are most appropriate for Auction No. 39.

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

100. In the *Auction No. 39 Comment Public Notice*, we proposed that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. We received no comment on this issue. Because this approach has proven effective in resolving exigent circumstances in previous auctions, we will adopt our proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding.

#### B. Bidding Procedures

##### i. Round Structure

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

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

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

103. In the *Auction No. 39 Comment Public Notice*, the Bureau proposed to establish minimum opening bids for Auction No. 39 and to retain discretion

to lower the minimum opening bids. Specifically, for Auction No. 39, the Bureau proposed the following formula for minimum opening bids:

- *VHF Public Coast*: Inland VPC

Licenses:  $\$.011 * \text{MHz} * \text{Pops}$  (the result rounded up to the nearest hundred for results less than \$10,000) with a minimum of no less than \$2,500 per license.

- *LMS*: Block A:  $\$.0004 * \text{MHz} * \text{Pops}$  (the result rounded up to the nearest hundred for results less than \$10,000) with a minimum of no less than \$1,000 per license.

Block B:  $\$.0005 * \text{MHz} * \text{Pops}$  (the result rounded up to the nearest hundred for results less than \$10,000) with a minimum of no less than \$1,000 per license.

Block C:  $\$.0005 * \text{MHz} * \text{Pops}$  (the result rounded up to the nearest hundred for results less than \$10,000 and to the nearest thousand for results greater than \$10,000) with a minimum of no less than \$1,000 per license.

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

105. Commenters were divided on whether the Bureau should adopt its proposed formulae for calculating minimum opening bids for LMS. Havens contends that the proposed formulae for calculating minimum opening bids for LMS is reasonable given the shared nature, encumbrances, issues and formative stage of LMS. Progeny contends that the Commission should lower its minimum opening bids. Progeny contends that, since this auction is a second auction and contains many smaller or rural markets that would be of little interest to new LMS entrants, the Commission should therefore err on the side of underestimating demand for this spectrum.

106. One commenter addressed the proposed formulae for calculating minimum opening bids for VHF Public Coast. Havens contends that the proposed formulae for calculating minimum opening bids for VHF Public Coast should be reduced such that they do not exceed fifty percent of the minimum opening bids in the first auction for VHF Public Coast licenses, *i.e.*, Auction No. 20. Havens contends that the markets that remain are worth less than half the price and contain smaller and less densely populated markets than those markets offered in Auction No. 20.

107. We will adopt minimum opening bids for Auction No. 39, which are

reducible at the discretion of the Bureau. We reiterate that upon review of prices for licenses awarded in the previous VHF Public Coast and LMS auctions, we find that the proposed minimum opening bids are appropriate when compared with the final prices of awarded licenses and bids received prior to the highest bids which were subsequently withdrawn (*e.g.*, second highest bids). Congress has enacted a presumption that unless the Commission determines otherwise, minimum opening bids or reserve prices are in the public interest.

108. As a final safeguard against unduly high pricing, minimum opening bids are reducible at the discretion of the Bureau. This will allow the Bureau flexibility to adjust the minimum opening bids if circumstances warrant. We emphasize, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureau will not entertain any bidder requests to reduce the minimum opening bid on specific licenses.

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

109. In the *Auction No. 39 Comment Public Notice*, we proposed to use a smoothing methodology to calculate minimum bid increments. We further proposed to retain the discretion to change the minimum bid increment if circumstances so dictate. We received no comment on this issue.

110. We will adopt our proposal for a smoothing formula. The smoothing methodology is designed to vary the increment for a given license between a maximum and minimum value based on the bidding activity on that license. This methodology allows the increments to be tailored to the activity level of a license, decreasing the time it takes for active licenses to reach their final value. The formula used to calculate this increment is included as Attachment G of the *Auction No. 39 Public Notice*.

111. We adopt our proposal of initially setting the weighing factor at 0.5, the minimum percentage increment at 0.1 (10 percent of the license value), and the maximum at 0.2 (20 percent of the license value). The Bureau retains the discretion to change the minimum bid increment if it determines that circumstance so dictate. The Bureau will do so by announcement in the Automated Auction System. Under its discretion, the Bureau may also implement an absolute dollar floor for the bid increment to further facilitate a timely close of the auction. The Bureau

may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant.

#### iv. High Bids

112. Each bid will be date- and time-stamped when it is entered into the FCC computer system. In the event of tied high bids (identical gross bid amounts) for a license during a round, the earliest of the tied bids will be the standing high bid at the end of the round. The bidding software allows bidders to make multiple submissions in a round. As each bid is individually date- and time-stamped according to when it was submitted, bids submitted by a bidder earlier in a round will have an earlier date and time stamp than bids submitted later in a round.

#### v. Bidding

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

114. Please note that all bidding will take place remotely either through the automated bidding software or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 39.

115. A bidder's ability to bid on specific licenses in the first round of the auction is determined by three factors: (i) the licenses applied for on FCC Form 175, (ii) eligibility restrictions on those licenses, and (iii) the upfront payment amount deposited. The bid submission screens will be tailored for each bidder to include only those licenses for which the bidder applied on its FCC Form 175. A bidder also has the option to further tailor its bid submission screens to call up specified groups of licenses.

116. The bidding software requires each bidder to login to the FCC auction system during the bidding round using the FCC account number, bidder identification number, and the confidential security codes provided in

the registration materials. Bidders are strongly encouraged to download and print bid confirmations *after* they submit their bids.

117. The bid entry screen of the Automated Auction System software for Auction No. 39 allows bidders to place multiple increment bids. Specifically, high bids may be increased from one to nine bid increments. A single bid increment is defined as the difference between the standing high bid and the minimum acceptable bid for a license. The bidding software will display the bid increment for each license.

118. To place a bid on a license, the bidder must increase the standing high bid by one to nine times the bid increment. This is done by entering a whole number between 1 and 9 in the bid increment multiplier (Bid Mult) field in the software. This value will determine the amount of the bid (Amount Bid) by multiplying the bid increment multiplier by the bid increment and adding the result to the high bid amount according to the following formula: Amount Bid = High Bid + (Bid Mult \* Bid Increment).

119. Thus, bidders may place a bid that exceeds the standing high bid by between one and nine times the bid increment. For example, to bid the minimum acceptable bid, which is equal to one bid increment, a bidder will enter "1" in the bid increment multiplier column and press submit.

120. For any license on which the FCC is designated as the high bidder (*i.e.*, a license that has not yet received a bid in the auction or where the high bid was withdrawn and a new bid has not yet been placed), bidders will be limited to bidding only the minimum acceptable bid. In both of these cases no increment exists for the licenses, and bidders should enter "1" in the Bid Mult field. Note that in this case, any whole number between 1 and 9 entered in the multiplier column will result in a bid value at the minimum acceptable bid amount. Finally, bidders are cautioned in entering numbers in the Bid Mult field because, as explained in the following section, a high bidder that withdraws its standing high bid from a previous round, even if mistakenly or erroneously made, is subject to bid withdrawal payments.

#### vi. Bid Removal and Bid Withdrawal

121. In the *Auction No. 39 Comment Public Notice*, we proposed bid removal and bid withdrawal rules. With respect to bid withdrawals, we proposed limiting each bidder to withdrawals in no more than two rounds during the course of the auction. The two rounds in which withdrawals are utilized, we

proposed, would be at the bidder's discretion.

122. The Bureau will limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals during the auction will still be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market. If a high bid is withdrawn, the license will be offered in the next round at the second highest bid price, which may be less than, or equal to, in the case of tie bids, the amount of the withdrawn bid, without any bid increment. The Commission will serve as a "place holder" on the license until a new acceptable bid is submitted on that license.

123. *Procedures.* Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bid" function in the software, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is subsequently removed does not count toward the bidder's activity requirement. This procedure, about which we received no comments, will enhance bidder flexibility during the auction. Therefore, we will adopt these procedures for Auction No. 39.

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

125. *Calculation.* Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the net high bid in the same or subsequent auction(s). In the case of multiple bid withdrawals on a single license, within

the same or subsequent auction(s), the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids, in either the same or subsequent auction(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any withdrawal payments if there is a subsequent higher bid in the same or subsequent auction(s). This policy allows bidder to most efficiently allocate their resources as well as to evaluate their bidding strategies and business plans during an auction while, at the same time, maintaining the integrity of the auction process. The Bureau retains the discretion to scrutinize multiple bid withdrawals on a single license for evidence of anti-competitive strategic behavior and take appropriate action when deemed necessary.

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

#### vii. Round Results

127. Bids placed during a round will not be published until the conclusion of that bidding period. After a round closes, the Commission will compile reports of all bids placed, bids withdrawn, current high bids, new minimum accepted bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 39 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of

the bidders against which they are bidding.

#### viii. Auction Announcements

128. The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available on the FCC remote electronic bidding system, as well as on the Internet.

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

129. As noted in Part II.I., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and certain revision of exhibits. Filers must make these changes on-line, and submit a letter summarizing the changes to: Louis Sigalos, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4-A668, Washington, DC 20554.

130. A separate copy of the letter should be mailed to Kenneth Burnley, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4-B524, Washington, DC 20554. Questions about other changes should be directed to Kenneth Burnley at (202) 418-0660.

### V. Post-Auction Procedures

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

131. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bids and bidders for each license, and listing withdrawn bid payments due.

132. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any applicable small and very small business bidding credits). See 47 CFR 1.2107(b). In addition, by the same deadline all bidders must pay any withdrawn bid amounts due under 47 CFR 1.2104(g), as discussed in "Bid Removal and Bid Withdrawal," section IV.B(6) of the *Auction No. 39 Comment Public Notice*.

#### B. Long-Form Application

133. Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application and required exhibits for each license won through Auction No. 39. Winning bidders that are small or very small businesses must include an exhibit demonstrating their eligibility for small and very small business bidding credits. See 47 CFR 1.2112(b). Further filing instructions will be provided to auction winners at the close of the auction.

#### C. Tribal Land Bidding Credit

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

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

136. For additional information on the tribal land bidding credit, including how the amount of the credit is calculated, see Extending Wireless Telecommunications Services to Tribal Lands, *Report and Order and Further Notice of Proposed Rule Making*, FCC 00-209 released June 30, 2000; 65 FR 47349 (August 2, 2000), Public Notice DA 00-2219, released September 28, 2000, entitled Wireless Telecommunications Bureau Announces Availability of Bidding Credits For Providing Wireless Services to Qualifying Tribal Lands, 15 FCC Rcd

18354; Public Notice DA 00-2836, released December 14, 2000, entitled Wireless Telecommunications Bureau Releases Additional Information Regarding the Procedures for Obtaining a Tribal Lands Bidding Credit and List of Tribal Lands, 15 FCC Rcd 24838; Public Notice DA 01-613, released March 8, 2001, entitled Wireless Telecommunications Bureau Announces Enhancements to the Universal Licensing System to Help Winning Bidders of FCC Auctions File for Tribal Land Bidding Credits and <http://www.fcc.gov/wtb/auctions> and click on *Information on Tribal Land Bidding Credits*.

#### D. Default and Disqualification

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

#### E. Refund of Remaining Upfront Payment Balance

138. All applicants that submitted upfront payments but were not winning bidders for a license in Auction No. 39 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. The refund will be returned to the payer of record as identified on the FCC Form 159, unless otherwise indicated by such payer. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid.

139. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire

transfer instructions and a Taxpayer Identification Number (TIN). Send refund request to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Shirley Hanberry, 445 12th Street, SW, Room 1-A824, Washington, DC 20554.

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

**Note:** Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Tim Dates or Gail Glasser at (202) 418-1995.

Federal Communications Commission.

**Magaret Wiener,**

*Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.*

[FR Doc. 01-9833 Filed 4-19-01; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed continuing information collection. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the National Fire Academy Executive Fire Officer Program Application Form.

**SUPPLEMENTARY INFORMATION:** Public Law 93-498, Fire Prevention and Control Act of 1974, as amended (The Act), created the National Fire Academy (NFA) to advance the professional development of fire service personnel and allied professionals. The Act provides the conduct of courses and programs of training and education, to train fire services personnel with skills and knowledge that may be useful to advance their ability to prevent and control fires, including tactics and command of firefighting for fire chiefs,

commanders, and administration and management of fire services.

### Collection of Information

**Title:** National Fire Academy Executive Fire Officer Program Application For Admission.

**Type of Information Collection:** Extension of a currently approved collection.

**OMB Number:** 3067-0194.

**Form Number(s):** FEMA Form 95-22, National Fire Academy Executive Officer Program Application for Admission.

**Abstract:** The National Fire Academy Executive Fire Officer Program Application for Admission (FEMA Form 95-22) is used by respondents who are senior level (executive) fire officers to apply into the National Fire Academy's Executive Fire Officer Program. FEMA uses the application form for effective screening/selection of applicants/students.

**Affected Public:** State, Local or Tribal Government; Individual or Households.

**FEMA Form(s):** 95-22, National Fire Academy Executive Officer Program Application for Admission.

**Number of Respondents:** 300.

**Frequency of Response:** On Occasion.

**Hours Per Response:** 1 hour.

**Estimated Total Annual Burden Hours:** 300 hours.

**Estimated Cost:** \$7,311. total cost to respondents. \$1,686. total cost to the government.

**Comments:** Written comments are solicited to: (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

**ADDRESSES:** Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Branch, Program Services Division, Operations Support Directorate, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472.

### FOR FURTHER INFORMATION CONTACT:

Contact Ms. Anderson at telephone number (202) 646-2625. Facsimile number (202) 646-3524 or by email [muriel.anderson@fema.gov](mailto:muriel.anderson@fema.gov) for copies of the proposed collection of information.

Dated: April 12, 2001.

**Reginald Trujillo,**

*Director, Program Services Division, Operations Support Directorate.*

[FR Doc. 01-9841 Filed 4-19-01; 8:45 am]

**BILLING CODE 6718-01-P**

## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Board of Governors of the Federal Reserve System.

### SUMMARY:

#### Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

### Request for Comment on Information Collection Proposal

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following: