

comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

## II. Additional Information About Commenting on the Proposed Settlement

### A. How Can I Get a Copy of the Settlement?

Direct your comments to the official public docket for this action under Docket ID No. EPA-HQ-OGC-2007-0190 which contains a copy of the settlement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

An electronic version of the public docket is available through [www.regulations.gov](http://www.regulations.gov). You may use the [www.regulations.gov](http://www.regulations.gov) to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at <http://www.regulations.gov> without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket

materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

### B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the [www.regulations.gov](http://www.regulations.gov) Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: February 27, 2007.

**Richard B. Ossias,**

*Associate General Counsel.*

[FR Doc. E7-3759 Filed 3-2-07; 8:45 am]

**BILLING CODE 6560-50-P**

## EXPORT-IMPORT BANK OF THE UNITED STATES

### Sunshine Act Meeting

**ACTION:** Notice of a Partially Open Meeting of the Board of Directors of the Export-Import Bank of the United States

**TIME AND PLACE:** Thursday, March 8, 2007 at 9:30 a.m. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

**OPEN AGENDA ITEM:** Small Business Committee Resolution (Amendment).

**PUBLIC PARTICIPATION:** The meeting will be open to public participation for Item No. 1 only.

**FURTHER INFORMATION:** For further information, contact; Office of the Secretary, 811 Vermont Avenue, NW., Washington, DC 20571 (Telephone 202-565-3957).

**Howard A. Schweitzer,**  
*General Counsel.*

[FR Doc. 07-1016 Filed 3-1-07; 3:07 pm]

**BILLING CODE 6690-01-M**

## FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 06-206; Report No. AUC-07-71-B (Auction No. 71); DA 07-30]

### Auction of Broadband PCS Spectrum Scheduled for May 16, 2007; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 71

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the procedures and minimum opening bids for the upcoming auction of certain Broadband PCS Spectrum (Auction No. 71). This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for this auction.

**DATES:** Applications to participate in Broadband PCS Auction No. 71 must be filed before 6 p.m. ET on March 16, 2007. Bidding for Auction No. 71 is scheduled to begin on May 16, 2007.

**FOR FURTHER INFORMATION CONTACT:** Wireless Telecommunications Bureau, Auctions Spectrum and Access Division: For legal questions: Stephen Johnson at (202) 418-0660. For general auction questions: Roy Knowles or Lisa Stover at (717) 338-2868. Mobility Division: For service rule questions: Michael Connelly (legal and licensing)

or Keith Harper (technical) at (202) 418-0620. To request materials in accessible formats (Braille, large print, electronic files, audio format) for people with disabilities, send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction No. 71 Procedures* Public Notice released on January 16, 2007. The complete text of the *Auction No. 71 Procedures Public Notice*, including attachments, as well as related Commission documents are available for public inspection and copying from 8 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8 a.m. to 11:30 a.m. on Friday at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The *Auction No. 71 Procedures Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone 202-488-5300, facsimile 202-488-5563, or Web site: <http://www.BCPIWEB.com>. When ordering documents from BCPI, please provide the appropriate FCC document number, for example, DA 07-30 for the *Auction No. 71 Procedures Public Notice*. The *Auction No. 71 Procedures Public Notice* and related documents are also available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/71/>.

## I. General Information

### A. Introduction

1. The Commission announces the procedures and minimum opening bid amounts for the upcoming auction of 38 broadband Personal Communications Service (PCS) licenses scheduled to begin on May 16, 2007 (Auction No. 71). On November 17, 2006, in accordance with Section 309(j)(3) of the Communications Act of 1934, as amended, the Wireless Telecommunications Bureau (Bureau) released a public notice seeking comment on reserve prices or minimum opening bid amounts and the procedures to be used in Auction No. 71. The Commission received no comments in response to the *Auction No. 71 Comment Public Notice* 71 FR 69125, November 29, 2006.

2. In the *Auction No. 71 Comment Public Notice*, the Bureau proposed to include all 38 PCS licenses in a single auction using the Commission's

standard simultaneous multiple-round (SMR) auction format. The Bureau sought comment on the feasibility and desirability of allocating the PCS licenses using the Commission's package bidding format (SMR-PB). Based on the record and the particular circumstances of the auction of these PCS licenses, the Bureau will include all 38 PCS licenses in a single auction using the Commission's standard SMR format, as proposed. Package bidding will not be used in Auction No. 71.

3. For Auction No. 71, the Commission will determine the information procedures based primarily on the eligibility ratio, a measure of likely competition in the auction. The eligibility ratio is defined as the total number of bidding units of eligibility purchased by bidders through their upfront payments, divided by the total number of bidding units for the licenses in the auction. Specifically, if the eligibility ratio equals or exceeds three, the Commission will use the information procedures since with sufficient likely competition, the anti-competitive behavior that limited information procedures aim to deter is unlikely to be successful. If the eligibility ratio is less than three, in general the Commission will withhold certain information on bidder interests and bidder identities. However, if the eligibility ratio is less than three, the Commission reserves the discretion not to limit information on bidder interests and identities if circumstances indicate that limited information procedures would not be an effective tool for deterring anti-competitive behavior. Such circumstances would occur, for example, if only two applicants became qualified to participate in the bidding, since limited information procedures would be ineffective in preventing bidders from knowing the identity of the competing bidder.

4. In the event that the conditions described above result in the use of procedures under which certain information is withheld, the Commission will release: (1) Each bidder's eligibility and upfront payment made prior to the start of the auction; and (2) the amounts of all gross bids (including the losing bids) for each license after each round, but not the identities of the bidders placing the bids. The Commission believes this provides bidders with information regarding license valuations without compromising the goal of reducing the potential for anti-competitive outcomes.

5. Pursuant to these procedures, information on the license selections of auction applicants will be withheld at least until the upfront payment deadline

has passed and the Commission determines the information procedures that will be used for the auction. Therefore, to enable applicants to comply with the Commission's anti-collusion rules, once the Bureau has conducted its initial review of applications to participate in Auction No. 71, each applicant will receive a letter that lists the other applicants in Auction No. 71 that have applied for licenses in any of the same geographic areas as the applicant.

### i. Licenses To Be Auctioned

6. Auction No. 71 will offer 38 licenses for A, C, D, E, and F blocks of broadband PCS spectrum. The spectrum to be auctioned has been offered previously in other auctions but was unsold and/or returned to the Commission as a result of license cancellation or termination. A complete list of licenses available for Auction No. 71 is included as Attachment A of the *Auction No. 71 Procedures Public Notice*.

7. Some of the C block licenses to be offered in Auction No. 71 are available to all bidders in open bidding, while others are available only to entrepreneurs in closed bidding. The A, B, E, and F block licenses, as well as certain C block licenses, are available in open bidding. Size-based bidding credits will be available for C and F block licenses won in open bidding. In order to qualify as an entrepreneur for closed bidding, an applicant, including attributable investors and affiliates, must have had gross revenues of less than \$125 million in each of the last two years and must have less than \$500 million in total assets. Size-based bidding credits are not available for C block licenses won in closed bidding or for licenses in the A, D, or E blocks.

8. Because of the history of licenses for broadband PCS spectrum, certain of the licenses available in Auction No. 71 cover less bandwidth and fewer frequencies and in some cases, licenses are available for only part of a market. See Attachment A of the *Auction No. 71 Procedures Public Notice* to determine the precise scope of the licenses that will be offered.

### B. Rules and Disclaimers

#### i. Relevant Authority

9. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules set forth in Title 47CFR part 1, including recent amendments and clarifications; rules relating to broadband PCS, contained in Title 47 CFR part 24; and rules relating to

applications, practice and procedure contained in Title 47 CFR part 1. Prospective applicants must also be thoroughly familiar with the procedures, terms and conditions (collectively, terms) contained in the Auction No. 71 Procedures Public Notice and the Commission's decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees.

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

ii. Prohibition of Collusion; Compliance With Antitrust Laws

11. To ensure the competitiveness of the auction process, § 1.2105(c) of the Commission's rules prohibits applicants competing for licenses in any of the same geographic license areas from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications (FCC Forms 175) as parties with whom they have entered into agreements pursuant to § 1.2105(a)(2)(viii). In Auction No. 71, the rule would apply to any applicants for licenses in the same BTA or MTA. The rule would also apply to applicants for licenses in overlapping BTAs and MTAs. For example, assume that one applicant applies for an MTA license and a second applicant applies for a BTA license covering any area within that MTA. The two entities will have applied for licenses covering the same geographic area and would be precluded from communicating with each other under the rule. In addition, the rule would preclude applicants that apply to bid for all licenses from communicating with all other applicants. Thus, applicants that have applied for licenses covering the same markets (unless they have identified each other on their FCC Form 175 applications as parties with whom they have entered into agreements under § 1.2105(a)(2)(viii)) must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy, which may include communications regarding the post-auction market structure. This

prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. *This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.* Information concerning applicants' license selections will not be made public at least until the upfront payment deadline has passed and the Commission determines the information procedures that will be used for the auction. Therefore, the Commission will inform each applicant by letter of the identity of each of the other applicants that has applied for licenses covering any of the same geographic areas as the licenses that it has selected in its short-form application.

12. For purposes of this prohibition, § 1.2105(c)(7)(i) defines applicant as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application.

13. Applicants for licenses for any of the same geographic license areas must not communicate directly or indirectly about bids or bidding strategy. Accordingly, such applicants are encouraged not to use the same individual as an authorized bidder. A violation of 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 such applicants. Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or engineering firm or consulting firm), a violation similarly could occur. In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule. A violation of the anti-collusion rule could occur in other contexts, such as an individual serving as an officer for two or more applicants. Moreover, the Commission has found a violation of the anti-collusion rule where a bidder used the Commission's bidding system to disclose its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets, and has placed auction participants on notice that the use of its

bidding system to disclose market information to competitors will not be tolerated and will subject bidders to sanctions. Bidders are cautioned that the Commission remains vigilant about prohibited communications taking place in other situations. For example, the Commission has warned that prohibited communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly. Applicants are hereby placed on notice that public disclosure of information relating to bidder interests and bidder identities that—although revealed prior to and during other Commission auctions—is confidential in this auction at the time of disclosure may violate the anti-collusion rule. Bidders should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become a conduit for the communication of prohibited bidding information.

14. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form application. If parties agree in principle on all material terms prior to the short-form filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under § 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the short-form filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiations, discussions or communications with any other applicants after the short-form filing deadline.

15. By electronically submitting its short-form application following the electronic filing procedures set forth in Attachment C of the Auction No. 71 Procedures Public Notice, each applicant certifies its compliance with § 1.2105(c). However, the Commission cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted. The Commission has stated that it intends to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring. Any

applicant found to have violated the anti-collusion rule may be subject to sanctions.

16. Applicants are also reminded that, regardless of compliance with the Commission's rules, they remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. Compliance with the disclosure requirements of the Commission's anti-collusion rule will not insulate a party from enforcement of the antitrust laws. For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submits a short form application. The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws. The Bureau has long reminded potential applicants and others that even where the applicant discloses parties with whom it has reached an agreement on the short-form application, thereby permitting discussions with those parties, the applicant is nevertheless subject to existing antitrust laws. To the extent the Commission becomes aware of specific allegations that may give rise to violations of the federal antitrust laws, the Commission may refer such allegations to the United States Department of Justice for investigation. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.

17. Section 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus § 1.65 requires an auction applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. Applicants are therefore required by § 1.65 to report to the Commission any communications they have made to or received from another applicant after the short-form filing deadline that affect or have the potential to affect bids or bidding strategy, unless such communications are made to or received from parties to agreements identified under § 1.2105(a)(2)(viii). Section 1.2105(c)(6) provides that any applicant that makes or receives a communication prohibited by

§ 1.2105(c) must report such communication to the Commission in writing immediately, and in no case later than five business days after the communication occurs.

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

19. A summary listing of documents issued by the Commission and the Bureau addressing the application of the anti-collusion rule may be found in Attachment F of the *Auction No. 71 Procedures Public Notice*.

#### iii. Incumbency Issues

20. While much of the private and common carrier fixed microwave services (FMS) operating in the 1850–1990 MHz band (and other bands) have been relocated to available frequencies in higher bands or to other media, some FMS licenses may still be operating in the band. Applicants should become familiar with the status of FMS operation and relocation, and applicable Commission rules and orders.

#### iv. Due Diligence

21. Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the broadband PCS licenses in this auction. 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 service, technology, or product, 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.

22. Potential bidders are strongly encouraged to conduct their own research prior to the beginning of bidding in Auction No. 71 in order to determine the existence of any pending administrative or judicial proceedings that might affect their decision regarding participation in the auction. Participants in Auction No. 71 are strongly encouraged to continue such research throughout the auction. In addition, potential bidders should perform technical analyses sufficient to

assure themselves that, should they prevail in competitive bidding for a specific license, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements.

23. Applicants should also be aware that certain pending and future proceedings, including applications (including those for modification), petitions for rulemaking, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal oppositions, and applications for review, before the Commission may relate to particular applicants or incumbent licensees or the licenses available in Auction No. 71. In addition, pending and future judicial proceedings may relate to particular applicants or incumbent licensees, or the licenses available in Auction No. 71. Prospective bidders are responsible for assessing the likelihood of the various possible outcomes, and considering their potential impact on spectrum licenses available in this auction.

24. Applicants should perform due diligence to identify and consider all proceedings that may affect the spectrum licenses being auctioned and that could have an impact on the availability of spectrum for Auction No. 71. In addition, although the Commission may continue to act on various pending applications, informal objections, petitions, and other requests for Commission relief, some of these matters may not be resolved by the beginning of bidding in the auction.

25. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses available in Auction No. 71.

26. Applicants may obtain information about licenses available in Auction No. 71 through the Bureau's licensing databases at <http://wireless.fcc.gov/uls>. Applicants may query the database online and download a copy of their search results if desired.

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

or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

28. Potential applicants are strongly encouraged to physically inspect any prospective sites located in, or near, the service area for which they plan to bid, and also to familiarize themselves with the environmental review obligations.

v. Use of Integrated Spectrum Auction System

29. The Commission will make available a browser-based bidding system to allow bidders to participate in Auction No. 71 over the Internet using the Commission's Integrated Spectrum Auction System (ISAS or FCC Auction System). The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning or use of the FCC Auction System that is accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming or other advice or service provided in connection with the FCC Auction System.

vi. Bidder Alerts

30. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may

attempt to use Auction No. 71 to deceive and defraud unsuspecting investors. Information about deceptive telemarketing investment schemes is available from the Commission as well as the FTC and SEC. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center.

vii. Environmental Review Requirements

31. Licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other federal environmental statutes. The construction of a wireless antenna facility is a federal action and the licensee must comply with the Commission's environmental rules for each such facility. The Commission's environmental rules require, among other things, that the licensee consult with expert agencies having environmental responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corps of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). In assessing the effect of facilities construction on historic properties, the licensee must follow the provisions of the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process. The licensee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas,

wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The licensee also must prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

i. Auction Date

32. Bidding in Auction No. 71 will begin on Wednesday, May 16, 2007, as announced in the *Auction No. 71 Comment Public Notice*. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction.

33. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

ii. Auction Title

34. Auction No. 71—Broadband PCS.

iii. Bidding Methodology

35. The bidding methodology for Auction No. 71 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet using the FCC Auction System, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically via the Internet or by telephone. All telephone calls are recorded.

iv. Pre-Auction Dates and Deadlines

36. Dates and Deadlines

Auction Seminar .....	March 7, 2007.
Short-Form Application (FCC Form 175) Filing Window Opens .....	March 7, 2007; 12 noon ET.
Short-Form Application (FCC Form 175) Filing Window Deadline .....	March 16, 2007; prior to 6 p.m. ET.
Upfront Payments (via wire transfer) .....	April 20, 2007; 6 p.m. ET.
Mock Auction .....	May 14, 2007.
Auction Begins .....	May 16, 2007.

v. Requirements for Participation

37. Those wishing to participate in the auction must: (1) Submit a short-form application (FCC Form 175) electronically prior to 6 p.m. Eastern Time (ET), March 16, 2007, following the electronic filing procedures set forth in Attachment C of the *Auction No. 71 Procedures Public Notice*; (2) submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. ET, April 20, 2007, following the procedures and instructions set forth in the *Auction No. 71 Procedures Public Notice*; and (3)

comply with all provisions outlined in the *Auction No. 71 Procedures Public Notice* and applicable Commission rules.

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

38. Entities seeking licenses available in Auction No. 71 must file a short-form application electronically via the FCC Auction System prior to 6 p.m. ET on March 16, 2007, following the procedures prescribed in Attachment C to the *Auction No. 71 Procedures Public Notice*. If an applicant claims eligibility for a bidding credit, the information

provided in its FCC Form 175 will be used in determining whether the applicant is eligible for the claimed bidding credit. Applicants bear full responsibility for submitting accurate, complete and timely short-form applications. All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license. Applicants should read the instructions set forth in Attachment C to the *Auction No. 71 Procedures Public Notice* carefully and should consult the Commission's rules to ensure that, in addition to the

materials, all the information that is required under the Commission's rules is included with their short-form applications.

39. An entity may not submit more than one short-form application for a single auction. In the event that a party submits multiple short-form applications, only one application will be accepted for filing.

40. Applicants also should note that submission of a short-form application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Applicants are not permitted to make major modifications to their applications; such impermissible changes include a change of the certifying official to the application. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

#### A. Eligibility for Closed Bidding

41. In order to be eligible to bid for one or more closed C block licenses, an applicant must demonstrate that it meets the eligibility requirements of § 24.709(a) of the Commission's rules. Specifically, as of the FCC Form 175 filing deadline, the applicant, together with its affiliates and persons or entities that hold interests in the applicant and their affiliates, must have combined total assets of less than \$500 million and must have had combined gross revenues of less than \$125 million in each of the last two years. Every applicant that claims eligibility for closed bidding will be required to provide information regarding revenues attributable to the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests on its FCC Form 175 short-form application to establish that it satisfies the eligibility requirement.

#### B. Preferences for Small Businesses and Others

##### i. Size Standards for Bidding Credits

42. A bidding credit represents the amount by which a bidder's winning bid will be discounted. For Auction No. 71, bidding credits will be available to small businesses and very small businesses, and consortia thereof, as follows: (1) A bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed

\$40 million for the preceding three years (small business) will receive a 15 percent discount on its winning bid for certain C and F block licenses; (2) a bidder with attributed average annual gross revenues that do not exceed \$15 million for the preceding three years (very small business) will receive a 25 percent discount on its winning bid for certain C and F block licenses.

43. Bidding credits are not cumulative; a qualifying applicant receives either the 15 percent or 25 percent bidding credit on its winning bid, but not both. No small and very small business bidding credits are provided for licenses in the A, D, and E blocks or for C block licenses available only to entrepreneurs in closed bidding.

44. Every applicant that claims eligibility for a bidding credit as either a small business or a very small business, or a consortium of small businesses or very small businesses, will be required to provide information regarding revenues attributable to the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests on its FCC Form 175 short-form application to establish that it satisfies the applicable eligibility requirement. Applicants claiming eligibility as a designated entity in Auction No. 71 should review carefully the *CSEA/Part 1 Designated Entity Second FNPRM*, 71 FR 6992, February 10, 2006 and the *CSEA/Part 1 Second Report and Order*, 71 FR 26245, May 5, 2006. In that connection, the Commission adopted rules governing eligibility for designated entity benefits in the *Designated Entity Second Report and Order*. The Commission's new rules regarding applicants seeking eligibility for designated entity benefits require the disclosure of a list of all parties with which the applicant has entered into arrangements for the lease or resale (including wholesale agreements) of any of the capacity of any of the applicant's spectrum; and a list, separately and in the aggregate, of the gross revenues of entities with which the applicant has an attributable material relationship, as defined in § 1.2110(b)(3)(iv)(B).

##### ii. Tribal Lands Bidding Credit

45. To encourage the growth of wireless services in federally recognized tribal lands, the Commission has implemented a tribal lands bidding credit.

##### iii. Installment Payments

46. Installment payment plans will not be available in Auction No. 71.

#### C. License Selection

47. In Auction No. 71, applicants must select the licenses on which they want to bid from the list of available licenses. In Auction No. 71, FCC Form 175 will include a filtering mechanism that allows an applicant to filter the available licenses. The applicant will make selections for one or more of the filter criteria and the system will produce a list of licenses satisfying the specified criteria. The applicant may select all the licenses in the customized list or select individual licenses from the list. Applicants also will be able to select licenses from one customized list and then create additional customized lists to select additional licenses. There will be no opportunity to change license selection after the short-form filing deadline. It is critically important that an applicant confirm its license selections before submitting its short-form application because the FCC Auction System will not accept bids on licenses that an applicant has not selected on its FCC Form 175.

#### D. Disclosure of Bidding Arrangements

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

49. After the filing of short-form applications, the Commission's rules do not prohibit a party holding a non-controlling, attributable interest in one applicant from acquiring an ownership interest in or entering into a joint bidding arrangement with other applicants 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 entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction-related business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies. Further compliance with the disclosure requirements of the Commission's anti-collusion rule will not insulate a party from enforcement of the antitrust laws.

#### E. Ownership Disclosure Requirements

50. 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 short-form application, applicants will be required to fully disclose information on the real party or parties-in-interest and ownership structure of the applicant. The ownership disclosure standards for the short form are prescribed in §§ 1.2105 and 1.2112 of the Commission's rules. Each applicant is responsible for information submitted in its short-form application being complete and accurate.

51. An applicant's most current ownership information on file with the Commission, if in an electronic format compatible with the short-form application (FCC Form 175) (such as information submitted in an online FCC Form 602 or in an FCC Form 175 filed for a previous auction using ISAS) will automatically be entered into the applicant's short-form application. Applicants are responsible for ensuring that the information submitted in their FCC Form 175 for Auction No. 71 is complete and accurate. Accordingly, applicants should carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for filing the short-form application. Applicants can update any information that was entered automatically and needs to be changed directly in the short-form application.

#### F. Entrepreneur Revenue Disclosures

52. To determine which entities qualify as entrepreneurs for closed bidding, the Commission considers the total assets and 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 entity requirements on parties

with controlling interests. Once principals or entities with a controlling interest are determined, only the assets and revenues of those principals or entities, the applicant, and their affiliates will be counted in determining entrepreneur eligibility. Therefore, entities applying to bid on closed licenses will be required to disclose on their FCC Form 175 short-form applications, separately and in the aggregate, the gross revenues for the preceding two years and the total assets of each of the following: (1) The applicant, (2) the applicant's affiliates, (3) the applicant's controlling interest holders, and (4) the affiliates of the applicant's controlling interest holders. Certification that the gross revenues for each of the preceding two years or the total assets do not exceed the applicable limit is not sufficient. In order to comply with the Commission's disclosure requirements for entrepreneur eligibility, an applicant must provide separately for itself, its affiliates, its controlling interests holders, and their affiliates, the gross revenues for each of the preceding two years. Applicants for closed bidding in Auction No. 71 should not include existing C and F block licenses in their calculations of total assets; however, all other Commission licenses must be included in such calculations.

#### G. Bidding Credit Revenue Disclosures

53. To determine which applicants qualify for bidding credits as small businesses or very small businesses, the Commission considers the gross revenues of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests. Therefore, entities applying to bid as small businesses or very small businesses (or consortia of small businesses or very small businesses) will be required to disclose on their FCC Form 175 short-form applications the gross revenues of each of the following for the preceding three years: (1) The applicant, (2) its affiliates, (3) its controlling interests, and (4) the affiliates of its controlling interests. Certification that the average annual gross revenues of such entities and individuals for the preceding three years do not exceed the applicable limit is not sufficient. In order to comply with the Commission's disclosure requirements for bidding credit eligibility, an applicant must provide separately for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, the gross revenues for each of the preceding three years. If the applicant is applying as a consortium of small businesses or very

small businesses, this information must be provided for each consortium member.

54. Controlling interests of an applicant include individuals and entities with either *de facto* or *de jure* control of the applicant. Typically, ownership of at least 50.1 percent of an entity's voting stock evidences *de jure* control. *De facto* control is determined on a case-by-case basis. The following are some common indicia of *de facto* control: (1) The entity constitutes or appoints more than 50 percent of the board of directors or management committee; (2) the entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; and (3) the entity plays an integral role in management decisions.

55. Officers and directors of an applicant are also considered to have a controlling interest in the applicant. The Commission does not impose specific equity requirements on controlling interest holders. Once the principals or entities with a controlling interest are determined, only the revenues of those principals or entities, the affiliates of those principals or entities, and the applicant and its affiliates will be counted in determining small business eligibility.

56. In recent years the Commission has made modifications to its rules governing the attribution of gross revenues for purposes of determining small business eligibility. These changes include exempting the gross revenues of the affiliates of a rural telephone cooperative's officers and directors from attribution to the applicant if certain specified conditions are met. The Commission has also clarified that, in calculating an applicant's gross revenues under the controlling interest standard, it will not attribute the personal net worth, including personal income, of its officers and directors to the applicant.

57. A consortium of small businesses or very small businesses is a conglomerate organization composed of two or more entities, each of which individually satisfies the definition of a small business or very small business as those terms are defined in the service-specific rules. Thus, each member of a consortium of small or very small businesses that applies to participate in Auction No. 71 must individually meet the definition of a small business or a very small business adopted by the Commission for broadband PCS. Each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, and the affiliates of its controlling interests.

Although the gross revenues of the consortium members will not be aggregated for purposes of determining the consortium's eligibility as a small business or very small business, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

#### *H. Provisions Regarding Former and Current Defaulters*

58. Each applicant must state under penalty of perjury on its short-form application whether or not the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by § 1.2110, have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must certify under penalty of perjury on its short-form application that as of the short-form filing deadline, the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by § 1.2110, are not in default on any payment for Commission licenses (including down payments) and that they are not delinquent on any non-tax debt owed to any Federal agency. Prospective applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

59. Former defaulters—i.e., applicants, including any of their affiliates, any of their controlling interests, or any of the affiliates of their controlling interests, 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. 71, provided that they are otherwise qualified. However former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

60. Current defaulters—i.e., applicants, including any of their affiliates, any of their controlling interests, or any of the affiliates of their controlling interests, that are in default on any payment for any Commission licenses (including down payments) or are delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for applications to

participate in this auction—are not eligible to bid in Auction No. 71.

61. Applicants are encouraged to review the Bureau's previous guidance on default and delinquency disclosure requirements in the context of the short-form application process. For example, it has been determined that to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for purposes of §§ 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline. Therefore, with respect to regulatory or application fees, the provisions of §§ 1.2105(a) and 1.2106(a) regarding default and delinquency in connection with competitive bidding are limited to circumstances in which the relevant party has not complied with a final Commission payment deadline.

62. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the red light rule, that implement the Commission's obligations under the Debt Collection Improvement Act of 1996, which governs the collection of claims owed to the United States. Under the red light rule, the Commission will not process applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission. In the same rulemaking order, the Commission explicitly declared, however, that the Commission's competitive bidding rules are not affected by the red light rule. As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of the Commission's competitive bidding rules, including the provisions and certifications of §§ 1.2105 and 1.2106, with regard to current and former defaults or delinquencies. Applicants are reminded, however, that the Commission's Red Light Display System, which provides information regarding debts owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of § 1.2105. Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant's red light status is not necessarily determinative of its eligibility to participate in this auction or of its upfront payment obligation.

63. Prospective applicants in Auction No. 71 should note that any long-form

applications filed after the close of competitive bidding will be reviewed for compliance with the Commission's red light rule, and such review may result in the dismissal of a winning bidder's long-form application.

#### *I. Other Information*

64. Applicants owned by member of minority groups and/or women, as defined in § 1.2110(c)(3), may identify themselves in filling out their short-form applications 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.

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

65. As of the deadline for filing short-form applications (FCC Forms 175) prior to 6 p.m. ET on March 16, 2007, applicants are permitted to make only minor changes to their applications. Applicants are not permitted to make major modifications to their applications (e.g., change their license selections, change control of the applicant, change the certifying official, or change their size to claim eligibility for a higher bidding credit). Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons.

66. Any application amendment and related statements of fact must be certified by:

(1) The applicant, if the applicant is an individual, (2) one of the partners if the applicant is a partnership, (3) an officer, director, or duly authorized employee, if the applicant is a corporation, (4) by a member who is an officer, if the applicant is an unincorporated association, (5) the trustee if the applicant is an amateur radio service club, or (6) a duly elected or appointed official who is authorized to make such certifications under the laws of the applicable jurisdiction, if the applicant is a governmental entity.

67. An applicant must make permissible minor changes to its short-form application, as such changes are defined by § 1.2105(b), electronically using the FCC Auction System. Applicants must click on the SUBMIT button in the FCC Auction System for the changes to be submitted and considered by the Commission. After the revised application has been submitted, a confirmation page will be displayed that states the submission

time and date, along with a unique file number.

68. In addition, an applicant should submit a letter briefly summarizing the changes and subsequently update their short-form applications in ISAS as soon as possible. Note: After the filing window has closed, the auction system will not permit applicants to make certain changes, such as legal classification and bidding credit. Any letter describing changes to an applicant's short-form application should be submitted by electronic mail to the following address: [auction71@fcc.gov](mailto:auction71@fcc.gov).

69. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System (ECFS).

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

70. Section 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Changes that cause a loss of or reduction in eligibility for a bidding credit must be reported immediately. If an amendment reporting substantial changes is a major amendment as defined by § 1.2105, the major amendment will not be accepted and may result in the dismissal of the short-form application.

71. After the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications, for example, deletion and addition of authorized bidders (to a maximum of three). Applicants must click on the SUBMIT button in the FCC Auction System for the changes to be submitted and considered by the Commission. In addition, applicants must submit a letter, briefly summarizing the changes, by electronic mail at the following address: [auction71@fcc.gov](mailto:auction71@fcc.gov). The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 71 and the name of the applicant.

72. Applicants must not submit application-specific material through ECFS into the record of the proceeding concerning Auction No. 71 procedures.

### III. Pre-Auction Procedures

#### A. Auction Seminar—March 7, 2007

73. On Wednesday, March 7, 2007, the FCC will sponsor a seminar for parties interested in participating in

Auction No. 71 at the FCC headquarters, located at 445 12th Street, SW., Washington, DC. The seminar will provide attendees with information about pre-auction procedures, completing FCC Form 175, auction conduct, the FCC Auction System, auction rules, and the broadband PCS rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff concerning the auction, auction procedures, filing requirements and other matters related to this auction.

74. To register, please provide the information listed on Attachment B of the *Auction No. 71 Procedures Public Notice* by Monday, March 5, 2007. Registrations are accepted on a first-come, first-served basis. The seminar is free of charge. For individuals who are unable to attend, an Audio/Video webcast of this seminar will be available from the FCC's Auction No. 71 Web page at <http://wireless.fcc.gov/auctions/71/>.

#### B. Short-Form Application (FCC Form 175)—Due Prior to 6 p.m. ET on March 16, 2007

75. In order to be eligible to bid in this auction, applicants must first follow the procedures set forth in Attachment C to the *Auction No. 71 Procedures Public Notice* to submit an FCC Form 175 application electronically via the FCC Auction System. This application must be received at the Commission prior to 6 p.m. ET on March 16, 2007. Late applications will not be accepted. 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.

76. Applications may generally be filed at any time beginning at noon ET on March 7, 2007, and the filing window will close at 6 p.m. ET on March 16, 2007. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their applications multiple times until the filing deadline on March 16, 2007.

77. Applicants must always click on the SUBMIT button on the Certify & Submit screen of the electronic form to successfully submit or modify their FCC Form 175. Any form that is not submitted will not be reviewed by the FCC. Additional information about accessing, completing, and viewing the FCC Form 175 is included in Attachment C of the *Auction No. 71 Procedures Public Notice*. FCC Auctions Technical Support is available at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (text telephone

(TTY)); hours of service are Monday through Friday, from 8 a.m. to 6 p.m. E.T. In order to provide better service to the public, all calls to Technical Support are recorded.

#### C. Application Processing and Minor Corrections

78. 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: (1) Those applications accepted for filing; (2) those applications rejected; and (3) those applications which have minor defects that may be corrected, and the deadline for resubmitting corrected applications.

79. As described more fully in the Commission's rules, after the March 16, 2007, short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (e.g., change their license selections, change control of the applicant, change certifying official, or change their size to claim eligibility for a higher bidding credit).

#### D. Upfront Payments—Due April 20, 2007

80. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and sent by facsimile to Mellon Bank in Pittsburgh, PA. All upfront payments must be sent by wire transfer and received in the proper account at Mellon Bank by 6 p.m. ET on April 20, 2007.

#### i. Making Auction Payments by Wire Transfer

81. Wire transfer payments must be received by 6 p.m. ET on April 20, 2007. 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.

82. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must send by facsimile a completed FCC Form 159 (Revised 2/03) to Mellon Bank. On the cover sheet of the facsimile, write Wire Transfer—Auction Payment for Auction No. 71. In order to

meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account before the deadline. Applicants are responsible for obtaining confirmation from their financial institution that Mellon Bank has timely received their upfront payment and deposited it in the proper account.

83. Please note that: (1) All payments must be made in U.S. dollars; (2) all payments must be made by wire transfer; (3) upfront payments for Auction No. 71 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 and (4) failure to deliver the upfront payment as instructed by the April 20, 2007, deadline, will result in dismissal of the application and disqualification from participation in the auction.

ii. FCC Form 159

84. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be sent by facsimile to Mellon Bank to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/03) is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment D to the *Auction No. 71 Procedures Public Notice*. An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payors using a pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

iii. Upfront Payments and Bidding Eligibility

85. In the *Auction No. 71 Comment Public Notice*, the Bureau proposed that the amount of the upfront payment would determine a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids. In order to bid on a license, otherwise qualified bidders that selected that license on Form 175 must have a current eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses selected on its Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all licenses

the applicant selected on its Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold provisionally winning bids at any given time. A qualified bidder's maximum eligibility will not exceed the sum of the bidding units associated with the total number of licenses selected on its FCC Form 175 application. In some cases a qualified bidder's maximum eligibility may be less than the amount of its upfront payment because the qualified bidder has either previously been in default on a Commission license or delinquent on a non-tax debt owed to a Federal Agency, or has submitted an upfront payment that exceeds the total amount of bidding units associated with the licenses selected on its FCC Form 175 application.

86. In the *Auction No. 71 Comment Public Notice*, the Bureau proposed to calculate upfront payments for Auction No. 71 on a license-by-license basis using the following formula based on bandwidth and license area population:  $\$0.05 * \text{MHz} * \text{License Area Population}$  with a minimum of \$500 per license. The Bureau set forth the specific upfront payments and bidding units for each license in Attachment A of the *Auction No. 71 Comment Public Notice* and sought comment on this proposal. The Bureau received no comments in response to the proposed upfront payments. The specific upfront payments and bidding units for each license are set forth in Attachment A of the *Auction No. 71 Procedures Public Notice*.

87. Applicants must make upfront payments sufficient to obtain bidding eligibility on the licenses on which they will bid.

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

89. Former defaulters should calculate their upfront payment for all licenses by multiplying the number of bidding units on which they wish to be active by 1.5. In order to calculate the number of bidding units to assign to former

defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

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

90. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information listed in the *Auction No. 71 Procedures Public Notice* supplied to the FCC. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise.

E. Auction Registration

91. 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.

92. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID® tokens that will be required to place bids, the Integrated Spectrum Auction System (ISAS) Bidder's Guide, and the Auction Bidder Line phone number.

93. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder that has not received this mailing by noon on Thursday, May 10, 2007, should call (717) 338-2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

94. In the event that SecurID® tokens are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacement registration material.

F. Remote Electronic Bidding

95. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically and telephonically. Each applicant should indicate its bidding preference—electronic or telephonic—on the FCC Form 175. In

either case, each authorized bidder must have its own SecurID® token, which the FCC will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. For security purposes, the SecurID® tokens, the telephonic bidding telephone number, and the Integrated Spectrum Auction System (ISAS) Bidder's Guide are only mailed to the contact person at the contact address listed on the FCC Form 175.

#### G. Mock Auction—May 14, 2007

96. All qualified bidders will be eligible to participate in a mock auction on Monday, May 14, 2007. The mock auction will enable applicants to become familiar with the FCC Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

#### IV. Auction Event

97. The first round of bidding for Auction No. 71 will begin on Wednesday, May 16, 2007. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is to be released approximately 10 days before the start of the auction.

##### A. Auction Structure

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

98. In the *Auction No. 71 Comment Public Notice*, the Bureau proposed to auction all licenses in Auction No. 71 in a single auction using the Commission's standard simultaneous multiple-round (SMR) auction format. This type of auction offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses. A bidder may bid on, and potentially win, any number of licenses. Typically, bidding remains open on all licenses until bidding stops on every license, unless a modified stopping rule is invoked.

99. The standard SMR auction format will meet the needs of bidders in Auction No. 71. The Bureau will use a simultaneous multiple-round auction format without package bidding. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction until bidding stops on every license. This approach, the Commission believes, allows bidders to take advantage of synergies that exist among licenses.

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

100. In the *Auction No. 71 Comment Public Notice*, the Bureau sought comment on whether to implement procedures that prior to and during the auction would limit the disclosure of information on bidder interests and identities. The Commission received no comments on this issue.

101. For Auction No. 71, the Commission will use limited information procedures if it appears likely that the competitiveness of the auction will be low, and if the Commission believes that limited information procedures will be effective in making anti-competitive behavior less likely to be successful. Alternatively, if the Commission determines that the auction is likely to be sufficiently competitive, and therefore, that the risk of successful collusion is low, the Commission will not implement procedures that would limit the disclosure of information on bidder interest and identities before the close of bidding.

102. Specifically, the Commission will estimate the likely level of competition in the auction by considering the eligibility ratio, defined as the total number of bidding units of eligibility purchased by bidders through their upfront payments divided by the total number of bidding units for the licenses in the auction. If the eligibility ratio equals or exceeds three, the Commission will not use limited information procedures. If the eligibility ratio is less than three, in general the Commission will withhold certain information on bidder interest and bidder identities prior to and during the auction.

103. However, if the eligibility ratio is less than three, the Commission reserves the discretion not to use limited information procedures if circumstances indicate that limited information procedures would be not be an effective tool for deterring anti-competitive behavior. For example, if only two applicants become qualified to participate in the bidding, limited information procedures would be ineffective in preventing bidders from knowing the identity of the competing bidder and, therefore, limited information procedures would not serve to deter attempts at signaling and retaliatory bidding behavior. The Commission anticipates announcing the information disclosure procedures to be used at or about the time that the Commission releases a public notice announcing the applicants that are qualified to participate in the bidding.

104. If the Commission determines that limited information procedures will be used, it will make available prior to the auction the total eligibility level for the auction as well as the eligibility of each bidder but will not identify bidders' license selections. After each round of bidding, the amounts of each bid placed will be made available, but not the identities of the bidders. This information will give bidders an indication of demand for the licenses, so that bidders and their investors will be able to assess whether their bids are likely to be consistent with the valuations of other bidders, mitigating fear of the winner's curse. In addition, after each round bidders logged in to the FCC Auction System will be able to see whether their own bids are provisionally winning.

105. *Other Issues.* The Commission does not believe that the information disclosure procedures established for this auction will interfere with the administration of or compliance with the Commission's anti-collusion rule. Section 1.2105(c)(1) of the Commission's rules provides that after the short-form application filing deadline, all applicants for licenses in any of the same geographic license areas are prohibited from disclosing to each other in any manner the substance of bids or bidding strategies until after the down payment deadline, subject to specified exceptions. When limited information procedures are not in effect for a particular auction, each applicant's selection of licenses has been publicly available through the Commission's on-line short-form application database. In Auction No. 71, however, the Commission will not disclose information regarding license selection at least until the upfront payment deadline has passed and the Commission determines the information disclosure procedures to be used for the auction. As in the past, the Commission will disclose the other portions of applicants' short-form applications, through its on-line database and certain application-based information through public notices. Thus, even without information regarding license selection, applicants would be able to comply with § 1.2105(c) by not disclosing bids or bidding strategies to any other applicants in the auction. This approach, however, could inhibit otherwise lawful communications with applicants for licenses in other geographic license areas, which the Commission's rule permits. Consequently, the Bureau will notify separately each applicant with short-form applications to participate in a

pending auction whether applicants in Auction No. 71 have applied for licenses in any of the same geographic areas as that applicant. Specifically, after the Bureau conducts its initial review of applications to participate in Auction No. 71, each applicant with a pending short-form application will receive a letter that lists the other applicants in Auction No. 71 that have applied for licenses in any of the same geographic areas as the applicant. The list will identify the Auction No. 71 applicant(s) by name but will not list the license selections of the Auction No. 71 applicant(s). As in past auctions, additional information regarding applicants in Auction No. 71 that is needed to comply with § 1.2105(c), e.g., the identities of controlling interest in the applicant and ownership interests greater than ten percent, will be available through the publicly accessible on-line short-form application database.

### iii. Eligibility and Activity Rules

106. In the *Auction No. 71 Comment Public Notice*, the Bureau 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. The Commission received no comments on this issue.

107. The Commission will use upfront payments to determine initial (maximum) eligibility (as measured in bidding units) for Auction No. 71. The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. Each license is assigned a specific number of bidding units listed in Attachment A of the *Auction No. 71 Procedures Public Notice*. Bidding units for a given license do not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific licenses. Rather, a bidder may place bids on any of the licenses selected on its FCC Form 175 as long as the total number of bidding units associated with those licenses does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. The total upfront payment does not affect the

total dollar amount a bidder may bid on any given license.

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

109. 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 provisionally winning bidder at the end of the previous bidding round and does not withdraw the provisionally winning bid in the current round, or if it submits a bid in the current round. The minimum required activity is expressed as a percentage of the bidder's current eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions, the Commission adopts them for Auction No. 71. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place bids in the auction.

### iv. Auction Stages

110. In the *Auction No. 71 Comment Public Notice*, the Bureau proposed to conduct the auction in two stages and employ an activity rule. The Bureau further proposed that, in each round of Stage One, a bidder desiring to maintain its current bidding eligibility would be required to be active on licenses representing at least 80 percent of its current bidding eligibility. Finally, the Bureau proposed that in each round of Stage Two, a bidder desiring to maintain its current bidding eligibility would be required to be active on at least 95 percent of its current bidding eligibility. The Commission received no comments on this proposal.

111. The Commission adopts the proposals for the activity rules and stages. Below are the activity levels for each stage of the auction. The Bureau reserves the discretion to further alter the activity percentages before and/or during the auction.

112. *Stage One*: During the first stage of the auction, a bidder desiring to maintain its current bidding eligibility will be required to be active on licenses representing at least 80 percent of its current bidding eligibility in each

bidding round. Failure to maintain the required activity level will result in the use of an activity rule waiver or, if the bidder has no activity rule waivers remaining, a reduction in the bidder's bidding eligibility in the next round. During Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by five-fourths (5/4).

113. *Stage Two*: During the second stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the required activity level will result in the use of an activity rule waiver or, if the bidder has no activity rule waivers remaining, a reduction in the bidder's bidding eligibility in the next round. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by twenty-nineteenths (20/19).

114. **CAUTION**: Since activity requirements increase in Stage Two, bidders must carefully check their activity during the first round following a stage transition to ensure that they are meeting the increased activity requirement. This is especially critical for bidders that have provisionally winning bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required activity level by logging into the FCC Auction System.

115. Because the foregoing procedures have proven successful in maintaining the proper pace in previous auctions, the Commission adopts them for Auction No. 71.

### v. Stage Transitions

116. In the *Auction No. 71 Comment Public Notice*, the Bureau proposed that the auction would generally advance to the next stage (i.e., from Stage One to Stage Two) when the auction activity level, as measured by the percentage of bidding units receiving new provisionally winning bids, is approximately 20 percent or lower for three consecutive rounds of bidding. The Bureau further proposed that it would retain the discretion to change stages unilaterally by announcement during the auction. This determination,

the Bureau proposed, would be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Commission received no comments on this issue.

117. The Commission adopts the proposal. Thus, the auction will start in Stage One and will generally advance to Stage Two when, in each of three consecutive rounds of bidding, the provisionally winning bids have been placed on 20 percent or less of the licenses being auctioned (as measured in bidding units). In addition, the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Commission believes that these stage transition rules, having proven successful in prior auctions, are appropriate for use in Auction No. 71.

#### vi. Activity Rule Waivers

118. In the *Auction No. 71 Comment Public Notice*, the Bureau proposed that each bidder in the auction be provided with three activity rule waivers. The Commission received no comments on this issue. Therefore, the Commission adopts the proposal that each bidder be provided three activity rule waivers. The Commission is satisfied that providing three waivers over the course of the auction will give bidders a sufficient number of waivers and flexibility, while also safeguarding the integrity of the auction.

119. Bidders may use an activity rule waiver in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum activity level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Activity rule waivers can be either applied proactively by the bidder (a proactive waiver) or applied automatically by the FCC Auction System (an automatic waiver) and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

120. The FCC Auction System assumes that bidders with insufficient activity would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round where a bidder's activity level is below the minimum required unless: (1) There are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility. If a bidder has no waivers remaining and does not satisfy the activity requirement, the FCC Auction System will permanently reduce the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

121. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility even if the round has not yet closed.

122. Finally, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity waiver (using the apply waiver function in the FCC Auction System) during a bidding round in which no bids are placed or withdrawn, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver applied by the FCC Auction System in a round in which there are no new bids, withdrawals, or proactive waivers will not keep the auction open. A bidder cannot submit a proactive waiver after submitting a bid in a round, and submitting a proactive waiver will preclude a bidder from placing any bids in that round. Note: Applying a waiver is irreversible; once a proactive waiver is submitted that waiver cannot be unsubmitted, even if the round has not yet closed.

#### vii. Auction Stopping Rules

123. For Auction No. 71, the Bureau proposed to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all licenses remain available for bidding until bidding closes simultaneously on all licenses. More specifically, bidding will close simultaneously on all licenses after the first round in which no bidder

submits any new bids, applies a proactive waiver, or withdraws any provisionally winning bids.

124. The Bureau also sought comment on a modified version of the simultaneous stopping rule (modified stopping rule). The modified stopping rule would close the auction for all licenses after the first round in which no bidder applies a proactive waiver, withdraws a provisionally winning bid, or places any new bids on any license on which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule.

125. The Bureau further proposed retaining the discretion to keep the auction open even if no bidder places any new bids, applies a proactive waiver, or withdraws any provisionally winning bids in a round. In this event, the effect will be the same as if a bidder had applied a waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either use an activity rule waiver (if it has any left) or lose bidding eligibility.

126. In addition, the Bureau proposed that it 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 specified final round(s) and the auction will close.

127. The Bureau proposed to exercise these options 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. The Bureau noted that before exercising these options, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or changing the minimum acceptable bids.

128. The Commission believes that the proposed stopping rules are appropriate for Auction No. 71 because the Commission's experience in prior auctions demonstrates that these stopping rules balance interests of administrative efficiency and maximum bidder participation. The Commission received no comments concerning the auction stopping rules, therefore it adopts the proposals made in the *Auction No. 71 Comment Public Notice*. Auction No. 71 will begin under the simultaneous stopping rule approach, and the Bureau will retain the discretion to employ the other versions of the

stopping rule. Moreover, the Bureau will retain the discretion to use the modified stopping rule with or without prior announcement during the auction.

viii. Auction Delay, Suspension, or Cancellation

129. Because the Commission's approach to notification of delay during an auction has proven effective in resolving exigent circumstances in previous auctions, the Commission adopts its proposed rules regarding auction delay, suspension, or cancellation. 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, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Commission emphasizes that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

*B. Bidding Procedures*

i. Round Structure

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

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

ii. Reserve Price or Minimum Opening Bids

132. Section 309(j) of the Communications Act of 1934, as amended, calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when applications for FCC licenses are subject to auction (i.e., because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. Among other factors, the Bureau must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on the spectrum being auctioned. The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.

133. The Bureau proposed in the *Auction No. 71 Comment Public Notice* to establish minimum opening bids for each license, while retaining discretion to lower the minimum opening bids. Specifically, for Auction No. 71, the Bureau proposed the following formula for calculating license-by-license minimum opening bids based on bandwidth and license area population:  $\$0.05 * \text{MHz} * \text{License Area Population}$  with a minimum of \$500 per license.

134. The Bureau sought comment on this proposal and, in the alternative, whether, consistent with the Section 309(j), the public interest would be served by having no minimum opening bid.

135. In Commission auctions, minimum opening bids are intended to serve as useful starting points for bidding. Minimum opening bids are not intended to be estimates of final auction prices or to reflect all differences between license values. Accordingly, differences in license characteristics, such as population density, that may result in different final prices do not always necessitate different minimum opening bids for the licenses.

136. The Commission received no comments addressing the proposed minimum opening bid amounts or the formula proposed to calculate them. Accordingly, the Commission will adopt the proposal and set the minimum opening bids using the proposed

formula of  $\$0.05 * \text{MHz} * \text{license area population}$  with a minimum of \$500 per license.

137. The Commission received no comments addressing the proposal that the Bureau retain the discretion to reduce minimum opening bid amounts. The Commission adopts this proposal. The minimum opening bid amounts adopted for Auction No. 71 are reducible at the discretion of the Bureau. The Commission emphasizes, however, that such discretion will be exercised, if at all, sparingly and early in the auction, i.e., before bidders lose all activity waivers. During the course of the auction, the Bureau will not entertain requests to reduce the minimum opening bid amount on specific licenses. The Commission notes that effectively the minimum opening bids operate as reserve prices.

138. The specific minimum opening bid amounts for each license available in Auction No. 71 calculated pursuant to the procedure described above are set forth in Attachment A of the *Auction No. 71 Procedures Public Notice*.

iii. Bid Amounts

139. In the *Auction No. 71 Comment Public Notice*, the Bureau proposed that in each round, eligible bidders be able to place a bid on a given license in any of nine different amounts. Under the proposal, the FCC Auction System interface will list the nine acceptable bid amounts for each license. The Commission received no comment on this issue. Based on the Commission's experience in prior auctions, the Commission adopts the proposals for Auction No. 71.

140. The first of the nine acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a license will be equal to its minimum opening bid amount until there is a provisionally winning bid for the license. After there is a provisionally winning bid for a license, the minimum acceptable bid amount for that license will be equal to the amount of the provisionally winning bid plus a percentage of that bid amount calculated using the formula described below. In general, the percentage will be higher for a license receiving many bids than for a license receiving few bids. In the case of a license for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the license.

141. The percentage of the provisionally winning bid used to establish the minimum acceptable bid amount (the additional percentage) is calculated at the end of each round,

based on an activity index which is a weighted average of the number of bids in that round and the activity index from the prior round. Specifically, the activity index is equal to a weighting factor times the number of bids on the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The additional percentage is determined as one plus the activity index times a minimum percentage amount, with the result not to exceed a given maximum. The additional percentage is then multiplied by the provisionally winning bid amount to obtain the minimum acceptable bid for the next round. The Commission will initially set the weighting factor at 0.5, the minimum percentage at 0.1 (10%), and the maximum percentage at 0.2 (20%). Hence, at these initial settings, the minimum acceptable bid for a license will be between 10% and 20% higher than the provisionally winning bid, depending upon the bidding activity for the license. Equations and examples are shown in Attachment E of the *Auction No. 71 Procedures Public Notice*.

142. The eight additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded. If, for example, the bid increment percentage is ten percent, the calculation is (minimum acceptable bid amount) \* (1 + 0.1), rounded, or (minimum acceptable bid amount) \* 1.1, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) \* 1.2, rounded; the third additional acceptable bid amount equals the minimum acceptable bid amount times one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) \* 1.3, rounded; etc. The Commission will round the results of these calculations, as well as the calculations to determine the minimum acceptable bid amounts, using the Bureau's standard rounding procedures. For Auction No. 71, the Bureau proposed to use a bid increment percentage of ten percent to calculate the eight additional acceptable bid amounts. The Commission received no comment on this issue and will begin the auction with a bid increment percentage of ten percent.

143. The Commission received no comments on the Bureau's proposal to retain the discretion to change the

minimum acceptable bid amounts, the parameters of the formula to determine the percentage of the provisionally winning bid used to determine the minimum acceptable bid, and the bid increment percentage if it determines that circumstances so dictate. The Bureau will do so by announcement in the FCC Auction System during the auction if circumstances warrant. The Commission adopts this proposal.

#### iv. Provisionally Winning Bids

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

145. In the *Auction No. 71 Comment Public Notice*, the Bureau proposed to use a random number generator to select a single provisionally winning bid in the event of identical high bid amounts being submitted on a license in a given round (i.e., tied bids). No comments were received on this proposal. Therefore, the Bureau adopts its proposal. A pseudo-random number generator based on the L'Ecuyer algorithms will be used to assign a random number to each bid. The tied bid with the highest random number wins the tiebreaker, and becomes the provisionally winning bid. The remaining eligible bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the selected provisionally winning bid.

146. During a round, a bidder may submit bids for as many licenses as it wishes (providing that it is eligible to bid), withdraw provisionally winning bids from previous rounds, remove bids placed in the current bidding round, or permanently reduce eligibility. Bidders also have the option of submitting and removing multiple bids and withdrawing multiple provisionally winning bids (subject to the limitation on withdrawal rounds discussed below) during a round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with licenses for which the bidder has removed or

withdrawn its bid do not count towards the bidder's current activity.

147. All bidding will take place remotely either through the FCC Auction System or by telephonic bidding. There will be no on-site bidding during Auction No. 71. Note that telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of 10 minutes.

148. A bidder's ability to bid on specific licenses is determined by two factors: (1) the licenses selected on the bidder's FCC Form 175 and (2) the bidder's eligibility. The bid submission screens will allow bidders to submit bids on only those licenses the bidder selected on its FCC Form 175.

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

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

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

152. Finally, bidders are cautioned to select their bid amounts carefully because, as explained below, bidders that withdraw a provisionally winning bid from a previous round, even if the bid was mistakenly or erroneously made, are subject to bid withdrawal payments.

#### v. Bid Removal and Bid Withdrawal

153. In the *Auction No. 71 Comment Public Notice*, the Commission proposed bid removal and bid withdrawal procedures. With respect to bid withdrawals, the Commission

proposed limiting each bidder to withdrawals in no more than two rounds during the course of the auction. The round in which withdrawals are used would be at each bidder's discretion. The Commission received no comments on this issue. In previous auctions, the Commission detected bidder conduct that, arguably, may have constituted anti-competitive behavior through the use of bid withdrawals. While the Commission continues to recognize the important role that bid withdrawals may play in an auction, i.e., reducing risk associated with efforts to secure various licenses in combination, the Commission concludes that, for Auction No. 71, adoption of a limit on the use of withdrawals to two rounds per bidder is appropriate. By doing so the Commission believes it strikes a reasonable compromise that will allow bidders to use withdrawals. The Commission bases the decision on this issue upon its experience with bid withdrawals in prior auctions, including PCS D, E and F block, 800 MHz SMR, and other auctions. The Commission will therefore limit the number of rounds in which bidders may place withdrawals to two rounds, as previously proposed.

154. *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 bids function in the FCC Auction System, a bidder may effectively unsubmit any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, i.e., a bid that is removed does not count toward bidding activity. These procedures will enhance bidder flexibility during the auction, and therefore the Commission adopts them for Auction No. 71.

155. Once a round closes, a bidder may no longer remove a bid. However, in later rounds, a bidder may withdraw provisionally winning bids from previous rounds using the withdraw bids function in the FCC Auction System (assuming that the bidder has not already withdrawn bids in two previous rounds). A provisionally winning bidder that withdraws its provisionally winning bid from a previous round during the auction is subject to the bid withdrawal payments specified in § 1.2104(g). Note: Once a withdrawal is submitted during a round, that withdrawal cannot be unsubmitted even if the round has not yet ended.

156. The rounds in which a bidder may withdraw its bids will be at the

bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals during the auction will be subject to the bid withdrawal payments specified in § 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.

157. If a provisionally winning bid is withdrawn, the minimum acceptable bid amount will equal the amount of the second highest bid received for the license, which may be less than, or in the case of tied bids, equal to, the amount of the withdrawn bid. To set the additional bid amounts, the second highest bid amount also will be used in place of the provisionally winning bid in the formula used to calculate additional bid amounts. The Commission will serve as a place holder provisionally winning bidder on the license until a new bid is submitted on that license.

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

159. Section 1.2104(g)(1) of the rules sets forth the payment obligations of a bidder that withdraws a high bid on a

license during the course of an auction, and provides for the assessment of interim bid withdrawal payments. In the *Auction No. 71 Comment Public Notice*, the Bureau proposed to establish the percentage at fifteen percent for the broadband PCS auction and sought comment on the proposal.

160. The Commission received no comments on this issue and adopts the proposal. The Commission will assess an interim withdrawal payment equal to fifteen percent of the amount of the withdrawn bids. The fifteen percent interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the license. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment. Section 1.2104(g) provides specific examples showing application of the bid withdrawal payment rule.

#### vi. Round Results

161. If limited information procedures described above are in effect, limited information about the results of a round will be made public after the conclusion of the round. Specifically, after a round closes, the Bureau will make available for each license, its current provisionally winning bid amount, the minimum acceptable bid amount for the following round, the amounts of all bids placed on the license during the round, and whether the license is FCC held. The reports will be publicly accessible. Moreover, after the auction, the Bureau will make available complete reports of all bids placed during each round of the auction, including bidder identities.

162. If, however, limited information procedures are not used, more information will be provided after each round in the auction. Bids placed during a round, including bidder identities, will be made public at the conclusion of that round. Specifically, after a round closes, the Bureau will compile reports of all bids placed and which bidders made them, current provisionally winning bids, new minimum acceptable bid amounts, and bidder eligibility status (bidding eligibility and activity rule waivers) and will post the reports for public access.

#### vii. Auction Announcements

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

## V. Post-Auction Procedures

### A. Down Payments

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

165. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction No. 71 to 20 percent of the net amount of its winning bids (gross bids less any applicable small business or very small business bidding credits).

### B. Final Payments

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

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

167. Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 601) for each license won through Auction No. 71. Winning bidders that are entrepreneurs and/or small businesses or very small businesses must demonstrate their qualifications to be considered an entrepreneur and/or their eligibility for a small business or very small business bidding credit. Further filing instructions will be provided to auction winners at the close of the auction.

168. The *CSEA/Part 1 Report and Order* modifies the procedure by which a consortium that is a winning bidder in Auction No. 71 will apply for a license. In particular, (a) each member or group of members of a winning consortium seeking separate licenses will be required to file a separate long-form application for its respective license(s) and, in the case of a license to be partitioned or disaggregated, the member or group filing the applicable long-form application shall provide the parties' partitioning or disaggregation agreement in its long-form application; (b) two or more consortium members seeking to be licensed together shall first form a legal business entity; and (c) any such entity must meet the applicable eligibility requirements in the Commission's rules for small business status. Applicants applying as consortia should review the *CSEA/Part 1 Report and Order* in detail and monitor any relevant future proceedings to

understand how the members of the consortia will apply for a license in the event they are winning bidders.

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

169. At the time it submits its long-form application (FCC Form 601), each winning bidder also must comply with the ownership reporting requirements as set forth in §§ 1.913, 1.919, and 1.2112. Further instructions will be provided to winning bidders at the close of the auction.

### E. Tribal Lands Bidding Credit

170. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally recognized tribal lands that are unserved by any telecommunications carrier or that have a wireline penetration rate equal to or below 85 percent is eligible to receive a tribal lands bidding credit as set forth in §§ 1.2107 and 1.2110(f). A tribal lands bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

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

172. For additional information on the tribal lands bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rule making proceeding regarding tribal lands bidding credits and related public notices.

### F. Default and Disqualification

173. Any winning bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in § 1.2104(g)(2). The

payments include both a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less. Pursuant to recent modifications to the rule governing default payments, the percentage of the applicable bid to be assessed as an additional payment for defaults in a particular auction is established in advance of the auction. Accordingly, in the *Auction No. 71 Comment Public Notice*, the Bureau proposed to set the additional default payment for the auction of broadband PCS licenses at ten percent of the applicable bid. The Bureau sought comment on the proposal and no comments were received on this issue. The Commission therefore adopts the proposal and sets the additional default payment for the auction of broadband PCS licenses at ten percent of the applicable bid.

174. Finally, the Commission notes that in the event of a default, the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at its final bid amount. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant.

### G. Refund of Remaining Upfront Payment Balance

175. All applicants that submit upfront payments but after the close of the auction are not winning bidders for a license in Auction No. 71 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

176. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction.

177. Following the close of the auction, the Commission may refund upfront monies on deposit that exceed the required total of payments owed by winning bidders. Such refunds will be made to the payer of record as identified on the FCC Form 159, provided the

necessary refund request and wire transfer instructions have been received. Federal Communications Commission.

**Gary D. Michaels,**

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

[FR Doc. E7-3786 Filed 3-2-07; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting Notices

**DATE & TIME:** Thursday, March 8, 2007, at 10 a.m.

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

**STATUS:** This Meeting Will be Open to the Public.

**THE FOLLOWING ITEMS HAVE BEEN ADDED TO THE AGENDA:** Report of the Audit Division on Kucinich for President, Inc.; Report of the Audit Division on LaRouch in 2004.

**PERSON TO CONTACT FOR INFORMATION:**

Mr. Robert Biersack, Press Officer,  
*Telephone:* (202) 694-1220.

**Mary W. Dove,**

*Secretary of the Commission.*

[FR Doc. 07-1014 Filed 3-1-07; 2:50 pm]

**BILLING CODE 6715-01-M**

## FEDERAL RESERVE SYSTEM

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

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

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the

standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at <http://www.ffiec.gov/nic/>.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 30, 2007.

**A. Federal Reserve Bank of Atlanta**  
(David Tatum, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. *Community Holding Company of Florida, Inc.*, Miramar Beach, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank, Destin, Miramar Beach, Florida (in organization).

2. *CNBS Financial Group, Inc.*, to become a bank holding company by acquiring 100 percent of the voting shares of Community National Bank of the South (in organization), both of Lake Mary, Florida.

Board of Governors of the Federal Reserve System, February 28, 2007.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E7-3760 Filed 3-2-07; 8:45 am]

**BILLING CODE 6210-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the National Coordinator for Health Information Technology

#### American Health Information Community Confidentiality, Privacy, and Security Workgroup Meeting

**ACTION:** Announcement of meeting.

**SUMMARY:** This notice announces the eighth meeting of the American Health Information Community Confidentiality, Privacy, and Security Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., App.)

**DATES:** March 15, 2007, from 10:30 a.m. to 4:30 p.m. Eastern Time.

**ADDRESSES:** Hubert H. Humphrey building (200 Independence Avenue, SW., Washington, DC 20201), Conference Room 705A (please bring photo ID for entry to a Federal building).

**FOR FURTHER INFORMATION CONTACT:**  
<http://www.hhs.gov/healthit/ahic/confidentiality/>.

**SUPPLEMENTARY INFORMATION:** The Workgroup Members will discuss identity proofing issues and priorities.

The meeting will be available via Web cast at [http://www.hhs.gov/healthit/ahic/cps\\_instruct.html](http://www.hhs.gov/healthit/ahic/cps_instruct.html).

Dated: February 23, 2007.

**Judith Sparrow,**

*Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.*

[FR Doc. 07-985 Filed 3-2-07; 8:45 am]

**BILLING CODE 4150-24-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

#### Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications for "The Centers for Education and Research on Therapeutics (CERTs)," are to be reviewed and discussed at this meeting. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

*SEP Meeting on:* The Centers for Education and Research on Therapeutics (CERTs).

*Date:* April 16, 2007 (Open on April 16 from 8 a.m. to 8:15 a.m. and closed for the remainder of the meeting).