

**List of Subjects in 40 CFR Part 300**

Environmental protection, Ground glass, Solids and sludges, Paper pulp waste, Ash and small amounts of cutting oils, Coolants, Solvents, Paints and cleaning compounds.

Dated: November 1, 1996.

Valdas V. Adamkus,  
Regional Administrator, U.S. EPA, Region 5.

40 CFR part 300 is amended as follows:

**PART 300—[AMENDED]**

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

**Appendix B—[Amended]**

2. Table 1 of appendix B to part 300 is amended by removing the Site “St. Augusta Sanitary Landfill/Engen Dump, St. Augusta Township, Minnesota”.

[FR Doc. 96–29029 Filed 11–13–96; 8:45 am]

BILLING CODE 6560–50–M

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 22**

[PP Docket No. 93–253; CC Docket No. 90–6; FCC 96–361]

**Implementation of Section 309(j) of the Communications Act—Competitive Bidding**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document adopts competitive bidding rules for mutually exclusive applications for cellular unserved Phase I and Phase II service areas. These rules result from the Commission’s decision to use competitive bidding to select from among mutually exclusive applications. The Adoption of these rules will enable the Commission to complete the licensing of cellular unserved area licenses.

**EFFECTIVE DATE:** December 16, 1996.

**FOR FURTHER INFORMATION CONTACT:** Thomas Horan, Wireless Telecommunications Bureau, (202) 418–0660.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Ninth Report and Order* in PP Docket No. 93–253; CC Docket No. 90–6; FCC 96–361, adopted August 23, 1996 and released November 7, 1996.

The complete text of the *Ninth Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. and also may be purchased from the Commission’s copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

**Synopsis of the Report and Order****Background**

1. Initial cellular systems operators were given a five-year period during which to expand their systems within the geographic area in which they are licensees. Cellular unserved areas were created from the geographic area not covered by the licensee at the close of the five-year build-out period. We adopted an application processing scheme that has two phases for all cellular markets in which the five-year build-out period has expired or will expire in the future. Phase I is a one-time process that provides an opportunity for eligible parties to file competing applications for authority to operate a new cellular system in, or to expand an existing cellular system into, unserved areas as soon as these areas become available. Phase II is an ongoing process that allows eligible parties to apply for any unserved areas that may remain in a market after the Phase I process is complete.

**Grouping of Licenses**

2. Following adoption of these rules, all Phase I auction applicants, including those who previously filed FCC Form 464s, shall file a short-form application (FCC Form 175) prior to the filing deadline announced by Public Notice. The filing window for Phase I applications will open on the 31st day after the expiration of a market’s five-year build-out period. For mutually exclusive Phase I applications that were filed prior to our new FCC Form 175 filing requirement, only the applicants who have timely-filed FCC Form 464 applications will be eligible to submit an FCC Form 175 and participate in the auction for these markets. The auction process will repeat itself approximately every six months until all of the Phase I licenses for which there are mutually exclusive applications have been auctioned. Applicants cannot file more than one Phase I initial application for any cellular market, and Phase I initial applications must not propose any de minimis or contract service area boundary extensions. Phase I licensees may file a single major modification

application no later than 90 days after the grant of their Phase I initial application. This major modification application may propose de minimis or contract service area boundary extensions, or a non-contiguous Cellular Geographic Area (“CGSA”) provided that the non-contiguous CGSA meets the minimum coverage requirement of section 22.951 of the Commission’s rules.

3. The start of the Phase II process is dependent on the resolution of the Phase I short-form filing deadline. If a Phase I initial application is granted for a market and channel block, Phase II applications for that market and channel block may be filed on or after the 121st day after the Phase I application is granted. If no Phase I initial applications are received, Phase II applications may be filed on or after the 32nd day after the expiration of the relevant five-year build-out period. Competing Phase II applications are subject to a 30-day filing window following a Phase II application’s publication in a Public Notice. Phase II applicants should continue to submit an FCC Form 464A and an FCC Form 600 during the appropriate filing windows. For Phase II applications, we will require the FCC Form 600 prior to the FCC Form 175 in order to determine whether mutual exclusivity exists among applicants. Mutual exclusivity will be determined by comparing the technical information contained in each FCC Form 600 to determine whether any applicants are applying for the same specific cell sites in any given cellular unserved area. This differs from the Phase I process, because Phase I applicants are applying for the entire unserved area. Thus, mutual exclusivity may be determined by reviewing the FCC Form 464 application for Phase I licenses. If the Commission determines mutually exclusive Phase II initial applications have been received, these applicants will be required to file a short-form application (FCC Form 175) prior to the filing deadline specified in a Public Notice. The Phase II licenses for which there are mutually exclusive applications will be auctioned in either a separate Phase II auction or as part of a Phase I auction. The Wireless Telecommunications Bureau (“Bureau”) will issue a Public Notice describing the auction process for Phase II licenses prior to any Phase II auctions.

**Competitive Bidding Design**

4. For Cellular Unserved Phase I and Phase II service areas, we are electing to use a simultaneous multiple round auction, but we reserve the option to do this auction sequentially.

5. For the cellular unserved auctions, we will use a simultaneous stopping rule. Bidding will remain open on all licenses until bidding stops on every license. We intend to close the auction after one round passes in which no new valid bids or proactive activity rule waivers are submitted. The Commission, however, retains the discretion to keep the auction open even if no new valid bids and no proactive waivers are submitted. The Commission delegates to the Bureau the authority to exercise such discretion. In the event that the Bureau exercises this discretion, the effect would be the same as if a bidder had submitted a proactive waiver. In addition, the Commission will retain the discretion to declare after a certain number of rounds that the auction will end after some specified number of additional rounds and delegates to the Bureau the authority to exercise such discretion. If this option is used, we will accept bids only on licenses where the high bid had increased in at least one of the last three rounds.

#### *Bidding Procedures*

6. We intend to allow only remote bidding for the cellular unserved area licenses auction. Bidders will be able to submit bids from remote locations electronically using special bidding software, or via telephone. We have established a schedule of fees that participants in the competitive bidding process will be assessed for certain on-line computer services, bidding software, and for bidder information packages. By Public Notice, the Bureau will provide additional information to prospective bidders to acquaint them with bidding procedures.

#### *Bid Increments*

7. We will establish minimum bid increments for bidding in each round of the auction at a level of five percent of the high bid in the previous round. The Commission also retains the discretion to vary the minimum bid increments for individual licenses or groups of licenses at any time before or during the course of the auction, based on the number of bidders, bidding activity, and the aggregate high bid amounts and delegates to the Bureau the authority to exercise such discretion. The Bureau will announce by Public Notice prior to the auction the general guidelines for bid increments. Where a tie bid occurs, we will determine the high bidder by the order in which the Commission receives the bids.

#### *Duration of Bidding Rounds*

8. We will retain the discretion to establish the duration and frequency of bidding rounds (e.g., the number of bidding rounds per day and the length of each bidding round) by Public Notice before each auction and delegate to the Bureau the authority to exercise such discretion. The Bureau will announce any changes to the duration of or intervals between bidding rounds either by Public Notice prior to the auction, or announcement during the auction.

#### *Activity Rules*

9. The Commission will assign a "bidding unit" value to each cellular unserved license for the purpose of measuring bidding activity and eligibility. For the cellular unserved auction, each cellular unserved license will be assigned a uniform 5,000 bidding units. This amount will be equal to the upfront payment associated with each cellular unserved license. Licenses on which a bidder is the high bidder at the end of the bid withdrawal period in the previous round count against the maximum eligibility bidding limit. To preserve their maximum eligibility, bidders are required to maintain a certain level of bidding activity during each round of the auction. The auction is divided into three stages with increasing levels of bidding activity required in each stage of the auction. A bidder is considered active on a license in the current round if the bidder has submitted an acceptable bid for that license in the current round, or has the high bid for that license at the end of the bid withdrawal period in the previous round, in which case, the bidder does not need to bid on that license in the current round to be considered active on that license. A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active.

10. We intend to establish the following minimum required activity levels for each stage of the auction: In each round of Stage One of the auction, a bidder who wishes to maintain its current eligibility is required to be active on licenses encompassing at least 60 percent of the bidding units for which it is currently eligible. Failure to maintain the requisite activity level will result in a reduction in the amount of bidding units upon which a bidder will be eligible to bid in the next round of bidding. During Stage One, if activity is below the required minimum level, eligibility in the next round will be calculated by multiplying the current round activity by five-thirds ( $\frac{5}{3}$ ).

Eligibility for each applicant in the first round of the auction is determined by the amount of the upfront payment received and the licenses identified in its short-form application. In each round of Stage Two, a bidder who wishes to maintain its current eligibility is required to be active on 80 percent of the bidding units for which it is eligible in the current round. During the second stage, if activity is below the required minimum level, eligibility in the next round will be calculated by multiplying the current round activity by five-fourths ( $\frac{5}{4}$ ). In each round of Stage Three, a bidder who wishes to maintain its current eligibility is required to be active on licenses encompassing 95 percent of the bidding units for which it is eligible in the current round. In Stage Three, if activity in the current round is below 95 percent of current eligibility, eligibility in the next round will be calculated by multiplying the current round activity by twenty-nineteenths ( $\frac{20}{19}$ ). The Commission, however, will retain the discretion to set and, by announcement before or during the auction, vary the required minimum activity levels (and associated eligibility calculations) for each auction stage, to control the pace of the auction and delegates to the Bureau the authority to exercise such discretion.

#### *Stage Transitions*

11. Stage transitions will be determined by the auction activity level. The "auction activity level" is the sum of the bidding units of licenses for which the high bid increased in the current round as a percentage of the total bidding units of all licenses offered in the auction. The cellular unserved auction will begin in Stage One and generally will move from Stage One to Stage Two when the auction activity level is below ten percent for three consecutive rounds in Stage One. The auction generally will move from Stage Two to Stage Three when the auction activity level is below five percent for three consecutive rounds in Stage Two. In no case can the auction revert to an earlier stage. The Commission will retain the discretion to determine and announce during the course of an auction when, and if, to move from one auction stage to the next, based on a variety of measures of bidder activity, including, but not limited to, the auction activity level as defined above, the percentage of licenses (measured in terms of bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Commission delegates to the Bureau the authority to exercise such discretion.

### *Activity Waivers*

12. We will provide bidders five waivers of the above-described activity rule that may be used in any round during the course of the auction. If a bidder's activity level is below the required activity level, a waiver will be applied automatically.

A waiver will preserve current eligibility in the next round. An activity rule waiver applies to an entire round of bidding and not to a particular service area.

13. Bidders will be afforded an opportunity to override the automatic waiver mechanism when they place a bid if they intentionally wish to reduce their bidding eligibility and do not want to use a waiver to retain their eligibility at its current level. If a bidder overrides the automatic waiver mechanism, its eligibility will be permanently reduced (according to the formulas specified above), and it will not be permitted to regain its bidding eligibility from a previous round. An automatic waiver invoked in a round in which there are no new valid bids will not keep the auction open. Bidders will have the option of entering an activity rule waiver proactively during the bid submission period. If a bidder submits a proactive waiver in a round in which no other bidding activity occurs, the auction will remain open.

14. The Commission will retain the discretion to issue additional waivers during the course of an auction for circumstances beyond a bidder's control and delegates to the Bureau the authority to exercise such discretion. The Bureau will also have the flexibility to adjust by Public Notice prior to an auction the number of waivers permitted, or to institute a rule that allows one waiver during a specified number of bidding rounds or during specified stages of the auction.

### *Pre-Auction Application Procedures*

15. Before each scheduled auction for cellular unserved area licenses, the Bureau will release an initial Public Notice announcing the auction. This initial Public Notice will specify the license(s) to be auctioned, the time and place for the auction, and other important information concerning the procedures, terms, and conditions of the auctions. The initial Public Notice will also specify the filing deadline for short-form applications.

16. Potential bidders who currently have long-form applications (FCC Form 401 or FCC Form 600) on file for the cellular unserved area licenses being offered in the first auction will be required to submit a short-form

application (FCC Form 175) by a date specified in the initial Public Notice to participate in the cellular unserved area auction. Those applicants who filed their applications on the FCC Form 401 will be required to resubmit their applications on an FCC Form 600, and we will waive the filing fee for the FCC Form 600. Those applicants will not have to repeat information which is contained on the FCC Form 401.

17. This requirement will provide current applicants with the opportunity to file their short-form applications electronically. The Bureau will provide detailed instructions on electronic filing in a Public Notice prior to the auction. For the first auction for cellular unserved area licenses, all other potential bidders will also be required to submit, either electronically or manually, a short-form application by the date specified in the Public Notice announcing the auction. If the Commission receives only one application that is acceptable for filing for a particular frequency block and there is thus no mutual exclusivity, the Bureau will cancel the auction for this license. Phase I applicants would then file a long-form application (FCC Form 600) by a date established by the Bureau. Phase II applicants would not file another long-form application (FCC Form 600, since one would already be on file.

### *Upfront Payments*

18. We are establishing a uniform upfront payment amount of \$5,000 per license. A bidder may file applications for every license being auctioned, but its upfront payment should reflect the maximum number of licenses it seeks to win.

19. Upfront payments will be due by a date specified by Public Notice, but generally not later than 14 days before a scheduled auction. To receive a bidder identification number, the applicant or its representative will be required to deposit with Mellon Bank, by cashiers' check or wire transfer, at least \$5,000. During the auction, bidders will be required to provide their bidder identification numbers when submitting bids. The highest bidder for each license will be asked to sign a bid confirmation form. The upfront money will later be counted toward the down payment for the license. During the period that upfront payment deposits are held pending ultimate award of the license, the interest that accrues will be retained by the Government.

### *Down Payments*

20. Winning bidders will be required to supplement their upfront payments to

bring their total deposit with the Commission up to at least 20 percent of the final payment due for the license(s) won in that particular auction. If the upfront payment already tendered amounts to 20 percent or more of the winning bid, no additional deposit will be required. If the upfront payment on deposit is greater than 20 percent of the winning bid amount after deducting any bid withdrawal and default penalties due, the additional monies will be refunded. If a bidder has withdrawn a bid or defaulted but the amount of the payment cannot yet be determined, the bidder will be required to make a deposit of 20 percent of the amount bid on such licenses. When it becomes possible to calculate and assess the payments, any excess deposit will be refunded. Upfront payments will be applied to such deposits, and to bid withdrawal and default assessments due, before being applied toward the bidder's down payment on licenses the bidder has won.

21. The winning bidders will be required to submit the required down payment by cashier's check or wire transfer to Mellon bank by a date to be specified by Public Notice, generally within five business days following the close of bidding. The Commission will hold the down payment until the high bidder has been awarded the license and has paid the remaining balance due on the license.

### *Full Payment*

22. Long-form applications (FCC Form 600) will be due from successful Phase I bidders within ten (10) business days after they have been notified of their winning bidder status, including those applicants who have an FCC Form 401 currently on file who are required to refile on FCC Form 600. Thus, FCC Form 600 applications will be due from all successful Phase I bidders on the same date. If a filing fee is required, the general rules governing the submission of fees will apply except for applicants who currently have FCC Form 401 applications on file. Once we have reviewed a long-form application and have made an initial determination that the applicant is qualified, we will release a Public Notice that the long-form applications have been accepted. This Public Notice will trigger the filing window for petitions to deny. After resolution of petitions to deny, the Commission will later release a Public Notice announcing that the Commission is prepared to award licenses. Applicants will be required to submit full payment for the license(s) within five days of the release of this Public Notice. If the Commission denies all

petitions to deny, and is otherwise satisfied that the applicant is qualified, the Commission will grant the license generally within ten (10) business days after receiving full payment.

23. Phase I or Phase II applicants with long-form applications (FCC Form 401 or FCC Form 600) currently on file will be permitted to make both minor and major modifications to their FCC Form 600 applications, including ownership changes or changes in the identification of parties to bidding consortia on or before the date of the auction. Other applicants will not be permitted to make any major modifications to their applications, including ownership changes or changes in the identification of parties to bidding consortia. Prospective bidders in a Phase I auction should be aware that their single major modification application permits them to bid for a license to cover all unserved areas in that particular market. Phase II applicants are limited to bidding for the ability to serve only the areas described in the technical parameters shown in their FCC Form 600 application and do not hold any rights to any unserved area not covered in this application.

#### *Bid Withdrawal, Default, and Disqualification*

24. Any bidder who withdraws a high bid during an auction before the Commission declares bidding closed, or defaults by failing to remit the required down payment within the prescribed time, would be required to reimburse the Commission in the amount of the difference between its high bid and the amount of the winning bid the next time the license is offered by the Commission, if the subsequent winning bid is lower. After bidding closes, we will apply § 1.2104(g)(2) of the Commission's rules to assess a defaulting auction winner an additional payment of three percent of the subsequent winning bid or three percent of the amount of the defaulting bid, whichever is less. The additional three percent payment is designed to encourage bidders who wish to withdraw their bids to do so before bidding ceases. We will hold deposits made by defaulting or disqualified auction winners until full payment is made. Entities that obtain their licenses through the auction process will forfeit all monies paid to the Commission if their licenses are revoked or canceled.

25. In the event an auction winner defaults or is otherwise disqualified after an auction is closed, the Commission must exercise our discretion to decide whether to hold a new auction or offer the license to the second highest bidder. In the unlikely

event that there is more than one bid withdrawal on the same license, we will hold each withdrawing bidder responsible for the difference between its withdrawn bid and the amount of the winning bid the next time the license is offered by the Commission.

#### *Transfer Disclosure Provisions*

26. We conclude that the transfer disclosure requirements of § 1.2111(a) should apply to all cellular radiotelephone licenses for unserved areas obtained through the competitive bidding process. Licensees transferring their licenses within three years after the initial unserved area license grant will be required to file, together with their transfer applications, the associated contracts for sale, option agreements, management agreements, and all other documents disclosing the total consideration received in return for the transfer of their licenses.

#### *Performance Requirements*

27. We will not adopt additional performance requirements for the cellular unserved area licenses beyond those already provided in the service rules for all auctionable services.

#### *Rules Prohibiting Collusion*

28. We will subject cellular unserved area licensees to the rules prohibiting collusion embodied in §§ 1.2107(d) and 1.2105(c) of the Commission's rules. Bidders will be required by § 1.2105(a)(2) to identify on their short-form applications all parties with whom they have entered into any consortium arrangements, joint ventures, partnerships, or other agreements or understandings that relate to the competitive bidding process. Bidders will be required to certify that they have not entered and will not enter into any explicit or implicit agreements, arrangements or understandings with any parties, other than those identified, regarding the amount of their bid, bidding strategies, or the particular properties on which they will or will not bid. In light of our decision to apply § 1.2105 to mutually exclusive cellular radiotelephone applicants for unserved areas, we are modifying § 22.949(c) which currently provides that settlements among all applicants with mutually exclusive applications (full settlements) for unserved areas must be filed no later than fifteen (15) days before the competitive bidding procedure is scheduled to take place. To provide consistency with auction rules for other services, § 22.949(c) will now reflect that full settlements must be filed no later than the deadline for the short-form application (FCC Form 175).

29. Although applicants may not make major modifications to their short-form applications, a single member of a bidding consortium may withdraw from a consortium only in a particular RSA or MSA(s), but otherwise remain in the consortium for purposes of bidding on all other markets specified on the short-form application. However, such arrangements to assign the member's interests in particular licenses to other consortium members after the auction must be disclosed on an original or amended short-form application, and a request to transfer or assign the license also must be filed in conjunction with the long-form application.

30. Section 1.2107(d) provides that, as an exhibit to the long-form application, the applicant must provide a detailed explanation of the terms and conditions and parties involved in any bidding consortia, joint venture, partnership or other agreement or arrangement it had entered into relating to the competitive bidding process prior to the time the bidding was completed. The rule provides that such agreements must have been entered into prior to the filing of the short-form application. Section 1.2105(c), however, provides an exception to that prohibition for bidders who have not filed short-form applications for licenses in any of the same geographic license areas because of the low risk of anticompetitive conduct among those bidders. Those bidders may enter into such discussions, consortia, or arrangements, or add equity partners, during the course of an auction provided that such changes do not result in a change of control of the applicant. We will also permit communications among bidders concerning matters unrelated to the license auctions, except for communications resulting in a transfer of control of the applicant.

#### *Designated Entities*

31. We believe it is unnecessary to create special provisions for designated entities in the auctions for cellular unserved area radiotelephone licenses. Unlike broadband PCS, which is a new service that attracts many entrepreneurs to the wireless telecommunications arena, unserved area licenses in the cellular radiotelephone service are highly specialized licenses that are valued mainly by a discrete group of entrepreneurs. In addition, because cellular unserved area radiotelephone service, characterized by small geographic areas that were not covered by the initial cellular licensee during the five-year build-out period, is not a capital-intensive service, we expect that designated entities who are interested in

participating in provision of the service will more easily access the capital needed to participate in the auction.

#### Procedural Matters

32. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, the Commission's final analysis for the *Ninth Report and Order* is as follows:

33. *Need for and purpose of the action.* As a result of new statutory authority, the Commission may utilize competitive bidding mechanisms in the grant of certain initial licenses. The Commission published an Initial Regulatory Flexibility Analysis (IRFA) within the *Notice of Proposed Rule Making*, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, 58 FR 53489 (Oct. 15, 1993), 8 FCC Rcd 7635 (1993) (*Auctions NPRM*) and published a Final Regulatory Flexibility Analysis within the *Competitive Bidding Second Report and Order*, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, 59 FR 22980 (May 4, 1994), 9 FCC Rcd 2348 (1994) (*Competitive Bidding Second Report and Order*). As noted in that previous final analysis, this proceeding will establish a system of competitive bidding for choosing among certain applications for initial licenses.

34. *Issues raised in response to the IRFA.* The IRFA in PP Docket No. 93–253 noted that the proposals under consideration in the *Auctions NPRM* included the possibility of new reporting and recordkeeping requirements for a number of small business entities. No commenters responded specifically to the issues raised in the IRFA. We have made some modifications to the proposed requirements as appropriate.

35. *Significant alternatives considered and rejected.* All significant alternatives have been addressed in the *Competitive Bidding Second Report and Order*.

36. With respect to the *Ninth Report and Order*, a Final Regulatory Flexibility Analysis (FRFA), in compliance with 5 U.S.C. 801, is provided as follows:

#### Final Regulatory Flexibility Analysis

37. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Auctions NPRM*. The Commission sought written public comments on the proposals in the *Auctions NPRM* including on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Order conforms to the RFA, as amended

by the Contract with America Advancement Act of 1996 (CWAAA), Public Law 104–131, 110 Stat. 847 (1996).

#### A. Need for and Objective of the Rules

38. This Report and Order adopts final auction rules that will enable the Commission to complete the licensing of unserved areas in the cellular radiotelephonic service. Initial cellular operators were given a five-year period during which to expand their systems within Metropolitan Service Areas (MSAs) and Rural Statistical Areas (RSAs) in which they are licensees. The Commission adopted an application processing approach that has two phases for all cellular markets in which the five-year period has expired or will expire in the future. The Commission now adopts competitive bidding as the appropriate method to award licenses from among mutually exclusive applications for unserved areas filed after July 26, 1993, in light of the competitive bidding authority contained in the Omnibus Budget Reconciliation Act of 1993. In adopting these rules for the provision of cellular service in unserved areas, the Commission's objectives are to: (1) foster the creation of a seamless and integrated nationwide cellular service, so that subscribers can receive high quality cellular service throughout the nation, and (2) make cellular service available to the public as expeditiously as possible.

#### B. Summary of Issues Raised by Public Comment on the Initial Regulatory Flexibility Analysis

39. The Commission included an Initial Regulatory Flexibility Analysis (IRFA) within the *Auctions NPRM* and published a Final Regulatory Flexibility Analysis (FRFA) in the *Competitive Bidding Second Report and Order*, the initiating document for this item. There were no specific comments in response to the IRFA or the FRFA. With respect to comments received in response to the *Auctions NPRM* from the initiating proceeding, the majority of comments that related to cellular unserved areas focused on whether auctions should be used for pending applications or whether the Commission should use lotteries to award those licenses. This issue was resolved in the *Competitive Bidding Second Report and Order* in which the Commission determined that unless specifically excluded, licenses for the Public Mobile Radio Service, including unserved area licenses, should be awarded through competitive bidding. The *Competitive Bidding Second Report and Order* also prescribed general rules and procedures,

including a broad menu of competitive bidding methods, to be used for all auctionable services.

#### C. Projected Reporting, Recordkeeping and Other Compliance Requirements of the Rules

##### 40. *Authorizing use of simultaneous multiple round auctions.*

The Commission is adopting a rule which will permit cellular unserved areas to be auctioned using a simultaneous multiple round auction. This type of auction has the advantage of providing bidders full flexibility to bid for any license as more information becomes available during the course of the auction. A simultaneous multiple round auction will allow remote access to bidding software, auction information, bid submission and results. This will make it easier for small business operators to participate in an auction without leaving their places of business. Also, it will make information concerning the status of the auction easier to access, which will reduce the administrative burden on participants in the auction.

#### Short Form Applications Required

41. Applicants for Phase I licenses were required to file an FCC Form 464 within 31 days after the expiration of the five-year build-out period of the authorized system(s) on the channel block requested in the market containing the unserved area. The adopted auction rules require all Phase I auction applicants to file a short-form application (FCC Form 175) prior to the filing deadline announced by Public Notice. The short-form applications require applicants to provide information required by § 1.2105(a)(2) of the Commission's Rules. The short-form applications are used to determine if there is mutual exclusivity for a license.

42. Also, potential bidders who currently have long-form applications (FCC Form 401 or FCC Form 600) on file for the cellular unserved area licenses will be required to submit a short-form application (FCC Form 175) by a date specified in the initial Public Notice to participate in the cellular unserved auction.

43. The Commission does not believe requiring all applicants to file a short-form application is burdensome because the information requirement is not substantial. Submitting a short-form application may be beneficial by providing the applicants with the opportunity to file their short-forms electronically. Those applicants who file their applications electronically will have the option of bidding in the auction either electronically or

telephonically. The Commission is moving toward electronic filing of short-form applications to streamline the administrative process for auction participants.

#### *Upfront Payment*

44. The Commission is adopting a rule requiring each auction participant to make an upfront payment in the amount of \$5,000 per license prior to the beginning of an auction. An upfront payment provides some degree of assurance that only serious, qualified bidders will participate in the auction and serves as a deterrent to the filing of speculative applications which would delay the provision of cellular service to the public. Upfront payments will be due by a date specified by Public Notice. The upfront money will later be counted toward the down payment for the license. Bidders who do not make the winning bid will be refunded their upfront payment minus any applicable bid withdrawal or default payments. The upfront payment procedures should keep the auction process simple and keep the costs down for entrepreneurs who wish to bid on only a few licenses.

#### *D. Description and Estimate of Small Entities Subject to the Rules*

45. The Commission has not developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing fewer than 1,500 persons. Since the Regulatory Flexibility Act amendments were not enacted until after the record in this proceeding was closed, the Commission was unable to request information regarding the number of small cellular businesses and is unable at this time to determine the precise number of cellular firms which are small businesses.

46. The size data provided by the SBA does not enable the Commission to make a meaningful estimate of the number of cellular providers which are small entities because it combines all radiotelephone companies with 500 or more employees. We therefore used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, even if all 12 of these firms were cellular telephone

companies, nearly all cellular carriers were small businesses under the SBA's definition. We assume, for purposes of our evaluations and conclusions in this FRFA, that all of the current cellular licensees are small entities, as that term is defined by the SBA. Although there are 1,758 cellular licenses, we do not know the exact number of cellular licensees, because a cellular licensee may own several licenses.

#### *E. Steps Taken to Minimize the Burdens on Small Entities*

47. The rules adopted in the *Ninth Report and Order* are designed to minimize burdens on small businesses who may participate in the competitive bidding process. By adopting a simultaneous multiple round design for cellular unserved area auctions, but reserving discretion to use an alternative competitive bidding design, the Commission adds flexibility to its process for awarding licenses. The Commission intends to allow only remote bidding. Bidders will be able to submit bids from remote locations electronically using special bidding software, or via telephone. One advantage of simultaneous multiple round auctions is that they can make it possible for bidders to participate from their own places of business.

#### *F. Significant Alternatives Considered and Rejected*

48. In 1994, the Commission established procedures to ensure that licenses awarded by auction were disseminated to a wide variety of applicants, including small businesses, but left the decision whether and how to use special provisions to the subsequent Reports and Orders designating specific competitive bidding rules for a particular service. For cellular unserved area radiotelephone licenses, the Commission considered and rejected creating special provisions for designated entities such as small businesses. The Commission believed that creating special provisions was unnecessary. Unlike licenses for new wireless telecommunications services such as PCS which attract numerous entrepreneurs and existing licensees from other services, cellular unserved area licenses are highly specialized licenses within limited geographic boundaries that are valued mainly by a discrete group of entities (most of whom are already providing cellular service in adjacent areas). In addition, the Commission anticipates that few markets will attract significant bids. Cellular unserved areas typically are small geographic areas, which most likely would entail smaller build-out

costs as compared to other wireless telecommunications services. As a result, the Commission expects that small businesses who are interested in participating in provision of this service may more easily access the capital needed to participate in the auction.

#### *G. Commission's Outreach Efforts to Learn of and Respond to the Views of Small Entities Pursuant to 5 U.S.C. 609*

49. Because the petitions and comments were filed in this proceeding prior to the enactment of the 1996 Regulatory Flexibility Act amendments, the Commission did not seek specific comments regarding small entities' views of these rules being adopted. In the overall proceeding in which this item was adopted, however, the Commission sought comment on how the Commission could achieve the objectives of the Omnibus Budget Reconciliation Act of 1993 related to designated entities such as small businesses.

#### *H. Report to Congress*

50. The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this *Report and Order*, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 4 U.S.C. 801(a)(1)(A). A copy of this FRFA will also be published in the Federal Register.

51. Accordingly, *it is ordered* that, pursuant to the authority of Sections 4(i), 303(r), 309(j), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 309(j), and 332, this *Ninth Report and Order* is adopted and Part 22 of the Commission's Rules IS AMENDED as set forth below.

52. *It is further ordered* that the rule amendments set forth below *will become effective* December 16, 1996.

#### *List of Subjects in 47 CFR Part 22*

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.  
William F. Caton,  
*Acting Secretary.*

#### *Rule Changes*

Part 22 of title 47 of the Code of Federal Regulations is amended as follows:

#### **PART 22—PUBLIC MOBILE SERVICES**

1. The authority citation for Part 22 is revised to read as follows:

Authority: Sections 4, 303, 309 and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 309 and 332, unless otherwise noted.

2. Section 22.943 is amended by adding paragraph (b)(3) to read as follows:

**§ 22.943 Limitations on assignments and transfers of cellular authorizations.**

\* \* \* \* \*

(b) \* \* \*

(3) An applicant seeking approval for a transfer of control or assignment (otherwise permitted under the Commission's Rules, 47 CFR chapter I) of a license within three years of receiving a new license through a competitive bidding procedure must, together with its application for transfer of control or assignment, file with the Commission a statement indicating that its license was obtained through competitive bidding. Such applicant must also file with the Commission the other documents and information set forth in § 1.2111 of this chapter.

\* \* \* \* \*

3. Section 22.949 is amended by revising paragraph (c) to read as follows:

**§ 22.949 Unserved area licensing process.**

\* \* \* \* \*

(c) Settlements among some, but not all, applicants with mutually exclusive applications for unserved areas (partial settlements) are prohibited. Settlements among all applicants with mutually exclusive applications (full settlements) are allowed and must be filed no later than the date that the FCC Form 175 (short-form) is filed.

\* \* \* \* \*

4. New §§ 22.960 through 22.967 are added to Part 22, Subpart H, to read as follows:

**§ 22.960 Cellular unserved area radiotelephone licenses subject to competitive bidding.**

Mutually exclusive initial applications for cellular unserved area Phase I and Phase II licenses filed after July 26, 1993, are subject to competitive bidding procedures. The general competitive bidding procedures found in part 1, subpart Q, of this chapter will apply unless otherwise provided in this part.

**§ 22.961 Competitive bidding design for cellular unserved area radiotelephone licensing.**

The Commission will employ a simultaneous multiple round auction design when choosing from among mutually exclusive initial applications to provide cellular unserved area radiotelephone service, unless otherwise specified by the Wireless

Telecommunications Bureau before the auction.

**§ 22.962 Competitive bidding mechanisms.**

(a) *Grouping.* All cellular unserved area Phase I and Phase II licenses will be auctioned simultaneously, unless the Wireless Telecommunications Bureau announces, by Public Notice prior to the auction, an alternative auction scheme.

(b) *Minimum bid increments.* The Wireless Telecommunications Bureau will, by announcement before or during an auction, require minimum bid increments in dollar or percentage terms.

(c) *Stopping rules.* The Wireless Telecommunications Bureau will establish stopping rules before or during multiple round auctions in order to terminate an auction within a reasonable time.

(d) *Activity rules.* The Wireless Telecommunications Bureau will establish activity rules which require a minimum amount of bidding activity. In the event that the Wireless Telecommunications Bureau establishes an activity rule in connection with a simultaneous multiple round auction, each bidder will be entitled to request and will be automatically granted a certain number of waivers of such rule during the auction.

**§ 22.963 Withdrawal, default and disqualification payments.**

(a) During the course of an auction conducted pursuant to § 22.961, the Commission will impose payments on bidders who withdraw high bids during the course of an auction, who default on payments due after an auction closes, or who are disqualified.

(b) *Bid withdrawal prior to close of auction.* A bidder who withdraws a high bid during the course of an auction will be subject to a payment equal to the difference between the amount bid and the amount of the winning bid the next time the license is offered by the Commission. No withdrawal payment would be assessed if the subsequent winning bid exceeds the withdrawn bid. This payment amount will be deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission.

(c) *Default or disqualification after close of auction.* If a high bidder defaults or is disqualified after the close of such an auction, the defaulting bidder will be subject to the payment in paragraph (a) of this section plus an additional penalty equal to three (3) percent of the subsequent winning bid. If the subsequent winning bid exceeds the defaulting bidder's bid amount, the 3 percent payment will be calculated

based on the defaulting bidder's bid amount. These amounts will be deducted from any upfront payments or down payments that the defaulting or disqualified bidder has deposited with the Commission.

**§ 22.964 Bidding application (FCC Form 175).**

All applicants who wish to participate in competitive bidding for cellular unserved area radiotelephone licenses must submit applications on FCC Form 175 pursuant to § 1.2105 of this chapter. The Wireless Telecommunications Bureau will issue a Public Notice announcing the availability of cellular unserved area Phase I and Phase II licenses and, in the event that mutually exclusive applications are filed, the date of the auction for those licenses. This Public Notice will specify the date on or before which applicants intending to participate in a cellular unserved area radiotelephone service auction must file their applications in order to be eligible for that auction, and it will contain information necessary for completion of the application as well as other important information such as the materials which must accompany the short form, any upfront payment that will need to be submitted, and the location where the application must be filed.

**§ 22.965 Submission of upfront payments and down payments.**

(a) Each bidder in the cellular unserved radiotelephone service auction(s) will be required to pay the Commission, immediately prior to the auction, by cashier's check or by wire, at least \$5,000 in order to get a bidder identification number. The upfront money will later be counted toward the full payment of the license.

(b) Each winning bidder in the cellular unserved radiotelephone service auction(s) will be required to make a down payment to the Commission's lock-box bank in an amount sufficient to bring its total deposits up to 20 percent of its winning bid within five business days after the close of the auction, or by a date specified by Public Notice. The remainder of the full payment for the license shall be paid within 5 days following the release of a Public Notice that will indicate that the Commission is prepared to award the license(s). The Commission will grant the license generally within ten (10) business days after receiving full payment.

**§ 22.966 Long-form applications.**

Each winning bidder will be required to submit a long-form application on



FCC Form 600 within ten (10) business days after being notified by Public Notice that it is the winning bidder. Applications on FCC Form 600 shall be submitted pursuant to the procedures set forth in § 1.2107 of this chapter and any associated Public Notices.

**§ 22.967 License grant, denial, default, and disqualification.**

(a) Each winning bidder will be required to pay the balance of its winning bid in a lump sum payment within five (5) business days following Public Notice that the Commission is prepared to award the license. The Commission will grant the license generally within ten (10) business days after receipt of full and timely payment of the winning bid amount.

(b) A bidder who withdraws its bid subsequent to the close of bidding, defaults on a payment due, or is disqualified, will be subject to the payments specified in § 22.963 or §§ 1.2104(g) and 1.2109 of this chapter, as applicable.

[FR Doc. 96-29054 Filed 11-13-96; 8:45 am]  
BILLING CODE 6712-01-P

**47 CFR Part 73**

[MM Docket No. 96-9; RM-8736]

**Radio Broadcasting Services; Ukiah, CA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 246A to Ukiah, California, as that community's fourth local FM transmission service, in response to a petition for rule making filed by LifeTalk Broadcasting Association. See 61 FR 6335, February 20, 1996.

Coordinates used for Channel 246A at Ukiah are North Latitude 39-09-00 and West Latitude 123-12-30. With this action, the proceeding is terminated.

**DATES:** Effective December 16, 1996. The window period for filing applications for Channel 246A at Ukiah, California, will open on December 16, 1996, and close on January 16, 1997.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 418-2180. Questions related to the window application filing process for Channel 246A at Ukiah, California, should be addressed to the Audio Services Division, (202) 418-2700.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 96-9, adopted September 20, 1996, and

released November 1, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, located at 1919 M Street, N.W., Room 246, or 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 246A at Ukiah.

Federal Communications Commission.

John A. Karousos,

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 96-29077 Filed 11-13-96; 8:45 am]

BILLING CODE 6712-01-P

**47 CFR Part 73**

[MM Docket No. 96-153; RM-8804]

**Radio Broadcasting Services; Batesville, AR**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 258A to Batesville, Arkansas, as that community's second local FM transmission service, in response to a petition filed by Arkansas Radio Broadcasters. See 61 FR 46430, September 3, 1996. Coordinates used for Channel 258A at Batesville, Arkansas, are North Latitude 35-50-28 and West Longitude 91-34-45. With this action, the proceeding is terminated.

**DATES:** Effective December 16, 1996. The window period for filing applications for Channel 258A at Batesville, Arkansas, will open on December 16, 1996, and close on January 16, 1997.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202)

418-2180. Questions related to the window application filing process for Channel 258A at Batesville, Arkansas, should be addressed to the Audio Services Division, (202) 418-2700.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 96-153, adopted October 25, 1996, and released November 1, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, located at 1919 M Street, N.W., Room 246, or 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Channel 258A at Batesville.

Federal Communications Commission

John A. Karousos,

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 96-29084 Filed 11-13-96; 8:45 am]

BILLING CODE 6712-01-P

**47 CFR Part 73**

[MM Docket No. 96-131; RM-8810]

**Radio Broadcasting Services; El Dorado, AR**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 268A to El Dorado, Arkansas, as that community's fifth local FM transmission service, in response to a petition filed by Arkansas Radio Broadcasters. See 61 FR 31084, June 19, 1996. Coordinates used for Channel 268A at El Dorado, Arkansas, are North Latitude 33-10-27 and West Longitude 92-38-55. With this action, the proceeding is terminated.