

point-to-point (non-relay) communications between VRS users, when a user switches providers but wishes to use equipment supplied by another default provider.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

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FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 09-56; DA 09-1376]

Auction of Broadband Radio Service (BRS) Licenses Scheduled for October 27, 2009; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of Broadband Radio Service Licenses (Auction 86). This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for the auction.

DATES: Applications to participate in Auction 86 must be filed prior to 6:00 p.m. Eastern Time (ET) on August 18, 2009. Bidding for licenses in Auction 86 is scheduled to begin on October 27, 2009.

FOR FURTHER INFORMATION CONTACT:

Wireless Telecommunications Bureau, Auctions and Spectrum Access Division: For legal questions: Sayuri Rajapakse at (202) 418-0660. For general auction questions: Debbie Smith or Linda Sanderson at (717) 338-2868. *Broadband Division:* For licensing information and service rule questions: Nancy Zaczek (legal) or Stephen Zak (technical) at 202-418-2487. To request materials in accessible formats (Braille, large print, electronic files or audio format) for people with disabilities, send an e-mail to fcc504@fcc.gov 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 86 Procedures Public Notice*, which was released on June 26, 2009. The complete text of the *Auction 86 Procedures Public Notice*, including attachments, as well as related Commission documents, are available for public inspection and

copying from 8 a.m. to 4:30 p.m. ET Monday through Thursday and from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The *Auction 86 Procedures Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-488-5300, facsimile 202-488-5563, or Web site: <http://www.BCPIWEB.com>, using document number DA 09-1376 for the *Auction 86 Procedures Public Notice*. The *Auction 86 Procedures Public Notice* and related documents are also available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/86/>.

I. General Information

A. Introduction

1. The Wireless Telecommunications Bureau (Bureau) announces the procedures and minimum opening bid amounts for the upcoming auction of licenses for unassigned Broadband Radio Service (BR) spectrum. This auction, which is designated as Auction 86, is scheduled to commence on October 27, 2009. Auction 86 will offer 78 licenses. On April 24, 2009 the Bureau released a public notice seeking comment on competitive bidding procedures to be used in Auction 86. Interested parties submitted 7 comments and 4 reply comments in response to the *Auction 86 Comment Public Notice* 74 FR 22166, May 12, 2009.

i. Licenses To Be Offered in Auction 86

2. The licenses to be offered in Auction 86 consist of the available spectrum in 78 BRS service areas. BRS service areas are BTAs or additional service areas similar to BTAs adopted by the Commission. In the *BRS/EBS 4th MO&O*, the Commission amended its rules to establish Gulf of Mexico service areas for BRS, and Auction 86 therefore includes licenses for three BRS service areas in the Gulf of Mexico. A complete list of licenses available for Auction 86 is included as Attachment A of the *Auction 86 Procedures Public Notice*.

3. Two commenters sought the removal of certain licenses from the Auction 86 inventory: Sarasota-Bradenton, Florida, BTA 408; Burlington, Vermont, BTA 063; and Rutland-Bennington, Vermont, BTA 388. The Bureau does not believe that the public interest would be served by the removal of the licenses from the auction. Therefore the Bureau declines

to remove these three licenses from the Auction 86 inventory.

B. License Descriptions

4. Where unencumbered, the licenses to be auctioned consist of 76.5 megahertz of spectrum at 2496-2502, 2602-2615, and 2616-2673.5 MHz. We note that the licenses issued pursuant to this auction will be issued pursuant to the post-transition band plan contained in Section 27.5(i)(2) of the Commission's rules. A table showing the channelization of this spectrum is included as Attachment B of the *Auction 86 Procedures Public Notice*.

C. Rules and Disclaimers

i. Relevant Authority

5. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding as well as decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees.

6. Commenters sought a revision of the performance requirement set forth in the BRS service rules. 47 CFR 27.14(o) provides that a BRS licensee must demonstrate substantial service in its service area no later than May 1, 2011. Other commenters oppose the proposal, contending that it would not be in the public interest. The requests to change the BRS service rules are beyond the scope of the public notice regarding the procedures for Auction 86. Any such rule change would require action by the full Commission. Absent such action, new licensees will be subject to the requirements set forth in the current rules.

ii. Prohibition of Collusion; Compliance With Antitrust Laws

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

a. Entities Subject to Section 1.2105

8. The anti-collusion rule will apply to any applicants that submit short-form applications seeking to participate in a Commission auction and select licenses in the same markets. In Auction 86, the rule would prohibit any applicants that have selected any of the same licenses

in their short form applications from communicating absent an agreement.

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

10. For purposes of this prohibition, 47 CFR 1.2105(c)(7)(i) defines applicant as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application.

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

b. Prohibition Applies Until Down Payment Deadline

12. 47 CFR 1.2105(c)'s anti-collusion prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction.

c. Prohibited Communications

13. Applicants for the upcoming Auction 86 and other parties that may be engaged in discussion with such applicants are cautioned on the need to comply with the Commission's anti-collusion rule, 47 CFR 1.2105(c). The anti-collusion rule prohibits not only a communication about an applicant's own bids or bidding strategy, but also a communication of another applicant's bids or bidding strategy. While the anti-collusion rule provisions do not prohibit business negotiations among auction applicants, applicants must remain vigilant so as not to communicate directly or indirectly information that affects, or could affect,

bids or bidding strategy, or the negotiation of settlement agreements.

14. The Commission remains vigilant about 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.

15. Applicants are hereby placed on notice that public disclosure of information relating to bidder interests and bidder identities that is confidential at the time of disclosure may violate the anti-collusion rule. This is so even though similar types of information were revealed prior to and during other Commission auctions subject to different information procedures. Bidders should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become a conduit for the communication of prohibited bidding information. For example, where limited information disclosure procedures are in place, as for Auction 86, a qualified bidder's statement to the press that it has lost bidding eligibility and stopped bidding in the auction could give rise to a finding of an anti-collusion rule violation. Similarly, an applicant's public statement of intent not to participate in Auction 86 bidding could also violate the rule.

16. Applicants selecting 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.

17. 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.

18. In addition, when completing short-form applications, applicants should avoid any statements or disclosures that may violate the Commission's anti-collusion rule, particularly in light of the limited information procedures in effect for Auction 86. Specifically, applicants should avoid including any information in their short-form applications that might convey information regarding their license selection, such as using applicant names that refer to licenses being offered, referring to certain licenses or markets in describing bidding agreements, or including any information in attachments that may otherwise disclose applicants' license selections.

d. Disclosure of Bidding Agreements and Arrangements

19. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form 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 47 CFR 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 for licenses covering any of the same geographic areas after the short-form filing deadline.

e. Anti-Collusion Certification

20. By electronically submitting a short-form application following the electronic filing procedures set forth in Attachment C to the *Auction 86 Procedures Public Notice*, each applicant certifies its compliance with 47 CFR 1.2105(c). However, the Bureau

cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that 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.

f. Antitrust Laws

21. Applicants are also reminded that, regardless of compliance with the Commission's rules, they remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. Compliance with the disclosure requirements of the Commission's anti-collusion rule will not insulate a party from enforcement of the antitrust laws. To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.

g. Duty To Report Prohibited Communications; Reporting Procedure

22. If an applicant makes or receives a communication that appears to violate the anti-collusion rule, it must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. 47 CFR 1.2105(c)(6) provides that any applicant that makes or receives a communication prohibited by 47 CFR 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. The Commission has clarified that each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.

23. In addition, 47 CFR 1.65 requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may

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

24. Parties reporting communications pursuant to 47 CFR 1.65 or 1.2105(c)(6) must take care to ensure that any such reports of prohibited communications do not themselves give rise to a violation of the anti-collusion rule. For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection. A party seeking to report such prohibited communications should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection. Such parties are also encouraged to consult with the Auctions and Spectrum Access Division staff if they have any questions about the procedures for submitting such reports.

25. Applicants must be aware that failure to comply with the Commission's rules can result in enforcement action.

h. Winning Bidders Must Disclose Terms of Agreements

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

i. Additional Information Concerning Anti-Collusion Rule

27. 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 86 Procedures Public Notice*. These documents are available on the Commission's auction anti-collusion Web page.

iii. Incumbency Issues

28. There are pre-existing BRS site-based incumbent licenses. The service area for each of those incumbent licenses is a 35-mile circle centered at

the station's reference coordinates, and is bounded by the chord(s) drawn between the intersection points of the licensee's previous protected service area and those of respective adjacent market, co-channel licensees. Any licenses granted pursuant to this auction will not include the geographic service areas of any co-channel incumbent site-based licenses. If a site-based incumbent license cancels or is forfeited, however, the right to operate within that area shall revert to the overlay licensee that holds the license for the BRS service area that encompasses that BTA. BRS incumbent licenses are entitled to interference protection in accordance with the applicable technical rules. BRS licenses have previously been awarded through auction (Auction 6) for BTAs other than those in this auction, and the previously-awarded licenses may have since been assigned or partitioned. Such BRS geographic area licenses authorize operation within a BTA and provide the licensee with rights similar to those being offered in Auction 86.

29. In addition, on the E and F channel groups, grandfathered Educational Broadband Service (EBS) licenses originally issued on those channels prior to 1983 may continue to operate indefinitely. Such grandfathered EBS licenses must be protected in accordance with the applicable technical rules.

30. Operations within the 2614–2618 MHz band are secondary to adjacent channel operations.

31. Finally, in the 2496–2500 MHz band, BRS licensees must share the band on a co-primary basis with the Code Division Multiple Access, Mobile Satellite Service, grandfathered Broadcast Auxiliary Service stations, and grandfathered land mobile and microwave licenses licensed under Parts 90 and 101 of the Commission's rules, respectively. In addition, the 2400–2500 MHz band is allocated for use by Industrial, Scientific, and Medical equipment under Part 18 of the Commission's rules.

32. A comment was filed noting that in certain markets, the transition to the new band plan is not yet complete, and in those markets, new licensees may not be able to operate on some or all of their spectrum until the transition process is completed. Under the Commission's rules, until a transition has been completed in a BTA, existing licensees operating under the pre-transition band plan are entitled to interference protection in accordance with the applicable technical rules. Potential bidders can check on the status of transition in a market by checking the Commission's Electronic Comment

Filing System and reviewing WT Docket No. 06–136. If a post-transition notification has been filed for a BTA, the transition has been completed in that BTA. In a BTA where no transition initiation plan had been filed by January 21, 2009, for a BTA, existing licensees in the BTA could file notifications with the Commission by April 21, 2009, of an intent to self-transition. Once a licensee completes a self-transition, it is required to modify its license to reflect its operation pursuant to the new band plan. Potential bidders can review the Universal Licensing System to see if a license has been modified to operate pursuant to the new band plan.

33. The commenter also asked that potential bidders be reminded of obligations to reimburse certain licensees of their costs in transitioning to the new BRS/EBS band plan. Under the Commission's rules, BRS licensees are responsible for reimbursing transition proponents or self-transitioning EBS licensees in accordance with the Commission's rules. Potential bidders should be aware that in BTAs where the transition to the new band plan has not yet been completed as of the date licenses are issued pursuant to this auction, they may be required to reimburse eligible licensees for a *pro rata* share of transition costs.

a. International Coordination

34. BRS licensees must individually apply for and receive a separate license for each transmitter if the proposed operation requires coordination with either Mexico or Canada. Potential bidders seeking licenses in Auction 86 for geographic areas that are near the Canadian or Mexican borders are encouraged to consult all international agreements with Canada and Mexico. We also note that the current agreement with Mexico does not provide for two-way operation in the border area. If the agreements with Mexico or Canada are modified in the future, licensees must likewise comply with these modifications.

b. Quiet Zones

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

iv. Due Diligence

36. The Bureau cautions potential applicants formulating their bidding strategies to investigate and consider the extent to which these frequencies are occupied. For example, there are

incumbent operations already licensed and operating in the band that must be protected. These limitations may restrict the ability of BRS licensees to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license areas. Bidders should become familiar with the status of these operations and applicable Commission rules, orders and any pending proceedings related to the service, in order to make reasoned, appropriate decisions about their participation in this auction and their bidding strategy.

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

38. Potential bidders are strongly encouraged to conduct their own research prior to the beginning of bidding in Auction 86 in order to determine the existence of any pending legislative, administrative or judicial proceedings that might affect their decision regarding participation in the auction. Participants in Auction 86 are strongly encouraged to continue such research throughout the auction. In addition, potential bidders should perform technical analyses sufficient to assure themselves that, should they prevail in competitive bidding for a specific license, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements as well as other applicable Federal, state, and local laws.

39. Applicants should also be aware that certain pending and future proceedings, including rulemaking proceedings or petitions for rulemaking, applications (including those for modification), requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal oppositions, and applications for review, before the

Commission may relate to particular applicants or incumbent licensees or the licenses available in Auction 86. Pending and future judicial proceedings may also relate to particular applicants or incumbent licensees, or the licenses available in Auction 86. 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.

40. 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 86. 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.

41. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses being offered.

42. Applicants may obtain information about licenses available in Auction 86 through the Bureau's online licensing databases at <http://wireless.fcc.gov/uls>. Applicants may query the database online and download a copy of their search results if desired. Detailed instructions on using License Search (including frequency searches and the GeoSearch capability) and downloading query results are available online by selecting the "?" button at the upper right-hand corner of the License Search screen or by going to the Universal Licensing System (ULS) support site at <http://esupport.fcc.gov/licensing.htm>. Applicants should direct questions regarding the ULS search capabilities to the FCC ULS Technical Support hotline at (877) 480–3201, option two. The hotline is available to assist with questions Monday through Friday, from 8 a.m. to 6 p.m. ET. In order to provide better service to the public, all calls to the hotline are recorded.

43. 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.

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

v. Use of Integrated Spectrum Auction System

45. The Commission will make available a browser-based bidding system to allow bidders to participate in Auction 86 over the Internet using the Commission's Integrated Spectrum Auction System (ISAS or FCC Auction System). The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees or agents, be liable for any damages whatsoever (including, but not

limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning or use of the FCC Auction System that is accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming or other advice or service provided in connection with the FCC Auction System.

vi. Environmental Review Requirements

46. 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.

D. Auction Specifics

i. Auction Start Date

47. Bidding in Auction 86 will begin on Tuesday, October 27, 2009, as announced in the *Auction 86 Comment Public Notice*. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction; unless otherwise announced bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

ii. Bidding Methodology

48. The bidding methodology for Auction 86 will be simultaneous multiple round (SMR) bidding. The Commission will conduct this auction over the Internet using the FCC Auction System, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically via the Internet or by telephone. All telephone calls are recorded.

iii. Pre-Auction Dates and Deadlines

49. The following dates and deadlines apply:

Auction Seminar	August 5, 2009.
Short-Form Application (FCC Form 175) Filing Window Opens	August 5, 2009; 12:00 noon ET.
Short-Form Application (FCC Form 175) Filing Window Deadline	August 18, 2009; prior to 6:00 p.m. ET.
Upfront Payments (via wire transfer)	September 24, 2009; 6:00 p.m. ET.
Mock Auction	October 23, 2009.
Auction Begins	October 27, 2009.

iv. Requirements for Participation

50. Those wishing to participate in this auction must: (1) submit a short-form application (FCC Form 175) electronically prior to 6:00 p.m. ET, August 18, 2009; (2) submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, September 24, 2009 and (3) comply with all provisions outlined in the *Auction 86 Procedures Public Notice* and applicable Commission rules.

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

A. General Information Regarding Short-Form Applications

51. Entities seeking licenses available in Auction 86 must file a short-form application electronically via the FCC Auction System prior to 6 p.m. ET on August 18, 2009, following the procedures prescribed in Attachment C of the *Auction 86 Procedures Public Notice*. Applicants filing a short-form application are subject to the Commission's anti-collusion rules beginning on the deadline for filing. The information provided in its short-form

application will be used in determining, among other things, if the applicant is eligible for a bidding credit.

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

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

54. Applicants also should note that submission of a short-form application and any amendments thereto constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, that he or she has read the form's instructions and certifications, and that the contents

of the application, its certifications, and any attachments are true and correct. An applicant cannot change the certifying official to its application. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

B. License Selection

55. An applicant must select the licenses on which it wants to bid from the *Eligible Licenses* list on its short-form application. Applicants will not be able to change their license selections after the short-form application deadline. Applicants interested in participating in Auction 86 must have selected license(s) available in the respective auction by the short-form application deadline. Applicants must confirm their license selections before the deadline for submitting short-form applications. The FCC Auction System will not accept bids from an applicant on licenses that the applicant has not selected on its short-form application.

C. Disclosure of Bidding Arrangements

56. An applicant must identify in its short-form application all parties with whom it has 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.

57. 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 an 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.

58. 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, as discussed above, compliance with the disclosure requirements of the Commission's anti-collusion rule will not insulate a party from enforcement of the antitrust laws.

D. Ownership Disclosure Requirements

59. All applicants must comply with the uniform Part 1 ownership disclosure standards and provide information required by 47 CFR 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 application are prescribed in 47 CFR 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.

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

previous auction using ISAS) will automatically be entered into the applicant's short-form application. An applicant is responsible for ensuring that the information submitted in its short-form application for Auction 86 is complete and accurate. Accordingly, applicants should carefully review any information automatically entered to confirm that it is complete and accurate as of the Auction 86 deadline for filing the short-form application. If any information that was entered automatically needs to be changed, applicants must do so directly in the short-form application.

E. Designated Entity Provisions

61. Eligible applicants in Auction 86 may claim designated entity status, as an entrepreneur, a small business, or very small business eligible for bidding credits. Applicants should review carefully the Commission's recent decisions regarding the designated entity provisions.

i. Bidding Credits for Small and Very Small Businesses

62. A bidding credit represents the amount by which a bidder's winning bid will be discounted. For Auction 86, bidding credits will be available to entrepreneurs, small businesses and very small businesses, and consortia thereof.

63. The level of bidding credit is determined 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; (2) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) will receive a 25 percent discount on its winning bid; and (3) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) will receive a 35 percent discount on its winning bid.

ii. Attributable Interests

a. Controlling Interests

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

b. Affiliates

65. Affiliates of an applicant or controlling interest include an

individual or entity that: (1) Directly or indirectly controls or has the power to control the applicant; (2) is directly or indirectly controlled by the applicant; (3) is directly or indirectly controlled by a third party that also controls or has the power to control the applicant; or (4) has an identity of interest with the applicant. The Commission's definition of an affiliate of the applicant encompasses both controlling interests of the applicant and affiliates of controlling interests of the applicant. For more information regarding affiliates, applicants should refer to 47 CFR 1.2110(c)(5) and Attachment C to the *Auction 86 Procedures Public Notice*.

c. Material Relationships

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

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

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

69. The Commission grandfathered material relationships in existence before the release of the *Designated Entity Second Report and Order*, 71 FR 26245, May 5, 2006, meaning that those preexisting relationships alone would not cause the Commission to examine a designated entity's ongoing eligibility

for benefits or its liability for unjust enrichment. The Commission did not, however, grandfather preexisting material relationships for determinations of an applicant's or licensee's designated entity eligibility for future auctions or in the context of future assignments, transfers of control, spectrum leases, or other reportable eligibility events. Rather, the occurrence of any of those eligibility events after the release date of the *Designated Entity Second Report and Order* triggers a reexamination of the applicant's or licensee's designated entity eligibility, taking into account all existing material relationships, including those previously grandfathered.

d. Gross Revenue Exceptions

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

71. The Commission has also exempted from attribution to the applicant the gross revenues of the affiliates of a rural telephone cooperative's officers and directors, if certain conditions specified in 47 CFR 1.2110(b)(3)(iii) of the Commission's rules are met. An applicant claiming this exemption must provide in an attachment an affirmative statement that the applicant, affiliate and/or controlling interest is an eligible rural telephone cooperative within the meaning of 47 CFR 1.2110(b)(3)(iii), and must supply any additional information as may be required to demonstrate eligibility for the exemption from the attribution rule. Applicants seeking to claim this exemption must meet all of the conditions.

e. Bidding Consortia

72. A consortium of small businesses, very small businesses, or entrepreneurs is a conglomerate organization composed of two or more entities, each of which individually satisfies the definition of a small business, very small business, or entrepreneur. Thus, each member of a consortium of small businesses, very small businesses, or entrepreneurs that applies to participate in Auction 86 must individually meet the criteria for small businesses, very small businesses, or entrepreneurs. Each consortium member must disclose its gross revenues along with those of its

affiliates, its controlling interests, the affiliates of its controlling interests, and any entities having an attributable material relationship with the member. Although the gross revenues of the consortium members will not be aggregated for purposes of determining the consortium's eligibility as a small business, very small business, or entrepreneur this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

F. Tribal Lands Bidding Credit

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

G. Provisions Regarding Former and Current Defaulters

74. Current defaulters are not eligible to participate in Auction 86, but former defaulters can participate so long as they are otherwise qualified and must make upfront payments that are fifty percent more than the normal upfront payment amounts.

75. On the short-form application, an applicant must certify under penalty of perjury that it, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by 47 CFR 1.2110, are not in default on any payments for Commission licenses (including down payments) and that it is not delinquent on any non-tax debt owed to any Federal agency. Each applicant must also state under penalty of perjury whether or not it, its affiliates, its controlling interests, and the affiliates of its controlling interests, have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. Prospective applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution. These statements and certifications are prerequisites to submitting an application to participate in an FCC auction.

76. Applicants are encouraged to review the Bureau's previous guidance

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

77. 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 47 CFR 1.2105 and 1.2106, with regard to current and former defaults or delinquencies.

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

H. Minor Modifications to Short-Form Applications

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

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

I. Maintaining Current Information in Short-Form Applications

81. 47 CFR 1.65 requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission 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 47 CFR 1.2105, the major amendment will not be accepted and may result in the dismissal of the short-form application.

82. After the short-form filing deadline, applicants may make only minor changes to their short-form applications. 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 e-mail at the following address: auction86@fcc.gov. The e-mail summarizing the changes must include a subject or caption referring to Auction 86 and the name of the applicant. The Bureau requests that parties format any attachments to e-mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Applicants must not submit application-specific material through ECFS. A party seeking to submit information that might reflect non-public information, such as an applicant's license selections, upfront payment amount or bidding eligibility,

should consider submitting any such information along with a request that the filing or portions of the filing be withheld from public inspection until the end of the anti-collusion period.

III. Pre-Auction Procedures

A. Auction Seminar—August 5, 2009

83. On Wednesday, August 5, 2009, the Commission will conduct a seminar for parties interested in participating in Auction 86 at FCC headquarters, located at 445 12th Street, SW., Washington, DC. The seminar will provide attendees with information about pre-auction procedures, completing short-form applications, auction conduct, the FCC Auction System, auction rules, and Broadband Radio Service 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. To register, see Attachment G of the *Auction 86 Procedures Public Notice*.

B. Short-Form Applications—Due Prior to 6 p.m. ET on August 18, 2009

84. In order to be eligible to bid in this auction, applicants must first follow the procedures set forth in Attachment C of the *Auction 86 Procedures Public Notice* to submit a short-form application (FCC Form 175) electronically via the FCC Auction System. This application must be received at the Commission prior to 6:00 p.m. ET on August 18, 2009. Late applications will not be accepted.

C. Application Processing and Minor Corrections

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

86. After the August 18, 2009, short-form filing deadline, applicants may make only minor corrections to their applications. Applicants will not be permitted to make major modifications to their applications (e.g., change their license selections, change control of the applicant, change certifying official, or change their size to claim eligibility for a higher bidding credit).

87. Applicants should be aware the Commission staff will communicate

only with an applicant's contact person or certifying official, as designated on the applicant's short-form application, unless the applicant's certifying official or contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on its behalf. Authorizations may be submitted by e-mail at the following address: auction86@fcc.gov.

D. Upfront Payments—Due September 24, 2009

88. In order to be eligible to bid in this auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing its short-form application, an applicant will have access to an electronic version of FCC Form 159 that can be printed and sent by fax to U.S. Bank in St. Louis, Missouri. All upfront payments must be made as instructed in the *Auction 86 Procedures Public Notice* and must be received in the proper account at U.S. Bank before 6 p.m. ET on September 24, 2009.

i. Making Upfront Payments by Wire Transfer

89. Wire transfer payments must be received by 6 p.m. ET on September 24, 2009. No other payment method is acceptable. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline.

90. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must fax a completed FCC Form 159 (Revised 2/03) to U.S. Bank at (314) 418-4232. On the fax cover sheet, applicants should write Wire Transfer—Auction Payment for Auction 86. In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account before the deadline. The applicant is responsible for obtaining confirmation from its financial institution that U.S. Bank has timely received its upfront payment and deposited it in the proper account.

91. 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 86 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 a sufficient upfront payment as instructed by the September 24, 2009, deadline will result in dismissal of the application and disqualification from participation in the auction

ii. FCC Form 159

92. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be faxed to U.S. Bank to accompany each upfront payment. Proper completion of FCC Form 159 is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment D of the *Auction 86 Procedures Public Notice*. An electronic pre-filled version of the FCC Form 159 is available after submitting the short-form application. Payors using the pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed electronically, but must be filed with U.S. Bank by fax.

iii. Upfront Payments and Bidding Eligibility

93. The Commission has delegated to the Bureau the authority and discretion to determine appropriate upfront payments for each auction. Upfront payments help deter frivolous or insincere bidding, and provide the Commission with a source of funds in the event that the bidder incurs liability during the auction.

94. Applicants that are former defaulters must pay upfront payments 50 percent greater than non-former defaulters. For purposes of this calculation, the applicant includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by 47 CFR 1.2110.

95. Applicants must make upfront payments sufficient to obtain bidding eligibility on the licenses on which they will bid. The Bureau proposed, in the *Auction 86 Comment Public Notice*, that the amount of the upfront payment would determine a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids. Under the Bureau's proposal, in order to bid on a particular license, a qualified bidder must have selected the license on its short-form application and must have a current eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses selected on its short-form

application, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all licenses the applicant selected on its short-form application, but only enough to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold provisionally winning bids at any given time.

96. The Bureau proposed to calculate upfront payments for Auction 86 on a license-by-license basis using the following formula based on bandwidth and license area population.

97. Several commenters addressed the proposed upfront payment amounts as well as minimum opening bids for this auction. These commenters sought a downward adjustment of the formulas used to calculate upfront payments and minimum opening bids. Commenters offered two alternatives to the upfront payment amounts and minimum opening bids proposed in the *Auction 86 Comment Public Notice*. The Commission received reply comments and an ex parte submission regarding the proposal.

98. Upon careful consideration of the comments, reply comments, and ex parte submission, as well as the history of this particular service, the Bureau has decided to exercise its discretion to adjust upfront payments. In making this change, the Bureau recognizes the concerns expressed regarding relative incumbency of the licenses. The revised upfront payments are calculated on a license-by-license basis using formulas based on bandwidth, license area population, and the encumbrance data, as follows:

Encumbrance	\$/MHz-pop
0%–20%	\$0.0125
21%–50%	0.0100
51%–80%	0.0050
above 80%	0.0025

99. The results of the formulas are subject to the Bureaus standard rounding procedures and to a minimum of \$5,000 per license, except for the licenses for BRS service areas in the Gulf of Mexico, for which the upfront payments will be \$20,000 as originally proposed. The upfront payment and bidding units for each license are set forth in Attachment A.

100. 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 that are former defaulters must calculate their upfront payment for all licenses by multiplying the number of bidding units on which they wish to be active by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

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

101. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information be supplied. Applicants can provide the information electronically during the initial short-form application filing window after the form has been submitted. Applicants are reminded that information submitted as part of an FCC Form 175 will be available to the public; for that reason, wire transfer information should not be included in an FCC Form 175. For wire transfer instructions see *Auction 86 Procedures Public Notice* at paragraph 129.

E. Auction Registration

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

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

104. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder that has not received this mailing by noon on Wednesday, October 21, 2009, 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.

105. 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 SecurID tokens.

F. Remote Electronic Bidding

106. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Only qualified bidders are permitted to bid. Each applicant should indicate its bidding preference—electronic or telephonic—on its short-form application. In either case, each authorized bidder must have its own SecurID® token, which the Commission will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. For security purposes, the SecurID® tokens, the telephonic bidding telephone number, and the Integrated Spectrum Auction System (ISAS) Bidder's Guide are only mailed to the contact person at the contact address listed on the short-form application. Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 86.

G. Mock Auction—October 23, 2009

107. All qualified bidders will be eligible to participate in a mock auction on Friday, October 23, 2009. 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

A. Auction Structure

i. Simultaneous Multiple Round Auction

108. The Bureau will auction all licenses in Auction 86 using the Commission's standard simultaneous multi-round auction format. This type of auction offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses. A bidder may bid on, and potentially win, any number of licenses. Typically, bidding remains open on all licenses until bidding stops on every license.

ii. Information Available to Bidders Before and During the Auction

109. In the *Auction 86 Comment Public Notice*, the Bureau proposed to withhold, until after the close of bidding, public release of (1) Bidders' license selections on their short-form applications (FCC Form 175), (2) the amounts of bidders' upfront payments and bidding eligibility, and (3) information that may reveal the identities of bidders placing bids and taking other bidding-related actions.

110. The Bureau adopts the limited information procedures proposed in the *Auction 86 Comment Public Notice*. Thus, after the conclusion of each round, the Bureau will disclose all relevant information about the bids placed and/or withdrawn except the identities of the bidders performing the actions and the net amounts of the bids placed or withdrawn. As in past auctions conducted with limited information procedures, the Bureau will indicate, for each license, the minimum acceptable bid amount for the next round and whether the license has a provisionally winning bid. After each round, the Bureau will also release, for each license, the number of bidders that placed a bid on the license. Furthermore, the Bureau will indicate whether any proactive waivers were submitted in each round, and the Bureau will release the stage transition percentage—the percentages of licenses (as measured in bidding units) on which there were new bids—for the round. In addition, bidders can log in to the FCC Auction System to see, after each round, whether their own bids are provisionally winning. The Bureau will provide descriptions and/or samples of publicly-available and bidder-specific (non-public) results files prior to the start of the auction.

111. *Other Issues.* Information disclosure procedures established for this auction will not interfere with the administration of or compliance with the Commission's anti-collusion rule. 47 CFR 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.

112. In Auction 86, the Commission will not disclose information regarding license selection or the amounts of bidders' upfront payments and bidding eligibility. As in the past, the Commission will disclose the other

portions of applicants' short-form applications through its online database, and certain application-based information through public notices.

113. To assist applicants in identifying other parties subject to the anti-collusion rule, the Bureau will notify separately each applicant that has filed a short-form application to participate in a pending auction whether applicants in Auction 86 have applied for licenses in any of the same geographic areas as the applicant. Specifically, after the Bureau conducts its initial review of applications to participate in Auction 86, it will send to each applicant in Auction 86 a letter that lists the other applicants that have pending short-form applications for licenses in any of the same geographic areas. The list will identify the other applicants by name but will not list their license selections. As in past auctions, additional information regarding other applicants that is needed to comply with 47 CFR 1.2105(c)—such as the identities of other applicants' controlling interests and entities with a greater than ten percent ownership interest—will be available through the publicly accessible online short-form application database.

114. When completing short-form applications, applicants should avoid any statements or disclosures that may violate the Commission's anti-collusion rule, particularly in light of the Commission's procedures regarding the availability of certain information in Auction 86. While applicants' license selection will not be disclosed until after Auction 86 closes, the Commission will disclose other portions of short-form applications through its online database and public notices. Accordingly, applicants should avoid including any information in their short-form applications that might convey information regarding license selections. For example, applicants should avoid using applicant names that refer to licenses being offered, referring to certain licenses or markets in describing bidding agreements, or including any information in attachments that may otherwise disclose applicants' license selections.

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

116. The Bureau hereby warns applicants that the direct or indirect

communication to other applicants or the public disclosure of non-public information, (e.g., bid withdrawals, proactive waivers submitted, reductions in eligibility) could violate the Commission's anonymous bidding procedures and the anti-collusion rule. To the extent an applicant believes that such a disclosure is required by law or regulation, including regulations issued by the Securities and Exchange Commission, the Bureau strongly urges that the applicant consult with the Commission before making such disclosure.

iii. Eligibility and Activity Rules

117. The Bureau will use upfront payments to determine initial eligibility for Auction 86. 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 86 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 short-form application as long as the total number of bidding units associated with those licenses does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. At a minimum, an applicant's upfront payment must cover the bidding units for at least one of the licenses it selected on its short-form application. The total upfront payment does not affect the total dollar amount a bidder may bid on any given license.

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

119. A bidder's activity level in a round is the sum of the bidding units associated with any licenses covered by new and provisionally winning bids. A bidder is considered active on a license

in the current round if it is either the provisionally winning bidder at the end of the previous bidding round and does not withdraw the provisionally winning bid in the current round, or if it submits a bid in the current round.

120. 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 86. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

iv. Auction Stages

121. In the *Auction 86 Comment Public Notice*, the Bureau proposed to conduct the auction in two stages and employ an activity rule. Under the Bureau's proposal a bidder desiring to maintain its current bidding eligibility would be required to be active on licenses representing at least 90 percent of its current bidding eligibility, during each round of Stage One, and at least 98 percent of its current bidding eligibility in Stage Two. The Commission received no comments on this proposal.

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

123. *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 90 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 ten-ninths (10/9).

124. *Stage Two*: During the second stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on 98 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 fifty-fortyninths (50/49).

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.

125. Because the foregoing procedures have proven successful in maintaining the proper pace in previous auctions, the Bureau adopts them for Auction 86.

v. Stage Transitions

126. In the *Auction 86 Comment Public Notice*, the Bureau proposed that it would advance the auction to the next stage (i.e., from Stage One to Stage Two) after considering a variety of measures of auction activity, including, but not limited to, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the increase in revenue. The Bureau further proposed that it would retain the discretion to change the activity requirements during the auction. For example, the Bureau could decide not to transition to Stage Two if it believes the auction is progressing satisfactorily under the Stage One activity requirement, or to transition to Stage Two with an activity requirement that is higher or lower than the 98 percent. The Bureau proposed to alert bidders of stage advancements by announcement during the auction. The Bureau received no comments on this issue.

127. The Bureau adopts its proposal for stage transitions. Thus, the auction will start in Stage One. The Bureau will regulate the pace of the auction by announcement. The Bureau retains the

discretion to transition the auction to Stage Two, to add an additional stage with a higher activity requirement, not to transition to Stage Two, and to transition to Stage Two with an activity requirement that is higher or lower than 98 percent. This determination will be based on a variety of measures of auction activity, including, but not limited to, the number of new bids and the percentages of licenses (as measured in bidding units) on which there are new bids.

vi. Activity Rule Waivers

128. In the *Auction 86 Comment Public Notice*, the Bureau proposed that each bidder in the auction be provided with three activity rule waivers. The Bureau received no comments on this issue.

129. Therefore, the Bureau adopts its proposal to provide bidders with three activity rule waivers.

vii. Auction Stopping Rules

130. For Auction 86, 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.

131. The Bureau also sought comment on alternative versions of the simultaneous stopping rule for Auction 86:

Option 1. The auction would close for all licenses after the first round in which no bidder applies a 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.

Option 2. The auction would end after a specified number of additional rounds. If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) and the auction will close.

Option 3. The auction would remain open even if no bidder places any new bids, applies a waiver, or withdraws any provisionally winning bids. In this event, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

132. The Bureau proposed to exercise these options only in circumstances such as where the auction is proceeding unusually slowly or quickly, where there is minimal overall bidding activity, or where it appears likely that the auction will not close within a reasonable period of time or will close prematurely. The Bureau noted that before exercising these options, it is likely to attempt to change the pace of the auction by, for example, changing the number of bidding rounds per day and/or changing minimum acceptable bids. The Bureau proposed to retain the discretion to exercise any of these options with or without prior announcement during the auction. The Bureau received no comment on these proposals, and the Bureau adopts them for Auction 86.

viii. Auction Delay, Suspension, or Cancellation

133. In the *Auction 86 Comment Public Notice*, the Bureau proposed that, by public notice or by announcement during the auction, it may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. The Bureau received no comment on this issue. The Bureau adopts its proposed rules regarding auction delay, suspension or cancellation.

B. Bidding Procedures

i. Round Structure

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

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

ii. Reserve Price and Minimum Opening Bids

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

137. In the *Auction 86 Comment Public Notice*, the Bureau did not propose to establish a separate reserve price for the licenses to be offered in Auction 86. The Bureau, however, did propose to establish minimum opening bids for each license, reasoning that a minimum opening bid, which has been used on other auctions, is an effective bidding tool for accelerating the competitive bidding process. Specifically, for Auction 86, the Bureau proposed to calculate minimum opening bid amounts on a license-by-license basis using a formula based on bandwidth and license area population as follows:

$\$0.01 * \text{MHz} * \text{BTA population with a minimum of } \$20,000 \text{ per license}$

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

139. Several commenters sought a downward adjustment in the formula for calculating minimum opening bids (as well as the formula for upfront payments). Commenters offer two alternatives to the upfront payment amounts and minimum opening bids proposed in the *Auction 86 Comment Public Notice*.

140. In the *Auction 86 Comment Public Notice*, the Bureau noted the presence of pre-existing BRS site-based incumbent licenses within some of the geographic areas available in Auction 86. In its discussion of the proposed minimum opening bid amounts, the Bureau noted, it had not attempted to adjust minimum opening bid amounts for licenses based on precise levels of incumbency within particular geographic areas, and have instead proposed a formula intended to reflect overall incumbency levels within the BRS service areas being offered.

141. Upon careful consideration of the comments, reply comments, and *ex parte* submission, as well as the history of this particular service, the Bureau has decided to exercise its discretion to adjust minimum opening bids. In

making this change, the Bureau recognizes the concerns expressed regarding relative incumbency of the licenses. The revised minimum opening bids are calculated on a license-by-license basis using formulas based on bandwidth, license area population, and the encumbrance data submitted in the *ex parte* filing as follows:

Encumbrance	\$/MHz-pop
0%–20%	0.0125
21%–50%	0.0100
51%–80%	0.0050
above 80%	0.0025

142. The results of the formulas are subject to the Bureau's standard rounding procedures and to a minimum of \$5,000 per license, except for the licenses for BRS service areas in the Gulf of Mexico, for which the minimum opening bids will be \$20,000 as originally proposed. The specific minimum opening bid amounts for each license available in Auction 86 calculated pursuant to the procedure described above are set forth in Attachment A of the *Auction 86 Procedures Public Notice*.

iii. Bid Amounts

143. In the *Auction 86 Comment Public Notice*, the Bureau proposed that in each round, eligible bidders be able to place a bid on a given license using one or more pre-defined bid amounts. Under the proposal, the FCC Auction System interface will list the acceptable bid amounts for each license. The Commission received no comment on this issue. Based on the Commission's experience in prior auctions, we adopt the proposals for Auction 86.

a. Minimum Acceptable Bids

144. Under the Bureau's proposed procedures, the first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a license will be equal to its minimum opening bid amount until there is a provisionally winning bid on the license. After there is a provisionally winning bid for a license, the minimum acceptable bid 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. 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.

145. The percentage of the provisionally winning bid used to establish the minimum acceptable bid amount is calculated at the end of each round, based on an activity index. The activity index is a weighted average of (a) the number of bidders placing a bid on the license, and (b) the activity index from the prior round. Specifically, the activity index is equal to a weighting factor times the number of bidders placing a bid 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 maximum. The additional percentage is then multiplied by the provisionally winning bid amount to obtain the minimum acceptable bid for the next round.

146. The Bureau proposed initially to set the weighting factor at 0.5, the minimum percentage (floor) at 0.1 (10%), and the maximum percentage (ceiling) at 0.3 (30%). At these initial settings, the minimum acceptable bid for a license will generally be between ten percent and thirty percent higher than the provisionally winning bid, depending upon the bidding activity for the license.

b. Additional Bid Amounts

147. Any additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage—more specifically, by multiplying the minimum acceptable bid by one plus successively higher multiples of the bid increment percentage. If, for example, the bid increment percentage is five percent, the calculation of the first additional acceptable bid amount is (minimum acceptable bid amount) * (1 + 0.05), or (minimum acceptable bid amount) * 1.05; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, or (minimum acceptable bid amount) * 1.1, etc. The Bureau will round the results of these calculations and the minimum acceptable bid calculations using the Bureau's standard rounding procedures.

148. For Auction 86, the Bureau proposed to set the bid increment percentage at 0.05, so that any additional bid amounts would increase by approximately 5 percent of the minimum acceptable bid. The Bureau received no comments on this proposal. Therefore, the Bureau adopts its proposal to begin the auction with a bid increment percentage of 0.05.

149. The Bureau also sought comment on whether we should start Auction 86 with eight additional bid amounts (for a total of nine bid amounts) or with fewer or no additional bid amounts per license. The Bureau received no comments on this proposal. The Bureau adopts its proposal, and Auction 86 will begin with eight additional bid amounts per license.

150. The Bureau also sought comment on circumstances under which the Bureau should cap (a) the amount by which a minimum acceptable bid for a license may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. No commenters addressed this question.

151. The Bureau will start the auction without a cap on the dollar amount by which minimum acceptable bids and additional bid amounts may increase. The Bureau retains the discretion to impose a cap on bid amounts.

152. The Bureau retains the discretion to change the minimum acceptable bid amounts, the additional bid amounts, the cap on bid amounts, the number of acceptable bid amounts, and the parameters of the formulas used to calculate minimum acceptable bid amounts and additional bid amounts if it determines that circumstances so dictate. Further, the Bureau retains the discretion to do so on a license-by-license basis.

iv. Provisionally Winning Bids

153. 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.

154. In the *Auction 86 Comment Public Notice*, the Bureau proposed to use a random number generator to select a single provisionally winning bid in the event of identical high bid amounts being submitted on a license in a given round (i.e., tied bids). No comments were received on this proposal. Hence, the Bureau adopts the proposal.

v. Bidding

155. 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 86. Please note that telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of ten minutes.

156. 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.

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

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

159. 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.

160. During a round, an eligible bidder may submit bids for as many licenses as it wishes (providing that it is eligible to bid), remove bids placed in the current bidding round, withdraw provisionally winning bids from previous rounds, or permanently reduce eligibility. If a bidder submits multiple bids for the same license in the same round—multiple bids on the exact same license, 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.

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

bid from a previous round, even if the bid was mistakenly or erroneously made, are subject to bid withdrawal payments.

vi. Bid Removal and Bid Withdrawal

162. In the *Auction 86 Comment Public Notice*, the Commission proposed bid removal and bid withdrawal procedures. The Bureau sought comment on permitting a bidder to remove a bid before the close of the round in which the bid was placed. With respect to bid withdrawals, the Commission proposed limiting each bidder to withdrawals of provisionally winning bids on licenses in no more than one round during the course of the auction. The round in which withdrawals are used would be at each bidder's discretion.

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

164. *Bid Removal*. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the remove bids function in the FCC Auction System, a bidder may effectively unsubmit any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. 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.

165. *Bid Withdrawal*. Once a round closes, a bidder may no longer remove a bid. However, in a later round, a bidder may withdraw provisionally winning bids from previous rounds for licenses using the withdraw bids function in the FCC Auction System. A provisionally winning bidder that withdraws its provisionally winning bid from a previous round during the auction is subject to the bid withdrawal payments specified in Section 1.2104(g). Once a withdrawal is submitted during a round, that withdrawal cannot be unsubmitted even if the round has not yet ended.

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

167. These procedures will permit bidder flexibility during the auction, and therefore the Bureau adopts them for Auction 86.

168. *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 winning bid in the same or subsequent auction(s). If there are multiple bid withdrawals on a single license and no subsequent higher bid is placed and/or the license is not won in the same auction, the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any subsequent intervening withdrawn bid, in either the same or subsequent auction(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any final withdrawal payment if there is a subsequent higher bid in the same or subsequent auction(s).

169. 47 CFR 1.2104(g)(1) of the rules sets forth the payment obligations of a bidder that withdraws a provisionally winning bid on a license during the course of an auction, and provides for the assessment of interim bid withdrawal payments. In the *Auction 86 Comment Public Notice*, the Bureau proposed to establish the percentage at 15% for Auction 86 and sought comment on the proposal.

170. The Bureau received no comments on this issue and adopts its proposal. The Commission will assess an interim withdrawal payment equal to 15% of the amount of the withdrawn bids. The 15% 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.

vii. Round Results

171. Limited information about the results of a round will be made public after the conclusion of the round. Specifically, after a round closes, the Bureau will make available for each license, its current provisionally winning bid amount, the minimum acceptable bid amount for the following round, the amounts of all bids placed on the license during the round, and

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

viii. Auction Announcements

172. 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

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

A. Down Payments

174. 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 86 to 20 percent of the net amount of its winning bids (gross bids less any applicable entrepreneur, small business or very small business bidding credits).

B. Final Payments

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

C. Long-Form Application (FCC Form 601)

176. 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 the license(s) they won through Auction 86. Winning bidders claiming eligibility for a small business, very small business, or entrepreneur bidding credit must demonstrate their eligibility for the bidding credit. Further filing instructions will be provided to winning bidders in the auction closing notice.

177. Winning bidders organized as bidding consortia must comply with the long-form application procedures established in the *CSEA/Part 1 Report*

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

D. Ownership Disclosure Information Report (FCC Form 602)

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

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

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

E. Tribal Lands Bidding Credit

181. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally recognized tribal lands that are unserved by any telecommunications carrier or that have a wireline penetration rate equal to or below 85 percent is eligible to receive a tribal lands bidding credit as set forth in 47 CFR 1.2107 and 1.2110(f). A tribal lands bidding credit is in addition to, and separate from, any other bidding

credit for which a winning bidder may qualify.

182. 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 47 CFR 1.2110(f)(3)(vii).

F. Default and Disqualification

183. Any winning bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). The payments include both a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

184. 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 86 Comment Public Notice*, the Bureau proposed to set the additional default payment for this auction at fifteen percent of the applicable bid. The Bureau received no comments on this proposal and therefore adopts the proposal.

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

that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant.

G. Refund of Remaining Upfront Payment Balance

186. After the auction, applicants that are not winning bidders or are winning bidders whose upfront payment exceeded the total net amount of their winning bids may be entitled to a refund of some or all of their upfront payment. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payor submits written authorization instructing otherwise. Bidders should not request a refund of their upfront payments before the Commission releases a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, long-form applications, and final payments.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. E9-18198 Filed 7-29-09; 8:45 am]

BILLING CODE 6712-01-P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090-0044]

Public Buildings Service; Submission for OMB Review; GSA Form 3453, Application/Permit for Use of Space in Public Buildings and Grounds

AGENCY: Public Buildings Service, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding GSA Form 3453, Application/Permit for Use of Space in Public Buildings and Grounds. A request for public comments was published at 74 FR 19094, April 27, 2009. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the

quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: August 31, 2009.

FOR FURTHER INFORMATION CONTACT:

Frank Giblin, Public Buildings Service, at telephone (202) 501-1856, or via e-mail to frank.giblin@gsa.gov.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (VPR), General Services Administration, 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 3090-0044, GSA Form 3453, Application/Permit for Use of Space in Public Buildings and Grounds, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The general public uses GSA Form 3453, Application/Permit for Use of Space in Public Buildings and Grounds, to request the use of public space in Federal buildings and on Federal grounds for cultural, educational, or recreational activities. A copy, sample, or description of any material or item proposed for distribution or display must also accompany this request.

B. Annual Reporting Burden

Respondents: 8,000.

Responses per Respondent: 1.

Hours per Response: 0.05.

Total Burden Hours: 400.

Obtaining Copies of Proposals:

Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 3090-0044, GSA Form 3453, Application/Permit for Use of Space in Public Buildings and Grounds, in all correspondence.

Dated: July 21, 2009.

Casey Coleman,

Chief Information Officer.

[FR Doc. E9-18129 Filed 7-29-09; 8:45 am]

BILLING CODE 6820-34-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2009-D-0324]

International Conference on Harmonisation; Draft Guidance on E16 Genomic Biomarkers Related to Drug Response: Context, Structure, and Format of Qualification Submissions; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled "E16 Genomic Biomarkers Related to Drug Response: Context, Structure, and Format of Qualification Submissions." The draft guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guidance describes recommendations regarding context, structure, and format of regulatory submissions for qualification of genomic biomarkers. The draft guidance is intended to foster consistency of applications across regions and facilitate joint discussions with and among regulatory authorities.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by September 28, 2009.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993-0002; or the Office of Communication, Outreach and Development (HFM-40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448. The guidance may also be obtained by mail by calling CBER at 1-800-835-4709 or 301-827-1800. Send two self-addressed adhesive labels to assist the office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://>