

General information about GNEB can be found on its Web site at [www.epa.gov/ofacmo/gneb](http://www.epa.gov/ofacmo/gneb).

If you wish to make oral comments or submit written comments to the Board, please contact Ann-Marie Gantner at least five days prior to the meeting. Written comments should be submitted at <http://www.regulations.gov> under Docket ID: EPA-HQ-OA-2013-0124.

**Meeting Access:** For information on access or services for individuals with disabilities, please contact Ann-Marie Gantner at (202) 564-4330 or email at [gantner.ann-marie@epa.gov](mailto:gantner.ann-marie@epa.gov). To request accommodation of a disability, please contact Ann-Marie Gantner at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: October 23, 2013.

**Ann-Marie Gantner,**

*Acting Designated Federal Officer.*

[FR Doc. 2013-26342 Filed 11-1-13; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

### Notice of Renewal of FASAB Charter

**AGENCY:** Federal Accounting Standards Advisory Board.

**ACTION:** Notice.

**Board Action:** Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92-463), as amended, and the FASAB Rules Of Procedure, as amended in October 2010, notice is hereby given that under the authority and in furtherance of the objectives of 31 U.S.C. 3511(d), the Secretary of the Treasury, the Director of OMB, and the Comptroller General (the Sponsors) have agreed to continue an advisory committee to consider and recommend accounting standards and principles for the federal government.

**For Further Information, or to Obtain a Copy of the Charter, Contact:** Ms. Wendy M. Payne, Executive Director, 441 G St. NW., Mail Stop 6H20, Washington, DC 20548, or call (202) 512-7350.

**Authority:** Federal Advisory Committee Act, Pub. L. 92-463.

Dated: October 30, 2013.

**Charles Jackson,**

*Federal Register Liaison Officer.*

[FR Doc. 2013-26325 Filed 11-1-13; 8:45 am]

**BILLING CODE 1610-02-P**

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collection Approved by the Office of Management and Budget (OMB)

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid control number. Comments concerning the accuracy of the burden estimates and any suggestions for reducing the burden should be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

#### FOR FURTHER INFORMATION CONTACT:

Cathy Williams, Office of the Managing Director, at (202) 418-2918, or email: [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

#### SUPPLEMENTARY INFORMATION:

**OMB Control Number:** 3060-1190.

**OMB Approval Date:** August 21, 2013.

**OMB Expiration Date:** August 31, 2016.

**Title:** Section 87.287(b), Aeronautical Advisory Stations (Unicom)s—"Squitters."

**Form No.:** N/A.

**Respondents:** Business or other for-profit entities, not for profit institutions and state, local or tribal government.

**Number of Respondents and Responses:** 200 respondents; 200 responses.

**Estimated Time per Response:** 1 hour.

**Frequency of Response:** On-occasion reporting requirement and third party disclosure requirement.

**Total Annual Burden:** 200 hours.

**Annual Cost Burden:** \$28,750.

**Obligation to Respond:** Require to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), and 309 of the Communications Act of 1934, as amended.

**Privacy Act Impact Assessment:** No impact(s).

**Nature and Extent of Confidentiality:** There is no need for confidentiality with this collection of information.

**Needs and Uses:** In this proceeding, the Commission amends its Part 87

rules to authorize new ground station technologies that will promote aviation safety, and allow use of frequency 1090 MHz by aeronautical utility mobile stations for airport surface detection equipment, commonly referred to as vehicle "squitters," to help reduce collisions between aircraft and airport ground vehicles.

Section 87.287(b) requires that before submitting an application for an aircraft data link land test station, an applicant must obtain written permission from the licensee of the aeronautical enroute stations serving the areas in which the aircraft data link land test station will operate on a co-channel basis. The Commission may request an applicant to provide documentation as to this fact.

The written permissions will aid the Commission in ensuring that licensees are complying with its policies and rules, while allowing the owners of antenna structures and other aviation obstacles to use Audio Visual Warning Systems (AVWS) stations, thereby helping aircraft avoid potential collisions and enhancing aviation safety, without causing harmful interference to other communications.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2013-26362 Filed 11-1-13; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 13-178; DA 13-1885; DA 13-2033]

### Auction of H Block Licenses in the 1915-1920 MHz and 1995-2000 MHz Bands Rescheduled for January 22 2014; Notice of Filing Requirements, Reserve Price, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 96; Notice of Changes to Auction 96 Schedule Following Resumption of Normal Commission Operations

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the procedures, reserve price, and minimum opening bids for the upcoming auction of H Block licenses (Auction 96) and provides the revised schedule for Auction 96. This document is intended to familiarize prospective applicants with the procedures and other requirements for participation in the auction.

**DATES:** Applications to participate in Auction 96 must be filed prior to 6:00 p.m. Eastern Time (ET) on November 15, 2013. Bidding for H Block licenses in Auction 96 is scheduled to begin on January 22, 2014.

**FOR FURTHER INFORMATION CONTACT:**

*Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* For legal and general auction questions: Valerie Barrish (attorney) at (202) 418-0660; *Broadband Division:* For licensing and service rule questions: Matthew Pearl (attorney) or Janet Young (engineer) at (202) 418-2487. To request materials in accessible formats (Braille, large print, electronic files, or audio format) for people with disabilities, send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction 96 Procedures Public Notice* released on September 13, 2013, and the *Auction 96 Rescheduling Public Notice* released on October 21, 2013. The complete text of the *Auction 96 Procedures Public Notice* and its attachments and the *Auction 96 Rescheduling Public Notice*, as well as related Commission documents, is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8:00 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 96 Procedures Public Notice*, the *Auction 96 Rescheduling Public Notice*, and related Commission documents also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW., Room CY-B402, Washington, DC 20554, telephone 202-488-5300, fax 202-488-5563, or you may contact BCPI at its Web site: <http://www.BCPIWEB.com>. When ordering documents from BCPI, please provide the appropriate FCC document number, for example, DA 13-1885 or DA-2033. The *Auction 96 Procedures Public Notice*, the *Auction 96 Rescheduling Public Notice*, and related documents also are available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/96/>, or by using the search function for AU Docket No. 13-178 on the Commission's Electronic Comment Filing System (ECFS) Web page at <http://www.fcc.gov/cgb/ecfs/>.

## I. General Information

### A. Introduction

1. The Wireless Telecommunications Bureau (Bureau) establishes the procedures, reserve price, and minimum opening bid amounts for the upcoming auction of licenses in the 1915-1920 MHz (Lower H Block) and 1995-2000 MHz (Upper H Block) bands (collectively, the H Block). This auction, which is designated as Auction 96, is scheduled to start on January 22, 2014. The *Auction 96 Procedures Public Notice* provides an overview of the procedures, terms, and conditions governing Auction 96 and the post-auction application and payment processes. The *Auction 96 Rescheduling Public Notice* announces the rescheduled date for the start of Auction 96, and revises the schedule of pre-auction deadlines for Auction 96 announced in the *Auction 96 Procedures Public Notice*. All other procedures, terms and requirements as set out in the *Auction 96 Procedures Public Notice* remain unchanged.

2. The Federal Communications Commission (Commission or FCC) is offering the licenses in Auction 96 pursuant to the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act). The Spectrum Act requires, among other things, that the Commission allocate for commercial use and license spectrum in the H Block using a system of competitive bidding no later than February 23, 2015.

3. On July 15, 2013, the Bureau released a public notice seeking comment on competitive bidding procedures to be used in Auction 96. Twelve comments and ten reply comments were submitted in response to the *Auction 96 Comment Public Notice*, 78 FR 45524, July 29, 2013.

### B. Description of Licenses To Be Offered in Auction 96

4. In the *H Block Report and Order*, 78 FR 50213, August 16, 2013, the Commission concluded that licenses for H Block spectrum should be awarded on an Economic Areas (EA) basis in all areas, including the Gulf of Mexico. Auction 96 will offer one license for each of the 176 EAs. The H Block frequencies will be licensed as paired 5 megahertz blocks, with each license having a total bandwidth of 10 megahertz; 1915-1920 MHz for mobile and low power fixed (i.e., uplink) operations and 1995-2000 MHz for base station and fixed (i.e., downlink) operations. A complete list of the licenses offered in Auction 96 is available in Attachment A to the *Auction 96 Procedures Public Notice*.

### C. Rules and Disclaimers

#### i. Relevant Authority

5. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules, including Commission decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees. Prospective bidders should also familiarize themselves with the Commission's rules relating to the H Block frequencies, including cost-sharing obligations for H Block licensees, and rules relating to applications, environment, practice and procedure. All bidders must also be thoroughly familiar with the procedures, terms and conditions contained in the *Auction 96 Procedures Public Notice*, the revised schedule for Auction 96 as announced in the *Auction 96 Rescheduling Public Notice*, and any future public notices that may be issued in this proceeding.

6. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most auctions-related Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at <http://wireless.fcc.gov/auctions>.

#### ii. Prohibited Communications and Compliance With Antitrust Laws

7. To ensure the competitiveness of the auction process, 47 CFR 1.2105(c) prohibits auction applicants for licenses in any of the same or overlapping 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. 47 CFR 1.2105(c)'s prohibition on certain communications will apply to any applicants that submit short-form applications seeking to participate in a Commission auction for licenses in the same or overlapping geographic license area. Thus, 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), applicants for any of the same or overlapping geographic license areas must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy. In some instances, this prohibition extends to communications regarding the post-auction market structure. This prohibition applies to all applicants that submit short-form applications regardless of whether such applicants ultimately become qualified bidders or actually bid.

9. Applicants are also reminded that, for purposes of this prohibition on certain communications, 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. For example, where an individual served as an officer for two or more applicants, the Bureau has found that the bids and bidding strategies of one applicant are conveyed to the other applicant, and, absent a disclosed bidding agreement, an apparent violation of 47 CFR 1.2105(c) occurs.

10. Individuals and entities subject to 47 CFR 1.2105(c) should take special care in circumstances where their employees may receive information directly or indirectly relating to any competing applicant’s bids or bidding strategies. The Bureau has not addressed a situation where non-principals (i.e., those who are not officers or directors, and thus not considered to be the applicant) receive information regarding a competing applicant’s bids or bidding strategies and whether that information should be presumed to be communicated to the applicant.

11. An exception to the prohibition on certain communications allows non-controlling interest holders to obtain interests in more than one competing applicant without violating 47 CFR 1.2105(c) provided specified conditions are met (including a certification that no prohibited communications have occurred or will occur), but that exception does not extend to controlling interest holders.

12. Auction 96 applicants selecting licenses for any of the same or overlapping geographic license areas are

encouraged not to use the same individual as an authorized bidder. A violation of 47 CFR 1.2105(c) could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between such applicants. Similarly, if the authorized bidders are different individuals employed by the same organization (e.g., law firm, engineering firm or consulting firm), a violation likewise 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 the applicant and its bidders will comply with 47 CFR 1.2105(c).

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

13. 47 CFR 1.2105(c)’s prohibition on certain communications begins at the short-form application filing deadline and ends at the down payment deadline after the auction closes, which will be announced in a future public notice.

#### c. Prohibited Communications

14. Applicants must not communicate directly or indirectly about bids or bidding strategy to other applicants in auction 96. 47 CFR 1.2105(c) prohibits not only communication about an applicant’s own bids or bidding strategy, it also prohibits communication of another applicant’s bids or bidding strategy. While 47 CFR 1.2105(c) does not prohibit non-auction-related business negotiations among auction applicants, each applicant must remain vigilant so as not to directly or indirectly communicate information that affects, or could affect, bids, bidding strategy, or the negotiation of settlement agreements.

15. Applicants are cautioned that the Commission remains vigilant about prohibited communications taking place in other situations. For example, the Commission has warned that prohibited “communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly.” Moreover, the Commission has found a violation of 47 CFR 1.2105(c) where an applicant 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.” Applicants also should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become conduits for the communication of prohibited bidding information. For example, where limited information disclosure procedures are in place, as is the case for Auction 96, an applicant’s statement to the press that it has lost bidding eligibility and intends to stop bidding in the auction could give rise to a finding of a 47 CFR 1.2105(c) violation. Similarly, an applicant’s public statement of intent not to participate in Auction 96 bidding could also violate the rule.

16. Applicants are also hereby placed on notice that public disclosure of information relating to bidder interests and bidder identities that has not yet been made public by the Commission at the time of disclosure may violate the provisions of 47 CFR 1.2105(c) that prohibit certain communications. This is so even though similar types of information were revealed prior to and during other Commission auctions subject to different information procedures.

17. In addition, when completing short-form applications, applicants should avoid any statements or disclosures that may violate 47 CFR 1.2105(c), particularly in light of the limited information procedures in effect for Auction 96. 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

18. The Commission’s rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form applications. Applicants must identify in their short-form applications all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the licenses being

auctioned, including any agreements relating to post-auction market structure.

19. If parties agree in principle on all material terms prior to the short-form application filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application 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 negotiation, discussion or communication with any other applicants after the short-form application filing deadline.

20. 47 CFR 1.2105(c) does not prohibit non-auction-related business negotiations among auction applicants. However, certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies. Such subject areas include, but are not limited to, issues such as management, sales, local marketing agreements, and other transactional agreements.

e. 47 CFR 1.2105(c) Certification

21. By electronically submitting a short-form application, each applicant in Auction 96 certifies its compliance with 47 CFR 1.2105(c). In particular, an applicant must certify under penalty of perjury it has 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 the applicant's bids, bidding strategies, or the particular licenses on which it will or will not bid. However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted. The Commission has stated that it "intend[s] to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring." Any applicant found to have violated 47 CFR 1.2105(c) may be subject to sanctions.

f. Duty To Report Prohibited Communications

22. 47 CFR 1.2105(c)(6) provides that any applicant that makes or receives a communication that appears to violate 47 CFR 1.2105(c) must report such communication in writing to the Commission immediately, and in no

case later than five business days after the communication occurs. The Commission has clarified that each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.

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 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. An applicant is therefore required by 47 CFR 1.65 to report to the Commission any communication the applicant has made to or received from another applicant after the short-form application filing deadline that affects or has the potential to affect bids or bidding strategy, unless such communication is made to or received from a party to an agreement identified under 47 CFR 1.2105(a)(2)(viii).

24. 47 CFR 1.65(a) and 1.2105(c) requires each applicant in competitive bidding proceedings to furnish additional or corrected information within five days of a significant occurrence, or to amend its short-form application no more than five days after the applicant becomes aware of the need for amendment. These rules are intended to facilitate the auction process by making the information available promptly to all participants and to enable the Bureau to act expeditiously on those changes when such action is necessary.

g. Procedure for Reporting Prohibited Communications

25. A party reporting any communication pursuant to 47 CFR 1.65, 1.2105(a)(2), or 1.2105(c)(6) must take care to ensure that any report of a prohibited communication does not itself give rise to a violation of 47 CFR 1.2105(c). For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection.

26. 47 CFR 1.2105(c) requires parties to file only a single report concerning a prohibited communication and to file that report with Commission personnel expressly charged with administering the Commission's auctions. This rule is

designed to minimize the risk of inadvertent dissemination of information in such reports. Any reports required by 47 CFR 1.2105(c) must be filed consistent with the instructions set forth in the *Auction 96 Procedures Public Notice*. For Auction 96, such reports must be filed with Margaret W. Wiener, the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available. Any such report should be submitted by email to Ms. Wiener at the following email address: [auction96@fcc.gov](mailto:auction96@fcc.gov). If you choose instead to submit a report in hard copy, any such report must be delivered only to: Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street SW., Room 6423, Washington, DC 20554.

27. A party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by following the procedures specified in 47 CFR 0.459. Such parties also are encouraged to coordinate with the Auctions and Spectrum Access Division staff about the procedures for submitting such reports. The *Auction 96 Procedures Public Notice* provides additional guidance on procedures for submitting application-related information.

h. Winning Bidders Must Disclose Terms of Agreements

28. Each applicant that is a winning bidder will be required to disclose in its long-form applications the specific terms, conditions, and parties involved in any agreement it has entered into. This applies to any bidding consortia, joint venture, partnership, or agreement, understanding, or other arrangement entered into relating to the competitive bidding process, including any agreement relating to the post-auction market structure. Failure to comply with the Commission's rules can result in enforcement action.

i. Additional Information Concerning Rule Prohibiting Certain Communications

29. A summary listing of documents issued by the Commission and the Bureau addressing the application of 47 CFR 1.2105(c) may be found in Attachment F to the *Auction 96 Procedures Public Notice*. These documents are available on the Commission's auction Web page at [http://wireless.fcc.gov/auctions/prohibited\\_communications](http://wireless.fcc.gov/auctions/prohibited_communications).

## j. Antitrust Laws

30. Regardless of compliance with the Commission's rules, applicants remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace.

Compliance with the disclosure requirements of 47 CFR 1.2105(c) will not insulate a party from enforcement of the antitrust laws. For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submitted a short-form application. The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws: for example, actual or potential competitors may not agree to divide territories in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another market for the other. Similarly, the Bureau previously reminded potential applicants and others that "[e]ven where the applicant discloses parties with whom it has reached an agreement on the short-form application, thereby permitting discussions with those parties, the applicant is nevertheless subject to existing antitrust laws."

31. 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.

## iii. Cost-Sharing Obligations

32. As noted in the *H Block Report and Order*, the spectrum in the Lower H Block and the Upper H Block is subject to cost-sharing requirements related to the past clearing and relocation of incumbent users from these bands. Consistent with its long-standing policy that cost-sharing obligations for both the Lower H Block and the Upper H Block be apportioned on a *pro rata* basis against the relocation costs attributable to the particular band, the Commission adopted cost-sharing rules in the *H Block Report and Order* that require H Block licensees to pay a *pro rata* share of expenses previously incurred by UTAM, Inc. (UTAM) and by

Sprint Nextel, Inc. (Sprint) in clearing incumbents from the Lower H Block and the Upper H Block, respectively.

33. Under the cost sharing formula adopted in the *H Block Report and Order*, the reimbursement amount owed (RN) to UTAM with respect to the 1915-1920 MHz band will be determined by dividing the gross winning bid (GWB) for an H Block license by the sum of the gross winning bids for all H Block licenses won in Auction 96 and then multiplying that result by \$12,629,857—the total amount owed to UTAM for clearing the Lower H Block. The cost-sharing formula for the Lower H Block is as follows:  $RN = (EA \text{ GWB} / \text{Sum of GWBs}) \times \$12,629,857$ .

34. The *H Block Report and Order* adopted the same cost-sharing formula for the Upper H Block (1995-2000 MHz band) related to Sprint's clearing costs of \$94,875,516:  $RN = (EA \text{ GWB} / \text{Sum of GWBs}) \times \$94,875,516$ .

35. Winning bidders are required to pay UTAM and Sprint, as applicable, the reimbursement amounts owed within thirty days after the grant of the winning bidders' long-form license applications.

36. The Commission also adopted a contingency plan in the *H Block Report and Order* that will be triggered in the unlikely event that licenses won in this auction cover less than forty percent of the U.S. population. If such an event occurs, winning bidders—in this auction and in subsequent H Block auctions—will be required to timely pay UTAM and Sprint, respectively, their *pro rata* share calculated by dividing the population of the individual EA by the total U.S. population and then multiplying this quotient by \$12,629,857 for UTAM and by \$94,875,516 for Sprint.

37. The cost-sharing rules and contingency plan adopted in the *H Block Report and Order* are designed to ensure the UTAM and Sprint receive full reimbursement after this auction even if some of the licenses are not sold. The rules accomplish this by apportioning the reimbursement costs associated with any unsold H Block licenses among the winning bidders, except in cases where the contingency plan is triggered or a successful bidder's long-form application is not filed or granted. If any of the licenses won in this auction are not awarded, the license at issue will be deemed to have triggered a reimbursement obligation that will be paid by the licensee acquiring the license in a subsequent auction.

## iv. International Coordination

38. Potential bidders seeking licenses for geographic areas adjacent to the Canadian and Mexican border should be aware that the use of some or all of the H Block frequencies they acquire in the auction is subject to international agreements with Canada and Mexico. As the Commission noted in the *H Block Report and Order*, because of its shared borders with Canada and Mexico, the Commission routinely works in conjunction with the United States Department of State and Canadian and Mexican government officials to ensure the efficient use of the spectrum as well as interference-free operations in the border areas. Until such time as any adjusted agreements, as needed, between the United States, Mexico and/or Canada can be agreed to, operations in the H Block frequency bands must not cause harmful interference across the border, consistent with the terms of the agreements currently in force.

## v. Quiet Zones

39. H Block 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.

## vi. Due Diligence

40. The Bureau reminds each potential bidder that it is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the licenses that it is seeking in this auction. Each bidder is responsible for assuring that, if it wins a license, it will be able to build and operate facilities in accordance with the Commission's rules. 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 Commission licensee, subject to certain conditions and regulations, and that the Commission's statutory authority, under the Communications Act, to add, modify and eliminate rules governing spectrum use, as the public interest warrants, applies equally to all licenses, whether acquired through the competitive bidding process or otherwise. In addition, a Commission 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.

41. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. In particular, the Bureau strongly encourages each potential bidder to review all Commission orders establishing rules and policies for the H Block bands, including cost-sharing obligations for H Block licensees. Additionally, each potential bidder should perform technical analyses or refresh their previous analyses to assure itself that, should it become a winning bidder for any Auction 96 license, it will be able to build and operate facilities that will fully comply with all applicable technical and regulatory requirements. The Bureau strongly encourages each applicant to inspect any prospective transmitter sites located in, or near, the service area for which it plans to bid, confirm the availability of such sites, and to familiarize itself with the Commission's rules regarding the National Environmental Policy Act.

42. The Bureau strongly encourages each applicant to conduct its own research prior to Auction 96 in order to determine the existence of pending administrative or judicial proceedings, including pending allocation rulemaking proceedings, that might affect its decision to participate in the auction. The Bureau strongly encourages each participant in Auction 96 to continue such research throughout the auction. The due diligence considerations mentioned in the *Auction 96 Procedures Public Notice* do not comprise an exhaustive list of steps that should be undertaken prior to participating in this auction. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon specific facts and circumstances related to its interests.

43. The Bureau also reminds each applicant that pending and future judicial proceedings, as well as pending and future proceedings before the Commission—including applications, applications for modification, rulemaking proceedings, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal objections, and applications for review—may relate to particular applicants or the licenses available in Auction 96 (or the terms and conditions thereof, including all applicable Commission rules and regulations). Each prospective applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on licenses available in this auction.

44. 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 the licenses available in Auction 96. Each potential bidder is responsible for undertaking research to ensure that any licenses won in this auction will be suitable for its business plans and needs. Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

vii. Use of Integrated Spectrum Auction System

45. Bidders will be able to participate in Auction 96 over the Internet using the Commission's web-based 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.

viii. 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. These environmental rules require, among other things, that the licensee consult with expert agencies having environmental responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the U.S. Army Corps of Engineers, and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). In assessing the effect of facility construction on historic properties, the licensee must follow the provisions of the FCC's Nationwide Programmatic Agreement Regarding the Section 106

National Historic Preservation Act Review Process. The licensee must prepare environmental assessments for any facility that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species, or designated critical habitats, historical or archaeological sites, Native American religious sites, floodplains, and surface features. In addition, the licensee must prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

D. Auction Specifics

i. Bidding Methodology

47. The bidding methodology for Auction 96 will be a simultaneous multiple round format. The Commission will conduct this auction over the Internet using the FCC Auction System. Qualified bidders are permitted to bid electronically via the Internet or by telephone using the telephonic bidding option. All telephone calls are recorded.

ii. Pre-Auction Dates and Deadlines

48. The following dates and deadlines, as announced in the *Auction 96 Rescheduling Public Notice*, apply: (1) Auction tutorial available (via Internet) by November 4, 2013; (2) short-form application (FCC Form 175) filing window opens on November 4, 2013, at 12:00 noon ET; (3) short-form application (FCC Form 175) filing window closes on November 15, 2013, at 6:00 p.m. ET; (4) upfront payments (via wire transfer) due on December 18, 2013 at 6:00 p.m. ET; (5) a mock auction will be held on January 17, 2014; and (6) Auction 96 will begin on January 22, 2014.

iii. Requirements for Participation

49. Those wishing to participate in this auction must: (1) Submit a short-form application (FCC Form 175) electronically prior to 6:00 p.m. ET, on November 15, 2013, following the electronic filing procedures set forth in Attachment D to the *Auction 96 Procedures Public Notice*; (2) submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, on December 18, 2013, following the procedures and instructions set forth in Attachment E to the *Auction 96 Procedures Public Notice*; and (3) comply with all provisions outlined in the *Auction 96 Procedures Public Notice* and applicable Commission rules.

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

### A. General Information Regarding Short-Form Applications

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

51. Every entity and individual seeking a license available in Auction 96 must file a short-form application electronically via the FCC Auction System prior to 6:00 p.m. ET on November 15, 2013, following the procedures prescribed in Attachment D to the *Auction 96 Procedures Public Notice*. If an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 will be used to determine whether the applicant is eligible for the claimed bidding credit. Applicants filing a short-form application are subject to the Commission's anti-collusion rules beginning at the deadline for filing.

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. Each applicant should read carefully the instructions set forth in Attachment D and should consult the Commission's rules to ensure that, in addition to the materials described in the *Auction 96 Procedures Public Notice*, all the information required is included within its short-form application.

53. An individual or 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 be accepted for filing.

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

### 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 must review and verify their license selections before the deadline for submitting short-form applications. License selections cannot be changed after the short-form application filing deadline. The FCC Auction System will not accept bids on licenses that were not selected on the applicant's short-form application.

### C. Disclosure of Bidding Arrangements

56. An applicant will be required to identify in its short-form application all real parties in interest 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. Each applicant will also be required to certify under penalty of perjury in its short-form application that it has 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 its bids, bidding strategies, or the particular licenses on which it will or will not bid. If an applicant has had discussions, but has not reached an agreement by the short-form application filing deadline, it should not include the names of parties to the discussions on its application and may not continue such discussions with any applicants after the deadline.

58. After the filing of short-form applications, the Commission's rules do not prohibit a party holding a non-controlling, attributable interest in one applicant from acquiring an ownership interest in or entering into a joint bidding arrangement with other applicants, provided that: (i) The attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While 47 CFR 1.2105(c) of the rules does not prohibit non-auction-related business negotiations among auction applicants, the Bureau reminds applicants that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies. Further, compliance with the disclosure requirements of 47 CFR 1.2105(c) will not insulate a party from enforcement of the antitrust laws.

### D. Ownership Disclosure Requirements

59. Each applicant must comply with the uniform Part 1 ownership disclosure standards and provide information required by 47 CFR 1.2105 and 1.2112. Specifically, in completing the short-form application, an applicant will be required to fully disclose information on the real party- or parties-in-interest and the ownership structure of the applicant, including both direct and indirect ownership interests of 10 percent or more, as prescribed in 47 CFR 1.2105 and 1.2112. Each applicant is responsible for ensuring that information submitted in its short-form application is complete and accurate.

60. In certain circumstances, an applicant's most current ownership information on file with the Commission, if in an electronic format compatible with the short-form application (FCC Form 175) (such as information submitted in an FCC Form 602 or in an FCC Form 175 filed for a previous auction using ISAS) will automatically be entered into the applicant's short-form application. Each applicant must carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for filing the short-form application. Any information that needs to be corrected or updated must be changed directly in the short-form application.



### E. Foreign Ownership Disclosure Requirements

61. Section 310 of the Communications Act requires the Commission to review foreign investment in radio station licenses and imposes specific restrictions on who may hold certain types of radio licenses. The provisions of section 310 apply to applications for initial radio licenses, applications for assignments and transfers of control of radio licenses, and spectrum leasing arrangements under the Commission's secondary market rules. In completing the short-form application (FCC Form 175), an applicant will be required to disclose information concerning any foreign ownership of the applicant. An applicant must certify in its short-form application that, as of the deadline for filing a short-form application to participate in Auction 96, the applicant either is in compliance with the foreign ownership provisions of section 310 or has filed a petition for declaratory ruling requesting Commission approval to exceed the applicable foreign ownership limit or benchmark in section 310(b) that is pending before, or has been granted by, the Commission.

### F. National Security Certification Requirement for Auction 96 Applicants

62. Section 6004 of the Spectrum Act prohibits a person who has been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant from participating in any auction that is required or authorized to be conducted pursuant to the Spectrum Act. In the *H Block Report and Order*, the Commission implemented the national security restriction in Section 6004 by adding a certification to the various other certifications that a party must make in any short-form application. This newly-adopted national security certification requires any applicant seeking to participate in Auction 96 to certify in its short-form application, under penalty of perjury, that the applicant and all of the related individuals and entities required to be disclosed on its application are not person(s) who have been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant, and who are thus statutorily prohibited from participating in such a Commission auction. As with other required certifications, an auction applicant's failure to include the required certification in its short-form

application by the applicable filing deadline would render its application unacceptable for filing, and its application would be dismissed with prejudice.

### G. Designated Entity Provisions

63. Eligible applicants in Auction 96 may claim small business bidding credits. In addition to the information provided in the *Auction 96 Procedures Public Notice*, Applicants should review carefully the Commission's decisions regarding the designated entity provisions.

#### i. Bidding Credits for Small Businesses

64. A bidding credit represents an amount by which a bidder's winning bid will be discounted. For Auction 96, bidding credits will be available to small businesses and consortia thereof.

##### a. Bidding Credit Eligibility Criteria

65. In the *H Block Report and Order*, the Commission adopted small business bidding credits to promote and facilitate the participation of small businesses in competitive bidding for licenses in the H Block.

66. The level of bidding credit is determined as follows: (1) A bidder with attributed average annual gross revenues that do not exceed \$40 million for the preceding three years will receive a 15 percent discount on its winning bid; and (2) A bidder with attributed average annual gross revenues that do not exceed \$15 million for the preceding three years will receive a 25 percent discount on its winning bid.

67. Bidding credits are not cumulative; qualifying applicants receive either the 15 percent or the 25 percent bidding credit on its winning bid, but not both. Applicants should note that unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license to an entity not qualifying for the same level of bidding credit.

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

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

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

#### ii. Attributable Interests

##### a. Controlling Interests

69. 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. The following are some common indicia of *de facto* control: (1) The entity constitutes or appoints more than 50 percent of the board of directors or management committee; (2) the entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; and (3) the entity plays an integral role in management decisions.

70. Applicants should refer to 47 CFR 1.2110(c)(2) and Attachment D to the *Auction 96 Procedures Public Notice* to understand how certain interests are calculated in determining control. For example, pursuant to 47 CFR 1.2110(c)(2)(ii)(F), officers and directors of an applicant are considered to have controlling interest in the applicant.

##### b. Affiliates

71. 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 D to the *Auction 96 Procedures Public Notice*.

##### c. Material Relationships

72. The Commission requires the consideration of certain leasing and resale (including wholesale) relationships—referred to as "attributable material relationships"—in determining designated entity eligibility for bidding credits. 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.

73. The Commission grandfathered material relationships in existence before the release of the *Designated Entity Second Report and Order*, meaning that those preexisting relationships alone would not cause the Commission to examine a designated entity's ongoing eligibility for existing 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, in such circumstances, the Commission reexamines the applicant's or licensee's designated entity eligibility, taking into account all existing material relationships, including those previously grandfathered.

#### d. Gross Revenue Exceptions

74. 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 to the applicant the personal net worth, including personal income, of its officers and directors.

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

conditions. Additional guidance on claiming this exemption may be found in Attachment D.

#### e. Bidding Consortia

76. A consortium of small businesses is a conglomerate organization composed of two or more entities, each of which individually satisfies the definition of a small business. Thus, each member of a consortium of small businesses that applies to participate in Auction 96 must individually meet the criteria for small businesses. Each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, the affiliates of its controlling interests, and any entities having an attributable material relationship with the member. Although the gross revenues of the consortium members will not be aggregated for purposes of determining the consortium's eligibility as a small business, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

#### H. Tribal Lands Bidding Credit

77. 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.

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

78. Current defaulters or delinquents are not eligible to participate in Auction 96, but former defaulters or delinquents can participate so long as they are otherwise qualified and make upfront payments that are fifty percent more than would otherwise be necessary. An applicant is considered a "current defaulter" or a "current delinquent" when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, is in default on any payment for any Commission construction permit or license (including a down payment) or is delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for short-form applications. An applicant is considered a "former defaulter" or a "former delinquent" when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests,

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

79. 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 payment for a Commission construction permit or license (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 it, its affiliates, its controlling interests, and the affiliates of its controlling interests, have ever been in default on any Commission construction permit or license 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.

80. 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 consult with the Wireless Telecommunications Bureau's Auctions and Spectrum Access Division staff if they have any questions about default and delinquency disclosure requirements.

81. 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 its obligations under the Debt Collection Improvement Act of

1996, which governs the collection of debts owed to the United States. Under the red light rule, applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission will not be processed. In the same rulemaking order, the Commission explicitly declared, however, that its 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 its 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.

82. Applicants are reminded, however, that the Commission’s Red Light Display System, which provides information regarding debts currently 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 lack of current “red light” status is not necessarily determinative of its eligibility to participate in an auction or of its upfront payment obligation.

83. Moreover, prospective applicants in Auction 96 should note that any long-form applications filed after the close of bidding will be reviewed for compliance with the Commission’s red light rule, and such review may result in the dismissal of a winning bidder’s long-form application.

#### *J. Optional Applicant Status Identification*

84. Applicants owned by members of minority groups and/or women, as defined in 47 CFR 1.2110(c)(3), and rural telephone companies, as defined in 47 CFR 1.2110(c)(4), may identify themselves regarding this status in filling out their short-form applications. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of “designated entities” in its auctions.

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

85. After the deadline for filing initial applications, an Auction 96 applicant is permitted to make only minor changes to its application. Permissible minor changes include, among other things, 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. An applicant is not permitted to make a major modification to its application (e.g., change of license selection, change control of the applicant, change the certifying official, or claim eligibility for a higher percentage of bidding credit) after the initial application filing deadline. Thus, any change in control of an applicant—resulting from a merger, for example—will be considered a major modification, and the application will consequently be dismissed.

86. If an applicant wishes to make permissible minor changes to its short-form application, such changes should be made electronically to its short-form application using the FCC Auction System whenever possible. For the change to be submitted and considered by the Commission, be sure to click on the SUBMIT button. After the revised application has been submitted, a confirmation page will be displayed stating the submission time, submission date, and a unique file number.

87. An applicant cannot use the FCC Auction System outside of the initial and resubmission filing windows to make changes to its short-form application for other than administrative changes (e.g., changing certain contact information or the name of an authorized bidder). If these or other permissible minor changes need to be made outside of these windows, the applicant must submit a letter briefly summarizing the changes and subsequently update its short-form application in the FCC Auction System once it is available. Moreover, after the filing window has closed, the system will not permit applicants to make certain changes, such as the applicant’s legal classification and license selections.

88. Any letter describing changes to an applicant’s short-form application must be submitted by email to [auction96@fcc.gov](mailto:auction96@fcc.gov). The email summarizing the changes must include a subject or caption referring to Auction 96 and the name of the applicant, for example, “Re: Changes to Auction 96 Short-Form Application of ABC Corp.” The Bureau requests that parties format any attachments to email as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Questions about short-form application amendments should be directed to the Auctions and Spectrum Access Division at (202) 418–0660.

89. As with the short-form application, any application amendment and related statements of fact must be certified by an authorized representative of the applicant with authority to bind the applicant. Applicants should note that submission of any such amendment

or related statement of fact constitutes a representation by the person certifying that he or she is an authorized representative with such authority, and that the contents of the amendment or statement of fact are true and correct.

90. Applicants must not submit application-specific material through the Commission’s Electronic Comment Filing System, which was used for submitting comments regarding Auction 96. Further, parties submitting information related to their applications should use caution to ensure that their submissions do not contain confidential information or communicate information that would violate 47 CFR 1.2105(c) or the limited information procedures adopted for Auction 96. 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 prohibition of certain communications pursuant to 47 CFR 1.2105(c).

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

91. 47 CFR 1.65 and 1.2105(b) requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and in competitive bidding proceedings to furnish additional or corrected information to the Commission within five days of a significant occurrence, or to amend a short form application no more than five days after the applicant becomes aware of the need for the amendment. Changes that cause a loss of or reduction in the percentage of bidding credit specified on the originally-submitted application must be reported immediately, and no later than five business days after the change occurs. If an amendment reporting 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 application. After the short-form filing deadline, applicants may make only minor changes to their applications. For changes to be submitted and considered by the Commission, be sure to click on the SUBMIT button in the FCC Auction System. In addition, an applicant cannot update its short-form application using the FCC Auction System after the initial and resubmission filing windows close. If information needs to be submitted pursuant to 47 CFR 1.65 after these windows close, a letter briefly

summarizing the changes must be submitted by email to [auction96@fcc.gov](mailto:auction96@fcc.gov). This email must include a subject or caption referring to Auction 96 and the name of the applicant. The Bureau requests that parties format any attachments to email as Adobe® Acrobat® (pdf) or Microsoft® Word documents. 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 prohibition of certain communications pursuant to 47 CFR 1.2105(c).

### III. Pre-Auction Procedures

#### A. Online Auction Tutorial—Available November 4, 2013

92. No later than Monday, November 4, 2013, an auction tutorial will be available on the Auction 96 Web page for prospective bidders to familiarize themselves with the auction process. This online tutorial will provide information about pre-auction procedures, completing short-form applications, auction conduct, the FCC Auction Bidding System, auction rules, and H Block service rules. The tutorial will also provide an avenue to ask Commission staff questions about the auction, auction procedures, filing requirements, and other matters related to this auction.

93. The auction tutorial will be accessible from the Commission's Auction 96 Web page at <http://wireless.fcc.gov/auctions/96/> through an "Auction Tutorial" link. Once posted, this tutorial will remain available and accessible anytime for reference in connection with the procedures outlined in the *Auction 96 Procedures Public Notice*.

#### B. Short-Form Applications—Due Prior to 6:00 p.m. ET on November 15, 2013

94. In order to be eligible to bid in this auction, applicants must first follow the procedures set forth in Attachment D to submit a short-form application (FCC Form 175) electronically via the FCC Auction System. This short-form application must be submitted prior to 6:00 p.m. ET on November 15, 2013. Late applications will not be accepted. No application fee is required, but an applicant must submit a timely upfront payment to be eligible to bid.

95. Applications may generally be filed at any time beginning at noon ET on November 4, 2013, until the filing

window closes at 6:00 p.m. ET on November 15, 2013. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applications can be updated or amended multiple times until the filing deadline on November 15, 2013.

96. An applicant must always click on the SUBMIT button on the "Certify & Submit" screen to successfully submit its FCC Form 175 and any modifications; otherwise the application or changes to the application will not be received or reviewed by Commission staff. Additional information about accessing, completing, and viewing the FCC Form 175 is included in Attachment D. FCC Auctions Technical Support is available at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET. In order to provide better service to the public, all calls to Technical Support are recorded.

#### C. Application Processing and Minor Corrections

97. 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 that are complete; (2) those that are rejected; and (3) those that are incomplete or deficient because of minor defects that may be corrected. The public notice will include the deadline for resubmitting corrected applications.

98. After the application filing deadline on November 15, 2013, applicants can make only minor corrections to their applications. They will not be permitted to make major modifications (e.g., change license selection, change control of the applicant, change the certifying official, or claim eligibility for a higher percentage of bidding credit).

99. Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the 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 sent by email to [auction96@fcc.gov](mailto:auction96@fcc.gov).

#### D. Upfront Payments—Due December 18, 2013

100. In order to be eligible to bid in this auction, an upfront payment must be submitted and accompanied by an

FCC Remittance Advice Form (FCC Form 159). After completing its short-form application, an applicant will have access to an electronic version of the FCC Form 159 that can be printed and sent by fax to U.S. Bank in St. Louis, Missouri. All upfront payments must be made as instructed in the *Auction 96 Procedures Public Notice* and must be received in the proper account at U.S. Bank before 6:00 p.m. ET on December 18, 2013.

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

101. Wire transfer payments must be received before 6:00 p.m. ET on December 18, 2013. No other payment method is acceptable. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their bankers 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. The specific information needed to make upfront payments by wire transfer is outlined in the *Auction 96 Procedures Public Notice*.

102. 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, write "Wire Transfer—Auction Payment for Auction 96." In order to meet the upfront payment deadline, an applicant's payment must be credited to the Commission's account for Auction 96 before the deadline.

103. Each applicant is responsible for ensuring timely submission of its upfront payment and for timely filing of an accurate and complete FCC Remittance Advice Form (FCC Form 159). An applicant should coordinate with its financial institution well ahead of the due date regarding its wire transfer and allow sufficient time for the transfer to be initiated and completed prior to the deadline. The Commission repeatedly has cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer. Each applicant also is responsible for obtaining confirmation from its financial institution that its wire transfer to U.S. Bank was successful and from Commission staff that its upfront payment was timely received and that it was deposited into the proper account. To receive confirmation from Commission staff, contact Gail Glasser of the Office of Managing Director's Auctions Accounting Group at (202)

418–0578, or alternatively, Theresa Meeks at (202) 418–2945.

104. Please note the following information regarding upfront payments: (1) all payments must be made in U.S. dollars; (2) all payments must be made by wire transfer; (3) upfront payments for Auction 96 go to a lockbox number different from the lockboxes used in previous Commission auctions; and (4) failure to deliver a sufficient upfront payment as instructed by the December 18, 2013, deadline will result in dismissal of the short-form application and disqualification from participation in the auction.

ii. FCC Form 159

105. An accurate and complete 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 this form is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment E to the *Auction 96 Procedures Public Notice*. An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payers 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 it must be filed with U.S. Bank by fax.

iii. Upfront Payments and Bidding Eligibility

106. The Commission has delegated to the Bureau the authority and discretion to determine appropriate upfront payments for each auction. An upfront payment is a refundable deposit made by each bidder to establish its eligibility to bid on licenses. 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.

107. Applicants that are former defaulters must make upfront payments that are fifty 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.

108. Applicants must make upfront payments sufficient to obtain bidding eligibility on the licenses on which they will bid. The Bureau proposed in the *Auction 96 Comment Public Notice* that the amount of the upfront payment would determine a bidder’s initial

bidding eligibility, i.e., 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 FCC Form 175 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 FCC Form 175 for Auction 96, 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 FCC Form 175, but only enough to cover the maximum number of bidding units that are associated with licenses on which it wishes to place bids and hold provisionally winning bids in any given round. The total upfront payment does not affect the total dollar amount the bidder may bid on any given license.

109. In the *Auction 96 Comment Public Notice*, the Bureau proposed to make the upfront payments equal to the minimum opening bids. The Bureau further proposed that each license be assigned a specific number of bidding units equal to the upfront payment listed for the license, on a bidding unit for dollar basis. The bidding unit level for each license will remain constant throughout the auction. The Bureau received no specific comments on the proposal, and thus adopts its proposed upfront payments. The complete list of licenses for Auction 96 and the specific upfront payments and bidding units for each license are available as separate “Attachment A” files at <http://wireless.fcc.gov/auctions/96/>.

110. 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 bidding units for all licenses on which it seeks to be active in any given round. Applicants should check their calculations carefully, as there is no provision for increasing a bidder’s eligibility after the upfront payment deadline.

111. If an applicant is a former defaulter, it must calculate its upfront payment for all of its identified licenses by multiplying the number of bidding units on which it wishes 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.

*E. Applicant’s Wire Transfer Information for Purposes of Refunds of Upfront Payments*

112. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information delineated in the *Auction 96 Procedures Public Notice* 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.) Wire transfer instructions can also be faxed to the Commission using the instructions provided in the *Auction 96 Procedures Public Notice*.

*F. Auction Registration*

113. 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 timely-filed, accurate, and complete, provided that such applicants have timely submitted an upfront payment that is sufficient to qualify them to bid.

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

115. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, if this mailing is not received by noon on Wednesday, January 15, 2014, call the Auctions Hotline at (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.

116. In the event that SecurID® tokens are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant’s

short-form application may request replacements. To request replacement of these items, call Technical Support at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY).

#### *G. Remote Electronic Bidding*

117. 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 FCC Form 175. 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 FCC Form 175. 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 96.

118. Please note that the SecurID® tokens can be recycled, and the Bureau encourages bidders to return the tokens to the FCC. Pre-addressed envelopes will be provided to return the tokens once bidding has closed.

#### *H. Mock Auction—January 17, 2014*

119. All qualified bidders will be eligible to participate in a mock auction on Friday, January 17, 2014. The mock auction will enable bidders to become familiar with the FCC Auction System prior to the auction. The Bureau strongly recommends that all bidders participate in the mock auction. Details will be announced by public notice.

### **IV. Auction**

120. The first round of bidding for Auction 96 will begin on Wednesday, January 22, 2014. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

#### *A. Auction Structure*

##### *i. Simultaneous Multiple Round Auction Without Package Bidding*

121. In the *Auction 96 Comment Public Notice*, the Bureau proposed to auction all licenses in Auction 96 in a single auction using a simultaneous multiple-round (SMR) auction format.

This type of auction offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses. A bidder may bid on, and potentially win, any number of licenses.

122. The Bureau also proposed to incorporate provisions for a simple form of package bidding called hierarchical package bidding (HPB) into the SMR auction under which, in addition to being able to bid on individual licenses, bidders would be able to bid on certain tiered, non-overlapping packages of licenses. The Bureau proposed that the basic bidding tier under HPB would be EA licenses, with possible predefined packages of EAs corresponding to Major Economic Areas (MEAs), Regional Economic Area Groupings (REAGs), and/or all markets in the contiguous 48 states. The Bureau sought comment generally on the proposed SMR format with HPB, including what predefined packages should be available for various tiers.

123. The Bureau received significant comment on its proposals. While all parties that commented on this topic generally support the Bureau’s proposal to use the SMR format, most oppose implementing any form of package bidding in Auction 96. The Bureau concludes based on the record, that it will use a standard SMR auction format in Auction 96, without HPB.

124. Commenters that oppose implementing any form of package bidding, including HPB, claim that it creates competitive issues by (1) adding unnecessary complexity to the auction, which would be most felt by smaller bidders, (2) tilting the playing field in favor of larger/incumbent carriers to the detriment of small, rural, and new entrant carriers, (3) potentially allowing certain licenses to be acquired at a discount, and (4) adding uncertainty for bidders that bid on any collection of licenses smaller than the largest package being bid. Because the Bureau is not implementing package bidding for Auction 96, it need not address each of these comments in detail. The commenters that favor incorporating HPB into an SMR auction with package bidding, AT&T, Holt and Goeree, and T-Mobile, maintain that an SMR-HPB auction provides flexibility by allowing smaller companies to bid on “bite size” licenses, while offering major providers the chance to establish a regional or national footprint with a winning package bid. Holt and Goeree explain that the SMR-HPB format is simple and transparent, and that a structure with one or more middle tiers of regional packages offers flexibility advantages

without significant increases in complexity or reductions in transparency or computational complexity. Both AT&T and Holt and Goeree observe that the proposed multi-round HPB auction format goes a long way towards solving an exposure problem, especially if more than two tiers are used. AT&T further notes that the Bureau’s proposal to offer predefined, non-overlapping packages would greatly simplify the process of determining the provisionally winning bid in an EA (as compared to other package bidding formats) and that this reduced computational complexity should provide for transparency.

125. The Bureau concludes based on the record and in light of its experience with previous spectrum auctions, including auctions of Advanced Wireless Service (“AWS”) and Personal Communications Service (“PCS”) licenses, that a standard SMR auction format will offer adequate opportunity for bidders to aggregate licenses in order to obtain the level of coverage they desire consistent with their business plans. Accordingly, the Bureau declines to implement HPB, and will use a standard SMR auction format for Auction 96. Bids will be accepted on all licenses in each round of the auction until bidding stops on every license unless otherwise announced.

126. In the *Auction 96 Comment Public Notice*, the Bureau alternatively proposed to conduct Auction 96 as a single round sealed bid (“SRSB”) auction, given that Auction 96 offers only a single spectrum block and that a single round auction might simplify the process for bidders and reduce auction participation costs. The Bureau sought comment on this alternative format and on any others it should consider. The four parties that took a position on the Bureau’s alternative SRSB auction format proposal all oppose it. Given both the lack of support in the record for the Bureau’s alternative SRSB auction proposal and the overwhelming record support for the SMR auction format, the Bureau will not conduct Auction 96 as a SRSB auction, and will conduct the auction using a standard SMR format.

##### *ii. Limited Information Disclosure Procedures: Information Available to Bidders Before and During the Auction*

127. Consistent with its practice in several prior wireless spectrum auctions, the Bureau proposed in the *Auction 96 Comment Public Notice* to withhold, until after the close of bidding, public release of (1) bidders’ license selections on their short-form applications (FCC Form 175), (2) the amounts of bidders’ upfront payments

and bidding eligibility, and (3) information that may reveal the identities of bidders placing bids and taking other bidding-related actions. The Bureau sought comment on the proposal to implement anonymous bidding and on any alternatives for Auction 96.

128. The Bureau received several comments on its proposal to use anonymous bidding procedures for Auction 96, both in support and in opposition. After carefully considering the record on this issue, the Bureau concludes that it will employ its standard anonymous bidding procedures in Auction 96. The Bureau agrees with commenters that assert that the anonymous bidding procedures used in past auctions help protect against potential anticompetitive behavior such as retaliatory bidding and collusion. The Bureau finds that the competitive benefits associated with anonymous bidding outweigh the potential benefits of full information disclosure, particularly in this case where the Bureau offers one block of spectrum licenses, and therefore rejects the assertions of opponents of anonymous bidding, who argue that anonymous bidding procedures are unnecessary or harmful to smaller bidders.

129. The Bureau therefore adopts the limited information procedures proposed in the *Auction 96 Comment Public Notice*. Nothing in the record persuades the Bureau that it should depart from the now-established Commission practice of implementing anonymous bidding procedures in wireless spectrum auctions. 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.

130. The Bureau, however, retains the discretion not to use limited information procedures if the Bureau, after examining the level of potential competition based on the short-form applications filed for Auction 96, determines that the circumstances indicate that limited information procedures would not be an effective tool for deterring anti-competitive behavior. For example, if only two applicants become qualified to participate in the bidding, limited information procedures would be ineffective in preventing bidders from knowing the identity of the competing bidder and, therefore, limited information procedures would not serve to deter attempts at signaling and retaliatory bidding behavior.

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

132. In Auction 96, the Commission will not disclose information regarding license selection or the amounts of bidders' upfront payments and bidding eligibility. The Commission will disclose the other portions of applicants' short-form applications through its online database, and certain application-based information through public notices.

133. To assist applicants in identifying other parties subject to 47 CFR 1.2105(c), the Bureau will notify separately each applicant in Auction 96 whether applicants with short-form applications to participate in pending auctions, including but not limited to Auction 96, have applied for licenses in any of the same or overlapping geographic areas as that applicant. Specifically, after the Bureau conducts its initial review of applications to participate in Auction 96, it will send to each applicant in Auction 96 a letter that lists the other applicants that have pending short-form applications for licenses in any of the same or overlapping geographic areas as the licenses it has selected in its

application. 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.

134. When completing short-form applications, applicants should avoid any statements or disclosures that may violate the Commission's prohibition of certain communications, pursuant to 47 CFR 1.2105(c), particularly in light of the Commission's procedures regarding the availability of certain information in Auction 96. While applicants' license selections will not be disclosed until after Auction 96 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.

135. If an applicant is found to have violated the Commission's rules or the 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.

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

137. In opposing the use of anonymous bidding procedures for Auction 96, US Cellular claims that smaller bidders face greater legal risks

and potential consequences because of the inherent conflict between anonymous bidding and the public disclosure requirements of the SEC concerning financially-material information. The Bureau is not persuaded by US Cellular's suggestion that SEC rules requiring bidders to disclose financially-material information may force bidders to disclose bidding information during the auction. US Cellular has raised this issue in the past, but has failed to cite any specific SEC rule that explicitly requires disclosure of bidding information. Until the SEC addresses the issue, the Bureau will not presume that SEC rules require public disclosure of information about bidding while an auction is still underway.

### iii. Eligibility and Activity Rules

138. The Bureau will use upfront payments to determine initial (maximum) eligibility (as measured in bidding units) for Auction 96. 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 as listed in the complete list of licenses available as separate "Attachment A" files at <http://wireless.fcc.gov/auctions/96/>. Bidding units assigned to each license do not change as prices change during the auction. Upfront payments are not attributed to specific licenses. Rather, a bidder may place bids on any of the licenses selected on its FCC Form 175 as long as the total number of bidding units associated with those licenses does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. At a minimum, an applicant's upfront payment must cover the bidding units for at least one of the licenses it selected on its FCC Form 175. The total upfront payment does not affect the total dollar amount a bidder may bid on any given license.

139. In order to ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific

percentage of their current bidding eligibility during each round of the auction. A bidder's activity level in a round is the sum of the bidding units associated with licenses covered by the bidder's new and provisionally winning bids.

140. 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.

141. 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 Bureau adopts them for Auction 96. 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

142. In the *Auction 96 Comment Public Notice*, the Bureau proposed to conduct the auction in two stages and employ an activity rule. Under the Bureau's proposal, a bidder desiring to maintain its current bidding eligibility would be required to be active on licenses representing at least 80 percent of its current bidding eligibility, during each round of Stage One, and at least 95 percent of its current bidding eligibility in Stage Two. The Commission received no specific comments on this proposal.

143. The Bureau finds that, for now, a two-stage 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 as described in the *Auction 96 Procedures Public Notice*.

144. When the Bureau moves the auction from Stage One to Stage Two, the Bureau will first alert bidders by announcement in the bidding system. The Bureau has the discretion to further alter the activity requirements before and/or during the auction as circumstances warrant.

### v. Stage Transitions

145. In the *Auction 96 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 95 percent. The Bureau proposed to alert bidders of stage advancements by announcement during the auction. The Bureau received no specific comments on this issue.

146. The Bureau adopts its proposal for stage transitions. Thus, the auction will start in Stage One, and the Bureau will regulate the pace of the auction by announcement. The Bureau retains the discretion to transition the auction to Stage Two, to add an additional stage with a higher activity requirement, not to transition to Stage Two, and to transition to Stage Two with an activity requirement that is higher or lower than 95 percent. This determination will be based on a variety of measures of auction activity, including, but not limited to, the number of new bids and the percentages of licenses (as measured in bidding units) on which there are new bids.

### vi. Activity Rule Waivers

147. The Bureau proposed in the *Auction 96 Comment Public Notice* that each bidder in the auction be provided with three activity rule waivers. The Bureau received no specific comments on this issue. Therefore, the Bureau adopts its proposal to provide bidders with three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's eligibility despite its activity in the current round being below the required minimum activity level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

148. The FCC Auction System assumes that a bidder with insufficient activity would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round



in which a bidder's activity level is below the minimum required unless (1) the bidder has no activity rule waivers remaining or (2) the bidder overrides the automatic application of a waiver by reducing eligibility. If no waivers remain and the activity requirement is not satisfied, the FCC Auction System will permanently reduce the bidder's eligibility, possibly curtailing or eliminating the ability to place additional bids in the auction.

149. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the "reduce eligibility" function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring it into compliance with the activity rule. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility, even if the round has not yet closed.

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

#### vii. Auction Stopping Rules

151. In the *Auction 96 Comment Public Notice*, the Bureau proposed to employ a simultaneous stopping rule under its SMR proposal. Under this rule, all licenses remain available for bidding until bidding stops simultaneously on every license. More specifically, bidding will close 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. Thus, under the Bureau's SMR proposal, unless it announces alternative stopping procedures, the simultaneous stopping rule will be used in this auction, and

bidding will remain open on all licenses until bidding stops on every license, regardless of whether bids are placed on individual licenses or packages of licenses.

152. The Bureau also proposed that it retain discretion to exercise any of the alternative versions of the simultaneous stopping rule for Auction 96 described in the *Auction 96 Procedures Public Notice*. The Bureau proposed to exercise these alternative versions of the simultaneous stopping rule only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising these options, the Bureau is likely to attempt to change the pace of the auction by, for example, changing the number of bidding rounds per day and/or the minimum acceptable bids. The Bureau also proposed to retain the discretion to exercise any of these options with or without prior announcement during the auction. Sprint, the only party that commented on the stopping rules, supports them. The Bureau adopts its proposals for Auction 96.

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

153. In the *Auction 96 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 specific comment on this issue.

154. Because this approach has proven effective in resolving exigent circumstances in previous auctions, the Bureau adopts these proposals regarding auction delay, suspension, or cancellation. By public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round or from some

previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that it will exercise this authority solely at its discretion, and not as a substitute for situations in which bidders may wish to apply their activity rule waivers.

#### B. Bidding Procedures

##### i. Round Structure

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

156. The Bureau has the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' needs to study round results and adjust their bidding strategies. The Bureau may change 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

157. Section 309(j) of the Communications Act 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 Commission 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.

##### a. Reserve Price

158. The Commission is statutorily obliged to consider and balance a variety of public interests and objectives when establishing service rules and licensing procedures with respect to the public spectrum resource. These objectives include promoting recovery for the public a portion of the value of that resource. With respect to the H Block licenses being offered in Auction 96, the Spectrum Act specifically directs that proceeds from an auction of H Block spectrum be deposited into the Public Safety Trust Fund and be used for, among other things, funding (or reimbursement to the U.S. Treasury for the funding) of the nationwide, interoperable public safety broadband

network by the First Responder Network Authority. In view of the various public interest objectives the Bureau must consider, the Bureau proposed to establish a reserve price for the H Block licenses offered in Auction 96. The Bureau further proposed to utilize an aggregate reserve price based on the total of the bids for the H Block licenses, rather than license-by-license reserve prices. The Bureau sought comment on its proposals, and on factors the Bureau should consider in determining a reserve price. The Bureau also sought comment on whether, if the Bureau adopts a reserve price for the H Block licenses in Auction 96, it should disclose the reserve price publicly prior to the auction.

159. The limited comment the Bureau received on this issue is generally supportive of its reserve price proposals, and the Bureau received no opposition to the use of a reserve.

160. In light of the support in the record, the Bureau adopts its proposal to establish a reserve price for the H Block licenses in Auction 96 that is higher than the sum of minimum opening bids, and here the Bureau publicly discloses it. For the H Block licenses in Auction 96, there will be an aggregate reserve price of \$1.564 billion. This reserve price was calculated by using a minimum spectrum value of \$0.50/MHz-pop, as suggested by a commenter, and rounding the result to the nearest million. The Bureau believes this amount will appropriately recover for the public a portion of the value of the spectrum, especially in light of the Spectrum Act's requirement to deposit proceeds from this auction into the Public Safety Trust Fund to be used for a nationwide, interoperable public safety broadband network by the First Responder Network Authority.

161. When determining whether the reserve price has been met, the Bureau will use the gross bid amounts rather than net bid amounts that take into account bidding credits. The Bureau will also count the gross amount of any withdrawn bids for licenses toward meeting the reserve price. Thus, the Bureau will count the gross amount of either the provisionally winning bid on a license or, if higher, the highest withdrawn provisionally winning bid on a license when determining whether the reserve price has been met. The Bureau will not count more than one bid per license, be it a provisionally winning or withdrawn bid, toward meeting the relevant reserve price. In the case of licenses with multiple withdrawn bids or a withdrawn bid and a provisionally winning bid, the Bureau will count the highest of the gross bid

amounts toward the reserve price. Other than the gross amounts of withdrawn bids licenses without provisionally winning bids will not count toward meeting a reserve price.

162. The Bureau will issue an announcement in the FCC Auction System stating that the reserve price has been met immediately following the first round in which that occurs, which will be viewable through the Commission's Web site. The current total of the relevant provisionally winning bids may not determine whether the reserve has been met, given that the Bureau also will count withdrawn bids toward meeting the reserve. By making an announcement when the reserve is met, the Bureau will free auction observers and participants from a need to monitor withdrawn bids over the course of the auction in order to determine whether the reserve has been met and avoid any uncertainty.

#### b. Minimum Opening Bids

163. In addition to proposing an aggregate reserve price, the Bureau proposed in the *Auction 96 Comment Public Notice* to establish minimum opening bid amounts for each license in Auction 96. The Bureau believes a minimum opening bid amount, which has been used in other auctions, is an effective bidding tool for accelerating the competitive bidding process.

164. In the *Auction 96 Comment Public Notice*, 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, similar to its approach in many previous spectrum auctions. The Bureau proposed to use a calculation based on \$0.07 per MHz-pop. Additionally, the Bureau proposed to incorporate pricing information from previous auctions to tailor the results of its calculation to the relative prices for each EA. For this, the Bureau proposed to create an index of the relative price of each EA using the winning bid amounts for the EA licenses of paired spectrum from Auctions 66 and 73. This modification to the use of \$0.07 per MHz-pop results in amounts ranging from less than \$0.01 per MHz-pop to \$0.16 per MHz-pop. The Bureau further proposed a minimum of \$1000 per license. For the license covering the Gulf of Mexico, the Bureau proposed to set the minimum opening bid at \$20,000.

165. Broadband Properties, the only party that commented on the Bureau's proposed minimum opening bids, maintains that indexing minimum opening bids and reserve prices to prior auctions takes the market forces out of

the auction process. Broadband Properties requests that the Bureau instead set the minimum opening bid at \$.01 per MHz-pop and let the market decide the values. The Bureau disagrees with Broadband Properties that indexing minimum opening bids amounts takes market forces out of the auction process. Minimum opening bids are not meant to set market values. Rather, they ensure that a portion of the value of the spectrum is recovered for the public. Additionally, minimum opening bids help the efficiency of the auction process by avoiding numerous additional rounds that may otherwise be required to reach the winning bid amount. Accordingly, the Bureau declines to modify opening bids proposed in the *Auction 96 Comment Public Notice*. The minimum opening bid amount for each H Block license available in Auction 96, calculated pursuant to the above-described procedures, is set forth in Attachment A to the *Auction 96 Procedures Public Notice*.

#### iii. Bid Amounts

166. In the *Auction 96 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. No specific comments were received on this issue. Based on the Commission's experience in prior auctions, the Bureau adopts this proposal for Auction 96.

#### a. Minimum Acceptable Bids

167. The Bureau proposed in the *Auction 96 Comment Public Notice* to calculate minimum acceptable bids based on "current price estimates" (CPEs) and an activity-based formula. In light of the Bureau's decision not to use package bidding, and consistent with its usual procedures, it will calculate minimum acceptable bids based on provisionally winning bids instead of CPEs, which serve as proxies for provisionally winning bids under HPB procedures. The Bureau will use the activity-based formula, as proposed.

168. 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 described below. In general, the percentage will be higher for a license receiving many bids than for a license receiving few bids. In the case of a license for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the license.

169. The percentage of the provisionally winning bid used to establish the minimum acceptable bid amount (“the additional percentage”) is calculated at the end of each round based on an activity index. The activity index is a weighted average of (a) the number of distinct 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 covering the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The additional percentage is determined as one plus the activity index times a minimum percentage amount, with the result not to exceed a given maximum. The additional percentage is then multiplied by the provisionally winning bid amount to obtain the minimum acceptable bid for the next round. The Bureau will round the results using the Commission’s standard rounding procedures for auctions. The Bureau proposed to initially set the weighting factor at 0.5, the minimum percentage at 0.1 (10%), and the maximum percentage at 0.25 (25%). Hence, at these initial settings, the minimum acceptable bid for a license will be between ten percent and twenty-five percent higher than the provisionally winning bid, depending upon the bidding activity covering the license. Equations and examples are shown in Attachment B to the *Auction 96 Procedures Public Notice*.

170. The Bureau did not receive any specific comments on calculating minimum acceptable bids. The Bureau adopts its proposal to begin the auction with the weighting factor set at 0.5, the minimum percentage at 0.1 (10%) and the maximum percentage at 0.25 (25%).

#### b. Additional Bid Amounts

171. Consistent with the Bureau’s practice in past wireless spectrum auctions, the Bureau proposed in the *Auction 96 Comment Public Notice* to calculate any additional bid amounts 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) \* 1.10; etc. The Bureau will round the results using the Commission’s standard rounding procedures for auctions. The Bureau proposed in the *Auction 96 Comment Public Notice* initially to set the bid increment percentage at five percent.

172. The Bureau also proposed in the *Auction 96 Comment Public Notice* to begin the auction with three acceptable bid amounts per license (the minimum acceptable bid amount and two additional bid amounts). The Bureau received no specific comments on these proposals, but it did receive comments supporting the use of its standard range of auction procedures if the Bureau adopts a simultaneous multiple-round auction without package bidding. The Bureau notes that proposing three bid amounts per license was consistent with its past experience using a simultaneous multiple-round auction format with HPB. Because the Bureau is not using package bidding for Auction 96, it instead adopts nine acceptable bid amounts per license, which is consistent with its past practice for most spectrum auctions.

#### c. Bid Amount Changes

173. The Bureau retains the discretion to change the minimum acceptable bid amounts, the additional bid amounts, the number of acceptable bid amounts, and the parameters of the formulas used to calculate minimum acceptable bid amounts and additional bid amounts if the Bureau determines that circumstances so dictate. Further, the Bureau retains the discretion to do so on a license-by-license basis. The Bureau also retains the discretion to limit (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. For example, the Bureau could set a \$10 million limit on increases in minimum acceptable bid amounts over provisionally winning bids. Thus, if the activity-based formula calculates a minimum acceptable bid amount that is \$20 million higher than the provisionally winning bid on a license, the minimum acceptable bid amount

would instead be capped at \$10 million above the provisionally winning bid. The Bureau sought comment in the *Auction 96 Comment Public Notice* on the circumstances under which it should employ such a limit, factors it should consider when determining the dollar amount of the limit, and the tradeoffs in setting such a limit or changing other parameters—such as changing the minimum acceptable bid percentage, the bid increment percentage, or the number of acceptable bid amounts.

174. The Bureau received no specific comments on this proposal. Therefore, the Bureau will start the auction without a limit on the dollar amount by which minimum acceptable bids and additional bid amounts may increase. The Bureau retains the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the bid increment percentage, and the number of acceptable bid amounts if it determine that circumstances so dictate. Further, the Bureau retains the discretion to do so on a license-by-license basis. If the Bureau exercises this discretion, it will alert bidders by announcement in the FCC Auction System during the auction.

#### iv. Provisionally Winning Bids

175. At the end of each bidding round, a “provisionally winning bid” will be determined based on 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 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.

176. In the *Auction 96 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 specific comments were received on this proposal. Accordingly, the Bureau adopts the tied bids proposal. The FCC Auction System will assign a random number to each bid upon submission. The tied bid with the highest random number wins the tiebreaker, and becomes the provisionally winning bid. Bidders, regardless of whether they hold a provisionally winning bid, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid.

## v. Bidding

177. 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 96. 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.

178. 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.

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

180. In each round, eligible bidders will be able to place bids on a given license in any of up to nine pre-defined bid amounts, provided they have sufficient eligibility to place bids on the particular license. 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 text files containing bid information to be uploaded.

181. 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 the following round will be determined.

182. During a round, an eligible bidder may submit bids for as many licenses as it wishes (providing that it is eligible to bid on the specific license), 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, the system takes the last bid entered as that bidder's bid for the round. Bidding units associated with licenses for which the

bidder has removed or withdrawn bids do not count towards current activity.

183. 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

184. In the *Auction 96 Comment Public Notice*, the Bureau 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 Bureau proposed not to permit any bids, provisionally winning or otherwise, to be dropped or withdrawn from consideration in Auction 96 if the SMR with HPB format is used. The Bureau noted in the *Auction 96 Comment Public Notice* that the benefits that bidders may realize from withdrawing bids in a typical SMR auction are minimized under the proposed package bidding format. In addition, in an SMR auction with package bidding, there are significant risks associated with bid withdrawals that are not present in an SMR auction without package bidding. In the *Part 1 Third Report and Order*, the Commission explained that under its typical SMR auction format without package bidding, allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of backup strategies as information becomes available during the course of an auction. The Commission noted, however, that in some instances bidders may seek to withdraw bids for improper reasons. The Bureau, therefore, has discretion in managing the auction to limit the number of withdrawals to prevent any bidding abuses.

185. *Bid Removal*. The Bureau received no specific comment on its proposed bid removal procedures, and therefore adopts these procedures for Auction 96. 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 "undo" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. If a bid is placed on a license during a round, it will count towards the activity for that round, but when that bid is then removed during the same round it was placed, the activity associated with it is also removed, i.e.,

a bid that is removed does not count toward bidding activity.

186. *Bid Withdrawal*. RDL, the only party that commented on the Bureau's proposed bid withdrawal procedures, supports providing participants with unlimited bid withdrawal rights, particularly if the SMR-HPB format is used. In light of the Bureau's decision to use a standard SMR format without HPB for Auction 96, the Bureau will permit bid withdrawals consistent with the Bureau's practice in recent wireless spectrum auctions.

187. 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 using the "withdraw bids" function in the FCC Auction System. Each bidder is limited to withdrawing provisionally winning bids in only one round during the course of the auction. The round in which a bidder may withdraw bids will be at the bidder's discretion, and there is no limit on the number of provisionally winning bids that may be withdrawn during that round. A provisionally winning bidder that withdraws its provisionally winning bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Once a bid withdrawal is submitted during a round, that withdrawal cannot be unsubmitted even if the round has not yet ended.

188. 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.

189. *Calculation of Bid Withdrawal Payment*. Generally, the Commission imposes payments on bidders that withdraw provisionally winning bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the winning bid in the same or subsequent auction(s). If there are multiple bid withdrawals on a single license and no subsequent higher bid is placed and/or the license is not won in the same auction, the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent

winning bid or any subsequent intervening withdrawn bid, in either the same or subsequent auction(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any final withdrawal payment if there is a subsequent higher bid in the same or subsequent auction(s).

190. 47 CFR 1.2104(g)(1) sets forth the payment obligations of a bidder that withdraws a provisionally winning bid on a license during the course of an auction, and provides for the assessment of interim bid withdrawal payments. In the *Auction 96 Comment Public Notice*, the Bureau sought comment on the appropriate interim withdrawal payment percentage to apply if it were to permit withdrawals under procedures for an SMR auction without package bidding for Auction 96. The Bureau proposed to establish this percentage at fifteen percent if withdrawals are permitted in Auction 96 and sought comment on the proposal.

191. The Bureau received no specific comment on this issue. The Bureau adopted a fifteen percent payment amount for prior AWS and PCS auctions, believes this to be an appropriate amount in this case, and therefore adopts its proposal for a fifteen percent payment amount for this auction. The Commission will assess an interim withdrawal payment equal to fifteen percent of the amount of the withdrawn bids. The fifteen percent interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the license. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment. 47 CFR 1.2104(g) provides specific examples showing application of the bid withdrawal payment rule.

#### vii. Round Results

192. 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. These reports will be publicly accessible. Moreover, after the auction closes, the Bureau will make available complete

reports of all bids placed during each round of the auction, including bidder identities.

#### viii. Auction Announcements

193. The Commission will use auction announcements to report necessary information 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

194. 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, final payments, long-form applications, and ownership disclosure information reports.

#### A. Down Payments

195. Within ten business days after release of the auction closing public notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 96 to twenty percent of the net amount of its winning bids (gross bids less any applicable small business bidding credit).

#### B. Final Payments

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

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

197. 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 96. Winning bidders claiming eligibility for a small business bidding credit must demonstrate their eligibility for the bidding credit. Further instructions on these and other filing requirements will be provided to winning bidders in the auction closing public notice.

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

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

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

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

#### E. Tribal Lands Bidding Credit

202. 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.

203. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal lands bidding credit after the auction

when it files its long-form application (FCC Form 601). When initially filing the long-form application, the winning bidder will be required to advise the Commission whether it intends to seek a tribal lands bidding credit, for each license won in the auction, by checking the designated box(es). After stating its intent to seek a tribal lands bidding credit, the applicant will have 180 days from the close of the long-form application filing window to amend its application to select the specific tribal lands to be served and provide the required tribal government certifications. Licensees receiving a tribal lands bidding credit are subject to performance criteria as set forth in 47 CFR 1.2110(f)(3)(vii).

204. For additional information on the tribal lands bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rulemaking proceeding regarding tribal lands bidding credits and related public notices. Relevant documents can be viewed on the Commission's Web site by going to <http://wireless.fcc.gov/auctions/> and clicking on the Tribal Lands Credits link.

#### *F. Default and Disqualification*

205. 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). This payment consists of a deficiency payment, equal to the difference between the amount of the Auction 96 bidder's winning 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.

206. As noted in the *Auction 96 Comment Public Notice*, the percentage of the bid that a defaulting bidder must pay in addition to the deficiency will depend on the auction format ultimately chosen for a particular auction. The amount can range from three percent up to a maximum of twenty percent, established in advance of the auction and based on the nature of the service and the inventory of the licenses being offered. Accordingly, the Bureau sought comment in the *Auction 96 Comment Public Notice* on an appropriate additional default payment percentage in the event it does not conduct Auction 96 with package bidding procedures. As

the Bureau noted in the *Auction 96 Comment Public Notice*, the Commission explained in the *CSEA/Part 1 Report and Order* that defaults weaken the integrity of the auction process and may impede the deployment of service to the public, and that an additional default payment of up to twenty percent will be more effective in deterring defaults than the three percent used in some earlier auctions. However, as the Bureau further noted, it does not believe the detrimental effects of any defaults in Auction 96 are likely to be unusually great. Balancing these considerations, the Bureau proposed to establish an additional default payment for Auction 96 of fifteen percent of the applicable bid. The Bureau received no specific comments on this proposal, and therefore adopts it for Auction 96.

207. Finally, in the event of a default, the Commission has the discretion to 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 authorizations held by the applicant.

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

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

209. Bidders are encouraged to file their refund information electronically using the Refund Information icon found on the *Auction Application Manager* page or through the Wire Transfer for Refund Purposes link available on the *Auction Application Submit Confirmation* page in the FCC Auction System. If an applicant has completed the refund instructions electronically, the refund will be sent automatically. If an applicant has not

completed the refund instructions electronically, the applicant must send a written request.

Federal Communications Commission.

**Gary D. Michaels,**

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

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## **FEDERAL COMMUNICATIONS COMMISSION**

**[DA 13-2025; WC Docket No. 05-337; IB Docket No. 13-230; WT Docket No. 13-225; WC; Docket Nos. 13-223, 13-228, 13-235, 13-237]**

### **Revised Filing Deadlines Following Resumption of Normal Commission Operations**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice; revised filing deadlines.

**SUMMARY:** The Commission is further extending certain filing deadlines for regulatory and enforcement filings (with the exception of Network Outage Reporting System (NORS) and specifically docketed proceedings<sup>1</sup>) because the public did not have access to electronic docket and other online Commission resources during the suspension of operations due to the government-wide lapse in funding.

#### **DATES:**

- Filings (except NORS filings or otherwise specified filings) that were due between October 1 and October 6, 2013, will be due on October 22, 2013. Filings (except NORS filings or otherwise specified filings) that were due between October 7 and October 16, 2013 are due 16 calendar days after the original filing date.
- Filings (except NORS filings or otherwise specified filings) due to be filed between October 17 and November 4, 2013, are due November 4, 2013.
- Comments in WC Docket No. 05-337 are due by November 4, 2013; reply comments are due by November 19, 2013.
- Comments in IB Docket No. 13-230, are due October 25, 2013, and reply comments are due November 1, 2013.
- Reply comments WT Docket No. 13-225 are due October 28, 2013.
- Comments in WC Docket Nos. 13-223, 13-228, 13-235, 13-237, are due

<sup>1</sup> A separate **Federal Register** notice is being published for filing deadlines in pending rulemaking proceedings. The Wireless Telecommunications Bureau and Wireline Competition Bureau will release a separate Public Notice in the near future announcing new dates and deadlines applicable to Auction 902, AU Docket No. 13-53.