

anticipated to substantially degrade, decompose or depolymerize.

5. Tetraethoxysilane, polymer with hexamethyldisiloxane is not manufactured or imported from monomers and/or other reactants that are not already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. Tetraethoxysilane, polymer with hexamethyldisiloxane is not a water absorbing polymer with a number average molecular weight (MW) 10,000 or greater. Tetraethoxysilane, polymer with hexamethyldisiloxane also meets the exemption criteria of 40 CFR 723.250(e)(1) (as amended April 11, 1997). Tetraethoxysilane, polymer with hexamethyldisiloxane has a number average MW greater than or equal to 1,000 and less than 10,000 daltons (and oligomer content less than 10% below MW 500 and less than 25% below MW 1,000).

#### A. Aggregate Exposure

##### 1. Dietary exposure.

Tetraethoxysilane, polymer with hexamethyldisiloxane is not absorbed through the skin or gastrointestinal (GI) tract and is generally considered incapable of eliciting a toxic response.

i. *Food.* There are no food or food additive uses of tetraethoxysilane, polymer with hexamethyldisiloxane currently approved under 40 CFR. There are currently approved indirect food contact uses for tetraethoxysilane, polymer with hexamethyldisiloxane under 21 CFR 175.300, 175.320, and 176.170.

ii. *Drinking water.* Tetraethoxysilane, polymer with hexamethyldisiloxane is not absorbed through the skin or GI tract and is generally considered incapable of eliciting a toxic response.

2. *Non-dietary exposure.* There are no exposures to tetraethoxysilane, polymer with hexamethyldisiloxane through non-occupational, non-dietary routes.

#### B. Cumulative Effects

There are no data to support cumulative risk from tetraethoxysilane, polymer with hexamethyldisiloxane since polymers with MWs greater than 400 generally are not absorbed through the intact skin and substances with MWs greater than 1,000 generally are not absorbed through the GI tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response. Therefore, there is no reasonable expectation of risk due to cumulative exposure.

#### C. Safety Determination

1. *U.S. population.* Tetraethoxysilane, polymer with hexamethyldisiloxane causes no safety concerns because it conforms to the definition of a low risk polymer given in 40 CFR 723.250(e)(1) and as such is considered incapable of eliciting a toxic response.

##### 2. Infants and children.

Tetraethoxysilane, polymer with hexamethyldisiloxane causes no additional concern to infants and children because it conforms to the definition of a low risk polymer given in 40 CFR 723.250(e)(1), and as such, is considered incapable of eliciting a toxic response.

#### D. International Tolerances

There are no CODEX Maximum Residue Limits established for tetraethoxysilane, polymer with hexamethyldisiloxane in/on any crop commodities at this time.

[FR Doc. 01-27470 Filed 10-31-01; 8:45 am]

BILLING CODE 6560-50-S

### EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

#### SES Performance Review Board Members

**AGENCY:** Equal Employment Opportunity Commission (EEOC).

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the names of the members of the SES Performance Review Board of EEOC.

**FOR FURTHER INFORMATION CONTACT:** Arlethia D. Monroe, Acting Director, Office of Human Resources, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507, (202) 663-4306.

**SUPPLEMENTARY INFORMATION:** Pursuant to the requirement of 5 U.S.C. 4314(c)(1), membership of the SES Performance Review Board is as follows: Mr. Roy J. Rodriguez, Deputy Chief Operating Officer, Equal Employment Opportunity Commission (Chairperson); Mr. Chester V. Bailey, Director, Milwaukee District Office, Equal Employment Opportunity Commission; Ms. Patricia T. Bivins, Director, New Orleans District Office, Equal Employment Opportunity Commission; Mr. David L. Frank, Legal Counsel, Equal Employment Opportunity Commission; Susan L. McDuffie, Director, San Francisco District Office, Equal Employment Opportunity Commission; Peggy R. Mastroianni, Associate Legal Counsel (Alternate), Equal Employment Opportunity Commission.

Signed at Washington, D.C., on this 25th day of October 2001.

For the Commission.

**Cari. M. Dominguez,**

*Chair.*

[FR Doc. 01-27408 Filed 10-31-01; 8:45 am]

BILLING CODE 6570-01-P

### FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC-01-43-B (Auction No. 43); DA 01-2315]

#### Auction No. 43 Multi-Radio Service Auction Scheduled for January 10, 2002; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedural Issues

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the procedures and minimum opening bids for the upcoming auction of licenses in the Phase II 220 MHz Service, 800 MHz Specialized Mobile Radio ("SMR") Service General Category Frequencies, and Location and Monitoring Service ("LMS") scheduled for January 10, 2002 (Auction No. 43).

**DATES:** Auction No. 43 is scheduled for January 10, 2002.

**FOR FURTHER INFORMATION CONTACT:** Auctions and Industry Analysis Division: Howard Davenport, Legal Branch, or Lyle Ishida, Auctions Operations Branch, at (202) 418-0660; Barbara Sibert, Auctions Operations Branch, at (717) 338-2888, Media Contact: Meribeth McCarrick at (202) 418-0654, Commercial Wireless Division: Amal Abdallah, Policy and Rules Branch, or Dwain Livingston, Licensing and Technical Analysis Branch, at (202) 418-0620.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction No. 43 Procedures Public Notice* released October 10, 2001. The complete text of the *Auction No. 43 Procedures Public Notice*, including attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC, 20554. The Auction No. 43 Procedures Public Notice may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

## I. General Information

### A. Introduction

1. By the *Auction No. 43 Procedures Public Notice*, the Wireless Telecommunications Bureau ("Bureau") announces the procedures and minimum opening bids for the upcoming auction of licenses in the Phase II 220 MHz Service, 800 MHz Specialized Mobile Radio ("SMR") Service General Category Frequencies, and Location and Monitoring Service ("LMS") scheduled for January 10, 2002 (Auction No. 43). On September 7, 2001, in accordance with the Balanced Budget Act of 1997, the Bureau released a public notice seeking comment on reserve prices or minimum opening bids and the procedures to be used in Auction No. 43. The Bureau received no comments in response to the *Auction No. 43 Comment Public Notice*, 66 FR 48462 (September 20, 2001).

#### i. Background of Proceeding

2. Auction No. 43 will include licenses in the Phase II 220 MHz Service, 800 MHz SMR Service General Category Frequencies, and Location and Monitoring Service that either remain unsold from a previous auction or were defaulted on by a winning bidder in a previous auction.

#### a. Phase II 220 MHz

3. In March 1997, the Commission restructured the licensing framework that governs the 220 MHz Service. Site-specific licensing used in the Phase I 220 MHz Service, was replaced with a geographic-based system in the Phase II 220 MHz Service, which is the subject of Auction No. 43. This geographic-based licensing methodology is similar to that used in other commercial mobile radio services ("CMRS"). The Commission developed three types of geographic area licenses for the Phase II 220 MHz Service. The first type of license was based upon Economic Areas (EAs), developed by the Bureau of Economic Analysis of the U.S. Department of Commerce. In addition, the Commission created three EA-type license areas to cover the following United States territories: American Samoa; the U.S. Virgin Islands and Puerto Rico; and Guam and the Northern Mariana Islands. The second type of license, known as Economic Area Groupings (EAGs), included 6 groups of EAs, which collectively encompassed all of the EA and EA-type licenses. Finally, the Commission designed three nationwide licenses, each of which encompassed all six EAGs. Service and operational requirements for the Phase II 220 MHz

Service are contained in Part 90 of the Commission's Rules, 47 CFR 90.

#### b. 800 MHz SMR

4. On December 15, 1995, the Federal Communications Commission ("FCC" or "Commission") released a *800 MHz First Report and Order*, 61 FR 6212 (February 16, 1996), that set forth proposals for new licensing rules and auction procedures for the "lower 230" 800 MHz SMR channels. On July 10, 1997, the Commission released a *800 MHz Second Report and Order*, 62 FR 41190 (July 31, 1997), that resolved pending issues and established technical and operational rules for the "lower 230" 800 MHz SMR channels. On October 8, 1999, the Commission released a *800 MHz Order on Reconsideration*, 64 FR 71042 (December 20, 1999), that completed the implementation of a new licensing framework for the 800 MHz SMR service.

#### c. LMS

5. In 1995, the Commission established rules governing the licensing of the LMS in the 902–928 MHz frequency band. LMS refers to advanced radio technologies designed to support the nation's transportation infrastructure and to facilitate the growth of Intelligent Transportation Systems. The Commission created a new subpart M in part 90 of the Commission's rules for Transportation Infrastructure Radio Services, which includes LMS and like services.

6. The LMS licenses offered in Auction No. 43 are multilateration licenses. Multilateration LMS systems are designed to locate vehicles or other objects by measuring the difference in time of arrival, or difference in phase, of signals transmitted from a unit to a number of fixed points, or from a number of fixed points to the unit to be located. Such systems generally use spread-spectrum technology to locate vehicles throughout a wide geographic area. Multilateration technology is used, for example, by trucking companies to track individual vehicles, by municipalities to pinpoint the location of their buses, and by private entrepreneurs developing subscriber-based services for recovery of stolen vehicles. The Commission defined non-multilateration systems as LMS systems that employ any technology other than multilateration technology. The Commission noted that unlike a multilateration system, which determines the location of a vehicle or object over a wide area, a typical non-multilateration system uses narrowband technology whereby an electronic

device placed in a vehicle transfers information to and from that vehicle when the vehicle passes near one of the system's stations. i. Licenses to Be Auctioned

7. The Auction No. 43 Comment Public Notice announced that 4 licenses in the Phase II 220 MHz Service, 23 licenses for the 800 MHz SMR Service General Category Frequencies, and 42 multilateration licenses in the Location and Monitoring Service ("LMS"), were to be auctioned on January 10, 2002. A complete list of licenses available for Auction No. 43 and their descriptions is included as Attachment A of the Auction No. 43 Procedures Public Notice.

### B. Rules and Disclaimers

#### i. Relevant Authority

8. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to the Phase II 220 MHz Service, 800 MHz SMR Service, and Location and Monitoring Service contained in title 47, part 90 of the Code of Federal Regulations, and those relating to application and auction procedures, contained in title 47, part 1 of the Code of Federal Regulations. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, "Terms") contained in the Auction No. 43 Procedures Public Notice; the Auction No. 43 Comment Public Notice; and the Part 1 Fifth Report and Order, 65 FR 52401 (August 29, 2000), (as well as prior Commission proceedings regarding competitive bidding procedures).

#### a. Phase II 220 MHz

9. Auction participants bidding on licenses in the 220 MHz service should also be familiar with the *220 MHz Third Report and Order*, 62 FR 16004 (April 3, 1997); *220 MHz Memorandum Opinion and Order on Reconsideration*, 63 FR 32580 (June 12, 1998); *220 MHz Fourth Report and Order*, 62 FR 46211 (September 2, 1997); and *220 MHz Fifth Report and Order*, 63 FR 49291 (September 15, 1998).

#### b. 800 MHz SMR

10. Auction participants bidding on licenses in the 800 MHz SMR service should also be familiar with the *800 MHz First Report and Order*; *800 MHz Second Report and Order*; and the *800 MHz Order on Reconsideration*.

#### c. LMS

11. Auction participants bidding on licenses in the Location and Monitoring Service should also be familiar with the

*LMS Second Report and Order*, 63 FR 40659 (July 30, 1998); *Memorandum Opinion and Order and Further Notice of Proposed Rule Making*, 62 FR 52036 (October 6, 1997).

d. Phase II 220 MHz, 800 MHz SMR, and LMS

12. 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 bidders. It is the responsibility of all prospective bidders to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at <http://www.fcc.gov/wtb/auctions>. Additionally, documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC, 20554 or may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com). When ordering documents from Qualex, please provide the appropriate FCC number (for example, FCC 98-157 for the LMS Second Report and Order).

#### i. Prohibition of Collusion

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

such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.

14. However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted. Furthermore, the rule would apply to an applicant bidding for an EAG and another applicant bidding for an EA within that EAG, regardless of service. In addition, applicants that apply to bid for "all markets" would be precluded from communicating with all other applicants until after the down payment deadline. However, applicants may enter into bidding agreements *before* filing their FCC Form 175, as long as they disclose the existence of the agreement(s) in their Form 175. If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application pursuant to § 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other applicants for licenses covering the same geographic areas. By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with § 1.2105(c).

15. In addition, § 1.65 of the Commission's rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, § 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders therefore are required to make such notification to the Commission immediately upon discovery.

16. The Commission recently amended § 1.2105 to require auction applicants to report prohibited communications in writing to the Commission immediately, but in no case later than five business days after the communication occurs. This rule takes November 28, 2001.

17. A summary listing of documents from the Commission and the Bureau

addressing the application of the anti-collusion rules may be found in Attachment H of the *Auction No. 43 Procedures Public Notice*.

#### iii. Due Diligence

##### a. 220 MHz

18. Potential bidders are reminded that there are a number of incumbent Phase I 220 MHz licensees already licensed and operating on frequencies that will be subject to the upcoming auction. Such incumbents must be protected from harmful interference by Phase II 220 MHz licensees in accordance with the Commission's rules. *See* 47 CFR 90.763. These limitations may restrict the ability of such geographic area licensees to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license areas.

19. In addition, potential bidders seeking licenses for geographic areas that are near the Canadian border should be aware that the use of some or all of the channels they acquire in the auction could be restricted by the agreement with Canada on the use of 220-222 MHz spectrum in the border area.

20. Potential bidders should also be aware that certain applications (including those for modification), petitions for rulemaking, requests for special temporary authority ("STA"), waiver requests, petitions to deny, petitions for reconsideration, and applications for review may be pending before the Commission that relate to particular applicants or incumbent non-nationwide 220 MHz licensees. In addition, the decisions reached in the 220 MHz proceeding are the subject of a judicial appeal and may be the subject of additional reconsideration or appeal. *See, e.g., PLMRS Narrowband Corp., et al. v. Federal Communications Commission*, No. 92-1432, (D.C. Cir., filed September 18, 1992). The Bureau notes that resolution of these matters could have an impact on the availability of spectrum for EA and EAG licensees. In addition, while the Commission will continue to act on pending applications, requests and petitions, some of these matters may not be resolved by the time of the auction.

##### b. 800 MHz

21. Potential bidders are reminded that there are incumbent licensees operating on frequencies that are subject to the upcoming auction. Incumbent licensees retain the exclusive right to use those channels within their self-defined service areas. The holder of an EA authorization thus will be required

to implement its facilities to protect incumbents from harmful interference. These limitations may restrict the ability of such geographic area licenses to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license areas. Specifically, an EA authorization holder will be required to coordinate with the incumbent licensees by using the interference protection criteria in §§ 90.683 and 90.621(b) of the Commission's rules. However, operational agreements are encouraged between the parties. Should an incumbent lose its license, the incumbent's service area(s) will convey to the relevant authorized holder of the EA. The relevant authorized holder of the EA will then be entitled to operate within the forfeited service area(s) located within its EA, without being subject to further competitive bidding.

22. Potential bidders should be aware that certain applications (including those for modification), petitions for rulemaking, requests for special temporary authority ("STA"), waiver requests, petitions to deny, petitions for reconsideration, and applications for review may be pending before the Commission that relate to particular applicants or incumbent licensees. The Bureau notes that resolution of these matters could have an impact on the availability of spectrum for EA licensees in the 800 MHz SMR general category. While the Commission will continue to act on pending applications, requests and petitions, some of these matters may not be resolved by the time of the auction. Potential bidders are solely responsible for investigating and evaluating the degree to, which such pending matters may affect spectrum availability in areas where they seek EA licenses.

23. In addition, licenses in EAs that border Canada may be subject to the Arrangement Between the Department of Communications of Canada and the Federal Communications Commission of the United States Concerning the Use of 806–890 MHz Band along the Canada-United States Border. Licenses in EAs that border Mexico may be subject to the Agreement Between the Government of the United States of America and the Government of the United Mexican States Concerning the Allocation and Use of Frequency Bands by Terrestrial Non-Broadcasting Radiocommunication Services Along the Common Border.

#### c. LMS

24. Potential bidders are reminded that LMS operates in the 902–928 MHz frequency band. This band is allocated

for primary use by Federal Government radiolocation systems. Next, in order of priority, are Industrial, Scientific and Medical devices. Federal Government fixed and mobile and LMS systems are secondary to these uses. The remaining uses of the 902–928 MHz band include licensed amateur radio operations and unlicensed part 15 equipment, both of which are secondary to all other uses of the band. Part 15 low power devices include, but are not limited to, those used for automatic meter reading, inventory control, package tracking and shipping control, alarm services, local area networks, internet access, and cordless telephones. The amateur radio service is used by technically inclined private citizens to engage in self-training, information exchange, and radio experimentation. In the *LMS Report and Order*, 60 FR 15248 (March 23, 1995), the Commission recognized the important contribution to the public provided by Part 15 technologies and amateur radio operators and sought to develop a band plan that would maximize the ability of these services to coexist with LMS systems.

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

26. Potential bidders should also be aware that certain applications (including those for modification), petitions for rulemaking, waiver requests, requests for special temporary authority ("STA"), petitions to deny, petitions for reconsideration, and applications for review may be pending before the Commission that relate to particular applicants or incumbent LMS licensees. While the Commission will continue to act on pending applications, requests and petitions, some of these matters may not be resolved by the time of the auction.

#### d. 220 MHz, 800 MHz, and LMS

27. Potential bidders are solely responsible for identifying associated risks and for investigating and

evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses available in Auction No. 43.

28. To aid potential bidders, Attachment B to the *Auction No. 43 Procedures Public Notice* lists 220 MHz, SMR 800 MHz, and LMS matters pending before the Commission that relate to licenses or applications in these services. The Commission makes no representations or guarantees that the listed matters are the only pending matters that could affect spectrum availability in these services.

29. Copies of pleadings from pending cases relating to the 220 MHz, SMR 800 MHz, and LMS matters identified in Attachment B, of the *Auction No. 43 Procedures Public Notice*, are available for public inspection and copying during normal reference room hours at: Office of Public Affairs (OPA), Reference Operations Division, 445 12th Street, SW., Room CY–C314, Washington, DC 20554.

30. In addition, potential bidders may research the Bureau's licensing database on the Internet in order to determine which frequencies are already licensed to incumbent licensees. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the database. Potential bidders are strongly encouraged to physically inspect any sites located in, or near, the EA or EAG for which they plan to bid.

31. Licensing records for the 220 MHz, SMR 800 MHz, and LMS are contained in the Bureau's Universal Licensing System (ULS) and may be researched on the Internet at <http://www.fcc.gov/wtb/uls> by selecting the "License Search" button. Potential bidders may query the database online and download a copy of their search results if desired. The Bureau recommends that potential bidders select the "Frequency" option under License Search, specify the desired frequency or frequency range, select Status "A" (Active), and use the "GeoSearch" button at the bottom of the screen to limit their searches to a particular geographic area. Detailed instructions on using License Search (including frequency searches and the GeoSearch capability) and downloading query results are available online by selecting the "?" button at the bottom

right-hand corner of the License Search screen.

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

33. Licenses may, in some EAs and EAGs, be required to protect quiet zones. See 47 CFR 1.923(g) and 1.924.

#### iv. Bidder Alerts

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

35. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants and interested parties should perform their own due diligence before proceeding, as they would with any new business venture.

36. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 43 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a "cold call" from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.

- The amount of investment is less than \$25,000.

- The sales representative makes verbal representations that: (a) the Internal Revenue Service ("IRS"), Federal Trade Commission ("FTC"), Securities and Exchange Commission ("SEC"), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

37. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326-2222 and from the SEC at (202) 942-7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876-7060. Consumers who have concerns about specific proposals regarding Auction No. 43 may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225-5322).

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

38. Licensees must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a wireless antenna facility is a federal action and the licensee must comply with the Commission's NEPA rules for each such facility. See 47 CFR 1.1305 through 1.1319. The Commission's NEPA rules require, among other things, that the licensee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corp of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The licensee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The licensee must also prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

#### C. Auction Specifics

##### i. Auction Date

39. The auction will begin on Thursday, January 10, 2002. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

40. The Commission announces that bidding for Auction No. 43 will be temporarily suspended January 21, 2002, in observance of the Federal holiday.

##### ii. Auction Title

41. Auction No. 43—Multi-Radio Service

##### iii. Bidding Methodology

42. The bidding methodology for Auction No. 43 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network, which requires access to a 900 number telephone service, will be available as well. Qualified bidders are permitted to bid telephonically or electronically.

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

43. These are important dates relating to Auction No. 43:

Auction Seminar—November 7, 2001  
Short-Form Application (FCC FORM 175)—November 16, 2001; 6 p.m. ET  
Upfront Payments (via wire transfer)—December 7, 2001; 6 p.m. ET  
Mock Auction—January 7, 2002  
Auction Begins—January 10, 2002

##### v. Requirements for Participation

44. Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically by 6:00 p.m. ET, November 16, 2001.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, December 7, 2001.
- Comply with all provisions outlined in this public notice.

##### vi. General Contact Information

45. The following is a list of general contract information relating to Auction No. 43:

General Auction Information: General Auction Questions, Seminar Registration.

FCC Auctions Hotline, (888) 225-5322, Press Option #2, or direct (717) 338-2888, Hours of service: 8 a.m.—5:30 p.m. ET

Auction Legal Information: Auction Rules, Policies, Regulations.

Auctions and Industry Analysis Division, Legal Branch (202) 418-0660

Licensing Information: Rules, Policies, Regulations, Licensing Issues, Due Diligence, Incumbency Issues.

Commercial Wireless Division, (202) 418-0620

Technical Support: Electronic Filing, Automated Auction System.

FCC Auctions Technical Support Hotline, (202) 414-1250 (Voice), (202) 414-1255 (TTY), Hours of service: Monday through Friday 7 a.m. to 10:00 p.m. ET, Saturday, 8:00 a.m. to 7:00 p.m., Sunday, 12:00 noon to 6:00 p.m.

Payment Information: Wire Transfers, Refunds.

FCC Auctions Accounting Branch, (202) 418-1995, (202) 418-2843 (Fax)

Telephonic Bidding: Will be furnished only to qualified bidders.

FCC Copy Contractor: Additional Copies of Commission Documents.

Quallex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, (202) 863-2893, (202) 863-2898 (Fax), [quallexint@aol.com](mailto:quallexint@aol.com) (E-mail)

Press Information: Meribeth

McCarrick (202) 418-0654.

FCC Forms: (800) 418-3676 (outside Washington, DC), (202) 418-3676 (in the Washington Area), <http://www.fcc.gov/formpage.html>

FCC Internet Sites: <http://www.fcc.gov>, <http://www.fcc.gov/wtb/auctions>, <http://www.fcc.gov/wtb/uls>

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

46. Guidelines for completion of the short-form (FCC Form 175) are set forth in Attachment E of the *Auction No. 43 Procedures Public Notice*. The short-form application seeks the applicant's name and address, legal classification, status, small or very small business bidding credit eligibility, identification of the license(s) sought, the authorized bidders and contact persons. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license and, as discussed in section II.E (Provisions Regarding Defaulters and Former Defaulters), that they are not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency.

### A. License Selection

47. In Auction No. 43, Form 175 will include a mechanism that allows an applicant to filter the licenses by Service, Market Number, and/or Block to create customized lists of licenses. The applicant will make selections for one or more of the filter criteria and the system will produce a list of licenses satisfying the specified criteria. The applicant may apply for all the licenses in the customized list by using the "Save all filtered licenses" option; select and save individual licenses separately from the list; or create a second customized list without selecting any of the licenses from the first list. Applicants also will be able to select licenses from one customized list and then create a second customized list to select additional licenses.

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

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

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

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

applicants must submit an "Exhibit B" to the FCC Form 175.

50. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for licenses in the same geographic license area provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, bidders are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.

### D. Eligibility

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

51. Bidding credits are available to small and very small business, or consortia, thereof, as defined in 47 CFR 90.1021 for Phase II 220 MHz, 47 CFR 90.912 for 800 MHz SMR, and 47 CFR 90.1103 for LMS. A bidding credit represents the amount by which a bidder's winning bids are discounted. The size of the bidding credit depends on the average of the aggregated annual gross revenues for each of the preceding three years of the bidder, its affiliates, its controlling interests, and the affiliates of its controlling interests:

- A bidder with attributed average annual gross revenues of not more than \$15 million for the preceding three years receives a 25 percent discount on its winning bids for 220 MHz, 800 MHz SMR, and LMS licenses;
- A bidder with attributed average annual gross revenues of not more than \$3 million for the preceding three years receives a 35 percent discount on its winning bids for 220 MHz, 800 MHz SMR, and LMS licenses;

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

#### ii. Tribal Land Bidding Credit

52. To encourage the growth of wireless services in federally recognized tribal lands the Commission has

implemented a tribal land bidding credit. See Part V.C. of the *Auction No. 43 Procedures Public Notice*.

iii. Applicability of Part 1 Attribution Rules

53. *Controlling interest standard*. On August 14, 2000, the Commission released the *Part 1 Fifth Report and Order*, in which the Commission, *inter alia*, adopted a “controlling interest” standard for attributing to auction applicants the gross revenues of their investors and affiliates in determining small business eligibility for future auctions. The Commission observed that the rule modifications adopted in the various Part 1 orders would result in discrepancies and/or redundancies between certain of the new Part 1 rules and existing service-specific rules, and the Commission delegated to the Bureau the authority to make conforming edits to the Code of Federal Regulations (CFR) consistent with the rules adopted in the part 1 proceeding. Part 1 rules that superseded inconsistent service-specific rules will control in Auction No. 43. Accordingly, the “controlling interest” standard as set forth in the Part 1 rules will be in effect for Auction No. 43, even if conforming edits to the CFR are not made prior to the auction.

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

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

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

56. A consortium of small or very small businesses is a “conglomerate organization formed as a joint venture between or among mutually independent business firms,” each of which *individually* must satisfy the definition of small or very small business in §§ 1.2110(f), 90.912, 90.1021, and 90.1103. Thus, each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, and the affiliates of its controlling interests. The Bureau notes that although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for small or very small business credits, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

iv. Supporting Documentation

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

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

59. *Small or very small business eligibility (Exhibit C)*. Entities applying to bid as small or very small businesses (or consortia of small or very small businesses) will be required to disclose on Exhibit C to their FCC Form 175 short-form applications, *separately and in the aggregate*, the gross revenues for the preceding three years of each of the following: (i) the applicant, (ii) its affiliates, (iii) its controlling interests, and (4) the affiliates of its controlling interests. Certification that the average annual gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, a schedule of gross

revenues for *each* of the preceding three years, as well as a statement of total average gross revenues for the three-year period. If the applicant is applying as a consortium of small or very small businesses, this information must be provided for each consortium member.

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

60. Each applicant must certify on its FCC Form 175 application that it is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must attach to its FCC Form 175 application a statement made under penalty of perjury indicating whether or not the applicant, its affiliates, its controlling interests, or the affiliates of its controlling interest have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. The applicant must provide such information for itself, for each of its controlling interests and affiliates, and for each affiliate of its controlling interests, as defined by § 1.2110 of the Commission’s rules (as amended in the *Part 1 Fifth Report and Order*). Applicants must include this statement as Exhibit D of the FCC Form 175. Prospective bidders are reminded that the statement must be made under penalty of perjury and, further, submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

61. “Former defaulters”—*i.e.*, applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—are eligible to bid in Auction No. 43, provided that they are otherwise qualified. However, as discussed *infra* in section III.D.3, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

F. Installment Payments

61. Installment payment plans will not be available in Auction No. 43.



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

62. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(c)(2), may attach an exhibit (Exhibit E) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of "designated entities" in its auctions. Applicants wishing to submit additional information may do so on Exhibit F (Miscellaneous Information) to the FCC Form 175.

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

63. After the short-form filing deadline (November 16, 2001), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (e.g., change their license selections or proposed service areas, change the certifying official or change control of the applicant or change bidding credits). See 47 CFR 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants should make these changes on-line, and submit a letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Suite 4-A760, Washington, DC 20554, briefly summarizing the changes. Questions about other changes should be directed to Howard Davenport of the Auctions and Industry Analysis Division at (202) 418-0660.

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

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

**III. Pre-Auction Procedures**

*A. Auction Seminar*

65. On Wednesday, November 7, 2001, the FCC will sponsor a free seminar for Auction No. 43 at the Federal Communications Commission,

located at 445 12th Street, SW., Room 8-B516, Washington, DC. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, the FCC Automated Auction System, and the Multi-Radio Service (Phase II 220 MHz, 800 MHz SMR, and LMS) spectrum and auction rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

66. To register, complete Attachment C of the *Auctions No. 43 Procedures Public Notice* and submit it by Monday, November 5, 2001. Registrations are accepted on a first-come, first-served basis.

*B. Short-Form Application (FCC Form 175)—Due November 16, 2001*

67. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be submitted electronically and received at the Commission no later than 6 p.m. ET on November 16, 2001. Late applications will not be accepted.

68. There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment. See Part III.D.

*i. Electronic Filing*

69. Applicants must file their FCC Form 175 applications electronically. Applications may generally be filed at any time beginning at noon ET on November 7, 2001, until 6 p.m. ET on November 16, 2001. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on November 16, 2001.

70. Applicants must press the "SUBMIT Application" button on the "Submission" page of the electronic form to successfully submit their FCC Form 175s. Any form that is not submitted will not be reviewed by the FCC. Information about accessing the FCC Form 175 is included in Attachment D of the *Auctions No. 43 Procedures Public Notice*. Technical support is available at (202) 414-1250 (voice) or (202) 414-1255 (text telephone (TTY)); the hours of service Monday through Friday, from 7 AM to 10 PM ET, Saturday, 8 AM to 7 PM ET, and Sunday, 12 noon to 6 PM ET. In order to provide better service to the public, *all calls to the hotline are recorded*.

71. Applicants can also contact Technical Support via e-mail. To obtain

the address, click the Support tab on the Form 175 Homepage.

*ii. Completion of the FCC Form 175*

72. Applicants should carefully review 47 CFR 1.2105, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment E of the *Auction No. 43 Procedures Public Notice*. Applicants are encouraged to begin preparing the required attachments for FCC Form 175 prior to submitting the form. Attachments D and E to the *Auction No. 43 Procedures Public Notice* provide information on the required attachments and appropriate formats.

*iii. Electronic Review of FCC Form 175*

73. The FCC Form 175 electronic review system may be used to locate and print applicants' FCC Form 175 information. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. For this reason, it is important that applicants do not include their Taxpayer Identification Numbers (TINs) on any exhibits to their FCC Form 175 applications. There is no fee for accessing this system. See Attachment D of the *Auction No. 43 Procedures Public Notice* for details on accessing the review system.

*C. Application Processing and Minor Corrections*

74. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (i) Those applications accepted for filing; (ii) those applications rejected; and (iii) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

75. As described more fully in the Commission's rules, after the November 16, 2001, short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (e.g., change their license selections, change the certifying official, change control of the applicant, or change bidding credit eligibility).

*D. Upfront Payments—Due December 7, 2001*

76. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an



FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6:00 p.m. ET on December 7, 2001. Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 43 go to a lockbox number different from the lockboxes used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the December 7, 2001, deadline will result in dismissal of the application and disqualification from participation in the auction.

i. Making Auction Payments by Wire Transfer

77. Wire transfer payments must be received by 6:00 p.m. ET on December 7, 2001. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261  
 Receiving Bank: Mellon Pittsburgh  
 BNF: FCC/Account # 910-1182  
 OBI Field: (Skip one space between each information item)  
 "AUCTIONPAY"  
 TAXPAYER IDENTIFICATION NO.:  
 (same as FCC Form 159, block 12)  
 PAYMENT TYPE CODE (same as FCC Form 159, block 24A: A43U)  
 FCC CODE 1 (same as FCC Form 159, block 28A: "43")  
 PAYER NAME (same as FCC Form 159, block 2)  
 LOCKBOX NO. # 358415

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

78. Applicants must fax a completed FCC Form 159 (Revised 2/00) to Mellon

Bank at (412) 209-6045 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer—Auction Payment for Auction Event No. 43." Bidders should confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

ii. FCC Form 159

79. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/00) must be faxed to Mellon Bank in order to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/00) is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment F of the *Auction No. 43 Procedures Public Notice*. An electronic version of the FCC Form 159 is available after filing the FCC Form 175. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

iii. Amount of Upfront Payment

80. In the *Part 1 Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making*, 62 FR 13540 (March 21, 1997), the Commission delegated to the Bureau the authority and discretion to determine appropriate upfront payment(s) for each auction. In addition, in the *Part 1 Fifth Report and Order*, the Commission ordered that "former defaulters," i.e., applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, be required to pay upfront payments fifty percent greater than non-"former defaulters."

81. In the *Auction No. 43 Comment Public Notice*, the Bureau proposed translating bidders' upfront payments to bidding units to define a bidder's maximum eligibility. In order to bid on a license, otherwise qualified bidders who applied for that license on Form 175 must have an 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 applied for on Form 175,

or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all licenses for which the applicant has applied on Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold high bids at any given time.

82. In the *Auction No. 43 Comment Public Notice*, the Bureau proposed upfront payments on a license-by-license basis using the following formula:

- 220 MHz  
 $\text{EAG Licenses: } \$0.01 * 0.15 \text{ MHz} * \text{License Area Population}$   
 $\text{EA Licenses: } \$500 \text{ per license}$
- 800 MHz  
 $\$0.005 * \text{License Area Population}$   
 with a minimum of \$2,500 per license.
- LMS  
 Block A:  $\$0.0004 * \text{MHz} * \text{License Area Population}$  with a minimum of \$500 per license.  
 Block B:  $\$0.0005 * \text{MHz} * \text{License Area Population}$  with a minimum of \$500 per license.  
 Block C:  $\$0.0005 * \text{MHz} * \text{License Area Population}$  with a minimum of \$500 per license.

83. Having received no comments regarding the value of the proposed upfront payments, the Bureau therefore adopts its proposed upfront payment amounts for Auction No. 43.

84. The specific upfront payments and bidding units for each license are set forth in Attachment A of the *Auction No. 43 Procedures Public Notice*.

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

EXAMPLE: 800 MHZ SMR UPFRONT PAYMENTS AND BIDDING FLEXIBILITY

| Market No.   | Block | Market name             | Population | Bidding units | Upfront payment |
|--------------|-------|-------------------------|------------|---------------|-----------------|
| BEA009 ..... | D     | State College, PA ..... | 798,826    | 4,000         | \$4,000         |

## EXAMPLE: 800 MHZ SMR UPFRONT PAYMENTS AND BIDDING FLEXIBILITY—Continued

| Market No.   | Block | Market name                           | Population | Bidding units | Upfront payment |
|--------------|-------|---------------------------------------|------------|---------------|-----------------|
| BEA011 ..... | DD    | Harrisburg–Lebanon–Carlisle, PA ..... | 1,026,459  | 5,100         | 5,100           |

If a bidder wishes to bid on both licenses in a round, it must have selected both on its FCC Form 175 and purchased at least 9,100 bidding units (4,000 + 5,100). If a bidder only wishes to bid on one, but not both, purchasing 5,100 bidding units would meet the requirement for either license. The bidder would be able to bid on either license, *but not both at the same time*. If the bidder purchased only 4,000 bidding units, it would have enough eligibility for the State College, PA license but not for the Harrisburg-Lebanon-Carlisle, PA license.

86. Former defaulters should calculate their upfront payment for all licenses by multiplying the number of bidding units they wish to purchase 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.

**Note:** An applicant may, on its FCC Form 175, apply for every applicable license being offered, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment.

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

87. The Commission will use wire transfers for all Auction No. 43 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed be supplied to the FCC. Applicants can provide the information electronically during the initial short-form filing window after the form has been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Tim Dates or Gail Glasser, at (202) 418–2843 by December 7, 2001. 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. For additional information, please call (202) 418–1995.

Name of Bank, ABA Number, Contact and Phone Number, Account Number to Credit, Name of Account Holder, Taxpayer Identification Number, Correspondent Bank (if applicable), ABA Number, Account Number.

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in Part V.E.

#### E. Auction Registration

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

89. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, one containing the confidential bidder identification number (BIN) required to place bids and the other containing the SecurID cards. These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.

90. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Thursday, January 3, 2002, should contact the Auctions Hotline at (717) 338–2888. Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

91. Qualified bidders should note that lost bidder identification numbers or SecurID cards can be replaced only by appearing *in person* at the FCC Auction Headquarters located at 445 12th St., SW., Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacements. Qualified bidders requiring replacements must call technical support prior to arriving at the FCC.

#### F. Electronic Bidding

92. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area

Network, which requires access to a 900 number telephone service, will be available as well. Qualified bidders are permitted to bid telephonically or electronically, *i.e.*, over the Internet or the FCC's Wide Area Network. In either case, each authorized bidder must have its own Remote Security Access SecurID card, which the FCC will provide at no charge. Each applicant with less than three authorized bidders will be issued two SecurID cards, while applicants with three authorized bidders will be issued three cards. For security purposes, the SecurID cards and the instructions for using them are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID card is tailored to a specific auction, therefore, SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 43. The telephonic bidding phone number will be supplied in the first Federal Express mailing of the confidential bidder identification number. Your bidding preference—electronic or telephonic—is specified on the FCC Form 175.

93. Please note that the SecurID cards can be recycled, and the Bureau encourages bidders to return the cards to the FCC. The Bureau will provide pre-addressed envelopes that bidders may use to return the cards once the auction is over.

#### G. Mock Auction

94. All qualified bidders will be eligible to participate in a mock auction on Monday, January 7, 2002. The mock auction will enable applicants to become familiar with the electronic system prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

#### II. Auction Event

95. The first round of bidding for Auction No. 43 will begin on Thursday, January 10, 2002. 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

#### ii. Simultaneous Multiple Round Auction

96. In the *Auction No. 43 Comment Public Notice*, the Bureau proposed to award all licenses in Auction No. 43 in a single, simultaneous multiple round auction. The Bureau received no comments on this issue. Therefore, the Bureau concludes that it is operationally feasible and appropriate to auction the 220 MHz, 800 MHz, and LMS licenses through a single, simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction. This approach allows bidders to take advantage of any synergies that exist among licenses and is administratively efficient.

#### ii. Maximum Eligibility and Activity Rules

97. In the *Auction No. 43 Comment Public Notice*, the Bureau proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder. The Bureau received no comments on this issue.

98. For Auction No. 43, the Bureau adopts this proposal. The amount of the upfront payment submitted by a bidder determines the initial maximum eligibility (in bidding units) for each bidder. Note again that upfront payments are not attributed to specific licenses, but instead will be translated into bidding units to define a bidder's initial maximum eligibility (see "Amount of Upfront Payment" in Part III.D.iii). The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid and hold high bids. As there is no provision for increasing a bidder's maximum eligibility during the course of an auction (as described under "Auction Stages" in Part IV.A.iii), prospective bidders are cautioned to calculate their upfront payments carefully. The total upfront payment does not affect the total dollars a bidder may bid on any given license.

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

100. A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the

bidder is active. A bidder is considered active on a license in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits an acceptable bid in the current round (see "Bid Increments and Minimum Accepted Bids" in Part IV.B.(iii)). The minimum required activity level is expressed as a percentage of the bidder's maximum bidding eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions (as set forth under "Auction Stages" in Part IV.A.iii and "Stage Transitions" in Part IV.A.iv), the Bureau adopts them for Auction No. 43.

#### iii. Auction Stages

101. In the *Auction No. 43 Comment Public Notice*, the Bureau proposed to conduct the auction in two stages and employ an activity rule. The Bureau further proposed that, in each round of Stage One, a bidder desiring to maintain its current eligibility would be required to be active on licenses encompassing at least 80 percent of its current bidding eligibility. In each round of Stage Two, a bidder desiring to maintain its current eligibility would be required to be active on at least 98 percent of its current bidding eligibility. The Bureau received no comments on this proposal.

102. The Bureau adopts its proposed activity rules. The activity levels for each stage of the auction are provided. The FCC reserves the discretion to further alter the activity percentages before and/or during the auction.

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

*Stage Two:* During the second stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). In this final stage, reduced

eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and valid bids during the current round) by fifty-fortyninths ( $\frac{50}{49}$ ).

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

103. Because the foregoing procedures have proven successful in maintaining proper pace in previous auctions, the Bureau adopts them for Auction No. 43.

#### iv. Stage Transitions

104. In the *Auction No. 43 Comment Public Notice*, the Bureau proposed that the auction would generally advance to the next stage (i.e., from Stage One to Stage Two) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is below 20 percent for three consecutive rounds of bidding in each Stage. The Bureau further proposed that the Bureau would retain the discretion to change stages unilaterally by announcement during the auction. This determination, the Bureau proposed, would be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Bureau received no comments on this subject.

105. The Bureau adopts its proposal. Thus, the auction will start in Stage One and it will advance to the next stage (i.e., from Stage One to Stage Two) when, in each of three consecutive rounds of bidding, the high bid has increased on 20 percent or less of the licenses being auctioned (as measured in bidding units). In addition, the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The

Bureau believes that these stage transition rules, having proven successful in prior auctions, are appropriate for use in Auction No. 43.

v. Activity Rule Waivers and Reducing Eligibility

106. In the *Auction No. 43 Comment Public Notice*, the Bureau proposed that each bidder in the auction would be provided three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. The Bureau received no comments on this issue.

107. Based upon the Bureau's experience in previous auctions, it adopts its proposal that each bidder be provided three activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. The Bureau is satisfied that its practice of providing three waivers over the course of the auction provides a sufficient number of waivers and maximum flexibility to the bidders, while safeguarding the integrity of the auction.

108. The FCC Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any round where a bidder's activity level is below the minimum required unless: (i) there are no activity rule waivers available; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

109. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the reduce eligibility function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in "Auction Stages" (see Part IV.A.iii discussion). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

110. Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive

waiver function in the bidding system) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver triggered during a round in which there are no new valid bids or withdrawals will not keep the auction open.

vi. Auction Stopping Rules

111. For Auction No. 43, the Bureau proposed to employ a simultaneous stopping rule. Under this rule, bidding will remain open on all licenses until bidding stops on every license. The auction will close for all licenses when one round passes during which no bidder submits a new acceptable bid on any license, applies a proactive waiver, or withdraws a previous high bid. After the first such round, bidding closes simultaneously on all licenses.

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

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

114. In addition, the Bureau proposed that it reserve the right to declare that the auction will end after a designated number of additional rounds ("special stopping rule"). If the Bureau invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. The Bureau proposed to exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example,

moving the auction into the next stage (where bidders will be required to maintain a higher level of bidding activity), increasing the number of bidding rounds per day, and/or adjusting the amount of the minimum bid increments for the licenses.

115. The Bureau received no comments on the subject therefore it adopts all of the proposals concerning the auction stopping rules. Auction No. 43 will begin under the simultaneous stopping rule and the Bureau will retain the discretion to invoke the other versions of the stopping rule. The Bureau believes that these stopping rules are most appropriate for Auction No. 43, because its experience in prior auctions demonstrates that the auction stopping rules balance the interests of administrative efficiency and maximum bidder participation.

vii. Auction Delay, Suspension, or Cancellation

116. In the *Auction No. 43 Comment Public Notice*, the Bureau proposed that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair conduct of competitive bidding.

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

## B. Bidding Procedures

### i. Round Structure

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

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

### ii. Reserve Price or Minimum Opening Bid

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

121. In the *Auction No. 43 Comment Public Notice*, the Bureau proposed to establish minimum opening bids for Auction No. 43 and to retain discretion to lower the minimum opening bids. Specifically, for Auction No. 43, the Bureau proposed the following license-by-license formula for calculating minimum opening bids:

- 220 MHz  
EAG Licenses:  $\$0.0125 * 0.15 \text{ MHz} * \text{License Area Population}$ .  
EA Licenses: \$500 per license.
- 800 MHz  
 $\$0.005 * \text{License Area Population}$  with a minimum of \$2,500 per license.
- LMS  
Block A:  $\$0.0004 * \text{MHz} * \text{License Area Population}$  with a minimum of \$500 per license.  
Block B:  $\$0.0005 * \text{MHz} * \text{License Area Population}$  with a minimum of \$500 per license.  
Block C:  $\$0.0005 * \text{MHz} * \text{License Area Population}$  with a minimum of \$500 per license.

122. In the alternative, the Bureau sought comment on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price. Having received no comments regarding the value of the proposed minimum opening bids, the Bureau therefore adopts its proposed minimum opening bids amounts for Auction No. 43.

123. The specific minimum opening bids for each license are set forth in Attachment A of the *Auction No. 43 Procedures Public Notice*.

124. The minimum opening bids that the Bureau adopts are reducible at its discretion. The Bureau emphasizes, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureau will not entertain any requests to reduce the minimum opening bid on specific licenses.

### iii. Bid Increments and Minimum Accepted Bids

125. In the *Auction No. 43 Comment Public Notice*, the Bureau proposed to use a smoothing methodology to calculate minimum acceptable bids. The Bureau further proposed to retain the discretion to change the minimum acceptable bids and bid increments if circumstances so dictate. The Bureau received no comment on this issue.

126. The Bureau adopts its proposal for a smoothing formula. The smoothing methodology is designed to vary the increment for a given license between a maximum and minimum value based on the bidding activity on that license. This methodology allows the increments to be tailored to the activity level of a license, decreasing the time it takes for active licenses to reach their final value. The formula used to calculate this increment is included as Attachment G

of the *Auction No. 43 Procedures Public Notice*.

127. The Bureau adopts its proposal of initially setting the weighing factor at 0.5, the minimum percentage increment at 0.1 (10 percent), and the maximum at 0.2 (20 percent). The Bureau retains the discretion to change the minimum acceptable bids and bid increments if it determines that circumstance so dictate. The Bureau will do so by announcement in the Automated Auction System. Under its discretion, the Bureau may also implement an absolute dollar floor for the bid increment to further facilitate a timely close of the auction. The Bureau may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant. The Bureau also retains the discretion to use alternate methodologies, such as a flat percentage increment for all licenses, for Auction No. 43 if circumstances warrant.

### iv. High Bids

128. At the end of each round, the Automated Auction System determines the standing high bid for each license based on the gross dollar amounts of the bids received for each license.

129. In the case of tied high bids, an implementation of the Lecuyer pseudo-random generator will be used to determine the standing high bid. A random number will be assigned to each bid. The tie bid having the highest random number will become the standing high bid.

### v. Bidding

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

131. Please note that all bidding will take place remotely either through the Automated Auction System or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 43.

132. A bidder's ability to bid on specific licenses in the first round of the

auction is determined by two factors: (i) the licenses applied for on FCC Form 175 and (ii) the upfront payment amount deposited. The bid submission screens will allow bidders to submit bids on only those licenses for which the bidder applied on its FCC Form 175.

133. The FCC Automated Auction System requires each bidder to be logged in during the bidding round using the bidder identification number provided in the registration materials, and the generated SecurID code. Bidders are strongly encouraged to print bid confirmations *after* they submit their bids.

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

135. Once there is a standing high bid on a license, the Automated Auction System will calculate a minimum acceptable bid for that license for the following round. The difference between the minimum acceptable bid and the standing high bid for each license will define the *bid increment*. The nine acceptable bid amounts for each license consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

136. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. The additional bid amounts for licenses that have not yet received a bid are calculated using the difference between the minimum opening bid times one plus the minimum percentage increment, rounded, and the minimum opening bid. Therefore, when the minimum percentage increment equals 0.1, the first additional bid amount will be approximately ten percent higher than the minimum opening bid; the second, twenty percent; the third, thirty percent; etc.

137. In the case of a license for which the standing high bid has been withdrawn, the minimum acceptable bid will equal the second highest bid received for the license. The additional

bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid.

138. See Attachment G of the *Auction No. 43 Procedures Public Notice* for more detail on the calculation of the various bid amounts.

139. Finally, bidders are cautioned in selecting their bid amounts because, as explained in the following section, bidders who withdraw a standing high bid from a previous round, even if mistakenly or erroneously made, are subject to bid withdrawal payments.

#### vi. Bid Removal and Bid Withdrawal

140. In the Auction No. 43 Comment Public Notice, the Bureau proposed bid removal and bid withdrawal rules. With respect to bid withdrawals, the Bureau proposed limiting each bidder to withdrawals in no more than two rounds during the course of the auction. The two rounds in which withdrawals are utilized, the Bureau proposed, would be at the bidder's discretion. The Bureau received no comments on this issue.

141. Procedures. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bid" function in the bidding system, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is subsequently removed does not count toward the bidder's activity requirement. This procedure, about which the Bureau received no comments, will enhance bidder flexibility during the auction. Therefore, the Bureau adopts these procedures for Auction No. 43.

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

143. In previous auctions, the Bureau has detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While the Bureau continues to recognize the important role that bid withdrawals play in an

auction, *i.e.*, reducing risk associated with efforts to secure various licenses in combination, it conclude that, for Auction No. 43, adoption of a limit on their use to two rounds is the most appropriate outcome. By doing so the Bureau believes it strikes a reasonable compromise that will allow bidders to use withdrawals. The Bureau's decision on this issue is based upon its experience in prior auctions, particularly the PCS D, E and F block auctions, and 800 MHz SMR auction, and is in no way a reflection of its view regarding the likelihood of any speculation or "gaming" in this auction.

144. The Bureau will therefore limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals during the auction will still be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market. If a high bid is withdrawn, the minimum accepted bid in the next round will be the prior round's second highest bid price, which may be less than, or equal to, in the case of tie bids, the amount of the withdrawn bid. The additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid. The Commission will serve as a "place holder" on the license until a new acceptable bid is submitted on that license.

145. Calculation. Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the net high bid in the same or subsequent auction(s). In the case of multiple bid withdrawals on a single license, within the same or subsequent auction(s), the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids, in either the same or subsequent auction(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any withdrawal payments if there is

a subsequent higher bid in the same or subsequent auction(s). This policy allows bidders most efficiently to allocate their resources as well as to evaluate their bidding strategies and business plans during an auction while, at the same time, maintaining the integrity of the auction process. The Bureau retains the discretion to scrutinize multiple bid withdrawals on a single license for evidence of anti-competitive strategic behavior and take appropriate action when deemed necessary.

146. In the *Part 1 Fifth Report and Order*, the Commission modified § 1.2104(g)(1) of the rules regarding assessments of interim bid withdrawal payments. As amended, § 1.2104(g)(1) provides that in instances in which bids have been withdrawn on a license that is not won in the same auction, the Commission will assess an interim withdrawal payment equal to 3 percent of the amount of the withdrawn bids. The 3 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. The *Part 1 Fifth Report and Order* provides specific examples showing application of the bid withdrawal payment rule.

#### vii. Round Results

147. Bids placed during a round will not be published until the conclusion of that bidding period. After a round closes, the Bureau will compile reports of all bids placed, bids withdrawn, current high bids, new minimum accepted bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 43 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

#### viii. Auction Announcements

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

ix. Maintaining the Accuracy of FCC Form 175 Information

149. As noted in Part II.H., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and certain revision of exhibits. Filers must make these changes on-line, and submit a letter summarizing the changes to: Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4-A760, Washington, DC 20554.

150. A separate copy of the letter should be mailed to Howard Davenport, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4-A435, Washington, DC 20554. Questions about other changes should be directed to Howard Davenport at (202) 418-0660.

### I. Post-Auction Procedures

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

151. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying winning bidders, down payments and any withdrawn bid payments due.

152. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any applicable small and very small business bidding credits). See 47 CFR 1.2107(b). In addition, by the same deadline all bidders must pay any bid withdrawal payments due under 47 CFR 1.2104(g), as discussed in "Bid Removal and Bid Withdrawal," Part IV.B.vi. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

#### B. Long-Form Application

153. 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) and required exhibits for each license won through Auction No. 43. Winning bidders that are small or very small businesses must include an exhibit demonstrating their eligibility for small

and very small business bidding credits. See 47 CFR 1.2112(b). Further filing instructions will be provided to auction winners at the close of the auction.

#### C. Tribal Land Bidding Credit

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

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

156. For additional information on the tribal land bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rule making proceeding regarding tribal land bidding credits and related public notices. Relevant documents can be viewed on the Commission's web site by going to <http://www.fcc.gov/wtb/auctions> and clicking on *Tribal Land Credits*.

#### D. Default and Disqualification

157. Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at their final bid. See 47 CFR 1.2109(b) and (c). In addition, if a default or



disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant. See 47 CFR 1.2109(d).

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

158. All applicants that submitted upfront payments but were not winning bidders for a license in Auction No. 43 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid. 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.

159. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions and a Taxpayer Identification Number (TIN). Send refund request to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Michelle Bennett, 445 12th Street, SW., Room 1-C864, Washington, DC 20554.

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

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

Federal Communications Commission.

**Margaret Wiener,**

*Chief, Auctions and Industry Analysis Division, WTB.*

[FR Doc. 01-27433 Filed 10-31-01; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Discontinuance

#### SUMMARY:

#### Background

Notice is hereby given of the discontinuance of an information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public).

#### FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer-Mary M. West-Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829); OMB Desk Officer-Alexander T. Hunt-Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7860).

#### Discontinuation of the following report:

1. *Report title:* Daily Advance Report of Deposits

*Agency form number:* FR 2000

*OMB Control number:* 7100-0087

*Effective Date:* November 5, 2001

*Frequency:* Daily

*Reporters:* Large commercial banks and thrifts

*Annual reporting hours:* 24,960

*Estimated average hours per response:* 0.60

*Number of respondents:* 160

Small businesses are not affected.

*General description of report:* This information collection is mandatory (12 U.S.C. 248(a), 347(d), 603, 615 and 415) and is given confidential treatment (5 U.S.C. 552(b)(4)).

*Abstract:* This report collects selected deposit and vault cash data for the most recent reporting week from a sample of large commercial banks and thrifts before such data become available for the universe of all weekly reporters of the Report of Transaction Accounts, Other Deposits and Vault Cash (FR 2900; OMB No. 7100-0087). Although these advance data have been useful for estimating the monetary aggregates, the Federal Reserve feels that the costs to the Federal Reserve System and to depository institutions of collecting these data outweigh the benefits. In addition, under contemporaneous reserve requirements, these data were essential in constructing estimates of aggregate required reserves and vault cash for the reserve maintenance period. Since the Federal Reserve's change back

to lagged reserve requirements in August 1998, these data are no longer essential for that purpose. Respondents will submit their final FR 2000 for the reporting week ending November 5, 2001. The Federal Reserve will continue to collect the other reports included in this information collection.

Board of Governors of the Federal Reserve System, October 26, 2001.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 01-27422 Filed 10-31-01; 8:45 am]

**BILLING CODE 6210-01-S**

## FEDERAL RESERVE SYSTEM

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

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

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 26, 2001.

**A. Federal Reserve Bank of Chicago** (Phillip Jackson, Applications Officer)  
230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Premier Holdings, Ltd.*, Rock Valley, Iowa; to become a bank holding