



PUBLIC NOTICE

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RECONFIGURED 39 GHZ INCUMBENT HOLDINGS

INITIAL COMMITMENT OPTIONS AND TIMELINE

PREPARATION FOR INCENTIVE AUCTION OF UPPER MICROWAVE FLEXIBLE USE SERVICE LICENSES IN THE UPPER 37 GHZ, 39 GHZ, AND 47 GHZ BANDS (AUCTION 103)

GN Docket No. 14-177

AU Docket No. 19-59

TABLE OF CONTENTS

Heading	Paragraph #
I. INTRODUCTION	1
II. RECONFIGURED 39 GHZ HOLDINGS AND INITIAL COMMITMENT OPTIONS.....	4
A. Option 1 – Accept Modified Licenses Based on Reconfigured Holdings in Attachment 1	7
B. Option 2 – Accept Modified Licenses Based on Acceptable Reconfigured Holdings Submitted by the Incumbent	12
C. Option 3 – Relinquish All 39 GHz Holdings in Existing Licenses for an Incentive Payment.....	15
III. RECONFIGURATION TIMELINE	17

ATTACHMENT 1

I. INTRODUCTION

1. In this Public Notice, the Wireless Telecommunications Bureau (Bureau), in cooperation with the Office of Economics and Analytics (OEA), takes the next step in reconfiguring existing 39 GHz licenses in preparation for Auction 103, an incentive auction that will offer new flexible use licenses in the Upper 37 GHz (37.6–38.6 GHz), 39 GHz (38.6–40 GHz), and 47 GHz (47.2–48.2 GHz) bands.¹

¹ See *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services, et al.*, GN Docket No. 14-177, Fourth Report and Order, 33 FCC Rcd 12168, 12169-70, para. 4 (2018) (*Spectrum Frontiers Fourth R&O*). See also *Incentive Auction of Upper Microwave Flexible Use Service Licenses in the Upper 37 GHz, 39 GHz, and 47 GHz Bands for Next-Generation Wireless Services; Comment Sought on Competitive Bidding Procedures for Auction 103*, GN Docket No. 14-177, AU Docket No. 19-59, Public Notice, FCC 19-35 (rel. April 15, 2019) (*Auction 103 Comment Public Notice* or *Auction 103 Comment PN*); *Notice of Updated 39 GHz Reconfiguration Procedures et al.*, GN Docket No. 14-177, AU Docket No. 19-59, Public Notice, DA 19-397, (WTB/OEA May 14, 2019)

(continued....)

Reconfiguration is critical for offering new licenses in this incentive auction and will enhance opportunities for both incumbents and new entrants to provide valuable 5G wireless, Internet of Things, and other advanced services. Bidding for those new licenses is scheduled to begin on December 10, 2019.²

2. This Public Notice provides important information for incumbent 39 GHz licensees in making an Initial Commitment with respect to their existing 39 GHz holdings. As part of the reconfiguration process, each 39 GHz incumbent will submit its selection of one of three Initial Commitment options. Each incumbent may either: (1) accept modified licenses based on the FCC's proposed reconfigured holdings announced in Attachment 1 to this Public Notice (Option 1); (2) accept modified licenses based on an acceptable alternative reconfiguration submitted by the incumbent that is consistent with Commission requirements (Option 2); or (3) relinquish spectrum usage rights under all its 39 GHz licenses in exchange for an incentive payment and eligibility to bid on new licenses (Option 3).

3. This Public Notice also sets forth the timeline for remaining steps in the reconfiguration process, which will be followed by the pre-bidding process for Auction 103 and then bidding on new licenses. As noted in the timeline, existing licenses will be modified or cancelled in exchange for any incentive payments after Auction 103 has concluded.

II. RECONFIGURED 39 GHZ HOLDINGS AND INITIAL COMMITMENT OPTIONS

4. In the *Spectrum Frontiers Fourth R&O*, the Commission decided that separate licenses held by entities that control or are controlled by each other and/or have controlling ownership interests in common ("commonly controlled entities") will be treated as holdings by a single incumbent when reconfiguring existing 39 GHz licenses.³ As a prerequisite to making its Initial Commitment, each incumbent will file a single Incumbent 39 GHz Licensee Short-Form Application (FCC Form 175-A) that identifies, among other things: the party making the application; any existing 39 GHz licensee(s) represented by the applicant; and up to three individuals authorized to submit an Initial Commitment through the Commission's Initial Commitment System with respect to the incumbent's combined holdings. The *Updated 39 GHz Reconfiguration Procedures* provides that an entity that is commonly controlled with one or more existing 39 GHz licensees can represent those licensees for purposes of making an Initial Commitment, receiving modified licenses, and receiving and/or directing an incentive payment for relinquished holdings.⁴ For purposes of reconfiguring existing 39 GHz licenses and Auction 103, "incumbent" therefore may refer to existing 39 GHz licensee(s), individually or together with other commonly controlled existing 39 GHz licensees, or to another entity that is not an existing 39 GHz licensee, but that is commonly controlled with existing 39 GHz licensee(s) and serves as an FCC Form 175-A applicant for those licensees listed in the FCC Form 175-A.

5. Each incumbent may commit to one of the three options described below with respect to all of the existing 39 GHz licenses it represents.⁵ Attachment 1 lists the FCC's proposed reconfigured holdings of each incumbent that would be the basis for modified licenses if that incumbent were to submit

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(*Updated 39 GHz Reconfiguration Procedures*). *Notice of Initial 39 GHz Reconfiguration Procedures; Preparation for Incentive Auction of Upper Microwave Flexible Use Service Licenses in the 37 GHz, 39 GHz, and 47 GHz Bands (Auction 103); Order of Modification; 39 GHz License Transfer and Assignment Freeze*, GN Docket No. 14-177, AU Docket No. 19-59, Public Notice, DA 19-196 (WTB/OEA rel. Mar. 20, 2019)(*Initial 39 GHz Reconfiguration Procedures Public Notice* or *Initial 39 GHz Reconfiguration Procedures PN*).

² See FCC Chairman Pai Announces Major Initiatives to Promote U.S. Leadership on 5G and Connect Rural Americans to High-Speed Internet at White House Event, April 12, 2019, at <https://docs.fcc.gov/public/attachments/DOC-356995A1.pdf>.

³ *Spectrum Frontiers Fourth R&O*, 33 FCC Rcd at 12176, para. 22.

⁴ *Updated 39 GHz Reconfiguration Procedures* at para. 26.

⁵ *Updated 39 GHz Reconfiguration Procedures* at para. 8.

as its selection Initial Commitment Option 1. The reconfigured holdings are the result of applying the reconfiguration procedures described in the *Updated 39 GHz Reconfiguration Procedures*, including Appendices A, B and C to that same Public Notice.⁶

6. An incumbent that for any reason does not submit an Initial Commitment by the deadline will be considered to have submitted its selection of Option 1, committing to accept modified licenses based on the Commission's proposed reconfiguration and forgoing any opportunity to relinquish any holdings for an incentive payment or to be eligible to bid in Auction 103 for new licenses in Upper 37 GHz, 39 GHz, and 47 GHz.⁷

A. Option 1 – Accept Modified Licenses Based on Reconfigured Holdings in Attachment 1.

7. An incumbent submitting Option 1 will accept modified licenses determined by the reconfigured holdings in Attachment 1. Attachment 1 identifies for each incumbent the Commission's proposed reconfigured holdings by Partial Economic Area (PEA). Among other things, Attachment 1 states the reconfigured holdings in terms of the equivalent number of 100 megahertz blocks in a PEA. Holdings equivalent to less than a full block represent the fraction of that PEA's population that will be covered by a modified license for less than the entire PEA. For example, an incumbent that submits Option 1 and has reconfigured holdings equivalent to 2.5 blocks in a PEA will receive two licenses for 100 megahertz that cover that entire PEA and a third modified 100 megahertz license that covers half of that PEA's population, i.e., 0.5 of the PEA's population.

8. The Commission determined in the *Spectrum Frontiers Fourth R&O* that an incumbent that accepts modified licenses will be ineligible to bid in Auction 103 for new licenses.⁸ Further, consistent with the Commission's decision, a party will not be eligible to bid in Auction 103 if it controls or is controlled by an existing 39 GHz licensee that submits or is considered to have submitted Initial Commitment Option 1, or has a controlling interest in common with an existing 39 GHz licensee that is considered to have submitted Initial Commitment Option 1.⁹

9. *Frequencies of Modified Licenses.* The frequencies of modified licenses will be determined in the assignment phase of Auction 103.¹⁰ A modified license may be assigned any spectrum block with frequencies within the contiguous Upper 37 GHz and 39 GHz bands.¹¹ Because Commission rules require that equipment for these bands be operable throughout the 37-40 GHz bands,¹² licensees will

⁶ See *Updated 39 GHz Reconfiguration Procedures*, at paras. 9-25, Appendix A: Updated Reconfiguration Technical Guide and Appendix B: Updated Aggregated Incumbent Holdings, and Appendix C: Index of PEA Weights for 39 GHz (all available at www.fcc.gov/auction/103).

⁷ *Id.*

⁸ *Spectrum Frontiers Fourth R&O*, 33 FCC Rcd at 12180, para. 38. See also, *id.* at 12178-79, paras. 32-33. An incumbent that is considered to have accepted modified licenses under Option 1 will likewise be ineligible to bid in Auction 103 for new licenses. *Updated 39 GHz Reconfiguration Procedures* at para. 8 n.13, paras. 28, 44.

⁹ *Updated 39 GHz Reconfiguration Procedures* at para. 8 n.13, paras. 28, 44.

¹⁰ See *Spectrum Frontiers Fourth R&O*, 33 FCC Rcd at 12185, para. 58; *Updated 39 GHz Reconfiguration Procedures* at para. 48.

¹¹ See *Spectrum Frontiers Fourth R&O*, 33 FCC Rcd at 12185, para. 54. In response to the *Auction 103 Comment Public Notice*, two commenters argued that spectrum blocks in the Upper 37 GHz band should be considered separately from spectrum blocks in the 39 GHz band. See PVT Networks, Inc. May 15, 2019, Comments at 5; Wireless Internet Service Providers Association (WISPA) May 15, 2019, Comments at 5-6. The Commission will address these arguments in the forthcoming *Auction 103 Procedures Public Notice*.

¹² See 47 CFR § 30.208 ("Mobile and transportable stations that operate on any portion of frequencies within the 27.5-28.35 GHz or the 37-40 GHz bands must be capable of operating on all frequencies within those particular (continued....)

be able to operate across different frequencies within the bands. In the event that an incumbent has more than one modified license in a PEA, those licenses will be on contiguous frequencies to maximize each incumbent's available useable bandwidth for advanced services within that PEA.¹³

10. *Boundaries of Modified Licenses for Less than an Entire PEA.* The geographic boundaries of any modified license for less than an entire PEA will be announced after the close of bidding in Auction 103.¹⁴ Reconfigured holdings that are equivalent to less than a full block will result in a modified license for 100 megahertz that covers less than the entire PEA.¹⁵ A modified license that does not cover an entire PEA will have boundaries "as similar as possible to the incumbent's original holdings in that PEA, recognizing that the remaining partial PEA block may cover a larger or smaller percentage of pops than the existing license."¹⁶ Specifically, an algorithm first will determine an incumbent's current geographic coverage and then will add (or subtract, if the population in the coverage area exceeds the reconfigured holdings) two-by-two kilometer grid cells adjacent to this coverage area within the PEA. The process will continue until arriving at the population that is as close as possible, but not less than the pops value of the incumbent's reconfigured holdings in the PEA.¹⁷ If multiple combinations of grid cells could yield the same outcome, the optimization will randomly choose one of the combinations.

11. *Relinquishing Holdings for Less than a Full Block for an Incentive Payment.* An incumbent submitting Option 1 through the Initial Commitment System may choose to relinquish reconfigured holdings that are equivalent to less than a full block (i.e., reconfigured holdings equivalent to a partial PEA) for an incentive payment, while still accepting modified licenses based on reconfigured holdings equivalent to full blocks.¹⁸

B. Option 2 – Accept Modified Licenses Based on Acceptable Reconfigured Holdings Submitted by the Incumbent.

12. An incumbent submitting Option 2 will accept modified licenses determined by an alternative reconfiguration that satisfies the conditions established by the Commission in the *Spectrum Frontiers Fourth R&O* submitted by the incumbent in the Initial Commitment System.¹⁹ If an incumbent's updated aggregated holdings include holdings equivalent to less than a full block in multiple PEAs, more than one reconfiguration of an incumbent's holdings may meet the Commission's

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bands."); *Spectrum Frontiers R&O*, 31 FCC Rcd at 8060, para. 114 (adopting technical rules consistent with the 39 GHz band and an operability requirement "that will ensure equipment developed for the 37 and 39 GHz bands is able to operate across the entire 37-40 GHz band").

¹³ See *Spectrum Frontiers Fourth R&O*, 33 FCC Rcd at 12185, para. 33 ("all licensees should be issued licenses with contiguous frequencies within a category of a PEA regardless of whether they participate in the auction or bid in the assignment phase.")

¹⁴ *Updated 39 GHz Reconfiguration Procedures* at para. 48. Because an incumbent might create choose a different PEA for its partial PEA holdings when submitting an acceptable alternative reconfiguration, the Commission will determine the precise geographic boundaries of modified licenses for less than an entire PEA only after incumbents make Initial Commitments. See *Updated 39 GHz Reconfiguration Procedures* at para. 28.

¹⁵ *Spectrum Frontiers Fourth R&O*, 33 FCC Rcd at 12177-78, para. 27.

¹⁶ *Spectrum Frontiers Fourth R&O*, 33 FCC Rcd at 12177-78, para. 27.

¹⁷ See *Updated 39 GHz Reconfiguration Procedures* at paras. 23-25 (including Appendix A).

¹⁸ Reconfigured holdings equivalent to less than a full block may be rounded when used as the basis for a modified license. An incumbent that chooses to relinquish such reconfigured holdings will receive an incentive payment based on the reconfigured holdings prior to any rounding. *Updated 39 GHz Reconfiguration Procedures* at paras. 21-22, 45.

¹⁹ *Updated 39 GHz Reconfiguration Procedures* at para. 19.

requirements. In this case, the incumbent will be able to consider the available options using the Initial Commitment System.

13. Only a reconfiguration that satisfies the requirements the Commission established in the *Spectrum Frontiers Fourth R&O* can be submitted in the Initial Commitment System.²⁰ More specifically, the Initial Commitment System will allow an incumbent to round holdings equivalent to less than a full block either down to the nearest number of full block equivalents less than the incumbent's updated aggregated holdings or up to the nearest number of full block equivalents greater than the incumbent's updated aggregated holdings.²¹ In at most one PEA, the Initial Commitment System will allow the holdings to be less than a full block, to keep the incumbent's combined holdings constant. The Initial Commitment System will notify the incumbent if an attempted reconfiguration does not meet these requirements and therefore cannot be submitted.

14. Initial Commitment Option 2 differs from Option 1 only with respect to the reconfigured holdings used to determine modified licenses. Submitting Initial Commitment Option 2 has the same consequences as submitting Option 1 through the Initial Commitment System. An incumbent submitting Option 2 and accepting modified licenses will not be eligible to bid in Auction 103 for new licenses. The frequencies of modified licenses and the boundaries of any modified license for less than an entire PEA will be determined in the same way as for an incumbent submitting Option 1. Finally, an incumbent submitting Option 2 has the option of relinquishing holdings for a license for less than an entire PEA in exchange for an incentive payment, while still accepting modified licenses for reconfigured holdings equivalent to full blocks.

C. Option 3 – Relinquish All 39 GHz Holdings in Existing Licenses for an Incentive Payment.

15. An incumbent submitting Option 3 will relinquish all its 39 GHz holdings and have all its existing licenses cancelled in exchange for an incentive payment. An incumbent submitting Option 3 also will have the opportunity to bid on new licenses in the auction and to use its incentive payment to satisfy in whole or in part any winning bids.

16. The amount of the incentive payment will be determined by the amount of the holdings in a PEA and the bidding for new licenses in the same PEA in Auction 103. Thus, an incentive payment for holdings equivalent to a full block in a PEA will equal the final clock phase price for a block in the Upper 37 GHz and 39 GHz bands in that PEA. Thus, an incumbent with holdings equivalent to a full block in a PEA will be able to satisfy the final clock phase price for a new license in that PEA with its incentive payment.

III. RECONFIGURATION TIMELINE

17. The timeline of upcoming events in the reconfiguration of existing 39 GHz licenses is as follows:

Incumbent 39 GHz Licensee Short-Form Application
(FCC Form 175-A) Instructions and Tutorial

Available via InternetJune 12, 2019

FCC Form 175-A Filing Window OpensJuly 9, 2019; 12:00 noon Eastern Time (ET)

FCC Form 175-A Filing Window Closes (Deadline).....July 15, 2019; 6:00 p.m. ET

²⁰ *Spectrum Frontiers Fourth R&O*, 33 FCC Rcd at 12178, para. 31.

²¹ *Updated 39 GHz Reconfiguration Procedures* at paras. 41-42.

Initial Commitment System User Guide and Tutorial

Available via InternetJuly 11, 2019

Secure Tokens for Accessing the

Initial Commitment System

SentBy August 6, 2019

Initial Commitment Filing Window OpensAugust 13, 2019; 12:00 noon (ET)

Initial Commitment Filing Window Closes (Deadline)August 15, 2019; 6:00 p.m. ET

Public Notice Announcing

Spectrum Blocks Available in Auction 103August 23, 2019

18. As noted in the *Updated 39 GHz Reconfiguration Procedures*, as of the deadline for filing FCC Form 175-A, Section 1.2105(c), the Commission’s rule that prohibits certain auction-related communications, will apply to covered incumbents from the short-form application deadline until the post-auction deadline for down payments on new licenses in Auction 103.²² In this respect, the applicant on FCC Form 175-A and any listed licensees are the “covered incumbent,” as all have an interest in the holdings and any resulting incentive payment. Any existing 39 GHz licensee that is listed on an FCC Form 175-A could relinquish existing spectrum usage rights in exchange for an incentive payment, even if ultimately it does not do so. Information on all covered incumbents will be available to the public since applicants and listed licensees on FCC Form 175-A and/or applicants filing FCC Form 175 will be identified by public notice subsequent to the respective filing deadlines for the forms. That subsequent public notice will announce the availability of FCC Form 175-A in the Commission’s system no later than the opening of the Initial Commitment filing window.

19. The remainder of the relevant dates and deadlines involve Auction 103 and will be announced in subsequent public notices. Any modifications or cancellations of existing 39 GHz licenses, as well as any incentive payments for relinquishing spectrum usage rights under existing 39 GHz licenses, will occur after Auction 103 concludes.

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²² See *Updated 39 GHz Reconfiguration Procedures* at paras. 35-57 (citing 47 CFR §§ 1.2105(c), 1.2115 CFR (providing for adapting rules for incentive auctions)). Parties should review those portions of the *Updated 39 GHz Reconfiguration Procedures* with respect to the rule and available resources regarding its application. In brief, subject to specified exceptions, Section 1.2105(c) provides that, after the application filing deadline, “all applicants are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other or any nationwide provider [of communications services] that is not an applicant, or, if the applicant is a nationwide provider, any non-nationwide provider that is not an applicant, in any manner the substance of their own, or each other’s, or any other applicants’ bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after the down payment deadline....” The rule’s prohibition regarding communications between applicants and nationwide providers applies regardless of whether those nationwide providers are applicants in the auction. In the *Updated 39 GHz Reconfiguration Procedures*, we identified AT&T, Sprint, T-Mobile, and Verizon Wireless as “nationwide providers” for the purpose of implementing our competitive bidding rules in Auction 103, including Section 1.2105(c). *Updated 39 GHz Reconfiguration Procedures* at para. 36.