

license, the greater the cost to the public of delaying licensing.<sup>349/</sup> In the event that we need to assign separate blocks of channels that we believe to be interdependent, we may choose to utilize a simultaneous multiple round auction.

183. *Bid Increments and Tie Bids.* In the *NPRM*, we tentatively concluded that, if we employed oral outcry bidding, the auctioneer should have discretion to establish bid increments – and raise or lower them in the course of an auction – consistent with directions provided by the Commission. We stated our view that such discretion on the part of the auctioneer would contribute to the efficient conduct of an oral outcry auction. We also solicited suggestions as to how bid increments should be determined in the event bids are submitted electronically. According to Kennedy-Wilson, bid increments are most crucial at the conclusion of an auction and must be low enough at that time to withstand a legal challenge from bidders who want to make bids above the high bid but below the bid increment. Kennedy-Wilson suggests that the auctioneer be given the discretion to set the amount of bid increments subject to a minimum increment of 1 percent rounded down to the nearest \$100,000 or \$1 million, whichever is less.<sup>350/</sup> Primestar suggests in its comments that bid increments of \$5 million would be sufficient to ensure that full value of the spectrum is received and that the auction proceeds to an expeditious conclusion.<sup>351/</sup> In its reply comments, however, Primestar supports Kennedy-Wilson's proposal of granting the auctioneer the discretion to set bid increments subject to a minimum of 1 percent rounded down to the nearest \$100,000 or \$1 million, whichever is less. Primestar disagrees with MCI's proposal of having bid increments increase as the bidding amounts increase. Primestar believes that this method runs counter to the Commission's goal of maximizing the value of the spectrum because at higher overall bidding levels, bidders may be willing to pay \$1 million more but not \$20 million more.<sup>352/</sup>

184. We conclude that the Commission should have discretion to establish, raise and lower minimum bid increments in the course of the auction. We believe that this discretion over minimum bid increments is necessary to ensure that the Commission can efficiently control the pace of the auction. We anticipate using larger percentage minimum bid increments early in the auction and reducing the minimum increment percentage as bidding activity falls. In light of MCI's comments, we also believe that the efficiency of the auction may be enhanced by limiting jump bidding, i.e., bidding above the minimum accepted bids. Therefore, we will also retain the discretion to establish and change maximum bid increments in the course of the auction. Where a tie bid occurs, the high bidder will be determined by the order in which the bids were received by the Commission.

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<sup>349/</sup> See *Second R&O*, 9 FCC Rcd at 2368.

<sup>350/</sup> Kennedy-Wilson Comments at 3.

<sup>351/</sup> Primestar Comments at 37.

<sup>352/</sup> Primestar Reply Comments at 21.

185. *Minimum Opening Bid.* We proposed in the NPRM to establish a minimum opening bid for the 28 channels available at 110°, both to help ensure that the auction proceeds quickly and to increase the likelihood that the public receives fair market value for the spectrum. We asked interested parties to suggest the appropriate level of a minimum opening bid for the permit for these channels, and to comment on whether we should have a minimum opening bid for the 24 channels at 148° and for other DBS construction permits that may become available in the future. Primestar states that the minimum opening bid should be the same as the upfront payment, which should be based on the value of the channels being auctioned. Primestar suggests the amount of \$10 million for the channels available at 110°, stating that this is approximately 25 percent of the amount ACC would have received for these channels through its proposed transaction with Tempo and Primestar.<sup>353</sup> MCI suggests that the minimum opening bid for the 28 channels available at 110° should be \$175 million, and reiterates its commitment to making this opening bid.<sup>354</sup> Kennedy-Wilson, on the other hand, states that there is nothing to be gained by setting a minimum opening bid, unless the Commission is convinced that there is a high probability of bidder collusion, and it therefore recommends not setting one.<sup>355</sup>

186. We continue to believe that it would be useful to have a minimum opening bid for the channels at 110° to help move the auction along and to increase the likelihood that the public receives fair market value for the spectrum. We will therefore establish a minimum opening bid for this spectrum, the amount of which will be announced by the Wireless Telecommunications Bureau by Public Notice. The Wireless Telecommunications Bureau and the International Bureau will determine the amount of the minimum opening bid using all available information and taking into consideration the uncertainty as to the value of the spectrum. No commenter has suggested a minimum opening bid for the channels available at 148°, but it appears that their value is substantially lower than the value of the channels at 110°. Therefore, we will not set a minimum bid for the channels at 148°. As our PCS auction experience shows, a minimum opening bid is not an absolute prerequisite for a successful, efficient auction. Because no parties have commented on whether we should have minimum opening bids for future DBS auctions, we reserve discretion to decide this issue with respect to individual auctions as circumstances warrant.

187. *Activity Rules.* To maximize the amount of information generated during the course of an auction and to ensure that the auction closes in a reasonable amount of time, we will require a bidder to be active in each round of the auction or use an activity rule waiver, as defined below. To be active in the current round, a bidder must submit an acceptable bid in the current round or have the high bid from the previous round. A bidder who is not active in a round and has no remaining activity rule waivers will no longer be eligible to bid

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<sup>353</sup> Primestar Comments at 37.

<sup>354</sup> MCI Comments at 28.

<sup>355</sup> Kennedy-Wilson Comments at 3-4.

on the construction permit being auctioned. However, as discussed below, in the event of a bid withdrawal, the eligibility of all bidders who have not withdrawn will be restored.

188. *Activity Rule Waivers.* To make allowance for unusual circumstances that might delay a bidder's bid preparation or submission in a particular round, we will provide bidders with a limited number of waivers of the above-described activity rule. We believe that some waiver procedure is needed because the Commission does not wish to end a bidder's participation due to an accidental act or circumstances not under the bidder's control.<sup>356/</sup> We will provide bidders with five activity rule waivers that may be used in any round during the course of the auction.<sup>357/</sup> A waiver will preserve eligibility in the next round.<sup>358/</sup> Waivers may be applied automatically by the Commission or invoked proactively by bidders. If a bidder is not active in a round, a waiver will be applied automatically. An automatic waiver applied in a round in which there are no new valid bids will not keep the auction open. A proactive activity rule waiver is a waiver invoked by a bidder during the bid submission period.<sup>359/</sup> If a bidder submits a proactive waiver in a round in which no other bidding activity occurs, the auction will remain open.

189. The Commission will retain the discretion to issue additional waivers during the course of an auction for circumstances beyond a bidder's control or in the event of a bid withdrawal, as discussed below. We will also retain the flexibility to adjust by Public Notice prior to an auction the number of waivers permitted.

190. *Stopping Rules.* A stopping rule specifies when an auction is over. The auction will close after one round passes in which no new valid bids or proactive activity rule waivers are submitted. The Commission retains the discretion, however, to keep the auction open even if no new valid bids and no proactive waivers are submitted. In the event that the Commission exercises this discretion, the effect will be the same as if a bidder had submitted a proactive waiver. This will help ensure that the auction is completed within a reasonable period of time, because it will enable the Commission to utilize larger bid increments, which speed the pace of the auction, without risking premature closing of the auction.<sup>360/</sup>

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<sup>356/</sup> See Second R&O, 9 FCC Rcd at 2372.

<sup>357/</sup> See id. at 2373.

<sup>358/</sup> An activity rule waiver cannot be used to correct an error in the amount bid.

<sup>359/</sup> Thus, a "proactive" waiver, as distinguished from the automatic waiver described above, is one requested by the bidder.

<sup>360/</sup> See Implementation of Section 309(j) of the Communications Act – Competitive Bidding, Memorandum Opinion and Order, 9 FCC Rcd 7684, 7685 (1994).

#### D. Procedural and Payment Issues

191. We proposed in the NPRM to apply our general procedural and payment rules for auctions to the DBS service, along with certain modifications. In keeping with our previous practice, we also proposed to retain discretion to implement or modify certain procedures that would be announced by Public Notice prior to particular DBS auctions, including rules governing the timing of application and payment requirements as well as any activity rules and stopping rules that may be appropriate. We received no comments opposing this general proposal, nor did we receive any comments disagreeing with our proposed application procedures or our proposed down payment and final payment requirements. We therefore adopt these procedures and requirements as proposed in the NPRM, except that, as explained below, we will allow more time than was proposed for winning bidders to file information in conformance with Part 100 of the Commission's Rules. As indicated above, we also delegate authority to the Wireless Telecommunications Bureau to implement or modify application and payment procedures, and to announce such procedures by Public Notice.<sup>361</sup> We received a number of comments regarding the issues of upfront payments and procedures dealing with bid withdrawal, default and disqualification, and these issues are discussed separately below.

192. *Application Procedures, Permittee Qualifications, and Payment for Construction Permits Awarded by Competitive Bidding.* As we proposed in the NPRM, applicants for DBS auctions will be required to file a short-form application, FCC Form 175, prior to the auction in which they wish to participate. Filing deadlines will be announced by Public Notice. If administratively feasible, we will allow electronic filing of FCC Form 175 for the auction of spectrum available at 110° and 148°, and will announce filing procedures by Public Notice. For subsequent DBS auctions, we will also announce by Public Notice how such forms should be filed.

193. As discussed below, we will require every DBS auction participant to submit to the Commission an upfront payment prior to commencement of the auction. In addition, each auction winner will be required to submit an amount sufficient to bring its total deposit up to 20 percent of its winning bid within 10 business days of the announcement of winning bidders. Winning bidders also will be required to file information in conformance with Part 100 of the Commission's Rules. This procedure will constitute the "long-form application" process referred to in our general auction rules. Although we proposed in the NPRM to require winning bidders to file this information within 10 business days of the announcement of winning bidders, we believe that this would not be a reasonable deadline in light of the amount and type of information that must be submitted. We will therefore require that winning bidders file this information with the Commission within 30 days of the announcement of winning bidders. Winning bidders must submit, as part of this post-auction application process, a signed statement describing their efforts to date and future plans to

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<sup>361</sup> See ¶ 181, *supra*.

come into compliance with any applicable spectrum limitations, if they are not already in compliance.

194. After reviewing a winning bidder's information supplied in conformance with Part 100 and determining that the bidder is qualified to be a permittee, and after verifying receipt of the bidder's 20 percent down payment, the Commission will announce the application's acceptance for filing, thus triggering the filing window for petitions to deny. If, pursuant to Section 309(d) of the Communications Act, the Commission dismisses or denies any and all petitions to deny, the Commission will issue an announcement to this effect, and the winning bidder will then have five business days to submit the balance of its winning bid. If the bidder does so, the permit will be granted subject to a condition, if necessary, that the permittee come into compliance with any applicable spectrum limitations within 12 months of the final grant. The permittee may come into compliance with this spectrum cap by either surrendering to the Commission its excess channels or filing an application that would result in divestiture of the excess channels. If the bidder fails to submit the balance of the winning bid or the permit is otherwise denied, we will assess a default payment as set forth below and re-auction the permit.

195. *Upfront Payment.* In the NPRM we proposed to require an upfront payment in all DBS auctions to help ensure that only serious, qualified bidders participate. We sought comment on how the size of an upfront payment should be determined and asked whether it would be appropriate to establish an upfront payment of roughly five percent of the spectrum's estimated value. In addition, we asked how the value of spectrum should be estimated. With respect to the collection of upfront payments, we proposed that prospective bidders deposit their payments in the Commission's lock-box bank by a date certain that would allow the Commission sufficient time to verify the availability of the funds before the start of the auction. Kennedy-Wilson agrees that there should be a substantial upfront payment for all auctions and recommends that we set the amount of this payment at \$15 million per license. According to Kennedy-Wilson, this amount is large enough to ensure that only serious, qualified bidders participate, but not so onerous as to discourage participation. Kennedy-Wilson does not recommend establishing an upfront payment as a percentage of the estimated value of the spectrum being auctioned, stating that this method of calculation could inadvertently set an upper limit on bidding.<sup>362/</sup> Similarly, MCI agrees that we must require an upfront payment in order to ensure that only serious, qualified bidders are allowed to participate in our auctions, but states that we should not base the amount on the estimated value of the spectrum. According to MCI, this method of calculation would not be productive because estimates of the value of the spectrum may vary widely. MCI recommends requiring a payment equal to 10 percent of a minimum opening bid. Using its own opening bid of \$175 million as a basis for this calculation, MCI suggests that the upfront payment for the 28 channels at 110° should be \$17.5 million.<sup>363/</sup> As noted above, Primestar

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<sup>362/</sup> Kennedy-Wilson Comments at 4.

<sup>363/</sup> MCI Comments at 26-27.

believes that the upfront payment should be based on the value of the channels being auctioned, and suggests the amount of \$10 million for the channels available at 110°, stating that this is approximately 25 percent of the amount ACC would have received for these channels through its proposed transaction with Tempo and Primestar.<sup>364/</sup> Kennedy-Wilson agrees with our proposed procedures for collecting upfront payments and recommends that we require payments to be deposited no more than five business days prior to the start of an auction.<sup>365/</sup>

196. Our approach to upfront payments varies from auction to auction depending on a balancing of the goal of encouraging bidders to submit serious bids with the desire to simplify the bidding process and minimize implementation costs imposed on bidders.<sup>366/</sup> In the Second Report and Order in our Competitive Bidding proceeding, we outlined a rationale for setting upfront payments at roughly five percent of the estimated value of a winning bid.<sup>367/</sup> We note that, a year ago, Tempo would have paid ACC \$45 million for its channels at 110° and 148°. In view of the proposed \$175 million bid for the channels at 110° and in the absence of any specific expression of interest in bidding on the 148° channels, it seems clear that the channels at 110° are more valuable than those at 148°. Moreover, we strongly believe that the value of the channels has increased over the past year. These considerations lead us to set an upfront payment of \$10 million for the channels at 110° and \$2 million for the channels at 148°. The \$10 million figure is well above five percent of \$45 million (it is actually 22.2 percent). This reflects a balancing of the assumed increase in value of the spectrum with the fact that the channels at 110° and 148° were included in the Tempo-ACC arrangement.

197. The magnitude of the upfront payment also reflects our concern that, if we set the upfront payment too low, there is a risk of encouraging insincere bidding. Moreover, a \$10 million payment should not be an excessive burden for bidders because it will not be held for a significant amount of time. Additionally, \$10 million is the lowest of the three specific upfront payment suggestions in the comments.<sup>368/</sup> With respect to procedures for collecting upfront payments, we specify that we will accept only wire transfers in the case of the auction of the channels available at 110° and 148°.

198. *Bid Withdrawal, Default and Disqualification.* We stated in the NPRM that, if we employed open outcry auctions for DBS, we believed it would be unnecessary to impose a

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<sup>364/</sup> Primestar Comments at 37.

<sup>365/</sup> Kennedy-Wilson Comments at 4.

<sup>366/</sup> Second R&O, 9 FCC Rcd at 2378.

<sup>367/</sup> *Id.* at 2379.

<sup>368/</sup> We also note that the spectrum appears to be worth at least \$175 million, and \$10 million is roughly five percent of this amount.

monetary payment for withdrawing a bid during the course of bidding on a particular permit (that is, immediately after bidding has concluded for an individual permit and before bidding has begun on any other permit), because such a withdrawal would not affect auction participants' decisions regarding how much to bid for other permits, as would be the case in simultaneous auctions, and any delay caused by the withdrawal of a bid in an open outcry auction would be minimal. In light of these circumstances, we proposed to rely on default payments to deter insincere bidding and provide an incentive for bidders wishing to withdraw their bids to do so before bidding ceases. Kennedy-Wilson supports our proposal with respect to assessing payments against defaulting winning bidders.<sup>369/</sup> MCI and Kennedy-Wilson believe, however, that we should impose a penalty for withdrawing a bid in the course of an auction.<sup>370/</sup> MCI emphasizes that the lack of any withdrawal penalty invites bidders to engage in predatory bidding, i.e., bidding up their rival bidders without having to account for the consequences of placing the winning bid.<sup>371/</sup> Primestar states in its comments that our proposed bid withdrawal and default payments are adequate,<sup>372/</sup> but in its reply comments concurs with MCI and Kennedy-Wilson regarding the importance of providing for substantial penalties for bid withdrawals made outside of the penalty-free period. Primestar supports MCI's proposal requiring that a bidder immediately be disqualified and subject to the standard bid withdrawal monetary payment upon withdrawing its bid outside of the penalty-free period.<sup>373/</sup>

199. We will adopt a monetary payment for withdrawing a bid during the course of bidding. Comments advocating such a payment are primarily concerned with insincere bids. We conclude that such insincere bidding could reduce the efficiency of the auction and that the threat of disqualifying a bidder from further participation in the auction may not be a sufficient deterrent, especially if a bidder does not sincerely seek a construction permit but is seeking only to raise its rival's costs. Pursuant to these rules, any bidder who withdraws a high bid during an auction before the Commission declares bidding closed will be required to reimburse the Commission in the amount of the difference between its high bid and the amount of the winning bid the next time the construction permit is offered by the Commission, if this subsequent winning bid is lower than the withdrawn bid.<sup>374/</sup> No

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<sup>369/</sup> Kennedy-Wilson Comments at 4-5.

<sup>370/</sup> MCI Comments at 27; Kennedy-Wilson Comments at 4-5.

<sup>371/</sup> MCI Comments, Ausubel Paper at 5-7.

<sup>372/</sup> Primestar Comments at 37-38.

<sup>373/</sup> Primestar Reply Comments at 20.

<sup>374/</sup> If a construction permit is reoffered by auction, the "winning bid" refers to the high bid in the auction in which the permit is reoffered. If a construction permit is reoffered in the same auction, the winning bid refers to the high bid amount, made subsequent to the withdrawal, in that auction. If the subsequent high bidder also withdraws its bid, that bidder will be required to pay an amount equal to the difference between its withdrawn bid and the amount of the subsequent winning bid the next time the permit is

withdrawal payment will be assessed if the subsequent winning bid exceeds the withdrawn bid.

200. To prevent multiple withdrawals by the same party, the Commission will bar a bidder who withdraws a bid from continued participation in the auction of the withdrawn construction permit. Once a bidder has withdrawn, the bid withdrawal payment mechanism no longer provides a deterrent to subsequent withdrawals at bids below the initially withdrawn bid because such withdrawals would not increase the total withdrawal payment for which the bidder is liable. Moreover, a bidder who has withdrawn would have an incentive to reenter the auction and strategically bid up the price at which another bidder can acquire the construction permit in order to reduce its bid withdrawal payment. Finally, in the case of an auction for a single item, there is no offsetting efficiency gain to permitting reentry into an auction by a bidder who has withdrawn, because no new information becomes available during the course of the auction about prices of other items which may be substitutes for or complements of the withdrawn item.

201. In the event of a bid withdrawal, the Commission will reoffer the permit in the next round. The offer price will be the highest price at or above which bids were made in previous rounds by three or more bidders. The Commission may at its discretion reduce this price in subsequent rounds if it receives no bids at this price. Prior to restarting the auction, the Commission will also restore the eligibility of all bidders who have not withdrawn. If no eligibility were restored it is possible, given the activity rules, that no bidders would be eligible to bid when a permit is reoffered after a bid withdrawal. Restoring eligibility of all but those who withdrew will ensure the maximum number of sincere bidders for the permit when the auction is restarted. After a withdrawal the Commission will also issue each eligible bidder one activity rule waiver in addition to any remaining waivers to provide additional time for bid preparation and to avoid accidental disqualification.

202. A default payment will be assessed if a winning bidder fails to pay the full amount of its 20 percent down payment or the balance of its winning bid in a timely manner, or is disqualified after the close of an auction. The amount of this default payment will be equal to the difference between the defaulting auction winner's "winning" bid and the amount of the winning bid the next time the construction permit is offered for auction by the Commission, if the latter bid is lower. In addition, the defaulting auction winner will be required to submit a payment of three percent of the subsequent winning bid or three percent of its own "winning" bid, whichever is less.

203. If withdrawal, default or disqualification involves gross misconduct, misrepresentation or bad faith by an applicant, we retain the option to declare the applicant

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offered by the Commission. If a permit which is the subject of withdrawal or default is not re-auctioned, but is instead offered to the highest losing bidders in the initial auction, the "winning bid" refers to the bid of the highest bidder who accepts the offer. Losing bidders would not be required to accept the offer, i.e., they may decline without penalty.

and its principals ineligible to bid in future auctions, or take any other action we deem necessary, including institution of proceedings to revoke any existing licenses held by the applicant.<sup>375/</sup>

E. Regulatory Safeguards

204. *Transfer Disclosure Provisions.* In order to accumulate data to evaluate whether DBS authorizations are being issued for bids that fall short of market value – a potential problem of concern to Congress<sup>376/</sup> – we proposed in the NPRM that any entity that acquires a DBS license through competitive bidding, and seeks to transfer that license within six years of the initial license grant, should be required to file, together with its application for FCC consent to the transfer, the associated contracts for sale, option agreements, management agreements, or other documents disclosing the total consideration received in return for the transfer of its license. Having received no comments in opposition, we adopt this requirement as proposed in the NPRM. Thus, the information submitted should include not only a monetary purchase price, but also any future, contingent, in-kind, or other consideration (e.g., management or consulting contracts either with or without an option to purchase; below market financing). As we have previously stated, we believe that such a filing requirement will not be a burden on licensees, which will have to prepare the documents to be submitted to the Commission in any event,<sup>377/</sup> and any competitive concerns raised by the possible disclosure of sensitive information can be addressed by the provisions in Sections 0.457 and 0.459 of our Rules, 47 C.F.R. §§ 0.457 & 0.459, providing for the nondisclosure of information.

205. *Performance Requirements.* In implementing auction procedures, the Commission is required under Section 309(j) to include performance requirements "to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services."<sup>378/</sup> We tentatively concluded in the NPRM that the performance requirements proposed as part of our DBS service rules would be sufficient to achieve these statutory goals, and that it would be unnecessary to adopt any further performance rules in connection with auction procedures. None of the commenters in this proceeding disagree with this assessment, and we conclude that only those performance requirements adopted as part of our DBS service rules are needed, particularly since DBS licenses will be conditioned on fulfillment of these requirements.

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<sup>375/</sup> See Second R&O, 9 FCC Rcd at 2383.

<sup>376/</sup> See NPRM at ¶ 98 (citing H.R. Rep. No. 111, *supra*, at 257).

<sup>377/</sup> See NPRM at ¶ 98; Second R&O, 9 FCC Rcd at 2385-86.

<sup>378/</sup> 47 U.S.C. § 309(j)(4)(B).

206. *Rules Prohibiting Collusion.* The Commission's rules prohibiting collusive conduct in connection with competitive bidding are codified at 47 C.F.R. § 1.2105. In the NPRM we proposed to apply these rules to DBS auctions, modifying them slightly to allow for the fact that DBS service areas are not precisely defined and are to a large extent overlapping. Thus, instead of being designed to prohibit collusion only among bidders wishing to serve the same geographic areas, our proposed rules also prohibit collusion among bidders wishing to serve overlapping geographic areas. We received no comments critical of our proposal, and we therefore adopt the anti-collusion rules set forth in the NPRM with one modification, as explained below.

207. Under these rules, bidders are 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 competitive bidding process. If parties agree in principle on all material terms, those parties must be identified on the short-form application under Section 1.2105(c), even if the agreement has not been reduced to writing.<sup>379</sup> Only at such level of agreement can it be fairly stated that the parties have entered into a bidding consortium or other joint bidding arrangement. 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 those parties.<sup>380</sup> Bidders are also 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 bid, bidding strategies or the particular properties on which they will or will not bid.

208. In addition, winning bidders are required to submit a detailed explanation of the terms and conditions and parties involved in any bidding consortia, joint venture, partnership or other agreement or arrangement they have entered into relating to the competitive bidding process prior to the close of bidding. Such arrangements must have been entered into prior to the filing of short-form applications as provided herein. In the NPRM we proposed that after short-form applications are filed, and prior to the time the winning bidder has submitted the balance of its bid, all applicants should be prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies with other applicants for construction permits that may be used to serve the same or overlapping geographic areas, unless such bidders are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application. We adopt this prohibition, but extend it only until the winning bidder has submitted its 20 percent down payment, and not until the winning bidder has submitted the balance of its bid. It is consistent with our rules for other services to extend this prohibition

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<sup>379</sup> Public Notice, Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, DA 95-2244, Oct. 26, 1995 ("Public Notice, Oct. 26, 1995"), at 2.

<sup>380</sup> *Id.*

only until submission of the down payment, and we think it is unnecessary to extend it to submission of the balance of the bid. Even when an applicant has withdrawn its application after the short-form filing deadline, the applicant may not enter into a bidding agreement with another applicant bidding on the same or overlapping geographic areas from which the first applicant withdrew.<sup>381/</sup> In addition, once the short-form application has been filed, a party with an attributable interest in one bidder may not acquire a controlling interest in another bidder bidding for construction permits in any of the same or overlapping geographic areas.<sup>382/</sup>

209. DBS applicants may (1) modify their short-form applications to reflect formation of consortia or changes in ownership at any time before or during an auction, provided that such changes do not result in a change in control of the applicant, and provided that the parties forming consortia or entering into ownership agreements have not applied for construction permits for channels that may be used to cover the same or overlapping geographic areas; and (2) make agreements to bid jointly for construction permits after the filing of short-form applications, provided that the parties to the agreement have not applied for construction permits that may be used to serve the same or overlapping geographic areas. In addition, the holder of a non-controlling attributable interest in an entity submitting a short-form application may acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for construction permits that may be used to serve the same or overlapping geographic areas after the filing of short-form applications, provided that (1) the attributable interest holder certifies to the Commission that it has not communicated 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 a consortium or joint bidding arrangement, and which have applied for construction permits that may be used to serve the same or overlapping geographic areas, and (2) the arrangements do not result in any change in control of an applicant. The attribution rules applicable to the auction of the spectrum available at 110° and 148° are set forth in Appendix C. If other DBS spectrum is auctioned in the future, the Commission may adopt different attribution rules for auction applicants.

210. In adopting these rules, we also remind potential bidders for DBS construction permits that allegations of collusion in a petition to deny may be investigated by the Commission or referred to the U.S. Department of Justice for investigation. Bidders who are found to have violated the antitrust laws or the Commission's Rules while participating in an auction may be subject to forfeiture of their down payment or their full bid amount, as well as revocation of their license, and may be prohibited from participating in future auctions.

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<sup>381/</sup> Implementation of Section 309(j) of the Communications Act – Competitive Bidding, Fourth Memorandum Opinion and Order, 9 FCC Rcd 6858, 6867 (1994).

<sup>382/</sup> Public Notice, Oct. 26, 1995, at 2

F. Designated Entities

211. *The NPRM* Because of the extremely high implementation costs associated with satellite-based services, we tentatively concluded in the NPRM that no special provisions should be made for designated entities – *i.e.*, small businesses, rural telephone companies, and businesses owned by members of minority groups and women – for the channels currently available at 110° and 148°. We noted that the expeditious implementation of DBS service at the two orbital locations in question might indirectly benefit designated entities by providing new opportunities for them to supply programming and equipment. We also sought comment on whether special provisions should be made for designated entities in future DBS auctions, and requested comment on whether future auctions of smaller blocks of DBS spectrum or technological advances in the delivery of DBS service might reduce capital requirement barriers for designated entities.

212. *Comments.* DBSC argues against auctioning the channels reclaimed from ACC on the grounds that an auction would deny DBS channels to a small business such as DBSC and make it more difficult for it to compete with larger entities having access to greater resources.<sup>383/</sup> DBSC does not argue for designated entity preferences. As discussed above, ASN, which also does not frame its recommendations in terms of designated entities, urges us to set aside 10 percent of available DBS spectrum for "independents," programmers or distributors who have no market power through a nationwide cable system or other multichannel video distribution system. ASN cautions the Commission that it should not limit the DBS industry to a predetermined economic model – that of a large, monolithic vertically integrated DBS operator, and suggests that its set-aside proposal will help cultivate independent sources of content, create programming mixes that may appeal to niche or underserved markets, offer individualized programming choices at the wholesale level, and encourage entrepreneurial partnerships and alliances to bring high-powered television and other signals to consumers.<sup>384/</sup> ASN further argues that because an independent would occupy only 10 percent of the capacity of a DBS orbital location, the financial criteria that it must meet would be proportionally reduced, thereby allaying the Commission's concern that acquisition of DBS licenses by undercapitalized firms could delay DBS service to the public.<sup>385/</sup> At the same time, ASN states in its reply comments that its proposed set-aside would give independent programmers and distributors secure rights to channel capacity they need to attract financing.<sup>386/</sup>

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<sup>383/</sup> DBSC Comments at 11.

<sup>384/</sup> ASN Comments at 11-12.

<sup>385/</sup> *Id.* at 10.

<sup>386/</sup> ASN Reply Comments at 14-15.

213. CTA urges us to adopt designated entity provisions, citing itself as proof that designated entities are in a position to develop competitive DBS systems. CTA specifically urges us to create a set-aside of one 14-channel block at 110° and one 12-channel block at 148° for designated entities, to give bidding credits to designated entities, and to permit installment payments for designated entities. CTA further argues that DBS is a content-based, broadcast-type service, and that the Commission cannot ignore its Congressional mandate to offer opportunities to minorities to enter broadcasting. According to CTA, the history of discrimination against women and minorities in broadcasting make it likely that designated entity preferences would be upheld under the strict scrutiny standard of judicial review now applicable to federal race-based preference programs. CTA states that we should at a minimum adopt a small business/entrepreneur preference.<sup>387/</sup> Communications Scientific International states that small and minority-owned businesses are contributing to the DBS industry, not necessarily as entities with the ability to launch service, but "in many other 'essential' primary and secondary service provider functions."<sup>388/</sup> It suggests that we provide auction incentives to companies that elect to team up with small or minority-owned businesses to launch DBS service.<sup>389/</sup>

214. *Discussion.* Our assertion that the implementation costs associated with satellite-based services are extremely high was not challenged by the commenters. These high costs formed the basis for our tentative conclusion that no designated entity provisions should be made for auctioning channels at 110° and 148°.<sup>390/</sup> CTA's argument in favor of creating provisions for designated entities flows from its statement that "the Commission needs to balance its goals of providing rapid service to the public with other public interest goals, including the participation of Designated Entities in the electronic mass media fields."<sup>391/</sup> CTA does not distinguish between the expedited auction of the channels at 110° and 148° and future DBS auctions. We believe that the public interest goals of an immediate auction of the channels at 110° and 148° versus future auctions differ and may not require the same approach to designated entity participation.

215. As we have stated, competition in the delivery of DBS service requires auction rules that will allow expedient assignment of the channels at 110° and 148°. Given the fact that these channels offer enough capacity to provide full DBS service in competition with current video providers, auction rules that put these two construction permits in the hands of

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<sup>387/</sup> CTA Comments at 10-13.

<sup>388/</sup> Undocketed letter from Russell T. Thomas, President & CEO, Communications Scientific International, to William Caton, Secretary, FCC (November 30, 1995). In the interest of a complete record, this letter, sent within the time period for filing reply comments, will be considered an informal reply comment.

<sup>389/</sup> *Id.*

<sup>390/</sup> *See* footnote 323, *supra*.

<sup>391/</sup> CTA Comments at 9-10.

entities that can quickly provide competition are in the public interest. Moreover, we are not convinced that a 10 percent set-aside for independents would support a viable DBS service, at least at the current stage of development of the DBS industry.

216. Commenters that identify themselves as a small or minority-owned business do not express an interest in obtaining all the channels available at either 110° or 148°. Instead, they argue for their interest in providing service with no more than half of the channels available at an orbital location. No commenters assert that small businesses could attract the capital necessary to provide service on all the channels available at either 110° or 148°.<sup>392/</sup>

217. Accordingly, we will not adopt special provisions for designated entities in the DBS auction for the channels at 110° and 148°, and we will not set aside spectrum in this auction for "independents" as suggested by ASN. Communications Scientific International's statement that small and minority businesses are developing services for the DBS industry confirms our belief that a wide variety of businesses will be involved in the DBS industry. We do not have a record before us, however, sufficient to support adoption of its suggestion that we provide incentives to encourage companies to team up with small and minority-owned businesses. However, designated entity provisions for future DBS auctions may be appropriate, particularly if we auction spectrum in small blocks.

## V. CONCLUSION AND ORDERING CLAUSES

218. For the foregoing reasons, we adopt the rules attached hereto as Appendices B and C. We believe that these rules will allow the DBS service to proceed from its current nascent stage to the next level at which it will provide true rivalry in the MVPD market and will achieve this aim on an expedited basis.

219. The analysis required pursuant to Section 608 of the Regulatory Flexibility Act, 5 U.S.C. § 608, is contained in Appendix D. This order contains new or modified information collections subject to the Paperwork Reduction Act of 1995 ("PRA"), Pub. L. No. 104-13, which were proposed in the NPRM and submitted to the Office of Management and Budget ("OMB") for approval. We received no comments on the proposed information collections, and adopt them as originally proposed. The effective date of the new and modified rules adopted herein falls after the deadline for OMB action under the PRA.

220. Accordingly, IT IS ORDERED that Part 100 of the Commission's Rules IS AMENDED as specified in Appendix B.

221. IT IS FURTHER ORDERED that the rules set forth in Appendix C will be implemented in connection with the auction of the construction permits for the use of 28 DBS channels at the 110° orbital location and 24 channels at the 148° orbital location.

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<sup>392/</sup> See ¶¶ 212-13, *supra*.

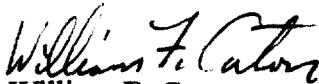
222. IT IS FURTHER ORDERED that the amendments to Part 100 adopted herein and the one-time auction rules set forth in Appendix C WILL BECOME EFFECTIVE thirty (30) days after publication in the Federal Register. This action is taken pursuant to Sections 1, 4(i), 4(j), 7, and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 157, and 309(j).

223. IT IS FURTHER ORDERED that, pursuant to 47 U.S.C. § 155(c), the Chief, Wireless Telecommunications Bureau, IS GRANTED DELEGATED AUTHORITY to implement and modify auction procedures in the DBS service, including the general design and timing of an auction, the number of authorizations to be offered in an auction, the manner of submitting bids, minimum opening bids and bid increments, activity and stopping rules, and application and payment requirements, and to announce such procedures by Public Notice.

224. IT IS FURTHER ORDERED that condition (a) placed on the construction permit of Tempo Satellite, Inc. in Tempo Satellite, Inc., 7 FCC Rcd 2728, 2732 (1992), which imposed certain marketing restrictions, IS RESCINDED.

225. IT IS FURTHER ORDERED that the proceeding in IB Docket No. 95-168 is hereby TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

  
William F. Caton  
Acting Secretary

## **APPENDIX A**

### **List of Parties Filing Comments**

Advanced Communications Corporation ("ACC")  
American Satellite Network, Inc. ("ASN")  
Ameritech Corporation  
BellSouth Corporation  
Cable Telecommunications Association ("CATA")  
Continental Cablevision, Inc.  
Continental Satellite Corporation  
Cox Enterprises, Inc. ("Cox")  
CTA Incorporated  
Direct Broadcasting Satellite Corporation ("DBSC")  
DIRECTV, Inc.  
EchoStar Satellite Corporation/Directsat Corporation ("EchoStar/Directsat")  
GE American Communications, Inc. ("GE Americom")  
State of Hawaii  
Kennedy-Wilson International  
Lockheed Martin Corporation  
MCI Telecommunications Corporation  
National Cable Television Association, Inc. ("NCTA")  
National Rural Telecommunications Cooperative ("NRTC")  
NYNEX Corporation  
PanAmSat Corporation  
Primestar Partners L.P.  
Tempo DBS, Inc.  
Time Warner Entertainment Company, L.P.  
United States Department of Justice ("DOJ")  
United States Satellite Broadcasting Company, Inc. ("USSB")  
Viacom Inc.

### **List of Parties Filing Reply Comments**

A&E Television Networks  
State of Alaska  
American Satellite Network, Inc.  
Bell Atlantic  
BellSouth Corporation  
Communications Scientific International  
Continental Cablevision, Inc.  
Direct Broadcast Satellite Corporation  
DIRECTV, Inc.  
EchoStar Satellite Corporation/Directsat Corporation

GE American Communications, Inc.  
General Instrument Corporation ("GIC")  
Home Box Office ("HBO")  
Lifetime Entertainment Services  
MCI Telecommunications Corporation  
National Cable Television Association, Inc.  
National Rural Telecommunications Cooperative  
NYNEX Corporation  
Primestar Partners, L.P.  
Tempo DBS, Inc.  
Time Warner Entertainment Company, L.P.  
United States Department of Justice  
United States Satellite Broadcasting Company, Inc.  
Viacom Inc.

## APPENDIX B

### Final Rules and Regulations to be Added to 47 C.F.R. Part 100 of the Commission's Rules

Part 100 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

#### **PART 100 - DIRECT BROADCAST SATELLITE SERVICE**

1. The authority citation for Part 100 is revised to read as follows:

Authority: Sections 4, 303, 309, and 554, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§154, 303, 309, and 554, unless otherwise noted.

2. Section 100.17 is amended to read as follows:

#### **§ 100.17 License term.**

Licenses for non-broadcast facilities governed by this Part will be issued for a period of ten (10) years. Licenses for broadcast facilities governed by this Part will be issued for a period of five (5) years.

3. Section 100.19 is amended to read as follows:

#### **§ 100.19 Due diligence requirements.**

(a) All persons granted DBS authorizations shall proceed with diligence in constructing DBS systems. Permittees shall be required to complete contracting for construction of the satellite station(s) within one year of the grant of the construction permit. The satellite stations shall also be required to be in operation within six years of the construction permit grant.

(b) In addition to the requirements stated in paragraph (a) of this section, all persons who receive new or additional DBS construction permits after [effective date] shall complete construction of the first satellite in their respective DBS systems within four years of the grant of the construction permit. All satellite stations in such a DBS system shall be in operation within six years of the grant of the construction permit.

(c) DBS permittees and licensees shall be required to proceed consistent with all applicable due diligence obligations, unless otherwise determined by the Commission upon proper showing in any particular case. Transfer of control of the construction permit shall not be considered to justify extension of these deadlines.

4. A new Section 100.53 is added to Subpart D to read as follows:

**§ 100.53 Geographic service requirements.**

- (a) Those holding DBS permits or licenses as of [effective date] must either:
- (1) provide DBS service to Alaska and Hawaii from one or more orbital locations before the expiration of their current authorizations; or
  - (2) relinquish their western DBS orbital/channel assignments at the following orbital locations: 148° W.L., 157°W.L., 166° W.L., and 175° W.L.
- (b) Those acquiring DBS authorizations after [effective date] must provide DBS service to Alaska and Hawaii where such service is technically feasible from the acquired orbital location.

5. A new subpart E consisting of §§ 100.71 through 100.80 is added to Part 100 to read as follows:

**Subpart E – Competitive Bidding Procedures for DBS**

Sec.

- 100.71 DBS subject to competitive bidding.
- 100.72 Competitive bidding design for DBS construction permits.
- 100.73 Competitive bidding mechanisms.
- 100.74 Withdrawal, default and disqualification payments.
- 100.75 Bidding application (FCC Form 175 and 175-S Short-form).
- 100.76 Submission of upfront payments and down payments.
- 100.77 Long-form applications.
- 100.78 Grant of construction permit, denial, default, and disqualification.
- 100.79 Prohibition of collusion.
- 100.80 Transfer disclosure.

**§ 100.71 DBS subject to competitive bidding.**

Mutually exclusive initial applications to provide DBS service are subject to competitive bidding procedures. The general competitive bidding procedures found in Part 1, Subpart Q, will apply unless otherwise provided in this part.

**§ 100.72 Competitive bidding design for DBS construction permits.**

- (a) The Commission will employ the following competitive bidding designs when choosing from among mutually exclusive initial applications to provide DBS service:
- (1) Single round sealed bid auctions (either sequential or simultaneous);
  - (2) Sequential oral auctions;
  - (3) Combined sealed bid-oral auctions;

- (4) Sequential multiple round electronic auctions; or
- (5) Simultaneous multiple round auctions.

(b) The Wireless Telecommunications Bureau may design and test alternative procedures. The Wireless Telecommunications Bureau will announce by Public Notice before each auction the competitive bidding design to be employed in a particular auction.

(c) The Wireless Telecommunications Bureau may use combinatorial bidding, which would allow bidders to submit all or nothing bids on combinations of construction permits, in addition to bids on individual construction permits. The Commission may require that to be declared the high bid, a combinatorial bid must exceed the sum of the individual bids by a specified amount. Combinatorial bidding may be used with any type of auction design.

(d) The Wireless Telecommunications Bureau may use single combined auctions, which combine bidding for two or more substitutable construction permits and award construction permits to the highest bidders until the available construction permits are exhausted. This technique may be used in conjunction with any type of auction.

#### **§ 100.73 Competitive bidding mechanisms.**

(a) **Sequencing.** In sequential auctions, the Wireless Telecommunications Bureau will generally auction DBS construction permits in order of their estimated value, with the highest value construction permit being auctioned first. The Wireless Telecommunications Bureau may vary the sequence in which DBS construction permits will be auctioned.

(b) **Grouping.** All DBS channels available for a particular orbital location will be auctioned as a block, unless the Wireless Telecommunications Bureau announces, by Public Notice prior to the auction, an alternative auction scheme. In the event the Wireless Telecommunications Bureau uses either a simultaneous multiple round competitive bidding design or combinatorial bidding, the Wireless Telecommunications Bureau will determine which construction permits will be auctioned simultaneously or in combination.

(c) **Bid Increments and Tie Bids.** The Wireless Telecommunications Bureau may, by announcement before or during an auction, establish, raise or lower minimum bid increments in dollar or percentage terms. The Wireless Telecommunications Bureau may establish and change maximum bid increments during an auction. The Wireless Telecommunications Bureau may also establish by Public Notice a suggested opening bid or a minimum opening bid on each construction permit. Where a tie bid occurs, the high bidder will be determined by the order in which the bids were received by the Commission.

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

(e) Activity Rules. The Wireless Telecommunications Bureau may establish activity rules which require a minimum amount of bidding activity. In the event that the Wireless Telecommunications Bureau establishes an activity rule in connection with a simultaneous multiple round auction or sequential multiple round electronic auction, each bidder will be automatically granted a certain number of waivers of such rule during the auction.

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

(a) When the Commission conducts a sequential multiple round electronic auction or simultaneous multiple round auction pursuant to § 100.72, the Wireless Telecommunications Bureau will impose payments on a bidder who withdraws a high bid during the course of the auction, who defaults on payments due, or who is disqualified.

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

(c) If a high bidder defaults or is disqualified after the close of such an auction, the defaulting bidder will be subject to the payment in paragraph (b) of this section plus an additional payment equal to three (3) percent of the subsequent winning bid. If the subsequent winning bid exceeds the defaulting bidder's bid amount, the 3 percent payment will be calculated based on the defaulting bidder's bid amount. These amounts will be deducted from any upfront payments or down payments that the defaulting or disqualified bidder has deposited with the Commission.

(d) When the Commission conducts a sequential multiple round electronic auction, the Wireless Telecommunications Bureau will bar a bidder who withdraws a bid from continued participation in the auction of the withdrawn construction permit. When the Commission conducts any other type of auction, the Wireless Telecommunications Bureau may bar a bidder who withdraws a bid from continued participation in the bidding for the same construction permit or other construction permits offered in the same auction.

(e) When the Commission conducts any type of auction other than those provided for in paragraphs (a), (b), (c), and (d) of this section, the Wireless Telecommunications Bureau may modify the payments to be paid in the event of bid withdrawal, default or disqualification; provided, however, that such payments shall not exceed the payments specified above.

**§ 100.75 Bidding application (FCC Form 175 and 175-S Short-form).**

All applicants to participate in competitive bidding for DBS construction permits must submit applications on FCC Form 175 pursuant to the provisions of § 1.2105 of this chapter. The Wireless Telecommunications Bureau will issue a Public Notice announcing the availability of DBS construction permits and the date of the auction for those construction permits. This Public Notice also will specify the date on or before which applicants intending to participate in a DBS auction must file their applications in order to be eligible for that auction, and it will contain information necessary for completion of the application as well as other important information such as any upfront payment that must be submitted, and the location where the application must be filed.

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

- (a) Bidders in DBS auctions will be required to submit an upfront payment in accordance with § 1.2106 of this chapter, the amount of which will be announced by Public Notice prior to each auction.
- (b) Winning bidders in a DBS auction must submit a down payment to the Commission in an amount sufficient to bring their total deposits up to 20 percent of their winning bids within ten (10) business days of the announcement of winning bidders.

**§ 100.77 Long-form applications.**

Each winning bidder will be required to submit the information described in §§ 100.13, 100.21, and 100.51 within thirty (30) days after being notified by Public Notice that it is the winning bidder. Each winner also will be required to file, by the same deadline, a signed statement describing its efforts to date and future plans to come into compliance with any applicable spectrum limitations, if it is not already in compliance. Such information shall be submitted pursuant to the procedures set forth in § 100.13 and any associated Public Notices. Only auction winners will be eligible to file applications for DBS construction permits in the event of mutual exclusivity between applicants filing a short-form application.

**§ 100.78 Permit grant, denial, default, and disqualification.**

- (a) Each winning bidder will be required to pay the balance of its winning bid in a lump sum payment within five (5) business days following Public Notice that the construction permit is ready for grant.
- (b) A bidder who withdraws its bid during the course of an auction, defaults on a payment due, or is disqualified, will be subject to the payments specified in § 100.74.

## **§ 100.79 Prohibition of collusion.**

(a) Bidders are 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 competitive bidding process. Bidders are also 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 bid, bidding strategies or the particular properties on which they will or will not bid.

(b)(1) Except as provided in paragraphs (b)(2), (b)(3) and (b)(4) of this section, after the filing of short-form applications, all applicants are prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies, or discussing or negotiating settlement agreements, with other applicants until after the high bidder submits its down payment, unless such applicants are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application.

(2) Applicants may modify their short-form applications to reflect formation of consortia or changes in ownership at any time before or during an auction, provided that such changes do not result in a change in control of the applicant, and provided that the parties forming consortia or entering into ownership agreements have not applied for construction permits that may be used to serve the same or overlapping geographic areas. Such changes will not be considered major modifications of the application.

(3) After the filing of short-form applications, applicants may make agreements to bid jointly for construction permits, provided that the parties to the agreement have not applied for construction permits that may be used to serve the same or overlapping geographic areas.

(4) After the filing of short-form applications, a holder of a non-controlling attributable interest in an entity submitting a short-form application may acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with, other applicants for construction permits that may be used to serve the same or overlapping geographic areas, provided that:

(i) The attributable interest holder certifies to the Commission that it has not communicated 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 a consortium or joint bidding arrangement, and which have applied for construction permits that may be used to serve the same or overlapping geographic areas; and

(ii) The arrangements do not result in any change in control of an applicant.

(5) Applicants must modify their short-form applications to reflect any changes in ownership or in the membership of consortia or joint bidding arrangements.

(c) Winning bidders are required to submit a detailed explanation of the terms and conditions and parties involved in any bidding consortia, joint venture, partnership or other agreement or arrangement they have entered into relating to the competitive bidding process prior to the close of bidding. Such arrangements must have been entered into prior to the filing of short-form applications pursuant to paragraphs (a) and (b) of this section.

**§ 100.80 Transfer disclosure.**

Any entity that acquires a DBS license through competitive bidding, and seeks to transfer that license within six years of the initial license grant, must file, together with its application for FCC consent to the transfer, the associated contracts for sale, option agreements, management agreements, or other documents disclosing the total consideration received in return for the transfer of its license. The information submitted must include not only a monetary purchase price, but also any future, contingent, in-kind, or other consideration.

## APPENDIX C

### One-Time Auction Spectrum Limitations

For purposes of the auction of construction permits for use of 28 DBS channels at the 110° orbital location and 24 DBS channels at the 148° orbital location, the following provisions shall apply.

#### Definitions.

(a) "*Direct Broadcast Satellite Service*" or "*DBS*." A radiocommunication service in which signals transmitted or retransmitted by space stations are intended for direct reception by the general public. In the Direct Broadcast Satellite Service, the term "*direct reception*" shall encompass both individual reception and community reception.

(b) "*Person*." Any individual or entity, including but not limited to a corporation, partnership, association, or joint venture.

(c) "*Full-CONUS orbital location*." The orbital locations at 101° W.L., 110° W.L., and 119° W.L., which have been assigned for use in the Direct Broadcast Satellite Service.

#### Spectrum Limitation Rule.

No person with an attributable interest in channels at a full-CONUS location shall acquire an attributable interest in the channels currently available at the 110° orbital location without divesting its existing interest in full-CONUS channels at another location within twelve months of such acquisition.

#### Attribution Rules.

(a) In applying the above-stated rule, ownership and other interests in DBS licensees and permittees will be attributed to their holders and deemed cognizable pursuant to the following criteria:

(1) Except as otherwise provided herein, partnership and direct ownership interests and any voting stock interest amounting to 5% or more of the outstanding voting stock of a corporate DBS licensee or permittee will be cognizable.

(2) Investment companies, as defined in 15 U.S.C. § 80a-3, insurance companies and banks holding stock through their trust departments in trust accounts will be considered to have a cognizable interest only if they hold 10% or more of the outstanding voting stock of a corporate DBS licensee or permittee, or if any of the officers or directors of the DBS licensee or permittee are representatives of the investment company, insurance company, or bank concerned. Holdings by a bank or insurance company will be aggregated if the bank or insurance company has any right to determine how the stock will be voted. Holdings by investment companies will be aggregated if under common management.