parties have reached the mandatory negotiation period, only the bare essentials of comparability should be required. We seek comment on our proposal. We also seek comment on the appropriate penalty to impose on a licensee that fails to act in good faith.

D. BETRS Eligibility on the Upper 200 Channels of 800 MHz SMR Spectrum

287. Background. Under Section 90.621(h) of the Commission's rules, Channel Numbers 401-410, 441-450, 481-490, 521-530, and 561-570 are available on co-primary basis to stations in Basic Exchange Telecommunications Radio Service (BETRS) as described in Part 22 of the Commission's rules.[652]

288. Proposal. According to our licensing records, there are few BETRS facilities currently licensed on these frequencies. Based on the limited BETRS licensing on these frequencies and the goals of the wide-area licensing plan adopted in the *First Report and Order* in PR Docket No. 93-144 (in which these channels are included), we propose that BETRS stations no longer be authorized on these frequencies. In addition, as of the adoption of this *Second Further Notice of Proposed Rule Making*, we will no longer accept applications for BETRS facilities on these channels.

E. Licensing of Lower 80 and General Category Channels

1. Geographic Area Licensing

289. Background. Under our current rules the lower 80 and General Category channels are licensed on a site-specific basis. In the *Further Notice,* we sought comment on whether to continue site-specific licensing or to adopt a form of geographic area licensing on these channels.[653]

290. Comments. Several commenters advocate that we continue licensing channels designated for local SMR use based on the geographic separation and channelization criteria in our current SMR rules.[654] These commenters argue that continued site-specific licensing

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[652]*See* 47 C.F.R. § 90.621(h).

[653]*Further Notice,* 10 FCC Rcd at 7985-7986, ¶ 24.

[654]AMI Comments at 5; AMTA Comments at 25; ABC Comments at 3; B&C Comments at 3; Bis-man Comments at 3; Bolin Comments at 3; Dakota Comments at 3; Deck Comments at 3; Diamond "L" Comments at 3; E.T. Communications Comments at 3; Keller Comments at 3; Nielson Comments at 3; Nodak Comments at 3; RCC Comments at 3; Raserco Comments at 3; Rayfield Comments at 3; SMCI Comments at 3; Vantek Comments at 3; E.F. Johnson Comments at 7; Genesee Comments at 2; Motorola Comments at 12-13; Palmer Comments at 4; Pittencrief Comments at 7; Fisher Reply Comments at 10; IC&E Reply Comments at 6; OneComm Reply Comments at 18.

would: (1) allow local operators to define their own markets;[655] (2) permit construction of niche systems designed to meet unique
and customized needs;[656] and, (3) minimize disruption to operations of existing licensees.[657]

291. Other commenters advocate discontinuing site-specific licensing of the lower 80 and General Category channels and instead offering licenses for individual channels or small channel blocks covering defined geographic areas.[658] Cumulous argues that market-area licensing would allow local SMR operators to grow and develop into geographic area licensees in the future.[659] Dru Jenkinson, *et al.* contend that market-area licensing would permit more efficient service area coverage than site-specific authorizations.[660] Total Com believes that market-area licensing will be advantageous to market development, with minimal regulation.[661]

292. Some commenters expressly oppose market-area licensing on the basis that: (1) there is no reason to license these channels on a market-defined area basis given the scarcity of vacant channels;[662] and, (2) it could create an artificial shortage of local channels simplv because a licensee secures an authorization covering a particular geographic area.[663] Pittencrief contends that such an approach, if adopted, should be used only in those areas where the spectrum currently is not being used.[664]

293. Although AMTA does not expressly support this licensing approach, it notes that there are certain advantages associated with geographic area licensing, including facilitation of future integration of local systems into wide-area operations should additional spectrum be

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[655]AMI Comments at 5; E.F. Johnson Comments at 7.

[656]AMI Comments at 5.

[657]AMTA Comments at 25; Motorola Comments at 12-13; Palmer Comments at 4; Pittencrief Comments at 7; Fisher Reply Comments at 10; IC&E Reply Comments at 6.

[658]Cumulous Comments at 9; Dru Jenkinson, *et al.* Comments at 6; Telecellular Comments at 5; Total Com Comments at 6.

[659]Cumulous Comments at 9.

[660]Dru Jenkinson, *et al.* Comments at 6.

[661]Total Com Comments at 6.

[662]Ericsson Comments at 9; Southern Comments at 12; Pittencrief Comments at 8.

[663]E.F. Johnson Reply Comments at 5-6.

[664]Pittencrief Comments at 8.

desired.[665] Pittencrief contends that even if site-specific licensing is retained, geographic area licensing would not necessarily be foreclosed in the future. In this regard, Pittencrief recommends that in order to secure a market-based license, a local licensee would be required to demonstrate either that: (a) no other co-channel systems serve the geographic area; or, (b) it has secured the consent of all affected co-channel licensees. In either case, Pittencrief suggests that the local licensee should be required to serve a certain percentage of the Commission-defined service area or face loss of the wide-area authorization.[666]

294. Proposal. We tentatively conclude that the lower 80 and General Category channels should be converted to geographic area licensing. We believe that this new licensing approach will afford smaller SMR operators the flexibility to provide service to a defined geographic area on the same basis as licensees in the upper 10 MHz block. We further believe that geographic licensing would simplify system expansion and substantially reduce the administrative burden on both lower 80 and General Category licensees and the Commission. In fact, we expect that in many instances, existing licensees will seek to obtain market-area licenses for those areas in which they already operate, which would enable them to consolidate and expand their operations under a more flexible regulatory regime. We seek comment on our tentative conclusion.

2. Service Areas

295. Background. In the *Further Notice*, we indicated our belief that BTAs could be an appropriate service area for geographic area licensing on the lower 80 channels.[667] In the *First Report and Order*, *supra*, we adopt EAs as the service area for licenses in the upper 10 MHz block.

296. Comments. AMTA recommends using EAs rather than BTAs, partly because EAs appear to approximate more closely the coverage range of existing systems.[668] Pittencrief also supports use of EAs.[669] DCL Associates and Telecellular support use of BTA service areas, because they believe that such licensing would permit substantially more operational flexibility than the traditional 35-mile radius licensing areas.[670] E.F. Johnson believes use of BTAs is contrary to the public interest because it potentially would require operators to construct facilities where they did not anticipate providing service; and, it would limit the

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[665]AMTA Comments at 25.

[666]Pittencrief Reply Comments at 6.

[667]*Further Notice*, 10 FCC Rcd at 7986, ¶ 25.

[668]AMTA Comments at 26.

[669]Pittencrief Comments at 8.

[670]DCL Associates Comments at 8-9; Telecellular Comments at 5.

possibility that a co-channel licensee legitimately could reuse those channels to serve an adjacent area.[671] CellCall favors licensing the lower 80 channels on an MTA basis.[672] Dru Jenkinson, *et al.* believe that uniformity and efficiency of administration suggest that the lower 80 channels be licensed on the same geographic area as the upper 200 channels.[673] Similarly, AMTA contends that such uniformity will preserve the value of lower 80 channels.[674]

297. Proposal. We tentatively conclude that EAs would be the most appropriate service areas for a geographic area licensing approach on the lower 80 and General Category channels. As discussed in the *First Report and Order*, EAs are based on urban, suburban, and rural traffic patterns that accurately reflect the coverage provided by most 800 MHz SMR operators other than the largest wide-area systems. We therefore believe that this is an appropriate service area definition for the smaller systems that we anticipate will occupy the lower 80 and General Category channels. We also believe that using the same service area definition for licenses on these channels as for licenses on the upper 200 channels will result in greater administrative efficiency. We seek comment on this tentative conclusion and on alternative area definitions.

3. Channel Assignments

298. Background. In the *Further Notice*, we indicated that by continuing to license the lower channels in five-channel blocks, as we do currently, we would enable existing licensees to expand local systems on the same channels they are using presently. We also indicated that licensing fewer channels in each block might be an option that would give SMR operators more flexibility in channel configuration.[675]

299. Comments. CellCall, Telecellular, AMI, Dru Jenkinson, *et al.*, and Palmer support licensing the lower 80 channels in five-channel blocks.[676] Palmer believes that such an approach would limit spectrum warehousing severely because channels would not be sitting idle while reserved for future service areas within a larger defined geographic region.[677] Dru

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[671]E.F. Johnson Comments at 8.

[672]CellCall Comments at 14.

[673]Dru Jenkinson, *et al.* Comments at 6.

[674]AMTA Reply Comments at 18.

[675]*Further Notice*, 10 FCC Rcd at 7986, ¶ 25.

[676]CellCall Comments at 13-14; Telecellular Comments at 5; AMI Comments at 5; Dru Jenkinson *et al.* Comments at 6; Palmer Comments at 4.

[677]Palmer Comments at 4.

Jenkinson, *et al.* believes that a five-channel block is an appropriate grouping which would permit limited service application on a local basis, yet provide flexibility for system modification within the designated area.[678]

300. Proposal. The five-channel blocks, which proved to be administratively convenient under a site-by-site licensing scheme, may also continue to be feasible under a geographic area licensing approach since incumbent licensees have established their systems based on such channelization. We anticipate that licensees operating on the lower 80 channels increasingly may become more interested in expanding the geographic areas served by their systems and preoccupied less with the number of frequencies utilized by such systems. We tentatively conclude that the lower 80 channels should be licensed in the same five-channel blocks under a geographic licensing approach in order to allow SMR operators to build upon the systems they have already established. Thus, we propose to license the lower 80 channels in five-channel blocks. We seek comment on this tentative conclusion and any alternatives.

301. For the General Category channels, we are not convinced that five-channel blocks would be the best licensing alternative. Unlike the lower 80 channels, the General Category channels are contiguous. As a result, licensees may be interested in establishing multiple-channel system networks. In addition, we are concerned that the competitive bidding process for these frequencies may be administratively unmanageable if they are licensed on a channel-by-channel basis, given the large number of channels involved. Thus, we tentatively conclude that the General Category channels should be licensed in channel blocks. We seek comment on our tentative conclusion. We also ask commenters to discuss what specific channel block size would be appropriate. One alternative is to license channel blocks of different sizes, *e.g.*, a 120-channel block, a 20-channel block, and a 10-channel block. Another alternative is to license channel blocks of the same size, *e.g.*, 25-channel or 10-channel blocks. We seek comment on these, as well as other, alternatives.

4. Operational and Eligibility Restrictions

302. Background. In the *Further Notice*, we proposed to allow licensees to use the lower 80 channels for any purpose that is technically consistent with our rules. We also did not propose to restrict the ability of licensees on the lower 80 channels to aggregate channels or integrate local systems to provide service over a larger area.

303. Comments. The majority of commenters addressing this issue endorse the Commission's proposal to allow licensees to use the lower 80 channels for any purpose that is technically consistent with our rules.[679] Cumulous believes that the Commission should

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[678]Dru Jenkinson, *et al.* Comments at 6.

[679]ABC Comments at 2; B&C Comments at 2; Bis-man Comments at 2; Bolin Comments at 2; Dakota Comments at 2; Deck Comments at 2; Diamond "L" Comments at 2; E.T. Communications Comments at 2; Keller Comments at 2; Nielson Comments at 2; Nodak Comments at 2; RCC Comments at 2; Raserco Comments

pursue licensing policies that allow the same use to be made of both the upper 10 MHz block of 800 MHz SMR spectrum and the lower 80 channels.[680] OneComm believes that such a regime would make local channels more fungible in relocation negotiations and preserve the value of the lower 80 channels.[681]

304. Some commenters, on the other hand, oppose allowing EA licensees to be able to obtain lower 80 channels.[682] Ericsson believes that such channels should be reserved as a safe haven for any local licensees who currently operate in the upper 10 MHz block and do not obtain the EA license if a mandatory relocation plan is adopted.[683] UTC believes that, in order to ensure the benefits of competition within all geographic markets, an entity should be restricted from holding EA licenses and authorizations for the lower 80 channels in the same geographic area.[684] Fisher urges the Commission to clarify that if an EA licensee also holds licenses for systems made up of frequencies from the lower 80 channels, it would be allowed to incorporate such frequencies into its wide-area system.[685] Fisher believes that such use would further the Commission's goal of efficient and full utilization of spectrum.[686]

305. Proposal. We tentatively conclude that lower 80 and General Category SMR licensees should be permitted to use these channels for any purpose which is technically consistent with our rules. In light of our designation of 10 MHz of 800 MHz spectrum for wide-area licensing, however, we wish to ensure that our rules do not inadvertently allow licensees in the upper 10 MHz to acquire large numbers of additional SMR channels primarily intended for other use. As discussed *infra*, we propose to adopt size restrictions on eligibility for the lower 80 and General Category channels by designating these channels as an entrepreneurs' block. As a result of the economic size limitations associated with such designation, the largest licensees in the upper 10 MHz block would likely be ineligible for the lower 80 and General Category channels. Aside from this proposed restriction, however, we tentatively conclude that limiting the potential uses of lower 80 and General Category licenses would not serve the public interest. We believe that operational restrictions ultimately may restrict the ability of smaller SMR operators to expand their service area and service offerings

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at 2; Rayfield Comments at 2; SMCI Comments at 2; Vantek Comments at 2; CellCall Comments at 14; OneComm Comments at 29; Pittencrief Comments at 4.

[680]Cumulous Comments at 8-9.

[681]OneComm Comments at 29.

[682]Ericsson Comments at 8; UTC Comments at 7.

[683]Ericsson Comments at 8.

[684]UTC Comments at 7.

[685]Fisher Reply Comments at 5.

[686]*Id.*

by such means as integrating their frequencies into a wide-area system or establishing a multiple-channel network. Thus, we do not propose any additional restrictions for these channels.

5. Channel Aggregation Limit

306. Background. In the *Further Notice*, we tentatively concluded that a limit should be placed on the number of lower 80 channels that an applicant may obtain at one time in an area without constructing and commencing operations on previously licensed channels in the same area.[687] We proposed to limit grants of the lower 80 channels to no more than five channels at one time, which is the applicable limit under our current rules.[688]

307. Comments. All commenters addressing this issue agree that a limit should be placed on the number of lower 80 channels that an applicant may obtain at one time in an area without constructing and commencing operations on previously licensed channels in the same area.[689] CellCall proposes a five-channel limit in a particular area for the lower 80 frequencies.[690] Russ Miller believes, however, that a five-channel limit is too restrictive over a geographic area as large as a BTA service area.[691] It proposes a five-channel limit, per location, not per area, for requested frequencies not licensed to the applicant within its existing footprint.[692] Russ Miller suggests that the limit apply to any of the 800 MHz frequencies, not just SMR channels. Telecellular believes that lower 80 licensees should be permitted to apply for additional channels only after construction has been completed for any frequencies covered by previously issued authorizations in a given area, with "area" defined as any location within 40 miles of the unbuilt site.[693] Total Com suggests that any licensee must have 90 percent of its channels constructed in each market before additional channels are authorized.[694]

308. Proposal. We propose not to limit the number of frequencies a single applicant can request at one time. Under our site-specific 800 MHz SMR licensing rules, we generally

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[687] *Further Notice*, 10 FCC Rcd at 7987, ¶ 26.

[688] *Id.*

[689] CellCall Comments at 14; Telecellular Comments at 5-6; Total Com Comments at 6; Russ Miller Comments at 4.

[690] CellCall Comments at 14.

[691] *Id.* at 9.

[692] Russ Miller Reply Comments at 4.

[693] Telecellular Comments at 6.

[694] Total Com Comments at 6.

have restricted the number of channels for which an entity could apply in a particular area at one time, to deter spectrum warehousing. We believe that the risk of channel warehousing would be limited because these licenses will be subject to competitive bidding and we anticipate that licensees will not bid for more channels than they actually need or can use. We also believe that lower 80 and General Category licensees should have the flexibility to pursue plans to establish wide-area systems by aggregating the lower 80 and General Category frequencies. We note, however, that CMRS spectrum holdings by these licensees still would be subject to the CMRS spectrum aggregation limit provided in Section 20.6 of our Rules. We seek comment on these proposals and any alternatives.

6. Construction Requirements

a. Construction Period

309. Background. In the *CMRS Third Report and Order*, we established a uniform 12-month period for constructing a standard base station in all CMRS services that are licensed on a site-specific basis.[695] In the *Further Notice*, we indicated that licensees of SMR systems presumptively are subject to this 12-month construction period.[696] In the *CMRS Third Report and Order*, we also indicated that CMRS providers would be required to commence service to subscribers by the end of their construction period, with "service to subscribers" defined to mean the provision of service to at least one party not affiliated with, controlled by, or related to the CMRS provider.[697]

310. Comments. All commenters addressing this issue endorse the Commission's proposal of a 12-month construction period, coupled with a commencement of service to subscribers requirement.[698]

311. Proposal. Consistent with our conclusions in the *CMRS Third Report and Order*, we propose that lower 80 and General Category licensees be subject to a 12-month construction period. We further propose that these licensees be required to construct their facilities and commence "service to subscribers" within twelve months from the grant of their licenses. We seek comment on this proposal and any alternatives.

b. Coverage Requirements

312. We seek comment on whether geographic area SMR licensees operating on the lower 80 and General Category frequencies should be subject to minimum coverage requirements as a condition of licensing. In the *First Report and Order*, *supra*, we require EA licensees operating in the upper 200 channels to provide coverage to one-third of the population within their EA within three years of initial license grant and to two-thirds of the population by the end of their five-year construction period. We propose to apply these same requirements to lower 80 and General Category geographic area licensees. We believe that these coverage requirements serve the public interest by deterring spectrum warehousing and

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[695] *CMRS Third Report and Order*, 9 FCC Rcd at 8074, ¶ 177.

[696] *Further Notice*, 10 FCC Rcd at 7995, ¶ 44.

[697] *CMRS Third Report and Order* , 9 FCC Rcd at 8075, ¶ 178.

[698] ABC Comments at 5; B&C Comments at 5; Bis-man Comments at 5; Bolin Comments at 5; Dakota Comments at 5; Deck Comments at 5; Diamond "L" Comments at 5; E.T. Communications Comments at 5; Keller Comments at 5; Morris Comments at 4; Nielson Comments at 5; Nodak Comments at 5; RCC Comments at 5; Raserco Comments at 5; Rayfield Comments at 5; SMCI Comments at 5; Vantek Comments at 5; OneComm Comments at 29-30; Pittencrief Comments at 13.

ensuring the speedy delivery of SMR service to the public. We also propose that lower 80 and General Category licensees be able to satisfy their coverage requirements by meeting a "substantial service" standard, like that adopted in the broadband PCS 10 MHz blocks and 900 MHz SMR services. We ask commenters to address the advantages and disadvantages of imposing coverage requirements on lower 80 and General Category licensees, the specific coverage criteria proposed, and any alternative criteria that could be used.

313. We also tentatively conclude that the geographic area lower 80 and General Category licensees should be responsible for meeting their coverage requirements, regardless of the extent to which their service areas are occupied by co-channel incumbents. We believe that incumbents that already provide substantial coverage in certain areas will have sufficient incentive to seek geographic area licenses for these areas. Thus, we propose to require the geographic area licensees for the lower 80 and General Category channels to satisfy their coverage requirements directly. This proposal is consistent with our approach for EA licensees on the upper 200 channels. We seek comment on these proposals and any alternatives, including the impact, if any, on the construction period for the lower 80 and General Category channels. Assuming a twelve-month construction period, we ask commenters to address whether the coverage requirements should be imposed earlier in the license term. If so, we ask commenters to discuss what would be the appropriate time frame.

314. If we adopt coverage requirements, we also must determine what penalty should be imposed if the geographic area licensee fails to comply with such requirements. We tentatively conclude that a geographic area licensee's failure to meet the coverage requirements should result in forfeiture of the market-area license. We also tentatively conclude that in the event that a licensee loses its geographic area license for failure to comply with coverage requirements, any authorizations that such licensee held in that area prior to the auction for facilities that are constructed and operating would be reinstated. This approach is consistent with the sanctions provided for in our rules for the upper 10 MHz block of 800 MHz SMR spectrum, 900 MHz SMR, and broadband PCS.[699] We seek comment on our proposal and any alternatives.

7. Treatment of Incumbents

315. Given the extensive licensing of the 800 MHz SMR service, we remain concerned about the ramifications of implementing a market-area licensing approach where systems have been licensed already on a site-specific basis. In the *First Report and Order*, *supra*, we adopt a mandatory relocation mechanism for the upper 10 MHz block. With respect to the lower 80 and General Category channels, however, we believe that there are no equitable means of relocating incumbents to alternative channels, and that there are no identifiable alternative channels to accommodate all such incumbents. We also believe that incumbent licensees relocated from the upper 200 channels should not be subject to relocation

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[699] *See* 47 CFR § 90.685 (Appendix A); 47 CFR §90.665(d) (900 MHz SMR); 47 CFR §24.203(b) (broadband PCS).

a second time. We therefore tentatively conclude that there should be no mandatory relocation mechanism for SMR operators operating on the lower 80 and General Category channels. We propose that incumbent SMR licensees on these frequencies be allowed to continue to operate under their existing site-specific authorizations, and geographic area licensees would be required to provide protection to all co-channel systems that are constructed and operating within their service areas. We further propose that no incumbent SMR licensee be allowed to expand beyond its existing service area (as discussed in further detail, *infra*) and into the geographic area licensee's territory without obtaining the prior consent of the geographic area licensee (unless, of course, the incumbent in question is itself the market-area licensee for the relevant channel). We seek comment on this proposal. In addition, we ask commenters to address how non-SMR licensees operating on the lower 80 and General Category channels should be treated. Should these licensees be relocated to non-SMR channels, and if so, under what circumstances and pursuant to what type of relocation plan?

316. Because incumbent licensees' ability to expand their service areas would be restricted as a result of our proposal, we believe that it is imperative that they be given the optimum amount of operational flexibility possible, without encroaching upon market-area licensees' operations. Consistent with our approach on the upper 200 channels, we propose that incumbent licensees on lower 80 and General Category channels be able to modify or add transmitters in their existing service area without prior notification to the Commission, so long as their 22 dBu interference contour is not expanded. As we note in the *First Report and Order, supra,* we believe that by using the 22 dBu interference contour as the benchmark for defining an incumbent's service area, incumbents will be afforded significant operational flexibility without detracting from the market-area licensee' operational capabilities. We seek comment on this proposal. We ask commenters to address whether our proposal strikes the appropriate balance between the competing interests of market-area and incumbent licensees. We also ask commenters to discuss whether a basis other than the 22 dBu interference contour should be used to determine an incumbent's service area.

317. In addition, similar to our approach in the upper 200 channels and the 900 MHz SMR service, we propose to allow SMR incumbents operating on the lower 80 and General Category channels to have their licenses reissued if they are not the successful bidder for the geographic area license which includes the area in which they are currently operating. Under this procedure, which will be granted post-auction upon the request of the incumbent, an incumbent may convert its current multiple site licenses to a single license, authorizing operations throughout the contiguous and overlapping 22 dBu contours of the incumbent's previously authorized sites. We propose that incumbents seeking such reissued licenses be required to make a one-time filing identifying each of their external base station sites to assist the staff in updating the Commission's database after the close of the auction for the lower 80 and General Category channels. We also propose to require evidence that such facilities are constructed and placed in operation and that, by operation of our rules, no other licensee would be able to use these channels within this geographic area. We believe that facilities added or modified within the 22 dBu contour without prior approval or subsequent

notification under this procedure will not receive interference, because they will be protected by the presence of surrounding stations of the same licensee on the same channel or channel block. We seek comment on this proposal.

8. Co-Channel Interference Protection

318. Under our market-area licensing proposal for the lower 80 and General Category channels, market-area licensees will be required to provide interference protection both to incumbent co-channel facilities and to co-channel licensees in neighboring market areas. With respect to incumbent co-channel facilities, we propose to retain the level of protection afforded under our existing rules. Thus, a market-area licensee would be required either to locate its stations at least 113 km (70 mi) from the facilities of any incumbent or to comply with the co-channel separation standards set forth in our short-spacing rule if it seeks to operate stations located less than 113 km (70 mi) from an incumbent licensee's facilities.[700] With respect to adjacent market-area licensees, we propose that market-area licensees provide interference protection either by reducing the signal level at their service area boundary, or negotiating some other mutually acceptable agreement with all potentially affected adjacent licensees. We seek comment on these proposals and we invite commenters to provide alternatives.

9. Licensing in Mexican and Canadian Border Areas

319. We recognize that a limited number of lower 80 channels are available for SMR licensing in the Mexican and Canadian border areas. In the *First Report and Order*, we have decided not to distinguish between border areas and non-border areas for licensing purposes. We propose the same approach for the lower 80 channels in the border areas, *i.e.*, all market areas should be licensed on a uniform basis without distinguishing border from non-border areas, even if some spectrum is unusable. We believe that lower 80 and General Category applicants, like those in the upper 10 MHz block and other services, will be able to assess the impact of more limited spectrum availability when valuing those market areas for competitive bidding purposes. Moreover, we believe that altering the size of particular market areas because they are located near an international border is likely to be administratively unworkable. Thus, we propose that market-area licensees be entitled to use any available border-area channels, subject to the relevant rules regarding international assignment and coordination of such channels. We seek comment on this proposal.

F. Regulatory Classification of Lower 80 and General Category Channels

320. Background. In the *CMRS Third Report and Order*, we determined that SMR licensees would be classified as CMRS if they offered interconnected service and as PMRS if they did not offer such service. In the *Further Notice*, we sought comment on whether the

[700] *See* 47 CFR § 90.621(b).

presumption of CMRS status should apply to licensees authorized for the lower 80 channels.[701]

321. Comments. All of the commenters addressing this issue believe that there should not be a CMRS presumption for the lower 80 channels or any other channels designated primarily for local service.[702] E.F. Johnson and Genesee opine that there is a significant difference between the type of services provided by local SMR systems and wide-area systems.[703] AMTA opines that it is not persuaded that Congress intended to adopt a definition of CMRS so sweeping as to encompass even the smallest, most rural SMR system, irrespective of its practical ability to provide a service substantially similar to cellular or other CMRS systems.[704]

322. Proposal. Based on our geographic area licensing proposal for the lower 80 and General Category channels, we believe that it is not evident that the operations of the licensees on these frequencies will be local in nature. In fact, some licensees may desire to establish regional networks on these frequencies. Furthermore, contrary to the suggestion by some commenters, the CMRS definition provided in the Communications Act does not distinguish mobile service providers based on their economic size. Instead, a service provider's regulatory classification is determined based on factors associated with the nature of its operations. In this connection, we believe that the operational opportunities for the lower 80 and General Category channels are not significantly different. Thus, we tentatively conclude that most if not all geographic area licensees on these channels will be classified as CMRS, because they are likely to provide interconnected service as part of their service offering. We therefore propose to classify all geographic area licensees on the lower 80 and General Category channels presumptively as CMRS. We also propose that market-area applicants or licensees who do not intend to provide CMRS service may overcome this presumption by demonstrating that their service does not fall within the CMRS definition. We also propose not to apply this presumption prior to August 10, 1996 in the case of any geographic area licensee who previously was licensed in the SMR service as of August 10, 1993. We seek comment on our tentative conclusion and proposals.

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[701] *Further Notice*, 10 FCC Rcd at 8006, ¶ 70.

[702] ABC Comments at 6; B&C Comments at 6; Bis-man Comments at 6; Bolin Comments at 6; Dakota Comments at 6; Deck Comments at 6; Diamond "L" Comments at 6; E.T. Communications Comments at 6; Keller Comments at 6; Nielson Comments at 6; Nodak Comments at 6; RCC Comments at 6; Raserco Comments at 6; Rayfield Comments at 6; SMCI Comments at 6; Vantek Comments at 6; E.F. Johnson Comments at 14; Genesee Comments at 4; Pittencrief Comments at 18.

[703] E. F. Johnson Comments at 14-15; Genesee Comments at 4.

[704] AMTA Comments at 7.

G. Competitive Bidding Issues for Lower 80 and General Category Channels

1. Auctionability of Lower 80 and General Category Channels

323. In the *Eighth Report and Order*, we affirm our previous determination that the 800 MHz SMR service is auctionable.[705] In addition, we conclude that use of competitive bidding in the upper 200 channels of 800 MHz SMR spectrum is fully consistent with Section 309(j) of the Communications Act. Because the lower 80 frequencies are SMR channels, and thus a subset of the 800 MHz SMR service, we believe that they also are auctionable. Consistent with our approach regarding the upper 200 channels, we propose to employ competitive bidding as a licensing tool to select among mutually exclusive applicants on the lower 80 channels. We seek comment on this proposal.

324. We also seek comment on whether to adopt equivalent auction procedures for competing applications for General Category channels. In the *Eighth Report and Order, supra*, we determine that in the future the General Category Channels will be licensed exclusively for SMR use. Consistent with our approach for other 800 MHz SMR spectrum, we tentatively conclude that if two or more entities file mutually exclusive initial applications, we intend to use competitive bidding to select from among competing applications.

325. We anticipate that a large number of applicants will file mutually exclusive geographic area applications for SMR operations on General Category frequencies. Competitive bidding will ensure that the qualified applicants who place the highest value on the available spectrum, and who will provide valuable services rapidly to the public, will prevail in the selection process. Thus, we tentatively conclude that all potential conflicts among General Category applicants will not be eliminated by our proposed geographic area licensing scheme. Competitive bidding procedures will be necessary to select from among competing applicants for these channels. We seek comment on this tentative conclusion.

2. Competitive Bidding Design

a. Bidding Methodology

326. Background. In the *Competitive Bidding Second Report and Order*, we established criteria to be used in selecting which auction design to use for particular auctionable services. Generally, we concluded that awarding licenses to parties who value them most highly will foster Congress's policy objectives of stimulating economic growth and enhancing access to telecommunications services. We further noted that, because a bidder's ability to introduce valuable new services and to deploy them quickly, intensively, and efficiently increases the value of a license to that bidder, an auction design that awards licenses to those bidders with the highest willingness to pay tends to promote the development

[705] *See* discussion at ¶ 146, *supra*.

and rapid deployment of new services and the efficient and intensive use of the spectrum. In determining how best to promote this objective, we identified several auction design elements which, in combination, produce many different auction types. The two most important design elements are: (1) the number of auction rounds (single or multiple), and (2) the order in which licenses are auctioned (sequentially or simultaneously).[706] These two elements can be combined to create four basic auction designs: sequential single round, simultaneous single round, sequential multiple round, and simultaneous multiple round.[707]

327. In the *Further Notice*, we noted that because of the non-contiguous nature of the lower 80 channels, there did not appear to be a high degree of interdependency among them.[708] We further noted that the limited geographic scope of the licenses is likely to make them less valuable than the licenses for the spectrum blocks for the upper 200 channels.[709]

328. Comments. SBA supports use of single round sealed bidding.[710] Genesee disagrees that one single round of auctions in sealed bidding would be fair, and suggests that at least two rounds be done with 30 day intervals.[711] AMTA does not dispute the Commission's tentative conclusion regarding the appropriate competitive bidding methodology for local licenses.[712] AMTA notes that it is reluctant to suggest an approach that might further complicate what would be an unjustifiably costly and complex process for those entities. AMTA contends that some grouping of frequency blocks and geographic areas might be necessary for this purpose, if the Commission determines to issue local licenses on a geographic, rather than site-specific basis.[713] Morris proposes the use of multiple round auctions for local area licenses, limited to five rounds.[714] Nextel proposes that after relocation is completed, the lower 80 channels and any other spectrum reallocated to exclusive SMR use, be auctioned on a single channel basis.[715]

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[706]*See Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2361, ¶ 79.

[707]*Id.* at 2362-2365, ¶¶ 80-97. The four auction designs are described in detail in the *Competitive Bidding Second Report and Order*. *See* 9 FCC Rcd 2348.

[708]*Further Notice*, 10 FCC Rcd at 8009, ¶ 77.

[709]*Id.*

[710]SBA Comments at 20.

[711]Genesee Comments at 4.

[712]AMTA Reply Comments at 30.

[713]*Id.*

[714]Morris Comments at 4.

[715]Nextel Reply Comments at 10.

329. Proposal. We seek comment on which of the above auction methodologies should be used for the auction of the lower 80 and General Category licenses. In the *Competitive Bidding Second Report and Order*, we stated that simultaneous multiple round auctions would be the preferred method where licenses have strong value interdependencies.[716] Accordingly, we have used this method in broadband and narrowband PCS services and the 900 MHz SMR service, and we will use the same methodology for the upper 200 channels in the 800 MHz SMR service.

330. Given our successful experience in conducting simultaneous multiple round auctions, we propose to use this competitive bidding methodology for the lower 80 and General Category channels as well. We seek comment on this proposal. We also note, however, that there is less interdependency between licenses for the lower 80 and General Category channels, both because channel aggregation is not required to provide SMR service and because channel selection may be largely dictated by which channels currently are licensed to incumbents in each license area. We therefore seek comment on alternatives to simultaneous multiple round bidding for these channels. One alternative would be to use the oral outcry method, *i.e.*, sequential multiple round bidding. This method may allow us to conduct auctions expeditiously and in a manner that is not burdensome to applicants.

b. License Grouping

331. Background. Depending upon the auction methodology chosen, several alternatives exist for grouping the lower 80 and General Category licenses. For example, the Commission determined in the *Competitive Bidding Second Report and Order* that in a multiple round auction, highly interdependent licenses should be grouped together and put up for bid at the same time, because such grouping provides bidders with the most information about the prices of complementary and substitutable licenses during the course of an auction.[717] We also determined that the greater the degree of interdependence among the licenses, the greater the benefit of auctioning a group of licenses together in a simultaneous multiple round auction.[718]

332. Proposal. We seek comment on how lower 80 and General Category licenses should be grouped for competitive bidding purposes. As noted above, it does not appear that licenses on these channels are likely to be highly interdependent. We therefore propose that lower 80 licenses be grouped in 16 five-channel blocks for each license area. We seek comment on this proposal. We also ask commenters to indicate if there are instances in which licenses on multiple channels should be grouped together for competitive bidding purposes.

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[716] *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2367, ¶¶ 109-111.

[717] *Id.* at 2366, ¶¶ 106-107.

[718] *Id.* at 2363-2364, ¶¶ 89-94.

333. Assuming that we group lower 80 licenses by 16 five-channel blocks, the issue remains whether all geographic area licenses for specific channel blocks should be grouped together for competitive bidding purposes. Given the large number of licenses, we believe that it would be administratively feasible to employ an additional means of grouping the five-channel blocks. We believe that some licensees may elect to pursue regional service plans. Thus, we propose to group the five-channel blocks on a regional basis. We seek comment on this proposal. We recognize that there are other sets of interdependencies which could form a basis for license grouping. In a simultaneous multiple round auction, for example, we could auction all of the market areas for a five-channel block simultaneously. Alternatively, we could begin with the largest (*i.e.* most populated) markets and then move to smaller markets. We seek comment on these alternatives as well. Assuming that we group, the licenses on a regional basis, we ask commenters to discuss how the regions should be defined. For example, should the regions be defined by sequential groupings of EAs or some other basis? We also ask commenters to address whether there is a particular order in which the regions should be auctioned.

334. With respect to the General Category channels, which we propose to license in a 120-channel block, 20-channel block and 10-channel block, we believe that these licenses will be significantly interdependent, primarily due to their contiguity. Thus, we propose to auction the General Category geographic area licenses simultaneously. We seek comment on this proposal and any alternatives.

c. Bidding Procedures

335. Background. In the *Competitive Bidding Second Report and Order*, the Commission established general procedures for simultaneous multiple round auctions, including bid increments, duration of bidding rounds, stopping rules, and activity rules.[719] We further noted that these procedures could be modified on a service-specific basis.[720] We seek comment on the bidding procedures that should be used for licensing of the lower 80 and General Category channels.

336. Bid Increments. If we use a multiple round auction, we propose to establish minimum bid increments for bidding in each round of the auction, based on the same considerations in the *Eighth Report and Order*.[721] The bid increment is the amount or percentage by which the bid must be raised above the previous round's high bid in order to be accepted as a valid bid in the current bidding round.[722] The application of a minimum bid

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[719] *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2367, ¶ 116.

[720] *Id.*

[721] *See, e.g., Competitive Bidding Third Report and Order*, 9 FCC Rcd at 2953, ¶¶ 30-32.

[722] *Id.* at 2953, ¶ 30.

increment speeds the progress of the auction and, along with activity and stopping rules, helps to ensure that the auction closes within a reasonable period of time.[723] Establishing an appropriate minimum bid increment is especially important in a simultaneous auction with a simultaneous closing rule, because all markets remain open until there is no bidding on any license and a delay in closing one market will delay the closing of all markets. We seek comment on the appropriate minimum bid increments for the lower 80 and General Category channels.

337. For example, if simultaneous multiple round auctions are employed for the lower 80 and General Category licenses, we believe that we should start such auctions with relatively large bid increments, and reduce the increments as the number of active bidders declines.[724] We also propose to adopt a minimum bid increment of five percent of the high bid in the previous round or $0.01 per activity unit, whichever is greater. We believe that applying a $0.01 per activity unit minimum bid increment in addition to the percentage calculation is appropriate to provide flexibility for a wide range of different license values, and to ensure timely closure of auctions. In addition, we propose to retain the discretion to vary the minimum bid increments for individual licenses or groups of licenses at any time before or during the course of the auction, based on the number of bidders, bidding activity, and the aggregate high bid amounts. We also propose to retain the discretion to keep an auction open if there is a round in which no bids or proactive waivers are submitted.[725] We seek comment on these proposals.

338. Stopping Rules. If multiple round auctions are used, a stopping rule must be established for determining when the auction is over.[726] Three types of stopping rules exist that could be employed in simultaneous multiple round auctions: markets may close individually, simultaneously, or a hybrid approach may be used.[727] We believe a market-by-market stopping rule is most appropriate for the lower 80 channels given the lack of strong interdependencies among these licenses. We also believe that a market-by-market stopping rule would be the least complex approach from an administrative perspective. Under a

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[723] *Id.*

[724] *Id.* at ¶¶ 32-33; *see also* Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, *Second Memorandum Opinion and Order and Third Notice of Proposed Rule Making,* PR Docket No. 89-552, FCC 95-312, 60 Fed. Reg. 46,564, ¶¶ 117-118 (1995) (*220 MHz Second Memorandum Opinion and Order*).

[725] A proactive waiver is one which can be submitted by the bidder when it chooses not to bid in a round and wishes to maintain its current eligibility level. (*See* discussion, ¶ 162)

[726] *See Competitive Bidding Second Report and Order,* 9 FCC Rcd at 2369, ¶ 127. *See also, Competitive Bidding Third Report and Order*, 9 FCC Rcd at 2954, ¶ 33.

[727] *See Competitive Bidding Third Report and Order*, 9 FCC Rcd at 2954, ¶ 33; *see also 220 MHz Second Memorandum Opinion and Order*. 60 Fed. Reg. 46,564, ¶ 119.

market-by-market approach, bidding closes on each license after three rounds pass in which no new acceptable bids are submitted for that particular license.[728] We tentatively conclude that a simultaneous stopping rule is not appropriate for these licenses, because market-by-market closure will provide bidders with sufficient flexibility to bid on the license of their choice. In addition, the complexity of implementation and the vulnerability to strategic delay by bidders seeking to impede closure of the auction outweigh the benefits of a simultaneous stopping rule given the nature of these SMR licenses. With a simultaneous stopping rule, bidding remains open on all licenses until there is no bidding on any license. Under this approach, all markets will close if three rounds pass in which no new acceptable bids are submitted for any license. We seek comment on our tentative conclusions. We also ask commenters to address the advantages and disadvantages of using a hybrid stopping rule. Under a hybrid approach, a simultaneous stopping rule, coupled with an activity rule designed to bring the markets to close within a reasonable period of time, could be used to close auctions with high value licenses. For lower value licenses, the simpler market-by-market closing could be employed.[729] For the General Category licenses, we tentatively conclude that a simultaneous stopping rule is most appropriate, given the significant interdependencies between these licenses. We seek comment on this tentative conclusion. Regardless of which stopping rule we ultimately apply, we further propose to retain the discretion to declare when the auction will end, whether it be after one additional round or some other specified number of rounds. This proposal will ensure ultimate Commission control over the duration of the auction. We seek comment on this proposal.

339. Activity Rules. Based on our proposal to employ a market-by-market stopping rule for the lower 80 licenses, we tentatively conclude that it is unnecessary to implement an activity rule. We believe that an activity rule is less important when markets close one-by-one, because failure to participate in any given round may result in losing the opportunity to bid at all, if that round turns out to be the last. We seek comment on this tentative conclusion. We also ask commenters to address what activity rules, if any, would be appropriate if an alternative stopping rule is adopted. For example, in order to ensure that simultaneous auctions with simultaneous stopping rules close within a reasonable period, we believe that it may be necessary to impose an activity rule to prevent bidders from waiting until the end of the auction before participating. Because simultaneous stopping rules generally keep all markets open as long as anyone wishes to bid, they also create incentives for bidders to hold back, until prices approach equilibrium, before making a bid and risking payment of a monetary assessment for withdrawing.[730] We believe that this could lead to very long auctions.

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[728] *See Competitive Bidding Second Report and Order,* 9 FCC Rcd at 2370, ¶ 129.

[729] We also have sought comment on a hybrid stopping rule approach for 220 MHz EA licenses. *See 220 MHz Second Memorandum Opinion and Order,* 60 Fed. Reg. 46,564, ¶ 120.

[730] *See Competitive Bidding Third Report and Order,* 9 FCC Rcd. at 2955, ¶ 36; *see also 900 MHz Second Report and Order,* 60 Fed. Reg. 21,987, ¶ 83.

340. Thus, in the *Competitive Bidding Second Report and Order,* we adopted the Milgrom-Wilson activity rule as our preferred activity rule where a simultaneous stopping rule is used.[731] We subsequently have adopted or proposed the Milgrom-Wilson rule in each of our simultaneous multiple round auctions.[732] The Milgrom-Wilson approach encourages bidders to participate in early rounds by limiting their maximum participation to some multiple of their minimum participation level.[733] Bidders are required to declare their maximum eligibility in terms of activity units,[734] and make the required upfront payment.[735] That is, bidders will be limited to bidding on licenses encompassing no more than the number of activity units covered by their upfront payment. Licenses on which a bidder is the high bidder from the previous round, as well as licenses on which a new valid bid is placed, count toward this activity unit limit. Under this approach, bidders have the flexibility to shift their bids among any licenses for which they have applied, so long as the total activity units encompassed by those licenses does not exceed the number for which they made an upfront payment. Moreover, bidders have the freedom to participate at whatever level they deem appropriate by making a sufficient upfront payment. To preserve their maximum eligibility, however, bidders are required to maintain some minimum activity level during each round of the auction. Accordingly, we propose to employ the Milgrom-Wilson activity rule for the General Category licenses. We seek comment on this proposal and any alternatives.

341. Under the Milgrom-Wilson approach, the minimum activity level, measured as a fraction of the self-declared maximum eligibility, will increase during the course of the auction. For this purpose, Milgrom and Wilson divide the auction into three stages.[736] During the first stage of the auction, a bidder is required to be active on licenses encompassing one-third of the activity units for which it is eligible. The penalty for falling below that activity level is a reduction in eligibility.[737] At this stage, bidder would lose three

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[731]*Competitive Bidding Second Report and Order,* 9 FCC Rcd at 2372-73, ¶¶ 144-145.

[732]*See, e.g., 900 MHz Reconsideration Order/7th R&O, supra* note 428, ¶ 88; *Competitive Bidding Third Report and Order,* 9 FCC Rcd at 2955-56, ¶¶ 36-40; *MDS Report and Order,* 60 Fed. Reg. 36,524, ¶¶ 114-123.

[733]*See, e.g.,Competitive Bidding Third Report and Order,* 9 FCC Rcd at 2955, ¶ 37.

[734]*See, e.g., 900 MHz Second Report and Order, supra* note 428, ¶ 82; *see also 220 MHz Second Memorandum Opinion and Order*, 60 Fed. Reg. 46,564, ¶ 123.

[735]*See* Section V(B)(3)(c), *infra,* for discussion of upfront payments.

[736]The auction would move from stage one to stage two when, after three rounds of bidding, the high bid has changed on five percent or fewer of the licenses (measured in terms of activity units) being auctioned. Stage three would begin when the high bid has changed on two percent or fewer licenses (measured in terms of activity units) over three rounds. We retain the discretion to modify this method and announce such modification by Public Notice. *See, e.g., Competitive Bidding Third Report and Order,* 9 FCC Rcd at 2956, ¶ 38, n.16.

[737]*Id.* at ¶ 38.

activity units in maximum eligibility for each activity unit below the minimum required activity level. In other words, each bidder would retain eligibility for three times the activity units for which it is an active bidder, up to the activity units covered by the bidder's upfront payment.[738] In the second stage, bidders are required to be active on two-thirds of the activity units for which they are eligible. The penalty for falling below that activity level would be a loss of 1.5 activity units in eligibility for each activity unit below the minimum required activity level. In the third stage, bidders are required to be active on licenses encompassing all of the activity units for which they are eligible.[739] The penalty for falling below that activity level is a loss of one activity unit in eligibility for each activity unit below the minimum required activity. Each bidder thus retains eligibility equal to its current activity level (1 times the activity units for which it is an active bidder). We seek comment on this alternative.

342. Duration of Bidding Rounds. We propose to retain the discretion to vary the duration of bidding rounds or the interval at which bids are accepted (*e.g.*, run two or more rounds per day rather than one), in order to close the auction more quickly. If this mechanism is used, we most likely would shorten the duration and/or intervals between bidding rounds where there are relatively few licenses to be auctioned, where the value of the licenses is relatively low, or in early rounds to speed the auction process. Where license values are expected to be high or where large numbers of licenses are being auctioned, we propose to increase the duration and/or intervals between bidding rounds. We would announce by Public Notice, and may vary by announcement during an auction, the duration and intervals between bidding rounds. We also propose to announce by Public Notice, before each auction, the stopping rule we adopt. We seek comment on these proposals.

d. Rules Prohibiting Collusion

343. Background. In the *Competitive Bidding Second Report and Order*, as modified by the *Competitive Bidding Reconsideration Order*, we adopted special rules prohibiting collusive conduct in the context of competitive bidding.[740] In the *Further Notice*, we proposed to apply these rules prohibiting collusion to the 800 MHz SMR service.[741] We want to prevent parties, especially large entities, from agreeing in advance to bidding strategies that divide the market according to their strategic interests and/or disadvantage other bidders. Bidders will be required to (i) reveal all parties with whom they have entered into any agreement that relates to the competitive bidding process, and (ii) certify they have not

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[738] *Id.*

[739] *Id.*

[740] *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2386-2388, ¶¶ 221-226; *Competitive Bidding Reconsideration Order*, 9 FCC Rcd at 7253-54, ¶¶ 48-53.

[741] *Further Notice*, 10 FCC Rcd at 8012, ¶ 86.

entered into any explicit or implicit agreements, arrangements, or understandings with any parties, other than those identified, regarding the amount of their bid, bidding strategies, particular properties on which they will or will not bid or any similar agreement.[742]

344. Proposals. We tentatively conclude that we should subject the lower 80 and General Category licenses to the reporting requirements and rules prohibiting collusion embodied in Sections 1.2105 and 1.2107 of the Commission's rules. Specifically, we propose to implement Section 1.2105(a) to require bidders to identify on their short-form applications all parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate to the competitive bidding process. We propose to apply Section 1.2105(c) of our rules, which prohibits bidders from communicating with one another (if they have applied for any of the same markets) regarding the substance of their bids or bidding strategies after short-form applications (FCC Form 175) have been filed. Section 1.2105(c) also prohibits bidders from entering into consortium arrangements or joint bidding agreements after the deadline for short-form applications has passed.[743] Prohibited communications between such bidders cannot take place directly or indirectly.

345. Further, in the *Competitive Bidding Fourth Memorandum Opinion and Order*, we noted that communications among bidders concerning matters unrelated to the license auction would be permitted.[744] In making this proposal, it is not our intent to discourage potential applicants from entering into consortia, joint ventures, or similar joint bidding arrangements for geographic area licenses prior to the short form filing deadline. To the contrary, we intend to provide parties with time to negotiate such arrangements before the start of the application process. To avoid compromising the auction process, however, such negotiations must end at the point that short forms are filed. As in other services, we also propose to require winning bidders to submit with their long-form application a detailed explanation of the terms, conditions and parties involved in any auction-related consortium, joint venture, partnership, or other agreement entered into prior to the close of bidding. We seek comment on these proposals.

3. Procedural and Payment Issues

a. Pre-Auction Application Procedures

346. Background. In the *Competitive Bidding Second Report and Order*, the

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[742] *Id.*

[743] 47 C.F.R. § 1.2105(c)(3).

[744] *Competitive Bidding Fourth Memorandum Opinion and Order*, 9 FCC Rcd at 6869, ¶ 59. *See also* Letter from R. Allen, Acting Chief, Commercial Radio Division, to R.M. Senkowski (Dec. 1, 1994) (discussions that indirectly provide information that affects bidding strategy are also precluded by anti-collusion rules).

Commission established general competitive bidding rules and procedures, which we noted may be modified on a service-specific basis.[745] In the *Competitive Bidding Second Report and Order*, we determined that we should require only a short-form application (FCC Form 175) prior to auction, and that only winning bidders should be required to submit a long-form license application (FCC Form 600) after the auction.[746] In this connection, we determined that such a procedure would fulfill the statutory requirements and objectives and adequately protect the public interest.[747]

347. As discussed below, we propose to follow generally the processing and procedural rules established in the *Competitive Bidding Second Report & Order*, with certain modifications designed to address the particular characteristics of the lower 80 and General Category licenses. These proposed rules are structured to ensure that bidders and licensees are qualified and will be able to construct systems quickly and offer service to the public. By ensuring that bidders and license winners are serious, qualified applicants, these proposed rules will minimize the need to re-auction licenses and prevent delays in the provision of SMR services to the public.

348. Section 309(j)(5) of the Communications Act provides that no party may participate in an auction "unless such bidder submits such information and assurances as the Commission may require to demonstrate that such bidder's application is acceptable for filing."[748] Moreover, "[n]o license shall be granted to an applicant selected pursuant to this subsection unless the Commission determines that the applicant is qualified pursuant to Section 309(a) and Section 308(b) and 310" of the Communications Act.[749] As the legislative history of Section 309(j) makes clear, the Commission may require that bidders' applications contain all information and documentation sufficient to demonstrate that the application is not in violation of Commission rules, and we propose to dismiss applications not meeting those requirements prior to the competitive bidding.[750]

349. Under this proposal, before the auction for the lower 80 and General Category channels, the Bureau would release an initial Public Notice announcing the auction. The initial Public Notice would specify the licenses to be auctioned and the time and place of the auction in the event that mutually exclusive applications are filed. The Public Notice would specify the method of competitive bidding to be used, applicable bid submission procedures,

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[745] *See* 47 C.F.R. Part 1, Subpart Q.

[746] *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2376, ¶ 165.

[747] *Id.* at 2375-2377, ¶¶ 161-166.

[748] 47 U.S.C. § 309(j)(5).

[749] *Id.*

[750] *See* H.R. Rep. No. 111, 103d Cong., 1st Sess. 258 (1993) (House Report).

stopping rules, activity rules, and the deadline by which short-form applications must be filed and the amounts and deadlines for submitting the upfront payment.[751] We would not accept applications filed before or after the dates specified in the Public Notice. Applications submitted before the release of the Public Notice would be returned as premature. Likewise, applications submitted *after* the deadline specified by the Public Notice would be dismissed, with prejudice, as untimely. We seek comment on these proposals.

350. Soon after the release of the initial Public Notice, a Bidder's Information Package will be made available to prospective bidders. The Bidder's Information Package will contain information on the incumbents occupying blocks on which bidding will be available. Incumbents will be expected to update information on file with the Commission, such as current address and phone number, so that such information will be of use to prospective bidders.

351. Under this proposal, all bidders would be required to submit short-form applications on FCC Form 175 (and FCC Form 175-S, if applicable), by the date specified in the initial Public Notice.[752] Applicants would be encouraged to file Form 175 electronically. Detailed instructions regarding electronic filing would be contained in the Bidder Information Package. Those applicants filing manually would be required to submit one paper original and one microfiche original of their application, as well as two microfiche copies. The short-form applications would require applicants to provide the information required by Section 1.2105(a)(2) of the Commission's rules.[753] Specifically, each applicant would be required to specify on its Form 175 application certain identifying information, including its status as a designated entity (if applicable), its classification (*i.e.*, individual, corporation, partnership, trust, or other), the license areas and frequency blocks for which it is applying, and assuming that the licenses will be auctioned, the names of persons authorized to place or withdraw a bid on its behalf.

352. As we indicated in the *Competitive Bidding Second Report & Order*, if we receive only one application that is acceptable for filing for a particular license, and thus there is no mutual exclusivity, we propose to issue a Public Notice cancelling the auction for this license and establishing a date for the filing of a long-form application, the acceptance of which would trigger the procedures permitting petitions to deny (as discussed at ¶¶ 365-366, *infra*).[754] If no petitions to deny are filed, the application would be grantable after 30 days. We seek comment on the proposals discussed above.

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[751]*See Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2376, ¶ 164.

[752]We note that the short-form application, FCC Form 175, recently has been revised. If this proposal is adopted we will not accept Form 175 applications printed prior to October 1995.

[753]47 C.F.R. § 1.2105(a)(2).

[754]*See Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2376, ¶ 165.

b. Amendments and Modifications

353. Background. To encourage maximum bidder participation, we proposed in the *Competitive Bidding Second Report and Order* to provide applicants with an opportunity to correct minor defects in their short-form applications prior to the auction.[755] We stated that applicants whose short-form applications are substantially complete, but contain minor errors or defects, would be provided an opportunity to correct their applications prior to the auction.[756] In the broadband PCS context, we modified our rules to permit ownership changes that result when consortium investors drop out of bidding consortia, even if control of the consortium changes due to this restructuring.[757] In the *CMRS Third Report and Order,* we decided to adopt the same or similar definitions for initial applications and major and minor amendments and modifications for all CMRS in Part 22 and Part 90, in order to facilitate similar system proposals and modifications for equal treatment of substantially similar services.[758]

354. On the date set for submission of corrected applications, applicants that discover minor errors in their own applications (*e.g.*, typographical errors, incorrect license designations, etc.) also would be permitted to file corrected applications. Recently, the Commission waived the *ex parte* rules as they applied to the submission of amended short-form applications for the A and B blocks of the broadband PCS auctions, to maximize applicants' opportunities to seek Commission staff advice on making such amendments.[759] We propose to apply the same principles to the SMR auctions. Under this proposal, applicants would not be permitted to make any major modifications to their applications, including changes in license areas and changes in control of the applicant, or additions of other bidders into the bidding consortia, until after the auction. Applicants could modify their short-form applications to reflect formation of consortia or changes in ownership at any time before or during an auction, provided such changes would 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 licenses in any of the same geographic license areas.[760] In addition, applications that are not signed would be dismissed as unacceptable.

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[755] *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2377, ¶¶ 167-68.

[756] *Id.*

[757] *Competitive Bidding Fourth Memorandum Opinion and Order*, 9 FCC Rcd at 6868, ¶ 57.

[758] *CMRS Third Report and Order*, 9 FCC Rcd at 8144, ¶ 354.

[759] Commission Announces that Mutually Exclusive "Short Form" Applications (Form 175) to Participate in Competitive Bidding Process ("Auctions") are Treated as Exempt for *Ex Parte* Purposes, *Public Notice*, 9 FCC Rcd 6760 (1994).

[760] *Competitive Bidding Second Memorandum Opinion & Order,* 9 FCC Rcd at 7254, ¶ 52.