



PUBLIC NOTICE

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AUCTION OF BROADBAND PCS SPECTRUM SCHEDULED FOR MAY 16, 2007

Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 71

AU Docket No. 06-206

Report No. AUC-07-71-B (Auction No. 71)

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I. GENERAL INFORMATION

A. Introduction

1. By this Public Notice, the Commission announces the procedures and minimum opening bid amounts for the upcoming auction of 38 broadband Personal Communications Service ("PCS") licenses scheduled to begin on May 16, 2007 (Auction No. 71). On November 17, 2006, in accordance with Section 309(j)(3) of the Communications Act of 1934, as amended,¹ the Wireless Telecommunications Bureau ("Bureau") released a public notice seeking comment on reserve prices or minimum opening bid amounts and the procedures to be used in Auction No. 71.² The Commission received no comments in response to the *Auction No. 71 Comment Public Notice*.

2. In the *Auction No. 71 Comment Public Notice*, the Bureau proposed to include all 38 PCS licenses in a single auction using the Commission's standard simultaneous multiple-round ("SMR") auction format.³ At the same time, the Bureau sought comment on the feasibility and desirability of allocating the PCS licenses using the Commission's package bidding format ("SMR-PB").⁴ Based on the record and the particular circumstances of the auction of these PCS licenses, the Bureau, as described in more detail below, will include all 38 PCS licenses in a single auction using the Commission's standard SMR format, as proposed.⁵ Package bidding will not be used in Auction No. 71.⁶

3. The Bureau also sought comment in the *Auction No. 71 Comment Public Notice* on whether to implement procedures that would limit the disclosure of certain information on bidder interests and identities prior to the close of bidding.⁷ In particular, the Bureau asked commenters to indicate what factors weigh for or against limiting disclosure of bidder interests and identities, and whether the Commission should condition the use of any disclosure limits on a measure of competition in the auction.

4. For Auction No. 71, the Commission will determine the information procedures based primarily on the eligibility ratio, a measure of likely competition in the auction. The eligibility ratio is defined as the total number of bidding units of eligibility purchased by bidders through their upfront payments, divided by the total number of bidding units for the licenses in the auction. Specifically, if the eligibility ratio equals or exceeds three, the Commission will not use limited information procedures, since with sufficient likely competition, the anti-competitive behavior that limited information procedures

¹ See 47 U.S.C. § 309(j)(3)(E)(i) (requirement to seek comment on proposed auction procedures); see also 47 U.S.C. § 309(j)(4)(F) (authorization to prescribe reserve price or minimum bid); 47 C.F.R. § 1.2104(c) and (d).

² See "Auction of Broadband PCS Spectrum Scheduled for May 16, 2007; Comment Sought on Competitive Bidding Procedures For Auction No. 71," *Public Notice*, DA 06-2298 (rel. November 17, 2006) ("*Auction No. 71 Comment Public Notice*").

³ See *id.* This type of auction offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses. A bidder may bid on, and potentially win, any number of licenses. Bidding generally remains open on all licenses until bidding stops on every license.

⁴ Under the Commission's package bidding format, bidders would be able to place bids on any groups of licenses they wish to win together, with the result that they win either all the licenses in a group or none of them.

⁵ See Section IV.A.1. "Simultaneous Multiple Round Auction," *below*.

⁶ See *id.*

⁷ See *Auction No. 71 Comment Public Notice* at 4.

aim to deter is unlikely to be successful.⁸ If the eligibility ratio is less than three, in general the Commission will withhold certain information on bidder interests and bidder identities. However, if the eligibility ratio is less than three, the Commission reserves the discretion not to limit information on bidder interests and identities if circumstances indicate that limited information procedures would not be an effective tool for deterring anti-competitive behavior. Such circumstances would occur, for example, if only two applicants became qualified to participate in the bidding, since limited information procedures would be ineffective in preventing bidders from knowing the identity of the competing bidder.⁹

5. In the event that the conditions described above result in the use of procedures under which certain information is withheld, the Commission will release: (1) each bidder's eligibility and upfront payment made prior to the start of the auction; and (2) the amounts of all gross bids (including the losing bids) for each license after each round, but not the identities of the bidders placing the bids. The Commission believes this provides bidders with information regarding license valuations without compromising the goal of reducing the potential for anti-competitive outcomes.

6. Pursuant to these procedures, information on the license selections of auction applicants will be withheld at least until the upfront payment deadline has passed and the Commission determines the information procedures that will be used for the auction. Therefore, to enable applicants to comply with the Commission's anti-collusion rules, once the Bureau has conducted its initial review of applications to participate in Auction No. 71, each applicant will receive a letter that lists the other applicants in Auction No. 71 that have applied for licenses in any of the same geographic areas as the applicant.¹⁰

1. Licenses to be Auctioned

7. Auction No. 71 will offer 38 licenses for A, C, D, E, and F blocks of broadband PCS spectrum.¹¹ The spectrum to be auctioned has been offered previously in other auctions but was unsold and/or returned to the Commission as a result of license cancellation or termination. A complete list of licenses available for Auction No. 71 is included as Attachment A of this Public Notice.

8. The following table cross-references the general rules regarding block/eligibility status/frequencies of broadband PCS licenses in these blocks. Gray boxes indicate that no license of the particular tier/frequency block combination will be available in Auction No. 71.

⁸ See "Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006, Notice and Filing Requirement, Minimum Opening Bids, Upfront Payment and Other Procedures for Auction No. 66," *Public Notice*, 21 FCC Rcd 4562, 4565, 4600-05 ¶¶ 4-5, 140-157 (2006) ("*Auction No. 66 Procedures Public Notice*").

⁹ The Commission anticipates announcing the information disclosure procedures to be used at or about the time that it releases a public notice announcing the applicants that are qualified to participate in the bidding.

¹⁰ The list will identify the Auction No. 71 applicant(s) by name but will not list the license selections of the Auction No. 71 applicant(s). As in past auctions, additional information regarding applicants in Auction No. 71 that is needed to comply with section 1.2105(c), e.g., the identities of controlling interests in the applicant and of ownership interests greater than ten percent, will be available through the publicly accessible on-line short-form application database. See *id.*

¹¹ Additional information concerning PCS licenses may be found in Part 24 of the Commission's rules. See 47 C.F.R. Part 24.

Frequency Block	Eligibility Status		Bandwidth	Frequency
	Tier 1	Tier 2		
A	n/a	n/a	30 MHz	1850-1865, 1930-1945 MHz
C1	Open	Closed*	15 MHz	1902.5-1910, 1982.5-1990 MHz
C2	Open	Closed*	15 MHz	1895-1902.5, 1975-1982.5 MHz
C3	Closed	Closed*	10 MHz	1895-1900, 1975-1980 MHz
C4	Open	Closed*	10 MHz	1900-1905, 1980-1985 MHz
C5	Open	Open	10 MHz	1905-1910, 1985-1990 MHz
D	n/a	n/a	10 MHz	1865-1870, 1945-1950 MHz
E	n/a	n/a	10 MHz	1885-1890, 1965-1970 MHz
F	Open	Open	10 MHz	1890-1895, 1970-1975 MHz

As indicated in the table, C and F block licenses are divided into two tiers according to the population size, with Tier 1 comprising markets with population at or above 2.5 million, based on 2000 decennial census figures, and Tier 2 comprising the remaining markets.¹² No Tier 1 licenses will be offered in Auction No. 71. C1, C2, C3, and C4 licenses in Tier 2 (marked with “*”) are generally available only to “entrepreneurs” in “closed” bidding. This eligibility restriction no longer applies, however, to licenses that have been made available on that basis, but not won, in any auction beginning on or after March 23, 1999.¹³ Thus, certain licenses that were formerly subject to “closed” bidding and available only to “entrepreneurs” are now offered in “open” bidding in Auction No. 71.¹⁴

9. As noted above and in Attachment A, some of the C block licenses to be offered in Auction No. 71 are available to all bidders in “open” bidding, while others are available only to “entrepreneurs” in “closed” bidding.¹⁵ The A, B, E, and F block licenses, as well as certain C block licenses, are available in “open” bidding. Size-based bidding credits will be available for C and F block licenses won in “open” bidding.¹⁶ In order to qualify as an “entrepreneur” for “closed” bidding, an applicant, including attributable investors and affiliates, must have had gross revenues of less than \$125 million in each of the last two years and must have less than \$500 million in total assets.¹⁷ Size-based bidding credits are not available for C block licenses won in “closed” bidding or for licenses in the A, D, or E blocks.¹⁸

10. Because of the history of licenses for broadband PCS spectrum, certain of the licenses available in Auction No. 71 cover less bandwidth and fewer frequencies than noted in the table above. In addition, in some cases, licenses are available for only part of a market. See Attachment A to this Public Notice to determine the precise scope of the licenses that will be offered.

¹² See 47 C.F.R. § 24.709(a)(3).

¹³ See 47 C.F.R. § 24.709(a)(4)(ii).

¹⁴ See *id.* In particular, CW-BTA054-C1, CW-BTA127-C1, CW-BTA135-C4, CW-BTA289-C3, CW-BTA349-C3, CW-BTA349-C4, CW-BTA492-C3 and CW-BTA492-C4 were available only to entrepreneurs but not won in Auction No. 58. Accordingly, these licenses will be offered in open bidding in Auction No. 71. Additionally, CW-BTA330-C3 was offered in open bidding in Auction No. 58 because the corresponding license had previously been offered but not won in Auction No. 22. Since that license was unsold in Auction No. 58, it is again offered in open bidding in Auction No. 71.

¹⁵ See 47 C.F.R. § 24.709(a)(3) – (4).

¹⁶ See 47 C.F.R. § 24.712.

¹⁷ See 47 C.F.R. § 24.709(a)(1).

¹⁸ See 47 C.F.R. §§ 24.712, 24.717.

B. Rules and Disclaimers

1. Relevant Authority

11. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules set forth in Title 47, Part 1, of the Code of Federal Regulations, including recent amendments and clarifications;¹⁹ rules relating to broadband PCS, contained in Title 47, Part 24, of the Code of Federal Regulations; and rules relating to applications, practice and procedure contained in Title 47, Part 1, of the Code of Federal Regulations. Prospective applicants must also be thoroughly familiar with the procedures, terms and conditions (collectively, "terms") contained in this Public Notice and the Commission's decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees.²⁰

12. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most auctions-related Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at <http://wireless.fcc.gov/auctions>. Additionally, documents are available for public inspection and copying between 8:00 a.m. and 4:30 p.m. Eastern Time (ET) Monday through Thursday or 8:00 a.m. to 11:30 a.m. ET Fridays at the FCC Reference Information Center, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. Documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. ("BCPI"), 445 12th Street, SW, Room CY-B402, Washington, DC 20554, 800-378-3160 or at <http://www.bcpiweb.com>.²¹

¹⁹ See 47 C.F.R. Part 1, Subpart Q. Prospective applicants are also encouraged to review the Commission's decisions that establish competitive bidding rules and policies, including policies governing benefits extended to designated entities (i.e., small businesses, rural telephone companies, and businesses owned by women and minorities). See, e.g., Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, WT Docket No. 05-211, *Report and Order*, 21 FCC Rcd 891 (2006) ("CSEA/Part 1 Report and Order"), *petitions for reconsideration pending*; Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, WT Docket No. 05-211, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 21 FCC Rcd 4753 (2006) ("CSEA/Part 1 Second Report and Order and CSEA/Part 1 Designated Entity Second FNPRM"), *petitions for reconsideration pending*; Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, WT Docket No. 05-211, *Order on Reconsideration of the Second Report and Order*, 21 FCC Rcd 6703 (2006), *petition for reconsideration pending*.

²⁰ See, e.g., Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, *Second Report and Order*, 9 FCC Rcd 2348 (1994) (*Competitive Bidding Second Report and Order*); Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd 15293 (2000) (modified by Erratum, DA 00-2475 (rel. Nov. 3, 2000)) ("*Part 1 Fifth Report and Order*"); Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, *Seventh Report and Order*, 16 FCC Rcd 17546 (2001) ("*Part 1 Seventh Report and Order*") (amending the anti-collusion rule, which is codified at 47 C.F.R. §1.2105(c)); Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, *Eighth Report and Order*, 17 FCC Rcd 2962 (2002) (amending Section 1.2110 of the Commission's rules); *Second Order on Reconsideration of the Fifth Report and Order*, 20 FCC Rcd 1942 (2005) ("*Second Order on Reconsideration of the Fifth Report and Order*") (further amending Section 1.2110 to exempt the gross revenues of the affiliates of a rural telephone cooperative's officers and directors from attribution to the applicant and adopting other modifications to the competitive bidding rules); *CSEA/Part 1 Report and Order*.

²¹ When ordering documents from BCPI, please provide the appropriate FCC document number (for example, (continued...))

2. Prohibition of Collusion; Compliance with Antitrust Laws

13. To ensure the competitiveness of the auction process, Section 1.2105(c) of the Commission's rules prohibits applicants competing for licenses in any of the same geographic license areas from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications (FCC Forms 175) as parties with whom they have entered into agreements pursuant to Section 1.2105(a)(2)(viii).²² In Auction No. 71, the rule would apply to any applicants for licenses in the same BTA or MTA. The rule would also apply to applicants for licenses in overlapping BTAs and MTAs. For example, assume that one applicant applies for an MTA license and a second applicant applies for a BTA license covering any area within that MTA. The two entities will have applied for licenses covering the same geographic area and would be precluded from communicating with each other under the rule. In addition, the rule would preclude applicants that apply to bid for all licenses from communicating with all other applicants. Thus, applicants that have applied for licenses covering the same markets (unless they have identified each other on their FCC Form 175 applications as parties with whom they have entered into agreements under Section 1.2105(a)(2)(viii)) must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy, which may include communications regarding the post-auction market structure.²³ This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction.²⁴ **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.**²⁵ (As described in Section IV.A.2., below, information concerning applicants' license selections will not be made public at least until the upfront payment deadline has passed and the Commission determines the information procedures that will be used for the auction. Therefore, the Commission will inform each applicant by letter of the identity of each of the other applicants that has applied for licenses covering any of the same geographic areas as the licenses that it has selected in its short-form application.²⁶)

14. For purposes of this prohibition, Section 1.2105(c)(7)(i) defines "applicant" as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application.²⁷

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DA 06-2298 for the *Auction No. 71 Comment Public Notice*, or DA 07-30 for this Public Notice).

²² See 47 C.F.R. §§ 1.2105(a)(2)(viii), 1.2105(c)(1). See also *Part 1 Seventh Report and Order*, 16 FCC Rcd 17546 (2001); *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15297-98 ¶¶ 7-8.

²³ See, e.g., "Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E, and F Block Bidders," *Public Notice*, DA 96-1460 (rel. August 28, 1996).

²⁴ See 47 C.F.R. § 1.2105(c)(1).

²⁵ See, e.g., *Star Wireless, LLC, Forfeiture Order*, 19 FCC Rcd 18626, 18628 ¶ 4, n. 19 (EB 2004), *application for review pending* (collusion rule applies to applicants regardless of whether they are qualified to bid); see also Letter to Robert Pettit, Esquire, from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 16 FCC Rcd 10080 (WTB 2000) (declining to exempt an applicant's controlling interest from coverage by the anti-collusion rule, even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder).

²⁶ See Section IV.A.2. "Information Available to Bidders Before and During the Auction," *below*, especially ¶ 123.

²⁷ See 47 C.F.R. § 1.2105(c)(7)(i).

15. *Applicants for licenses for any of the same geographic license areas must not communicate directly or indirectly about bids or bidding strategy.*²⁸ Accordingly, such applicants are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between such applicants. Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or engineering firm or consulting firm), a violation similarly could occur.²⁹ In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.³⁰ A violation of the anti-collusion rule could occur in other contexts, such as an individual serving as an officer for two or more applicants.³¹ Moreover, the Commission has found a violation of the anti-collusion rule where a bidder used the Commission's bidding system to disclose "its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets,"³² and has placed auction participants on notice that the use of its bidding system "to disclose market information to competitors will not be tolerated and will subject bidders to sanctions."³³ Bidders are cautioned that the Commission remains vigilant about prohibited communications taking place in other situations. For example, the Commission has warned that prohibited "communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly."³⁴ Applicants are hereby placed on notice that public disclosure of information relating to bidder interests and bidder identities that — although revealed prior to and during other Commission auctions — is confidential in this auction at the time of disclosure may violate the anti-collusion rule.³⁵ Bidders should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become a conduit for the communication of prohibited bidding information.³⁶

²⁸ See *Part I Seventh Report and Order*, 16 FCC Rcd at 17549-50 ¶ 6.

²⁹ See *Application of Nevada Wireless for a License to Provide 800 MHz Specialized Mobile Radio Service in the Farmington, NM-CO Economic Area (EA-155) Frequency Band A, Memorandum Opinion and Order*, 13 FCC Rcd 11973, 11977 ¶ 11 (1998) ("*Nevada Wireless Order*").

³⁰ See *id.*

³¹ See, e.g., *Letter to Colby M. May, TCCSA, Inc., d/b/a Trinity Broadcasting Network, from Barbara A. Kreisman, Chief, Video Division, Media Bureau, and Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau*, 20 FCC Rcd 14648 (WTB/MB 2005) (finding apparent violation of anti-collusion rule where applicants with mutually exclusive applications reported sharing same individual as an officer and director and reported having no bidding agreement).

³² See *Mercury PCS II, LLC, Notice of Apparent Liability for Forfeiture*, 12 FCC Rcd 17970, 17976 ¶ 12 (1997).

³³ See *Mercury PCS II, LLC, Memorandum Opinion and Order*, 13 FCC Rcd 23755, 23760 ¶ 11 (1998).

³⁴ See *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, *Memorandum Opinion and Order*, 9 FCC Rcd 7684, 7689 ¶ 12 (1994).

³⁵ Thus, communication by an applicant to another applicant for one or more of the same licenses of the applicant's license selections on its short-form application, or of the fact that the applicant does or does not hold provisionally winning bids on particular licenses, may well violate the anti-collusion rule.

³⁶ For example, where limited information disclosure procedures are in place, as in this auction, a qualified bidder's statement to the press that it has lost bidding eligibility and stopped bidding in the auction could give rise to a finding of an anti-collusion rule violation. Cf. "Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction," *Public Notice*, 13 FCC Rcd 341, 347-8 (1998) ("Public (continued....)")

16. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form application.³⁷ If parties agree in principle on all material terms prior to the short-form filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under Section 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the short-form filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiations, discussions or communications with any other applicants after the short-form filing deadline.³⁸

17. By electronically submitting its short-form application following the electronic filing procedures set forth in Attachment C to this Public Notice, each applicant certifies its compliance with Section 1.2105(c). However, the Commission cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted.³⁹ The Commission has stated that it "intend[s] to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring."⁴⁰ Any applicant found to have violated the anti-collusion rule may be subject to sanctions.⁴¹

18. Applicants are also reminded that, regardless of compliance with the Commission's rules, they remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace.⁴² Compliance with the disclosure requirements of the Commission's anti-collusion rule will not insulate a party from enforcement of the antitrust laws.⁴³ For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submits a short form application.⁴⁴ The Commission has cited a number of examples of potentially anticompetitive actions that would be

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statements can give rise to collusion concerns. This has occurred in the antitrust context, where certain public statements can support other evidence which tends to indicate the existence of a conspiracy.").

³⁷ See 47 C.F.R. § 1.2105(c)(7)(i).

³⁸ See "Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules," *Public Notice*, 11 FCC Rcd 9645 (1995) ("Anti-Collusion Public Notice").

³⁹ See *Nevada Wireless Order*, 13 FCC Rcd at 11978 ¶ 13.

⁴⁰ See Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, 9 FCC Rcd 7684, 7689 ¶ 12 (1994).

⁴¹ See 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

⁴² See Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Further Notice of Proposed Rule Making*, 14 FCC Rcd 21558, 21560 ¶ 4 and n. 4 (1999) citing Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, 9 FCC Rcd 7684, 7689 ¶ 12 (1994) ("[W]e wish to emphasize that all applicants and their owners continue to be subject to existing antitrust laws. Applicants should note that conduct that is permissible under the Commission's Rules may be prohibited by the antitrust laws."); see also Implementation of Section 309(j) of the Communications Act-Competitive Bidding, PP Docket No. 93-253, *Fourth Memorandum Opinion & Order*, 9 FCC Rcd 6858, 6869 n. 134 (1994)("[A]pplicants will also be subject to existing antitrust laws.") ("Fourth Memorandum Opinion and Order").

⁴³ See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226. See also "Justice Department Sues Three Firms Over FCC Auction Practices," *Press Release* 98-536 (DOJ Nov. 10, 1998).

⁴⁴ The Commission has cited a number of examples of such anticompetitive behavior. See, e.g., Implementation of Section 309(j) of the Communications Act-Competitive Bidding, PP Docket No. 93-253, *Fourth Memorandum Opinion & Order*, 9 FCC Rcd 6858, 6869 n. 134.

prohibited under antitrust laws: for example, actual or potential competitors may not agree to divide territories horizontally in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another for the other.⁴⁵ Similarly, the Bureau has long reminded potential applicants and others that “[e]ven where the applicant discloses parties with whom it has reached an agreement on the short-form application, thereby permitting discussions with those parties, the applicant is nevertheless subject to existing antitrust laws.”⁴⁶ To the extent the Commission becomes aware of specific allegations that may give rise to violations of the federal antitrust laws, the Commission may refer such allegations to the United States Department of Justice for investigation.⁴⁷ If an applicant is found to have violated the antitrust laws or the Commission’s rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.⁴⁸

19. Section 1.65 of the Commission’s rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application.⁴⁹ Thus, Section 1.65 requires an auction applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. Applicants are therefore required by Section 1.65 to report to the Commission any communications they have made to or received from another applicant after the short-form filing deadline that affect or have the potential to affect bids or bidding strategy, unless such communications are made to or received from parties to agreements identified under Section 1.2105(a)(2)(viii). In addition, Section 1.2105(c)(6) provides that any applicant that makes or receives a communication prohibited by Section 1.2105(c) must report such communication to the Commission in writing immediately, and in no case later than five business days after the communication occurs.⁵⁰

20. Applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in any bidding consortia, joint ventures, partnerships, and other arrangements entered into relating to the competitive bidding process.⁵¹

21. A summary listing of documents issued by the Commission and the Bureau addressing the application of the anti-collusion rule may be found in Attachment F. These documents are available on the Commission’s auction anti-collusion web page.⁵²

3. Incumbency Issues

22. While much of the private and common carrier fixed microwave services (“FMS”) operating in the 1850-1990 MHz band (and other bands) have been relocated to available frequencies in

⁴⁵ See Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93-253, *Fourth Memorandum Opinion & Order*, 9 FCC Rcd 6858, 6869 n. 134 (1994); see also *Anti-Collusion Public Notice*.

⁴⁶ See *Anti-Collusion Public Notice*.

⁴⁷ See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226.

⁴⁸ See 47 C.F.R. § 1.2109(d); see also *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226.

⁴⁹ See 47 C.F.R. § 1.65.

⁵⁰ See 47 C.F.R. § 1.2105(c)(6); see also *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17555 ¶ 17.

⁵¹ See 47 C.F.R. § 1.2107(d).

⁵² See <http://wireless.fcc.gov/auctions/anticollusion>.

higher bands or to other media, some FMS licenses may still be operating in the band. Applicants should become familiar with the status of FMS operation and relocation, and applicable Commission rules and orders.⁵³

4. Due Diligence

23. Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the broadband PCS licenses in this auction. **The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC license constitute a guarantee of business success.** Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

24. Potential bidders are strongly encouraged to conduct their own research prior to the beginning of bidding in Auction No. 71 in order to determine the existence of any pending administrative or judicial proceedings that might affect their decision regarding participation in the auction. Participants in Auction No. 71 are strongly encouraged to continue such research throughout the auction. In addition, potential bidders should perform technical analyses sufficient to assure themselves that, should they prevail in competitive bidding for a specific license, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements.

25. Applicants should also be aware that certain pending and future proceedings, including applications (including those for modification), petitions for rulemaking, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal oppositions, and applications for review, before the Commission may relate to particular applicants or incumbent licensees or the licenses available in Auction No. 71. In addition, pending and future judicial proceedings may relate to particular applicants or incumbent licensees, or the licenses available in Auction No. 71. Prospective bidders are responsible for assessing the likelihood of the various possible outcomes, and considering their potential impact on spectrum licenses available in this auction.

26. Applicants should perform due diligence to identify and consider all proceedings that may affect the spectrum licenses being auctioned and that could have an impact on the availability of spectrum for Auction No. 71. In addition, although the Commission may continue to act on various pending applications, informal objections, petitions, and other requests for Commission relief, some of these matters may not be resolved by the beginning of bidding in the auction.

27. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses available in Auction No. 71.

28. Applicants may obtain information about licenses available in Auction No. 71 through the Bureau's licensing databases at <http://wireless.fcc.gov/uls>. Applicants may query the database online and download a copy of their search results if desired. Detailed instructions on using License Search

⁵³ See, e.g., 47 C.F.R. §§ 15.307, 24.5, 101.3, 101.69–101.81, 101.147; Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, *Memorandum Opinion and Order on Reconsideration*, 15 FCC Rcd 13,999 (2000); Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, *Second Report and Order*, 12 FCC Rcd 2705 (1997); Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, *First Report and Order and Further Notice of Proposed Rule Making*, 11 FCC Rcd 8825 (1996).

(including frequency searches and the GeoSearch capability) and downloading query results are available online by selecting the “?” button at the upper right-hand corner of the License Search screen or by going to the Universal Licensing System (“ULS”) support site at <http://esupport.fcc.gov/licensing.htm>. Applicants should direct questions regarding the ULS search capabilities to the FCC ULS Technical Support hotline at (877) 480-3201, option two. The hotline is available to assist with questions Monday through Friday, from 8:00 a.m. to 7:00 p.m. ET. In order to provide better service to the public, all calls to the hotline are recorded.

29. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission’s databases may not include all information deemed necessary or desirable by an applicant, applicants may obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

30. Potential applicants are strongly encouraged to physically inspect any prospective sites located in, or near, the service area for which they plan to bid, and also to familiarize themselves with the environmental review obligations described below in Section I.B.7.

5. Use of Integrated Spectrum Auction System

31. The Commission will make available a browser-based bidding system to allow bidders to participate in Auction No. 71 over the Internet using the Commission’s Integrated Spectrum Auction System (“ISAS” or “FCC Auction System”). The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning or use of the FCC Auction System that is accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission’s technical, programming or other advice or service provided in connection with the FCC Auction System.

6. Bidder Alerts

32. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 71 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a “cold call” from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of investment is less than \$25,000.
- The sales representative makes verbal representations that: (a) the Internal Revenue Service (“IRS”), Federal Trade Commission (“FTC”), Securities and Exchange Commission (“SEC”), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

33. Information about deceptive telemarketing investment schemes is available from the Commission as well as the FTC and SEC. Additional sources of information for potential bidders and investors may be obtained from: (i) FCC by going to <http://wireless.fcc.gov/csinfo/#fraud> or by telephone at (888) 225-5322 (FCC's Consumer Call Center); (ii) FTC by going to <http://ftc.gov/bcp/menu-invest.htm> or by telephone at (202) 326-2222; and (iii) SEC by going to <http://sec.gov/cgi-bin/txt-srch-sec?text=fraud§ion=Investor+Information&x=8&y=5> or by telephone at (202) 942-7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876-7060.

7. Environmental Review Requirements

34. Licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other federal environmental statutes.⁵⁴ The construction of a wireless antenna facility is a federal action and the licensee must comply with the Commission's environmental rules for each such facility.⁵⁵ The Commission's environmental rules require, among other things, that the licensee consult with expert agencies having environmental responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corps of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). In assessing the effect of facilities construction on historic properties, the licensee must follow the provisions of the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process.⁵⁶ The licensee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The licensee also must prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

1. Auction Date

35. Bidding in Auction No. 71 will begin on Wednesday, May 16, 2007, as announced in the *Auction No. 71 Comment Public Notice*.⁵⁷ The initial schedule for bidding will be announced by public notice at least one week before the start of the auction.

36. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

2. Auction Title

37. Auction No. 71 – Broadband PCS

3. Bidding Methodology

38. As discussed in more detail below, the bidding methodology for Auction No. 71 will be simultaneous multiple round bidding.⁵⁸ The Commission will conduct this auction over the Internet using

⁵⁴ See 47 C.F.R. Ch. 1, Subpart I.

⁵⁵ See 47 C.F.R. §§ 1.1305-1.1319.

⁵⁶ See 47 C.F.R. Part 1, Appendix C.

⁵⁷ See *Auction No. 71 Comment Public Notice* at 1.

⁵⁸ See Section IV.A.1. "Simultaneous Multiple Round Auction," *below*.

the FCC Auction System, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically via the Internet or by telephone.⁵⁹ All telephone calls are recorded.

4. Pre-Auction Dates and Deadlines

39. Dates and Deadlines

Auction Seminar.....	March 7, 2007
Short-Form Application (FCC Form 175) Filing Window Opens	March 7, 2007; 12:00 noon ET
Short-Form Application (FCC Form 175) Filing Window Deadline ...	March 16, 2007;
	prior to 6:00 p.m. ET
Upfront Payments (via wire transfer).....	April 20, 2007; 6:00 p.m. ET
Mock Auction.....	May 14, 2007
Auction Begins.....	May 16, 2007

5. Requirements for Participation

40. Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically prior to 6:00 p.m. Eastern Time (ET), March 16, 2007, following the electronic filing procedures set forth in Attachment C to this Public Notice.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, April 20, 2007, following the procedures and instructions set forth in Section III.D. and Attachment D to this Public Notice.
- Comply with all provisions outlined in this Public Notice and applicable Commission rules.

⁵⁹ For additional information regarding ISAS, including sample screen shots, visit the "About ISAS" web page at http://wireless.fcc.gov/auctions/about_isas.

6. General Contact Information

41. General Contact Information Table

GENERAL AUCTION INFORMATION

General Auction Questions
Seminar Registration

FCC Auctions Hotline
(888) 225-5322, option two;
or (717) 338-2868
Hours of service: 8:00 a.m. – 5:30 p.m. ET,
Monday through Friday

AUCTION LEGAL INFORMATION

Auction Rules, Policies, Regulations

Auctions and Spectrum Access Division
(202) 418-0660

LICENSING INFORMATION

Service Rules, Policies, Regulations
Licensing Issues, Engineering Issues
Due Diligence, Incumbency Issues

Mobility Division
(202) 418-0620

TECHNICAL SUPPORT

Electronic Filing
FCC Auction System

FCC Auctions Technical Support Hotline
(877) 480-3201, option nine; or (202) 414-1250
(202) 414-1255 (TTY)
Hours of service: 8:00 a.m. – 6:00 p.m. ET,
Monday through Friday

PAYMENT INFORMATION

Wire Transfers
Refunds

FCC Auctions Accounting Branch
(202) 418-0578
(202) 418-2843 (Fax)

AUCTION BIDDER LINE

Will be furnished only to qualified bidders

FCC COPY CONTRACTOR

Additional Copies of
Commission Documents

Best Copy and Printing, Inc
445 12th Street, SW, Room CY-B402
Washington, DC 20554
(800) 378-3160
<http://www.bcpiweb.com>

PRESS INFORMATION

Chelsea Fallon
(202) 418-7991

FCC FORMS

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

ACCESSIBLE FORMATS

Braille, large print, electronic files, or
audio format for people with disabilities

Consumer and Governmental Affairs Bureau
(202) 418-0530 or (202) 418-0432 (TTY)
fcc504@fcc.gov

FCC INTERNET SITES

<http://www.fcc.gov>
<http://wireless.fcc.gov/auctions>
<http://wireless.fcc.gov/uls>

II. SHORT-FORM APPLICATION (FCC FORM 175) REQUIREMENTS

42. An application to participate in an FCC auction, referred to as a short-form application or *FCC Form 175*, provides information used in determining whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or permits.⁶⁰ The short-form application is the first part of the Commission's two-phased auction application process. In the first phase of this process, parties desiring to participate in the auction file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications.⁶¹ Eligibility to participate in bidding is based on the applicants' short-form applications and certifications as well as their upfront payments, explained below.⁶² In the second phase of the process, winning bidders file a more comprehensive long-form application.⁶³

43. Entities seeking licenses available in Auction No. 71 must file a short-form application electronically via the FCC Auction System prior to 6:00 p.m. ET on March 16, 2007, following the procedures prescribed in Attachment C to this Public Notice. If an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 will be used in determining whether the applicant is eligible for the claimed bidding credit. Applicants bear full responsibility for submitting accurate, complete and timely short-form applications. All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license.⁶⁴ Applicants should read the instructions set forth in Attachment C to this Public Notice carefully and should consult the Commission's rules to ensure that, in addition to the materials described below, all the information that is required under the Commission's rules is included with their short-form applications.

44. An entity may not submit more than one short-form application for a single auction. In the event that a party submits multiple short-form applications, only one application will be accepted for filing.

45. Applicants also should note that submission of a short-form application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Applicants are not permitted to make major modifications to their applications; such impermissible changes include a change of the certifying official to the application.⁶⁵ Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

A. Eligibility for Closed Bidding

46. In order to be eligible to bid for one or more closed C block licenses, an applicant must demonstrate that it meets the eligibility requirements of section 24.709(a) of the Commission's rules.⁶⁶ Specifically, as of the FCC Form 175 filing deadline, the applicant, together with its affiliates and persons

⁶⁰ See 47 C.F.R. § 1.2105.

⁶¹ See *id.*; see also *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2376 ¶ 163.

⁶² See Section III.D. "Upfront Payments – Due April 20, 2007," *below*.

⁶³ See 47 C.F.R. § 1.2107.

⁶⁴ See 47 C.F.R. § 1.2105(a)(2)(v).

⁶⁵ See 47 C.F.R. § 1.2105(b).

⁶⁶ See 47 C.F.R. § 24.709(a).

or entities that hold interests in the applicant and their affiliates, must have combined total assets of less than \$500 million and must have had combined gross revenues of less than \$125 million in each of the last two years.⁶⁷ Every applicant that claims eligibility for closed bidding will be required to provide information regarding revenues attributable to the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests on its FCC Form 175 short-form application to establish that it satisfies the eligibility requirement.⁶⁸

B. Preferences for Small Businesses and Others

1. Size Standards for Bidding Credits

47. A bidding credit represents the amount by which a bidder's winning bid will be discounted. For Auction No. 71, bidding credits will be available to small businesses and very small businesses, and consortia thereof, as follows:

- A bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years ("small business") will receive a 15 percent discount on its winning bid for certain C and F block licenses.⁶⁹
- A bidder with attributed average annual gross revenues that do not exceed \$15 million for the preceding three years ("very small business") will receive a 25 percent discount on its winning bid for certain C and F block licenses.⁷⁰

48. Bidding credits are not cumulative; a qualifying applicant receives either the 15 percent or 25 percent bidding credit on its winning bid, but not both. No small and very small business bidding credits are provided for licenses in the A, D, and E blocks or for C block licenses available only to entrepreneurs in closed bidding.

49. Every applicant that claims eligibility for a bidding credit as either a small business or a very small business, or a consortium of small businesses or very small businesses, will be required to provide information regarding revenues attributable to the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests on its FCC Form 175 short-form application to establish that it satisfies the applicable eligibility requirement.⁷¹ Applicants claiming eligibility as a designated entity in Auction No. 71 should review carefully the *CSEA/Part 1 Designated Entity Second FNPRM* and the *CSEA/Part 1 Second Report and Order*. In that connection, the Commission adopted rules governing eligibility for designated entity benefits in the *Designated Entity Second Report and Order*.⁷² The Commission's new rules regarding applicants seeking eligibility for designated entity benefits require the disclosure of a list of all parties with which the applicant has entered into arrangements for the lease or resale (including wholesale agreements) of any of the capacity of any of the applicant's spectrum;⁷³ and a

⁶⁷ See *id.*

⁶⁸ See *id.* See Section II.F. "Entrepreneur Revenue Disclosures," *below*, and Attachment C.

⁶⁹ See 47 C.F.R. § 1.2110(f)(2)(iii).

⁷⁰ See 47 C.F.R. § 1.2110(f)(2)(ii).

⁷¹ See 47 C.F.R. §§ 1.2105, 1.2110(b)(1)(i). See also Section II.G. "Bidding Credit Revenue Disclosures," *below*, and Attachment C.

⁷² See, generally, *CSEA/Part 1 Second Report and Order*, petitions for reconsideration pending.

⁷³ See 47 C.F.R. § 1.2112(b)(1)(iii).

list, separately and in the aggregate, of the gross revenues of entities with which the applicant has an *attributable material relationship, as defined in Section 1.2110(b)(3)(iv)(B).*⁷⁴

2. Tribal Lands Bidding Credit

50. To encourage the growth of wireless services in federally recognized tribal lands, the Commission has implemented a tribal lands bidding credit.⁷⁵

3. Installment Payments

51. Installment payment plans will not be available in Auction No. 71.

C. License Selection

52. In Auction No. 71, applicants must select the licenses on which they want to bid from the list of available licenses. In Auction No. 71, FCC Form 175 will include a filtering mechanism that allows an applicant to filter the available licenses. The applicant will make selections for one or more of the filter criteria and the system will produce a list of licenses satisfying the specified criteria. The applicant may select all the licenses in the customized list or select individual licenses from the list. Applicants also will be able to select licenses from one customized list and then create additional customized lists to select additional licenses. There will be no opportunity to change license selection after the short-form filing deadline.⁷⁶ It is critically important that an applicant confirm its license selections before submitting its short-form application because the FCC Auction System will not accept bids on licenses that an applicant has not selected on its FCC Form 175.

D. Disclosure of Bidding Arrangements

53. Applicants will be required to identify in their short-form applications all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the licenses being auctioned, including any agreements relating to post-auction market structure.⁷⁷ Applicants also will be required to certify under penalty of perjury in their short-form applications that they have not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid.⁷⁸ If an applicant has had discussions, but has not reached a joint bidding agreement by the short-form application filing deadline, it would not include the names of parties to the discussions on its application and may not continue such discussions with any applicants after the deadline.⁷⁹

54. After the filing of short-form applications, the Commission's rules do not prohibit a party holding a non-controlling, attributable interest in one applicant from acquiring an ownership interest in or entering into a joint bidding arrangement with other applicants provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of

⁷⁴ See 47 C.F.R. § 1.2112(b)(1)(iv). Note that certain otherwise attributable material relationships may not be attributable pursuant to the provisions of 47 C.F.R. § 1.2110(b)(3)(iv)(C)(2).

⁷⁵ See Section V.E. "Tribal Lands Bidding Credit," *below*.

⁷⁶ See 47 C.F.R. § 1.2105(b)(2).

⁷⁷ See 47 C.F.R. § 1.2105(a)(2)(viii), (c)(1).

⁷⁸ See 47 C.F.R. § 1.2105(a)(2)(ix).

⁷⁹ See Section I.B.2 "Prohibition of Collusion; Compliance with Antitrust Laws," *above*.

any of the applicants.⁸⁰ While the anti-collusion rules do not prohibit non-auction-related business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges *could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.*⁸¹ Further, as discussed above, compliance with the disclosure requirements of the Commission's anti-collusion rule will not insulate a party from enforcement of the antitrust laws.⁸²

E. Ownership Disclosure Requirements

55. All applicants must comply with the uniform Part 1 ownership disclosure standards and provide information required by Sections 1.2105 and 1.2112 of the Commission's rules.⁸³ Specifically, in completing the short-form application, applicants will be required to fully disclose information on the real party or parties-in-interest and ownership structure of the applicant. The ownership disclosure standards for the short form are prescribed in Sections 1.2105 and 1.2112 of the Commission's rules.⁸⁴ Each applicant is responsible for information submitted in its short-form application being complete and accurate.

56. An applicant's most current ownership information on file with the Commission, if in an electronic format compatible with the short-form application (FCC Form 175) (such as information submitted in an on-line FCC Form 602 or in an FCC Form 175 filed for a previous auction using ISAS) will automatically be entered into the applicant's short-form application. Applicants are responsible for ensuring that the information submitted in their FCC Form 175 for Auction No. 71 is complete and accurate. Accordingly, applicants should carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for filing the short-form application. Applicants can update any information that was entered automatically and needs to be changed directly in the short-form application.

F. Entrepreneur Revenue Disclosures

57. To determine which entities qualify as entrepreneurs for closed bidding, the Commission considers the total assets and gross revenues of the applicant, its controlling interest holders, the affiliates of the applicant, and their controlling interests holders. The Commission does not impose specific entity requirements on parties with controlling interests. Once principals or entities with a controlling interest are determined, only the assets and revenues of those principals or entities, the applicant, and their affiliates will be counted in determining entrepreneur eligibility. Therefore, entities applying to bid on closed licenses will be required to disclose on their FCC Form 175 short-form applications, *separately and in the aggregate*, the gross revenues for the preceding two years and the total assets of each of the following: (1) the applicant, (2) the applicant's affiliates, (3) the applicant's controlling interest holders, and (4) the affiliates of the applicant's controlling interest holders. Certification that the gross revenues for each of the preceding two years or the total assets do not exceed the applicable limit is not sufficient. In order to comply with the Commission's disclosure requirements for entrepreneur eligibility, an applicant must provide separately for itself, its affiliates, its controlling interests holders, and their affiliates, the gross revenues for each of the preceding two years. Applicants for closed bidding in

⁸⁰ See 47 C.F.R. § 1.2105(c)(4)(i), (ii).

⁸¹ See Section I.B.2 "Prohibition of Collusion; Compliance with Antitrust Laws," *above*.

⁸² See *id.*

⁸³ See 47 C.F.R. § 1.2105 (requiring the disclosure on the short-form application of the applicant's ownership information as set forth in 47 C.F.R. §§ 1.2105 and 1.2112.)

⁸⁴ See *id.*

*Auction No. 71 should not include existing C and F block licenses in their calculations of total assets; however, all other Commission licenses must be included in such calculations.*⁸⁵

G. Bidding Credit Revenue Disclosures

58. To determine which applicants qualify for bidding credits as small businesses or very small businesses, the Commission considers the gross revenues of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests.⁸⁶ Therefore, entities applying to bid as small businesses or very small businesses (or consortia of small businesses or very small businesses) will be required to disclose on their FCC Form 175 short-form applications the gross revenues of each of the following for the preceding three years: (1) the applicant, (2) its affiliates, (3) its controlling interests, and (4) the affiliates of its controlling interests.⁸⁷ Certification that the average annual gross revenues of such entities and individuals for the preceding three years do not exceed the applicable limit is not sufficient. In order to comply with the Commission's disclosure requirements for bidding credit eligibility, an applicant must provide separately for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, the gross revenues for each of the preceding three years. If the applicant is applying as a consortium of small businesses or very small businesses, this information must be provided for each consortium member.

59. Controlling interests of an applicant include individuals and entities with either *de facto* or *de jure* control of the applicant. Typically, ownership of at least 50.1 percent of an entity's voting stock evidences *de jure* control. *De facto* control is determined on a case-by-case basis.⁸⁸ The following are some common indicia of *de facto* control:

- the entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- the entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee;
- the entity plays an integral role in management decisions.⁸⁹

60. Officers and directors of an applicant are also considered to have a controlling interest in the applicant.⁹⁰ The Commission does not impose specific equity requirements on controlling interest holders. Once the principals or entities with a controlling interest are determined, only the revenues of

⁸⁵ See Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96-59, Amendment of the Commission's Cellular/PCS Cross-Ownership Rule, GN Docket No. 90-314, *Order on Reconsideration*, 15 FCC Rcd 17384 at ¶ 20 (rel. September 14, 2000).

⁸⁶ See 47 C.F.R. § 1.2110(b); see also *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15323-27 ¶¶ 59-67.

⁸⁷ See 47 C.F.R. § 1.2110(b).

⁸⁸ For further guidance on the issue of *de facto* control, see 47 C.F.R. § 1.2110(b)(5) (rule concerning affiliation); see also *Intermountain Microwave*, 12 FCC 2d 559, 560 (1963), and *Application of Baker Creek Communications, L.P., for Authority to Construct and Operate Local Multipoint Distribution Services in Multiple Basic Trading Areas, Memorandum Opinion and Order*, 13 FCC Rcd 18709 (1998).

⁸⁹ See 47 C.F.R. § 1.2110(c)(2)(i)(A)-(C).

⁹⁰ See 47 C.F.R. § 1.2110(c)(2)(ii)(F).

those principals or entities, the affiliates of those principals or entities, and the applicant and its affiliates will be counted in determining small business eligibility.

61. In recent years the Commission has made modifications to its rules governing the attribution of gross revenues for purposes of determining small business eligibility. These changes include exempting the gross revenues of the affiliates of a rural telephone cooperative's officers and directors from attribution to the applicant if certain specified conditions are met.⁹¹ The Commission has also clarified that, in calculating an applicant's gross revenues under the controlling interest standard, it will not attribute the personal net worth, including personal income, of its officers and directors to the applicant.⁹²

62. A consortium of small businesses or very small businesses is a "conglomerate organization composed of two or more entities, each of which individually satisfies the definition of a small business [or] very small business as those terms are defined in the service-specific rules."⁹³ Thus, each member of a consortium of small or very small businesses that applies to participate in Auction No. 71 must individually meet the definition of a small business or a very small business adopted by the Commission for broadband PCS.⁹⁴ Each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, and the affiliates of its controlling interests. Although the gross revenues of the consortium members will not be aggregated for purposes of determining the consortium's eligibility as a small business or very small business,⁹⁵ this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.⁹⁶

H. Provisions Regarding Former and Current Defaulters

63. Each applicant must state under penalty of perjury on its short-form application whether or not the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by Section 1.2110,⁹⁷ have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency.⁹⁸ In addition, each applicant must certify under penalty of perjury on its short-form application that as of the short-form filing deadline, the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by Section 1.2110, are not in default on any payment for Commission licenses (including down payments) and that they are not delinquent on any non-tax debt owed to any Federal agency.⁹⁹ Prospective

⁹¹ See *Order on Reconsideration of the Part 1 Fifth Report and Order*, 18 FCC Rcd at 10186-194 ¶¶ 10-18; see also *Second Order on Reconsideration of the Fifth Report and Order*, 20 FCC Rcd at 1945-46 ¶ 9.

⁹² See *Order on Reconsideration of the Part 1 Fifth Report and Order*, 18 FCC Rcd at 10185-186 ¶¶ 8-9. However, to the extent that the officers and directors of the applicant are controlling interest holders of other entities, the gross revenues of those entities will be attributed to the applicant.

⁹³ See 47 C.F.R. § 1.2110(c)(6).

⁹⁴ See 47 C.F.R. § 24.709.

⁹⁵ See 47 C.F.R. § 1.2110(b)(3)(i).

⁹⁶ The *CSEA/Part 1 Report and Order* modified the procedure by which a consortium that is a winning bidder will apply for a license. See *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 911-912 ¶¶ 51-52. Applicants applying as consortia should review the *CSEA/Part 1 Report and Order* and sections 1.2107(g) and 1.2110(b)(3) of the Commission's rules to understand how the members of the consortia will apply for a license in the event they are winning bidders.

⁹⁷ See 47 C.F.R. § 1.2110.

⁹⁸ See 47 C.F.R. § 1.2105(a)(2)(xi); see also *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317 ¶ 42 and n. 142.

⁹⁹ See 47 C.F.R. § 1.2105(a)(2)(x); see also *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317 ¶ 42.

applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

64. “Former defaulters” — i.e., applicants, including any of their affiliates, any of their controlling interests, or any of the affiliates of their controlling interests, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies — are eligible to bid in Auction No. 71, provided that they are otherwise qualified. However, as discussed in Section III.D.3., *below*, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.¹⁰⁰

65. “Current defaulters” — i.e., applicants, including any of their affiliates, any of their controlling interests, or any of the affiliates of their controlling interests, that are in default on any payment for any Commission licenses (including down payments) or are delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for applications to participate in this auction — are not eligible to bid in Auction No. 71.¹⁰¹

66. Applicants are encouraged to review the Bureau’s previous guidance on default and delinquency disclosure requirements in the context of the short-form application process.¹⁰² For example, it has been determined that to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for purposes of Sections 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline.¹⁰³ Therefore, with respect to regulatory or application fees, the provisions of Sections 1.2105(a) and 1.2106(a) regarding default and delinquency in connection with competitive bidding are limited to circumstances in which the relevant party has not complied with a final Commission payment deadline.¹⁰⁴

67. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the “red light rule,” that implement the Commission’s obligations under the Debt Collection Improvement Act of 1996, which governs the collection of claims owed to the United States.¹⁰⁵ Under the red light rule,

¹⁰⁰ See 47 C.F.R. § 1.2106(a).

¹⁰¹ See 47 C.F.R. §§ 1.2105(a)(2)(x) and 1.2105(b)(1); see also *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317 ¶ 42 and n. 142 (“If any one of an applicant’s controlling interests or their affiliates...is in default on any Commission licenses or is delinquent on any non-tax debt owed to any Federal agency at the time the applicant files it[s] FCC Form 175, the applicant will not be able to make the certification required by Section 1.2105(a)(2)(x)...and will not be eligible to participate in Commission auctions.”)

¹⁰² See “WTB Reminds Prospective Broadband PCS Spectrum Auction Applicants of Default and Delinquency Disclosure Requirements,” *Public Notice*, 19 FCC Rcd 21920 (2004) (“*Auction Default Disclosure Public Notice*”). This public notice may be found at <http://wireless.fcc.gov/auctions/58/>.

¹⁰³ See Letter to Cheryl A. Tritt, Esq., Morrison and Foerster, LLP, from Margaret Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, 19 FCC Rcd 22907 (2004) (clarifying the term “debt” or “non-tax debt” as referenced in 47 C.F.R. §§ 1.2105(a) and 1.2106(a)). This letter may be found at: <http://wireless.fcc.gov/auctions/58/>.

¹⁰⁴ Even where Commission rules expressly permit late payment, subject to payment of an additional late fee, and do not impose a final payment deadline, the Commission may in some cases issue a demand for payment by a date certain. See 47 C.F.R. § 1.1164(a). Failure to comply with the terms of a particular demand letter in the time period provided may render the subject debt delinquent, notwithstanding rules generally permitting late payment.

¹⁰⁵ See Amendment of Parts 0 and 1 of the Commission’s Rules; Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent (continued....)

the Commission will not process applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission. In the same rulemaking order, the Commission explicitly declared, however, that the Commission's competitive bidding rules "are not affected" by the red light rule.¹⁰⁶ As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of the Commission's competitive bidding rules, including the provisions and certifications of Sections 1.2105 and 1.2106, with regard to current and former defaults or delinquencies. Applicants are reminded, however, that the Commission's Red Light Display System, which provides information regarding debts owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of section 1.2105.¹⁰⁷ Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant's "red light" status is not necessarily determinative of its eligibility to participate in this auction or of its upfront payment obligation.

68. Prospective applicants in Auction No. 71 should note that any long-form applications filed after the close of competitive bidding will be reviewed for compliance with the Commission's red light rule,¹⁰⁸ and such review may result in the dismissal of a winning bidder's long-form application.¹⁰⁹

I. Other Information

69. Applicants owned by member of minority groups and/or women, as defined in Section 1.2110(c)(3),¹¹⁰ may identify themselves in filling out their short-form applications regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of "designated entities" in its auctions.¹¹¹

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

70. As of the deadline for filing short-form applications (FCC Forms 175) prior to 6:00 p.m. ET on March 16, 2007, applicants are permitted to make only minor changes to their applications. Applicants are not permitted to make major modifications to their applications (e.g., change their license selections, change control of the applicant, change the certifying official, or change their size to claim eligibility for a higher bidding credit).¹¹² Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons.

(Continued from previous page)

Debtors, MD Docket No. 02-339, *Report and Order*, 19 FCC Rcd 6540 (2004) (implementing Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996)) ("*Debt Collection Report and Order*").

¹⁰⁶ See *Debt Collection Report and Order*, 19 FCC Rcd at 6541 n. 11. Footnote 11 specifically mentions 47 C.F.R. § 1.2105(a)(2)(x) and (xi).

¹⁰⁷ See *Auction Default Disclosure Public Notice*, 19 FCC Rcd at 21920 (addressing relationship between Commission's Red Light Display System and FCC Form 175 default and delinquency disclosure requirements for auction applicants).

¹⁰⁸ See *Debt Collection Report and Order*, 19 FCC Rcd at 6540. See also 47 C.F.R. § 1.1112.

¹⁰⁹ Applicants that have their long-form applications dismissed will be deemed to have defaulted and will be subject to default payments under 47 C.F.R. §§ 1.2104(g) and 1.2109(c).

¹¹⁰ See 47 C.F.R. § 1.2110(c)(3).

¹¹¹ Designated entities are defined as small businesses, businesses owned by members of minority groups and/or women, and rural telephone companies. See 47 C.F.R. § 1.2110(a).

¹¹² See 47 C.F.R. § 1.2105(b).

71. Any application amendment and related statements of fact must be certified by: (1) the applicant, if the applicant is an individual, (2) one of the partners if the applicant is a partnership, (3) an officer, director, or duly authorized employee, if the applicant is a corporation, (4) by a member who is an officer, if the applicant is an unincorporated association, (5) the trustee if the applicant is an amateur radio service club, or (6) a duly elected or appointed official who is authorized to make such certifications under the laws of the applicable jurisdiction, if the applicant is a governmental entity.¹¹³

72. An applicant must make permissible minor changes to its short-form application, as such changes are defined by Section 1.2105(b), electronically using the FCC Auction System. Applicants must click on the **SUBMIT** button in the FCC Auction System for the changes to be submitted and considered by the Commission. After the revised application has been submitted, a confirmation page will be displayed that states the submission time and date, along with a unique file number.

73. In addition, an applicant should submit a letter briefly summarizing the changes and subsequently update their short-form applications in ISAS as soon as possible. Note: After the filing window has closed, the auction system will not permit applicants to make certain changes, such as legal classification and bidding credit. Any letter describing changes to an applicant's short-form application should be submitted by electronic mail to the following address: auCTION71@fcc.gov. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 71 and the name of the applicant (e.g., "RE: Changes to Auction No. 71 Short-Form Application of ABC Corp."). The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Questions about short-form application (FCC Form 175) amendments should be directed to Stephen Johnson of the Auctions and Spectrum Access Division at (202) 418-0660.

74. Applicants must **not** submit application-specific material through the Commission's Electronic Comment Filing System (ECFS).

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

75. Section 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application.¹¹⁴ Changes that cause a loss of or reduction in eligibility for a bidding credit must be reported immediately. If an amendment reporting substantial changes is a "major amendment" as defined by 47 C.F.R. § 1.2105, the major amendment will not be accepted and may result in the dismissal of the short-form application.¹¹⁵

76. As noted in Section II.J., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications, for example, deletion and addition of authorized bidders (to a maximum of three). Applicants must click on the **SUBMIT** button in the FCC Auction System for the changes to be submitted and considered by the Commission. In addition, applicants must submit a letter, briefly summarizing the changes, by electronic mail at the following address: auCTION71@fcc.gov. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 71 and the name of the applicant. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

77. Applicants must **not** submit application-specific material through ECFS into the record of the proceeding concerning Auction No. 71 procedures.

¹¹³ See 47 C.F.R. § 1.917.

¹¹⁴ See 47 C.F.R. § 1.65.

¹¹⁵ See 47 C.F.R. § 1.2105(b)(2).

III. PRE-AUCTION PROCEDURES

A. Auction Seminar — March 7, 2007

78. On Wednesday, March 7, 2007, the FCC will sponsor a seminar for parties interested in participating in Auction No. 71 at the FCC headquarters, located at 445 12th Street, SW, Washington, DC. The seminar will provide attendees with information about pre-auction procedures, completing FCC Form 175, auction conduct, the FCC Auction System, auction rules, and the broadband PCS rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff concerning the auction, auction procedures, filing requirements and other matters related to this auction.

79. To register, please provide the information listed on Attachment B by Monday, March 5, 2007. Registrations are accepted on a first-come, first-served basis. The seminar is free of charge.

80. For individuals who are unable to attend, an Audio/Video webcast of this seminar will be available from the FCC's Auction No. 71 web page at <http://wireless.fcc.gov/auctions/71/>. Select the "Auction Seminar" link. The seminar webcast will be archived for future viewing.

B. Short-Form Application (FCC Form 175) — Due Prior to 6:00 p.m. ET on March 16, 2007

81. In order to be eligible to bid in this auction, applicants must first follow the procedures set forth in Attachment C to this Public Notice to submit an FCC Form 175 application electronically via the FCC Auction System.¹¹⁶ This application must be received at the Commission prior to 6:00 p.m. ET on March 16, 2007. **Late applications will not be accepted.** There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment.¹¹⁷

82. Applications may generally be filed at any time beginning at noon ET on March 7, 2007, and the filing window will close at 6:00 p.m. ET on March 16, 2007. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their applications multiple times until the filing deadline on March 16, 2007.

83. Applicants must always click on the **SUBMIT** button on the Certify & Submit screen of the electronic form to successfully submit or modify their FCC Form 175. Any form that is not submitted will not be reviewed by the FCC. Additional information about accessing, completing, and viewing the FCC Form 175 is included in Attachment C. FCC Auctions Technical Support is available at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET. In order to provide better service to the public, all calls to Technical Support are recorded.

C. Application Processing and Minor Corrections

84. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (1) those applications accepted for filing; (2) those applications rejected; and (3) those applications which have minor defects that may be corrected, and the deadline for resubmitting corrected applications.

85. As described more fully in the Commission's rules, after the March 16, 2007, short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (e.g., change their

¹¹⁶ See 47 C.F.R. § 12105(a).

¹¹⁷ See Section III.D. "Upfront Payments — Due April 20, 2007," *below*.