



# PUBLIC NOTICE

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## AUCTION OF FLEXIBLE-USE LICENSES IN THE 2.5 GHz BAND FOR NEXT-GENERATION WIRELESS SERVICES

### NOTICE AND FILING REQUIREMENTS, MINIMUM OPENING BIDS, UPFRONT PAYMENTS, AND OTHER PROCEDURES FOR AUCTION 108

**BIDDING SCHEDULED TO BEGIN JULY 29, 2022**

**AU Docket No. 20-429**

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## I. GENERAL INFORMATION

### A. Introduction

1. By this Public Notice, we establish the procedures to be used for Auction 108, the auction of approximately 8,000 new flexible-use geographic overlay licenses in the 2.5 GHz band. Auction 108 will offer the single largest contiguous portion of available mid-band spectrum below 3 GHz, and the licenses made available in this auction will help extend 5G service beyond the most populated areas.

2. Bidding in Auction 108 is scheduled to commence on July 29, 2022. Auction 108 will be conducted using an ascending clock auction with a supply of one in each category of frequency-specific channel blocks, referred to as the “clock-1” auction format. This Public Notice provides details regarding the procedures, terms, conditions, dates, and deadlines governing participation in Auction 108 bidding, as well as an overview of the post-auction application and payment processes.

### B. Background and Relevant Authority

3. In the *2.5 GHz Report and Order*, the Commission made available 117.5 megahertz of spectrum in the 2.5 GHz band for new licensed use.<sup>1</sup> In that Order, the Commission established a Rural Tribal Priority Window to enable federally-recognized Tribal nations an opportunity to obtain 2.5 GHz licenses to provide service using unassigned spectrum in the former Educational Broadband Service (EBS) band on rural Tribal lands before the remaining unassigned spectrum is made generally available through competitive bidding.<sup>2</sup> Among other things, the Commission authorized both fixed and mobile operations in the 2.5 GHz band using geographic area licensing, replaced the regulatory regime of the EBS with new flexible-use licensing and operating rules, and decided to use its competitive bidding rules to assign remaining overlay licenses following the close of the Rural Tribal Priority Window.<sup>3</sup>

4. On January 13, 2021, in accordance with section 309(j)(3) of the Communications Act of 1934, as amended (Communications Act),<sup>4</sup> the Commission released a public notice seeking comment on certain competitive bidding procedures and various other procedures to be used in Auction 108.<sup>5</sup>

<sup>1</sup> See generally *Transforming the 2.5 GHz Band*, WT Docket No. 18-120, Report and Order, 34 FCC Rcd 5446 (2019) (modified by Erratum, 34 FCC Rcd 10386 (WTB 2019)) (*2.5 GHz Report and Order*).

<sup>2</sup> *Id.* at 5450, 5463-69, paras. 13, 46-65.

<sup>3</sup> See *id.* at 5450-62, 5472-88, paras. 14-44, 75-112.

<sup>4</sup> 47 U.S.C. § 309(j)(3)(E)(i) (requiring Commission to seek comment on proposed auction procedures); see also *id.* § 309(j)(4)(F) (authorizing Commission to prescribe reserve price or minimum bid); 47 CFR § 1.2104(c)-(d).

Interested parties filed 16 comments and 26 reply comments in response to the *Auction 108 Comment Public Notice*.<sup>6</sup> On February 9, 2022, the Office of Economics and Analytics (OEA) and the Wireless Telecommunications Bureau (WTB) released a public notice seeking further comment on multiple-round auction procedures for Auction 108.<sup>7</sup> Specifically, OEA and WTB sought comment on whether a clock auction would address commenters' concerns and suggestions regarding the simultaneous multiple-round (SMR) and single-round, sealed bid auction formats proposed in the *Auction 108 Comment Public Notice*.<sup>8</sup> Interested parties filed 13 comments in response to the *Auction 108 Further Comment Public Notice*. On February 18, 2022, OEA and WTB released the *Auction 108 Inventory Comment Public Notice* that announced an updated auction inventory and sought comment whether any procedures need to be adjusted for all the licenses available in Auction 108 in light of additions to the initial license inventory.<sup>9</sup> Interested parties filed eight comments in response to the *Auction 108 Inventory Comment Public Notice*. In this Public Notice, we resolve all open issues raised in the *Auction 108 Comment Public Notice*, the *Auction 108 Further Comment Public Notice*, and the *Auction 108 Inventory Comment Public Notice* and address the comments received.<sup>10</sup>

5. Other Commission rules and decisions provide the underlying authority for the procedures we adopt today for Auction 108. Among other things, prospective applicants should familiarize themselves with the Commission's general competitive bidding rules,<sup>11</sup> including amendments and clarifications thereto, as well as Commission decisions regarding competitive bidding procedures, application requirements, and obligations of Commission licensees.<sup>12</sup> Prospective applicants also should

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<sup>5</sup> *Auction of Flexible-Use Service Licenses in the 2.5 GHz Band for Next-Generation Wireless Services; Comment Sought on Competitive Bidding Procedures for Auction 108*, AU Docket No. 20-429, Public Notice, 36 FCC Rcd 645, 648-71, paras. 7-98 (2021) (*Auction 108 Comment Public Notice*).

<sup>6</sup> These comments to the *Auction 108 Comment Public Notice* (and subsequent two auction comment public notices) are available in AU Docket No. 20-429 in the Commission's Electronic Comment Filing System (ECFS). The ECFS home page is publicly accessible at [www.fcc.gov/ecfs](http://www.fcc.gov/ecfs). We generally note in the context of discussing particular issues whether any commenter addressed those issues.

<sup>7</sup> *Auction of Flexible-Use Licenses in the 2.5 GHz Band for Next-Generation Wireless Services; Further Comment Sought on Competitive Bidding Procedures for Auction 108*, AU Docket No. 20-429, Public Notice, DA 22-120, at 4-14, paras. 8-56 (OEA/WTB 2022) (*Auction 108 Further Comment Public Notice*).

<sup>8</sup> *Auction 108 Further Comment Public Notice* at 2-3, para. 4; see *Auction 108 Comment Public Notice*, 36 FCC Rcd at 656-71, paras. 34-98.

<sup>9</sup> *Revised Inventory for Auction of Flexible-Use Licenses in the 2.5 GHz Band; Comment Sought on Upfront Payments, Minimum Opening Bids, and Other Procedures for the Revised Inventory of Auction 108*, AU Docket No. 20-429, Public Notice, DA 22-171, at 4, para. 7 (OEA/WTB 2022) (*Auction 108 Inventory Comment Public Notice*).

<sup>10</sup> The Appendix to this Public Notice is a list of short names for parties who submitted comments, reply comments and/or *ex parte* filings in this proceeding that are referenced in this Public Notice. We also note that Mile One filed its comments one day after the deadline for filings comments to the *Auction 108 Comment Public Notice*, with an accompanying Motion To Accept Late-Filed Comments. See Mile One May 4, 2021, *Ex Parte*; Motion of Mile One Broadband Consortium to Accept Late-Filed Comments, AU Docket No. 20-429 (filed May 4, 2021). Additionally, Blooston filed its comments to the *Auction 108 Further Comment Public Notice* one day after the deadline for filings comments, with an accompanying request for waiver of the filing deadline, or in the alternative, request to treat its comments as a timely *ex parte* filing. See Blooston Feb. 24, 2022, *Ex Parte*; Letter of D. Cary Mitchell, counsel to Blooston Rural Carriers, AU Docket No. 20-429 (filed February 24, 2022). We will treat both comments as timely *ex parte* filings.

<sup>11</sup> See generally 47 CFR pt. 1, subpt. Q.

<sup>12</sup> See, e.g., *Updating Part 1 Competitive Bidding Rules et al.*, WT Docket Nos. 14-170 et al., Report and Order, Order on Reconsideration of the First Report and Order, Third Order on Reconsideration of the Second Report and Order, Third Report and Order, 30 FCC Rcd 7493 (2015) (*Updating Part 1 Report and Order*) (modified by Erratum, 30 FCC Rcd 8518 (2015)); *Amendment of Part 1 of the Commission's Rules—Competitive Bidding Proceeding*, WT Docket No. 97-82, Order, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 12 FCC Rcd 5686 (continued....)

familiarize themselves with the Commission's rules regarding the 2.5 GHz band, as well as the licensing and operating rules that are applicable to all Part 27 services.<sup>13</sup> In addition, applicants must be thoroughly familiar with the procedures, terms, and conditions contained in this Public Notice and any future public notices that may be released in this proceeding.<sup>14</sup>

6. 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 generally applicable information to applicants. Pursuant to the Commission's rules, OEA and WTB also retain the authority to implement further procedures during the course of this auction.<sup>15</sup> It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to Auction 108.<sup>16</sup>

### C. Description of Licenses to Be Offered in Auction 108

7. Consistent with the Commission's determination, "any remaining unassigned EBS spectrum" will be made available in Auction 108.<sup>17</sup> Auction 108 will offer geographic overlay licenses for unassigned spectrum in the 2.5 GHz (2496–2690 MHz) band.<sup>18</sup> We will offer up to three blocks of spectrum—49.5 megahertz, 50.5 megahertz, and 17.5 megahertz blocks, respectively—licensed on a county basis.<sup>19</sup> Specifically, the first channel block will include channels A1–A3, B1–B3, C1–C3 (49.5  
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(1997) (*Part 1 Order*); 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) (*Part 1 Fifth Report and Order*) (modified by Erratum, 15 FCC Rcd 21520 (2000)); Seventh Report and Order, 16 FCC Rcd 17546 (2001) (*Part 1 Seventh Report and Order*); Eighth Report and Order, 17 FCC Rcd 2962 (2002); Second Order on Reconsideration of the Third Report and Order and Order on Reconsideration of the Fifth Report and Order, 18 FCC Rcd 10180 (2003) (*Part 1 Third R&O Second Recon/Part 1 Fifth R&O Recon*); Second Order on Reconsideration of the Fifth Report and Order, 20 FCC Rcd 1942 (2005) (*Part 1 Fifth R&O Second Recon*).

<sup>13</sup> See generally 47 CFR part 27, subpart M; *id.* § 2.106.

<sup>14</sup> See Section II.A. (Certification of Notice of Auction 108 Requirements and Procedures), below.

<sup>15</sup> See 47 CFR §§ 0.21(m), 0.131(a), (c), 0.271(a) ("The Chief, [OEA], shall not have authority to act on notices of proposed rulemaking and of inquiry, final orders in rulemaking proceedings and inquiry proceedings, and reports arising from any of the foregoing *except . . . notices and orders addressing the detailed procedures for implementation of auctions of spectrum and broadcast services . . .*" (emphasis added)).

<sup>16</sup> Copies of most auctions-related Commission documents, including public notices, can be retrieved from the Commission's FCC Auctions Internet site at [www.fcc.gov/auctions](http://www.fcc.gov/auctions). Additionally, documents are available at the Commission's headquarters during normal business hours when the building is open to the public. See Section VI.D. (Contact Information), below, for additional guidance.

<sup>17</sup> *2.5 GHz Report and Order*, 34 FCC Rcd at 5472, para. 75.

<sup>18</sup> *Id.* at 5473, para. 77. With overlay licenses, licensees obtain the rights to geographic area licenses "overlaid" on top of the existing incumbent licenses. *Id.* As with an ordinary flexible-use license, the overlay licensee may operate anywhere within its geographic area, subject to protecting the licensed areas (i.e., circular Geographic Service Areas with a 35-mile radius) of incumbent licensees. *Id.* If an incumbent licensee in a county cancels or terminates its license, then the overlay licensee obtains the rights to operate in the geographic area and on the channel of the cancelled license. *Id.* An overlay licensee may clear its geographic area by purchasing the incumbent licenses, but it does not have the exclusive right to negotiate with the incumbent licensee for its spectrum rights or to purchase an incumbent license in the geographic area in which it has the overlay rights. *Id.* Some commenters urge the Commission to reconsider an incentive auction whereby incumbent licensees would have the opportunity to return their licenses for compensation. AT&T Feb. 23, 2022, Comments at 8-9; Verizon May 3, 2021, Comments at 1. The Commission declined to offer the 2.5 GHz spectrum through an incentive auction in the *2.5 GHz Report and Order*. *2.5 GHz Report and Order*, 34 FCC Rcd at 5475, para. 82. To the extent that commenters seek reconsideration of that Commission determination, such requests are untimely and beyond the scope of this proceeding. See 47 CFR § 1.429.

<sup>19</sup> *2.5 GHz Report and Order*, 34 FCC Rcd at 5480, 5481, paras. 93, 96.

megahertz); the second channel block will include channels D1–D3, the J channels, and channels A4, B4, C4, D4, and G4 (50.5 megahertz); and the third channel block will include channels G1–G3 and the relevant K channels (16.5 megahertz of contiguous spectrum and 1 megahertz of the K channels associated with the G channel group, for a total of 17.5 megahertz).<sup>20</sup> New overlay licenses in the EBS portion of the 2.5 GHz band will be issued for 10-year, renewable license terms.<sup>21</sup> A licensee in this band may provide any services permitted under terrestrial fixed or mobile allocations, as set forth in the non-Federal Government column of the Table of Frequency Allocations in section 2.106 of the Commission’s rules.<sup>22</sup>

8. Concurrent with the release of the *Auction 108 Comment Public Notice*, OEA and WTB made available a file listing all county and channel block combinations potentially available for Auction 108.<sup>23</sup> Several commenters, including some incumbent licensees, noted potential discrepancies between the Commission’s initial list of potentially available licenses and commenters’ own analyses of available white space in the band.<sup>24</sup> These commenters and others urged the Commission to audit the preliminary list of licenses available in Auction 108 to ensure that the final list of available licenses is complete and accurate.<sup>25</sup> In light of these comments, WTB staff performed additional geographic information systems (GIS) analysis of existing 2.5 GHz licenses and prepared a new list of potentially available licenses based on license service area data extracted from the Universal Licensing System

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<sup>20</sup> *Id.* at 5481, para. 96.

<sup>21</sup> *See id.* at 5486-87, paras. 109-10.

<sup>22</sup> *See* 47 CFR § 2.106.

<sup>23</sup> *See Auction 108 Comment Public Notice*, 36 FCC Rcd 645, Attach. A.

<sup>24</sup> These noted discrepancies include certain county-block combinations that commenters argue should be excluded from the inventory because they are fully-encumbered or cover *de minimis* areas or areas with no population, and certain county-block combinations that were initially excluded from the inventory that commenters argue should be included because they contain unassigned spectrum. *See* Voqal May 3, 2021, Comments at 2-6 (identifying fully-encumbered licenses included in the inventory); T-Mobile May 3, 2021, Comments at 16-22 (identifying fully-encumbered licenses and licenses covering water-only areas included in the inventory, and licenses with available white space excluded from the inventory); Archdiocese of Detroit May 17, 2021, Reply at 1-2, Attach. (identifying fully-encumbered licenses); Archdiocese of Los Angeles May 17, 2021, Reply at 1-2, Attach. (identifying fully-encumbered licenses); Archdiocese of New York May 24, 2021, Reply at 1-3, Attach. (identifying fully-encumbered licenses); Catholic Bishop of Chicago May 17, 2021, Reply at 1-2, Attach. (identifying fully-encumbered licenses); Catholic Church of Hawaii May 17, 2021, Reply at 1-4, Attach. (identifying licenses covering areas with no population included in the inventory); DeSales May 24, 2021, Reply at 1-3, Attach. (identifying fully-encumbered licenses); iCatholic Media May 24, 2021, Reply at 1-3, Attach. (identifying fully-encumbered licenses); Miami School Board May 27, 2021, Reply at 1-9 (identifying licenses covering water-only areas and areas with no population); NACEPF/Mobile Beacon May 27, 2021, Reply at 1, 3 (arguing licenses covering *de minimis* areas should be excluded); OCF May 17, 2021, Reply at 1-2, Attach. (identifying fully-encumbered licenses); RCCC May 25, 2021, Reply at 1-2, Attach. (identifying fully-encumbered licenses and licenses covering water-only areas); Source for Learning May 27, 2021, Reply at 1-5, Attach. (identifying fully-encumbered licenses); Stanford May 17, 2021, Reply at 1-2, Attach. (identifying fully-encumbered licenses); T-Mobile May 27, 2021, Reply at 6, Appx. 1 (identifying licenses covering water-only areas); University of Colorado May 17, 2021, Reply at 1-2, Attach. (identifying fully-encumbered licenses); Voqal May 27, 2021, Reply at 7-10 (arguing the Commission should exclude licenses covering water-only areas, areas with no population, and areas with *de minimis* white space); Letter from James B. Goldstein, Director, Technology and Engineering Policy, T-Mobile, to Marlene H. Dortch, Secretary, FCC, AU Docket No. 20-429, at 1-2, Attach. (filed Feb. 16, 2021) (identifying fully-encumbered licenses and excluded licenses with available white space) (T-Mobile Feb. 16, 2021, *Ex Parte*).

<sup>25</sup> *See* Voqal May 3, 2021, Comments at 5-6; NEBSA May 3, 2021, Comments at 2; T-Mobile May 3, 2021, Comments at 16-17; Miami School Board May 27, 2021, Reply at 1-2; NACEPF/Mobile Beacon May 27, 2021, Reply at 2-4; T-Mobile May 27, 2021, Reply at 5-7; U.S. Cellular May 27, 2021, Reply at 16-17; Verizon May 27, 2021, Reply at 2-3; Letter from Michael P. Goggin, AT&T, to Marlene H. Dortch, Secretary, FCC, AU Docket No. 20-429, at 4 (filed Aug. 17, 2021) (AT&T Aug. 17, 2021, *Ex Parte*).

(ULS) on February 2, 2022.<sup>26</sup> The revised list also took into account licenses issued pursuant to Rural Tribal Priority Window applications and information provided by commenters.<sup>27</sup> OEA and WTB released that updated list of potentially available licenses, which added 189 licenses to the list and removed 370, on February 18, 2022, and requested comment on whether any of the procedures proposed in the *Auction 108 Comment Public Notice* or the *Auction 108 Further Comment Public Notice* needed to be adjusted in light of licenses added to the initial license inventory.<sup>28</sup>

9. Many of the issues raised by commenters in response to the *Auction 108 Comment Public Notice* were addressed in the revised inventory released with the *Auction 108 Inventory Comment Public Notice*.<sup>29</sup> Many county/channel block combinations that commenters had identified as fully encumbered have been removed. No commenter opposed the removal of those county/channel block combinations from inventory. The revised list of licenses also excluded county/channel block combinations where the only areas with unassigned spectrum were over large bodies of water such as the Atlantic Ocean or the Great Lakes.<sup>30</sup> Since a licensee may only place base stations within their geographic service area (GSA) and limit the power flux density of their signal within their GSA, there would be no prospect for a licensee to deploy service to land-based populations in that scenario.

10. The revised license inventory that we release in conjunction with this Public Notice incorporates WTB's comprehensive review of the inventory in response to additional GIS analyses and feedback from interested parties including incumbent licensees and lessees.<sup>31</sup> Additionally, on March 15, 2022, WTB granted seven additional Rural Tribal Priority Window applications in Alaska. As a result of those grants, all 2.5 GHz spectrum in Bristol Bay and Lake and Peninsula Boroughs in Alaska was assigned on all three channel blocks. Accordingly, the three licenses for those boroughs have been removed from the list of available licenses.

11. We address particular arguments from commenters below.<sup>32</sup> First, we decline to exclude counties from inventory on the basis that the only areas with unassigned spectrum are unpopulated areas where a licensee could not meet performance requirements.<sup>33</sup> Such an exclusion would be inconsistent

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<sup>26</sup> *Auction 108 Inventory Comment Public Notice* at 2-3, para. 4. For purposes of this analysis, a channel block/county combination is considered unavailable, and is therefore not included in the inventory, if more than 99.9999% of the area within the county is fully encumbered by an existing license for that channel block. *Id.* at 2-3, para. 4. This threshold was set to avoid computational errors found to have been attributable to rounding when calculating areas as part of its GIS analysis. *Id.* at n.11.

<sup>27</sup> *Id.* at 2-3, paras. 4-5.

<sup>28</sup> *Id.* at 4, para. 7.

<sup>29</sup> *Auction 108 Inventory Comment Public Notice* at 2-3, para. 4 (noting that “[t]he majority of the changes to the inventory result from further review of the J guard band,” at the request of T-Mobile and Voqal).

<sup>30</sup> *See, e.g.*, T-Mobile May 3, 2021, Comments at 17 and App. 1-3; T-Mobile May 27, 2021, Reply at 5-6, App. 1.

<sup>31</sup> We decline a request by certain parties to implement a more formal process by which interested parties may submit data to challenge the revised license inventory. NACEPF/Mobile Beacon May 3, 2021, Comments at 8-9; DISH May 27, 2021, Reply at 7; Miami School Board May 27, 2021, Reply at 1-2; NEBSA May 27, 2021, Reply at 2-3; U.S. Cellular May 27, 2021, Reply; Verizon May 27, 2021, Reply at 3; Voqal May 27, 2021, Reply at 11-12; WISPA May 27, 2021, Reply at 17. First, we note that interested parties have had multiple opportunities to provide input on the development of the license inventory, as WTB has continued to refine and revise the inventory in response to feedback from interested parties. Most recently, several parties have submitted additional information in response to the *Auction 108 Inventory Comment Public Notice*, and WTB has taken that information into account in developing the most recent inventory listing reflected in the updated Attachment A that is being released in conjunction with this Public Notice. Second, we agree with T-Mobile establishing a new, formal process at this time would significantly delay the auction of critical mid-band spectrum. *See* T-Mobile May 27, 2021, Reply at 7.

<sup>32</sup> Verizon and WISPA also filed comments in response to the *Auction 108 Inventory Comment Public Notice*, but their comments did not raise any specific issues with the inventory and addressed other issues. Accordingly, we will not address their comments further with respect to license inventory.

with the Commission's decision in the *2.5 GHz Report and Order* to make available all unassigned spectrum that is part of a county.<sup>34</sup> Furthermore, the possibility that an area is unpopulated does not mean that broadband could not be useful there. For example, the Roman Catholic Church in the State of Hawaii mentions that many of the outer islands in Honolulu County Hawaii are part of the Hawaiian Islands National Wildlife Refuge.<sup>35</sup> Scientists studying the wildlife could use broadband in support of their work. While potential applicants should carefully consider the factors cited by commenters before deciding to apply for these areas, we decline to exclude those counties from the list of available licenses.

12. Second, some commenters have suggested that the auction inventory should include licenses for those portions of the Gulf of Mexico that are not part of counties.<sup>36</sup> However, unlike with respect to the Broadband Radio Service (BRS), the *2.5 GHz Report and Order* did not establish separate license areas for the Gulf of Mexico for the 2.5 GHz spectrum being made available in Auction 108.<sup>37</sup> Therefore, license areas for the portions of the Gulf of Mexico not otherwise included in any county are not part of the Auction 108 inventory.

13. Third, CTN, jointly with NEBSA, and Voqal note that the inventory provided with the *Auction 108 Inventory Comment Public Notice* appears to assume that active licensees' geographic service areas were reduced by "splitting the football" with licenses that expired prior to January 10, 2005.<sup>38</sup> We agree with CTN/NEBSA and Voqal that existing active licensees did not have their licenses areas reduced by other licenses that expired prior to January 10, 2005 (the date the "splitting the football" process occurred) when those other licenses were not reinstated by 2008.<sup>39</sup> In light of CTN/NEBSA's and Voqal's comments, we have excluded from our analysis licenses that expired before January 10, 2005, and were not reinstated prior to March 10, 2008. As a result, we have removed 81 licenses in 57 counties from the auction inventory, including the specific channel block and county combinations identified by CTN/NEBSA<sup>40</sup> and Voqal.<sup>41</sup>

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<sup>33</sup> Roman Catholic Church in the State of Hawaii May 17, 2021, Reply; Miami School Board May 27, 2021, Reply; Miami School Board Mar. 4, 2022, Comments. We also decline to exclude interior portions of Broward County, Florida, from inventory based on an assertion that those portions are a flooded water conservation area. Miami School Board Mar. 4, 2022, Comments at 3-4. As noted above, the Commission previously determined that any remaining unassigned EBS spectrum will be made available in Auction 108. *2.5 GHz Report and Order*, 34 FCC Rcd at 5472, para. 75. Moreover, the Commission generally has not made such carveouts in other auctions where counties were the geographic license area.

<sup>34</sup> *2.5 GHz Report and Order*, 34 FCC Rcd at 5472, para. 75.

<sup>35</sup> Catholic Church of Hawaii May 17, 2021, Reply at 2.

<sup>36</sup> James Wilson Jan. 13, 2021, Comments; T-Mobile May 27, 2021, Reply at 5-6, App. 5 at 32; Voqal May 27, 2021, Reply at 6; Justin Tourneau Mar. 2, 2022, Comments.

<sup>37</sup> Compare 47 CFR § 27.1207(a) (establishing Gulf of Mexico license areas for BRS), with *id.* § 27.1207(b) (making no reference to Gulf of Mexico license areas for EBS). To the extent that commenters seek reconsideration of that Commission determination, such requests are untimely and beyond the scope of this proceeding.

<sup>38</sup> CTN/NEBSA Mar. 4, 2022, Comments at 4; Voqal Mar. 4, 2022, Comments at 2-3. See also T-Mobile Mar. 4, 2022, Comments at 3 (citing CTN/NEBSA and Voqal comments with approval).

<sup>39</sup> In 2008, the Commission issued a declaratory ruling "that an active licensee whose former PSA overlapped with a license that was expired as of January 10, 2005 need not split the football with such expired license if the expired licensee has not had its license reinstated prior to [March 18, 2008]." *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Third Order on Reconsideration and Sixth Memorandum Opinion and Order and Fourth Memorandum Opinion and Order and Second Further Notice of Proposed Rulemaking and Declaratory Ruling, WT Docket No. 03-66, 23 FCC Rcd 5992, 6058, para. 173 (2008).

<sup>40</sup> CTN/NEBSA Mar. 4, 2022, Comments at 4 (Channel Blocks 1 and 2 in Bronx, Kings, Nassau and Queens counties, New York).

14. Fourth, the Cherokee Nation requests that any available spectrum subject to its pending application from the Rural Tribal Priority Window be excluded from inventory.<sup>42</sup> We emphasize that licenses granted through applications received during the Rural Tribal Priority Window have incumbent status *vis-à-vis* licenses awarded in Auction 108. In other words, any winning bidder awarded a license in Auction 108 will not be allowed to operate within the license area of a successful Rural Tribal Priority Window applicant, even if that application remains pending today or at the time of issuance of the overlay license.<sup>43</sup> Auction 108 licensees will also be required to comply with technical rules designed to protect incumbent licensees.<sup>44</sup> Our analysis shows that were the Cherokee Nation's pending application granted in full, there would still be some unassigned spectrum in some portion of each county within its proposed license area, and we thus decline to remove those counties from inventory.

15. Fifth, Source for Learning argues that Channel Block 2 should be removed from inventory in Ozaukee and Sheboygan Counties, Wisconsin.<sup>45</sup> Our analysis shows that while the specific channels on which Source for Learning is licensed are fully encumbered, there is unassigned spectrum on the D channels in both counties. Accordingly, we will keep Channel Block 2 in inventory in both counties.

16. Concurrent with the release of this Public Notice, we make available an updated file listing all county and channel block combinations potentially available for Auction 108. This file is listed as an "Attachment A" file on the Auction 108 website at [www.fcc.gov/auction/108](http://www.fcc.gov/auction/108). This inventory of overlay licenses available in Auction 108 released concurrently with this Public Notice removes 87 licenses from the revised inventory released on February 18, 2022, based on our review of comments and the results of the Rural Tribal Priority Window.<sup>46</sup> If additional licenses are removed from inventory because of future Rural Tribal Priority Window grants, those actions will be announced by subsequent public notice(s).

17. We have also made available resources to assist applicants in conducting due diligence research regarding potential encumbrances in the band. These resources include a new mapping tool to help identify and view existing licenses and Rural Tribal Priority Window applications.<sup>47</sup> The new mapping tool is being made available to all potential bidders in Auction 108, and the public generally, concurrently with the release of this Public Notice. It can be found under the Education tab on the Auction 108 website at [www.fcc.gov/auction/108](http://www.fcc.gov/auction/108). Potential applicants are reminded, however, that this mapping tool is merely a graphical aid for potential applicants and does not represent official licensing information; all information should be confirmed in the Universal Licensing System (ULS) for any specific license or area.

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<sup>41</sup> Voqal Mar. 4, 2022, Comments at 1 (Channel Block 2 in Boone, Hendricks, and Morgan counties, Indiana).

<sup>42</sup> Cherokee Nation Mar. 4, 2022, Comments. See ULS File No. 0009164132 (pending application filed by the Cherokee Nation). See also ULS File No. 0009204123 (pending application filed by the United Keetoowah Band of Cherokee Indians that is mutually exclusive with the pending application filed by the Cherokee Nation).

<sup>43</sup> See 47 CFR § 27.1206(b)(2)(ii) (GSA of county-based 2.5 GHz licenses excludes overlapping, co-channel incumbent GSAs, including Rural Tribal Priority Window licenses).

<sup>44</sup> See 47 CFR §§ 27.55(a)(4) (limiting power flux density at border of licensee's GSA), 27.1221 (interference protection rule).

<sup>45</sup> Source for Learning May 27, 2021, Reply at 3.

<sup>46</sup> See *Auction 108 Inventory Comment Public Notice* at 3, para. 5 (explaining that the final inventory for Auction 108 will be subject to the results of processing Rural Tribal Priority Window applications).

<sup>47</sup> *Federal Communications Commission Launches Mapping Tool for the Use of Auction 108 Applicants*, AU Docket No. 20-429, Public Notice, DA 22-298 (OEA/WTB 2022).

18. We decline to make available the additional lease information requested by AT&T and Verizon.<sup>48</sup> Specifically, we will not adopt an expansion of existing requirements on incumbent licensees and lessors in this band that would mandate disclosure of additional details of spectrum lease agreements to potential bidders. Supporters of broader disclosures assert that additional information is needed to more fully understand the encumbrances on the overlay licenses that will be available in Auction 108 and the prospects that the underlying spectrum will be available to new licensees through secondary market transactions.<sup>49</sup> They also argue that requiring disclosure of lease information would reduce information asymmetry between T-Mobile, which holds a substantial portion of existing EBS spectrum leases, and other potential bidders.<sup>50</sup> T-Mobile urges us to reject this proposal as an attempt to competitively harm it by providing potential competitors its sensitive, proprietary business information.<sup>51</sup> T-Mobile also claims that disclosure of lease information would provide no meaningful information to potential bidders.<sup>52</sup> We find that adoption of proponents' expanded disclosure requirement is beyond the bounds of the existing spectrum leasing rules and the Commission's prior determinations supporting those disclosure requirements.<sup>53</sup> As such, adoption of a broader lease disclosure requirement is beyond the scope of this proceeding. Moreover, our spectrum leasing rules already provide that each licensee that enters into a leasing agreement must disclose to the Commission a significant amount of information pertaining to the agreement, including the identity of the lessee, the term, and the spectrum and geographic area covered, and that such information is publicly available through ULS.<sup>54</sup> Given the spectrum lease information

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<sup>48</sup> AT&T May 3, 2021, Comments at 8-10; Verizon May 3, 2021, Comments at 3-4. This proposal is supported by DISH, U.S. Cellular, Voqal, and NACEPF/Mobile Beacon. *See* U.S. Cellular May 27, 2021, Reply at 15-16; Voqal May 27, 2021, Reply at 4-5; NACEPF/Mobile Beacon May 27, 2021, Reply at 8-9; DISH Feb. 23, 2022, Comments at 3. Some commenters request that we require the disclosure, pursuant to appropriate protective orders, of lease provisions regarding the terms of the lease, the duration of the lease, the renewal or extension of the lease, and any rights of first refusal concerning the licensed spectrum, *see e.g.*, AT&T May 3, 2021, Comments at 8-9, while other commenters ask for public disclosure of unredacted lease agreements, *see e.g.*, Voqal May 27, 2021, Reply at 4.

<sup>49</sup> *See, e.g.*, AT&T May 3, 2021, Comments at 3, 8-9 (noting that the potential to buy out incumbent licensees affects a potential bidder's valuation of the overlay license and asserting that potential bidders need to know relevant lease terms in order to determine the "extent of the complications" that the lease may cause to potential secondary market transactions); NACEPF/Mobile Beacon May 27, 2021, Reply at 8-9 (asserting that potential bidders need lease information because it affects a bidder's prospects for potentially removing encumbrances through secondary market transactions).

<sup>50</sup> *See, e.g.*, AT&T May 3, 2021, Comments at 3; AT&T May 27, 2021, Reply at 5; AT&T Aug. 17, 2021, *Ex Parte* at 3; Verizon May 3, 2021, Comment at 3-4; Verizon May 27, 2021, Reply at 3; Letter from Alison Minea, Vice President and Associate General Counsel, Regulatory Affairs, DISH, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 18-120, AU Docket No. 20-429 (filed Oct. 20, 2021) (DISH Oct 20, 2021, *Ex Parte*).

<sup>51</sup> T-Mobile May 27, 2021, Reply at 7-9; T-Mobile Nov. 17, 2021, *Ex Parte* at 1-2. T-Mobile explains that requiring disclosure of its confidential lease information to a competitor in an auction, even pursuant to a protective order, would contradict Commission rules and precedent. T-Mobile Nov. 17, 2021, *Ex Parte* at 2-5.

<sup>52</sup> T-Mobile reasons that "[t]he only determining factor in an overlay auction is where the spectrum is licensed to an existing incumbent," and that any information concerning "an overlay license winner's ability to buy out the incumbent licensee in the future is irrelevant." T-Mobile May 27, 2021, Reply at 7-8.

<sup>53</sup> *See* 47 CFR §§ 1.9005(i), 1.9003, 1.9020 (e)(1)(i), (f), (h); *see also Promoting Efficient Use of Spectrum through Elimination of Barriers to the Development of Secondary Markets*, Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 20604, 20669, para. 153 (2003) (stating that the Commission "will not routinely require the lease applicants to submit a copy of the lease agreement with the application") (*Secondary Markets Report and Order*); *accord id.* at 20659, para. 124; *Amendments of Parts 1, 21, 73, 74 and 101 to the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands et al.*, Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order, 21 FCC Rcd 5606, 5708-09, paras. 251-53 (2006).

already available, proponents of disclosure have not supported their assertion that additional information is necessary in making decisions about whether or how to participate in this auction. Finally, even if additional information may be helpful or material to one or more bidders—and we make no such finding here—we are not convinced that the benefits to potential bidders of obtaining such information would outweigh the potential competitive harm to the leaseholders from disclosure.<sup>55</sup>

19. As described in more detail below, each potential bidder is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the potential uses of a license that it may seek in Auction 108, including the availability of unassigned white space in any particular license area.<sup>56</sup> In addition to the typical due diligence considerations that we encourage of bidders in all auctions,<sup>57</sup> we call particular attention in Auction 108 to potential encumbrances due to existing licenses and pending applications.<sup>58</sup> We note in particular that there will be a substantial number of licenses in the inventory where the amount of unassigned area or unassigned spectrum is very small. For example, there could be licenses in Channel Block 2 where as little as .333 megahertz of spectrum is unassigned.<sup>59</sup> There are also a substantial number of licenses where the area with unassigned spectrum is smaller than one square mile. Each applicant should carefully consider these issues and the technical and economic implications for commercial use of the 2.5 GHz band.

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<sup>54</sup> See 47 CFR § 1.9005(i) (listing EBS as a service subject to the spectrum leasing rules); *id.* § 1.9003 (defining FCC Form 608 as the form to be used by licensees that enter into spectrum leasing agreements); *id.* § 1.9020 (e)(1)(i), (f), (h) (a spectrum lease agreement will commence and expire on the relevant dates provided in FCC Form 608); FCC Form 608, Information and Instructions, [www.fcc.gov/sites/default/files/fcc\\_form\\_608.pdf](http://www.fcc.gov/sites/default/files/fcc_form_608.pdf). The public can search lease information that has been filed in ULS at <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchLease.jsp>. See also *Secondary Markets Report and Order*, 18 FCC Rcd at 20682, para. 192 (noting that disclosure policies adopted will make “significant amount of information available in ULS with regard to spectrum leasing”).

<sup>55</sup> In arguing for the disclosure of lease agreement details, Verizon notes a Petition for Declaratory Ruling filed by the Christian College of Georgia, Inc. seeking guidance on a lessor’s ability to assign the underlying license. Verizon claims that the incumbent licensee’s request for clarification about the terms of the lease highlights the importance of making lease terms available to all potential bidders. See Letter from Greg Romano, Vice President and Associate General Counsel, Verizon, to Marlene H. Dortch, Secretary, FCC, at 1-2 (filed Dec. 17, 2021) (citing Petition for Declaratory Ruling of Christian College of Georgia, Inc., Call Sign WND620, Lease No. L000005369 (filed Nov. 3, 2021)); see also Letter from Steve B. Sharkey, Vice President, Government Affairs, T-Mobile, to Marlene H. Dortch, Secretary, FCC, AU Docket No. 20-429 et al., at 1-2 (filed Jan. 19, 2022); Letter from James H. Johnston, counsel for Christian College of Georgia, Inc., to Marlene H. Dortch, Secretary, FCC, AU Docket No. 20-429 (filed Jan. 27, 2022). This individual licensee’s request for guidance does not persuade us that a different balance is needed between the benefits of additional information to potential bidders and the potential competitive harm of disclosure to leaseholders.

<sup>56</sup> See Section III.A. (Due Diligence), below.

<sup>57</sup> See, e.g., *Auctions of Upper Microwave Flexible Use Licenses for Next-Generation Wireless Services; Comment Sought on Competitive Bidding Procedures for Auctions 101 (28 GHz) and 102 (24 GHz); Bidding in Auction 101 Scheduled to Begin November 14, 2018*, AU Docket 18-85, Public Notice, 33 FCC Rcd 4103, 4116-17, paras. 36-41 (2018).

<sup>58</sup> In addition to incumbents in the band, the pending Rural Tribal Priority Window applications represent the maximum potential additional encumbrances that may affect the licenses available in the auction. See *2.5 GHz Report and Order*, 34 FCC Rcd at 5450-72, paras. 13-74. For further information, see Sections III.A. (Due Diligence) and III.B. (Licensing Considerations), below.

<sup>59</sup> The J guard band channels are each 1/3 megahertz wide.

**D. Auction Specifics**

**1. Auction Title and Start Date**

20. The auction of licenses in the 2.5 GHz band will be referred to as “Auction 108.” Bidding in Auction 108 will begin on Friday, July 29, 2022. Pre-bidding dates and deadlines are listed below. The initial schedule for bidding rounds in Auction 108 will be announced by public notice at least one week before bidding begins.

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

**2. Auction Dates and Deadlines**

22. The following dates and deadlines apply to Auction 108:

|  |  |
|--|--|
| Auction Application Tutorial Available (via Internet)..... | No later than April 5, 2022                  |
| Short-Form Application (FCC Form 175)                      |  |
| Filing Window Opens.....                                   | April 27, 2022, 12:00 p.m. Eastern Time (ET) |
| Short-Form Application (FCC Form 175)                      |  |
| Filing Window Deadline .....                               | May 10, 2022, 6:00 p.m. ET                   |
| Upfront Payments (via wire transfer) .....                 | June 23, 2022, 6:00 p.m. ET                  |
| Bidding Tutorial Available (via Internet) .....            | No later than July 13, 2022                  |
| Mock Auction.....  | July 26-27, 2022                             |
| Bidding Begins in Auction 108 .....                        | July 29, 2022                                |

**3. Requirements for Participation**

23. Those wishing to participate in Auction 108 must:

- Submit a short-form application (FCC Form 175) electronically prior to 6:00 p.m. ET on May 10, 2022, following the electronic filing procedures and other instructions set forth in this Public Notice and in the FCC Form 175 Instructions.<sup>60</sup>
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET on June 23, 2022, following the procedures and instructions set forth in this Public Notice.<sup>61</sup>
- Comply with all provisions outlined in this Public Notice and applicable Commission rules.

**II. APPLYING TO PARTICIPATE IN AUCTION 108**

**A. Certification of Notice of Auction 108 Requirements and Procedures**

24. For the reasons set forth in the *Auction 108 Comment Public Notice*, we adopt the proposal to require any applicant seeking to participate in Auction 108 to certify in its short-form application, under penalty of perjury, that it has read this Public Notice adopting procedures for Auction 108 and that it has familiarized itself with these procedures and with the requirements for

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<sup>60</sup> Concurrent with this Public Notice, OEA is making publicly available detailed instructions for submitting an FCC Form 175 for Auction 108 (FCC Form 175 Instructions) in the Education section of the Auction 108 website at [www.fcc.gov/auction/108](http://www.fcc.gov/auction/108).

<sup>61</sup> See Section III.F.2. (Completing and Submitting FCC Form 159), below.

obtaining a license and operating facilities in the 2.5 GHz band.<sup>62</sup> No commenter opposed the proposed certification, and one commenter, T-Mobile, supports it.<sup>63</sup>

25. This certification is designed to bolster applicants' efforts to educate themselves about the procedures for auction participation and to ensure that, prior to submitting their short-form applications, applicants understand their obligation to stay abreast of relevant, forthcoming information. Familiarity with the Commission's rules and procedures governing Auction 108 may also help bidders avoid the consequences to them associated with defaults, which also cause harm to other applicants and the public by reducing the efficiency of the auction process and reducing the likelihood that the license will be assigned to the bidder that values it the most. This certification, along with the other certifications required pursuant to section 1.2105(a), will promote submission of applications that meet the Commission's requirements, thereby leading to a more efficient application process.

26. A substantively similar requirement was recently instituted for Auction 110, a Commission auction of flexible-use licenses in the 3.45–3.55 GHz band.<sup>64</sup> That requirement furthered a long-standing policy under which the Commission expressly places a burden upon each applicant to be thoroughly familiar with the procedures, terms, and conditions contained in the relevant Procedures Public Notice and any future public notices that may be released in the auction proceeding.<sup>65</sup> While the certification we add refers to information regarding auction procedures and licensing that is available at the time of certification, potential auction applicants are on notice that their educational efforts must continue even after their short-form applications are filed. Commission staff routinely makes available detailed educational materials, such as interactive, online tutorials and technical guides, to enhance interested parties' comprehension of the pre-bidding and bidding processes and to help minimize the need for applicants to engage outside engineers, legal counsel, or other auction experts.

27. For these reasons, we will require each Auction 108 applicant to certify as follows in its short-form application:

that the applicant has read the public notice adopting procedures for the auction and that it has familiarized itself both with the auction procedures and with the requirements for obtaining a license and operating facilities in the 2.5 GHz band.

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<sup>62</sup> See *Auction 108 Comment Public Notice*, 36 FCC Rcd at 648, para. 8.

<sup>63</sup> See T-Mobile May 3, 2021, Comments at 21-22 (“Putting bidders on notice about their responsibility to evaluate fully the 2.5 GHz spectrum market will reduce post-auction concerns and frivolous disputes.”); T-Mobile Feb. 18, 2021, *Ex Parte* at 8. T-Mobile also requests that the Commission “make clear to bidders, and require them to certify, that they must conduct their own due diligence prior the auction.” T-Mobile May 27, 2021, Reply at 7. To the extent that T-Mobile is requesting a certification in addition to the certification that we adopt here, we decline this request. Applicants must now certify that they have read and familiarized themselves with this Public Notice, which reminds applicants that they are solely responsible for conducting their own due diligence. Thus, an additional certification specifically regarding due diligence is unnecessary. See Section III.A. (Due Diligence), below.

<sup>64</sup> *Certification Adopted for Auction of Flexible-Use Service Licenses in the in the 3.45–3.55 GHz Band For Next Generation Wireless Services (Auction 110)*, AU Docket No. 21-62, Public Notice, 36 FCC Rcd 8444, 8444-46, paras. 1-7 (OEA/WTB 2021). A substantively similar requirement was also recently instituted for Auction 112, a Commission auction of construction permits for full-power television stations. *Auction of Construction Permits for Full Power Television Stations; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 112; Bidding Scheduled to Begin June 7, 2022*, Public Notice, DA 22-125, at 8-9, paras. 19-23 (OEA/MB 2022) (*Auction 112 Procedures Public Notice*).

<sup>65</sup> See, e.g., *Auction of Flexible Use Licenses in the 3.7–3.98 GHz Band for Next-Generation Wireless Services; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 107; Bidding in Auction 107 Scheduled to Begin December 8, 2020*, AU Docket No. 20-25, Public Notice, 35 FCC Rcd 8404, 8407, para. 5 (2020) (*Auction 107 Procedures Public Notice*).

28. An applicant must provide this certification under penalty of perjury, consistent with section 1.2105(a) of the Commission's rules.<sup>66</sup> This certification is in addition to the certifications already required under section 1.2105.<sup>67</sup> Consistent with the other certifications required in the short-form application, an applicant's failure to make this certification in its FCC Form 175 by the May 10, 2022 filing deadline will render its application unacceptable for filing, and its application will be dismissed with prejudice.<sup>68</sup>

### **B. General Information Regarding Short-Form Applications**

29. An application to participate in Auction 108, referred to as a short-form application or FCC Form 175, provides information that the Commission uses to determine whether the applicant has the legal, technical, and/or financial qualifications to participate in a Commission auction for spectrum licenses or permits.<sup>69</sup> The short-form application is the first part of the Commission's two-phased auction application process. In the first phase, a party seeking to participate in Auction 108 must file a short-form application in which it certifies, under penalty of perjury, that it is qualified to participate.<sup>70</sup> Eligibility to participate in Auction 108 is determined based on an applicant's short-form application and certifications and on the applicant's upfront payment.<sup>71</sup> After bidding closes, in the second phase of the process, each winning bidder in Auction 108 must file a more comprehensive post-auction long-form application (FCC Form 601) for the licenses it wins in the auction, and it must have a complete and accurate ownership disclosure information report (FCC Form 602) on file with the Commission.<sup>72</sup>

30. A party seeking to participate in Auction 108 must file an FCC Form 175 electronically via the Auction Application System prior to 6:00 p.m. ET on May 10, 2022, following the procedures prescribed in the FCC Form 175 Instructions. If an applicant claims eligibility for a bidding credit, then the information provided in its FCC Form 175 will be used to determine whether the applicant appears to be eligible for the claimed bidding credit, with the final determination of bidding credit eligibility to occur based on a winning bidder's post-auction long-form application. Below we describe more fully the information disclosures and certifications required in the short-form application. Each Auction 108 applicant will be subject to the Commission's rule prohibiting certain communications.<sup>73</sup> An applicant is subject to the prohibition beginning at the deadline for filing short-form applications—6:00 p.m. ET on May 10, 2022.<sup>74</sup>

31. An Auction 108 applicant bears full responsibility for submitting an accurate, complete, and timely short-form application. Pursuant to the Commission's competitive bidding rules, an applicant must make a series of certifications under penalty of perjury on its FCC Form 175 related to the information provided in its application and its participation in the auction, and an applicant must confirm

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<sup>66</sup> 47 CFR § 1.2105(a)(2).

<sup>67</sup> See *id.* § 1.2105(a)(2)(v)-(xiii); Section II.B. (General Information Regarding Short-Form Applications), below.

<sup>68</sup> See 47 CFR § 1.2105(b)(1).

<sup>69</sup> See *id.* § 1.2105; see also *Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, PP Docket No. 93-253, Second Report and Order, 9 FCC Rcd 2348, 2376-77, para. 166 (1994) (*Competitive Bidding Second Report and Order*).

<sup>70</sup> See 47 CFR § 1.2105; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2376, para. 165.

<sup>71</sup> See Section III.F. (Upfront Payments), below.

<sup>72</sup> 47 CFR § 1.2107. We remind applicants that being deemed qualified to bid in Auction 108 does not constitute a determination that a party is qualified to hold a Commission license or is eligible for a designated entity bidding credit.

<sup>73</sup> *Id.* § 1.2105(c).

<sup>74</sup> See 47 CFR § 1.2105(c)(1). The prohibition will end for applicants on the post-auction down payment deadline for Auction 108. See Section II.H.2. (Prohibition Applies Until Down Payment Deadline), below.

that it is legally, technically, financially, and otherwise qualified to hold a license.<sup>75</sup> As noted above, each participant in Auction 108 must also certify that it has read this Public Notice and familiarized itself both with the auction procedures and with the requirements for obtaining a license and operating facilities in the 2.5 GHz band.<sup>76</sup> If an Auction 108 applicant fails to make the required certifications in its FCC Form 175 by the filing deadline, then its application will be deemed unacceptable for filing and cannot be corrected after the filing deadline.<sup>77</sup>

32. An applicant should note that submitting an FCC Form 175 (and any amendments thereto) constitutes a representation by the certifying official that he or she is an authorized representative of the applicant with authority to bind 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.<sup>78</sup> Submitting 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.<sup>79</sup>

33. Applicants are cautioned that, because the required information submitted in FCC Form 175 bears on each applicant's qualifications, requests for confidential treatment will not be routinely granted. The Commission generally has held that it may publicly release confidential business information where the party has put that information at issue in a Commission proceeding or where the Commission has identified a compelling public interest in disclosing the information.<sup>80</sup> In this regard, the Commission specifically has held that information submitted in support of receiving bidding credits in auction proceedings should be made available to the public.<sup>81</sup>

34. An applicant must designate between one and three individuals as authorized bidders in its FCC Form 175. The Commission's rules prohibit an individual from serving as an authorized bidder for more than one auction applicant.<sup>82</sup>

35. **In order to access the auction bidding system, each authorized bidder will be required to have a unique email address associated with an FCC Username Account that is linked to the applicant's FCC Registration Number (FRN) in the Commission Registration System (CORES).**<sup>83</sup> This added security measure is newly implemented for bidding in Commission auctions. If

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<sup>75</sup> 47 CFR § 1.2105(a)(2)(v)-(xiii).

<sup>76</sup> See Section II.A. (Certification of Notice of Auction 108 Requirements and Procedures), above.

<sup>77</sup> See 47 CFR § 1.2105(b)(1)(i).

<sup>78</sup> As more fully explained in Section II.M. (Modifications to FCC Form 175), below, applicants are not permitted to make major modifications to their FCC Form 175 applications after the filing deadline. 47 CFR § 1.2105(b)(2). A change in the required certifications is considered a major change and would therefore not be permitted.

<sup>79</sup> See 47 CFR § 1.2105(a)(2).

<sup>80</sup> See *Examination of Current Policy Concerning Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55, Report and Order, 13 FCC Rcd 24816, 24822-23, para. 8 (1998).

<sup>81</sup> See, e.g., *SAL Spectrum, LLC—Request for Confidential Treatment of Subscriber Information Provided in FCC Form 175*, Letter Order, 31 FCC Rcd 3726, 3727-38 (WTB 2016) (denying a request for confidentiality of the number of wireless, wireline, broadband, and cable subscribers submitted by an applicant for only those affiliates operating in the United States).

<sup>82</sup> 47 CFR § 1.2105(a)(2)(iii).

<sup>83</sup> The email address associated with an FCC Username Account is also the FCC Username for that account. An applicant should provide that username as the email address for the authorized bidder in the applicant's FCC Form 175. Each authorized bidder must have a unique FCC Username; authorized bidders cannot share FCC Username Accounts. An applicant may designate up to three individuals to serve as an authorized bidder for the applicant. Thus, an application may list up to three authorized bidders with each having a unique FCC Username. Instructions for setting up an FCC Username Account and linking it to an existing FRN are available on the CORES website: (continued...)

an authorized bidder does not provide an FCC Username Account linked to the applicant's FRN in the applicant's FCC Form 175, that bidder will be unable to place or submit bids. For further details, applicants should refer to the FCC Form 175 Instructions for Auction 108.

36. No individual or entity may file more than one short-form application or have a controlling interest in more than one short-form application.<sup>84</sup> If a party submits multiple short-form applications for an auction, then only one application may form the basis for that party to become qualified to bid in that auction.<sup>85</sup>

37. Similarly, and consistent with the Commission's general prohibition on joint bidding agreements, a party generally is permitted to participate in a Commission auction only through a single bidding entity.<sup>86</sup> Accordingly, the filing of applications in Auction 108 by multiple entities controlled by the same individual or set of individuals generally will not be permitted.<sup>87</sup> As noted by the Commission in adopting the prohibition on applications by commonly controlled entities, this rule, in conjunction with the prohibition against joint bidding agreements, protects the competitiveness of the Commission's auctions.<sup>88</sup>

38. After the initial short-form application filing deadline, Commission staff will review all timely submitted applications for Auction 108 to determine whether each application complies with the application requirements and whether the applicant has provided all required information concerning its qualifications for bidding. After this review is completed, a public notice will be released announcing the status of applications and identifying the applications that are complete and those that are incomplete because of minor defects that may be corrected. That public notice also will establish an application resubmission filing window, during which an applicant may make permissible minor modifications to its application to address identified deficiencies.<sup>89</sup> The public notice will include the deadline for resubmitting modified applications. To become a qualified bidder, an applicant must have a complete application (i.e., have timely filed an application that is deemed complete after the deadline for correcting any identified deficiencies), and must make a timely and sufficient upfront payment. Qualified bidders will be identified by public notice at least 10 days prior to the mock auction.

39. We discuss below additional details regarding certain information required to be submitted in the FCC Form 175. An applicant should consult the Commission's rules to ensure that, in addition to the materials described below, all required information is included in its short-form application. To the extent the information in this Public Notice does not address an applicant's specific operating structure, or if the applicant needs additional information or guidance concerning the described disclosure requirements, the applicant should review the educational materials for Auction 108 (see the Education section of the Auction 108 website at [www.fcc.gov/auction/108](http://www.fcc.gov/auction/108)) and use the contact

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[apps.fcc.gov/cores](mailto:apps.fcc.gov/cores). The Commission will withhold these email addresses—the authorized bidders' FCC Usernames—from public disclosure.

<sup>84</sup> 47 CFR § 1.2105(a)(3); see *Updating Part 1 Report and Order*, 30 FCC Rcd at 7579, para. 205.

<sup>85</sup> See 47 CFR § 1.2105(a)(3), (b)(1)(ii).

<sup>86</sup> See *Updating Part 1 Report and Order*, 30 FCC Rcd at 7580-81, paras. 206-08.

<sup>87</sup> See 47 CFR § 1.2105(a)(3), (a)(4)(i), (b)(1)(ii); *Updating Part 1 Report and Order*, 30 FCC Rcd at 7580-81, paras. 206-08. This restriction applies across all applications, without regard to the geographic areas selected. See *Updating Part 1 Report and Order*, 30 FCC Rcd at 7580, para. 206. The Commission adopted a limited exception to the general prohibition on the filing of multiple applications by commonly controlled entities for qualified rural wireless partnerships and individual members of such partnerships. See 47 CFR § 1.2105(a)(3). Under this limited exception, each qualifying rural wireless partnership and its individual members will be permitted to participate separately in an auction. See *id.*; see also *Updating Part 1 Report and Order*, 30 FCC Rcd at 7582, para. 210.

<sup>88</sup> See *Updating Part 1 Report and Order*, 30 FCC Rcd at 7580, para. 206.

<sup>89</sup> 47 CFR § 1.2105(b)(2).

information provided in this Public Notice to consult with Commission staff to better understand the information that it must submit in its short-form application.

### C. License Area Selection

40. An applicant must select all of the license areas on which it may want to bid from the list of available counties on its FCC Form 175.<sup>90</sup> An applicant must carefully review and verify its license area (i.e., county) selections before the FCC Form 175 filing deadline because those selections cannot be changed after the auction application filing deadline.<sup>91</sup> An applicant is not required to place bids on licenses in any or all of the license areas selected, but the FCC Auction Bidding System (bidding system) will not accept bids for licenses in license areas (i.e., counties) that the applicant did not select in its FCC Form 175.

41. When two or more short-form applications (FCC Form 175) are submitted selecting the same licenses in Auction 108, mutual exclusivity exists for auction purposes as to those licenses, and the licenses must be awarded by competitive bidding procedures.<sup>92</sup> Once mutual exclusivity exists for auction purposes, even if only one applicant is qualified to bid for a particular license, that applicant is required to submit a bid in order to obtain the license.<sup>93</sup> An applicant may select licenses on its Form 175 by using the “select all licenses” checkbox or by selecting any particular county. Selection of a county will allow the applicant to bid on any available license within that county, provided that it otherwise becomes a qualified bidder and has sufficient bidding eligibility.

### D. Disclosure of Agreements and Bidding Arrangements

42. An applicant must provide in its FCC Form 175 a brief description of, and identify each party to, any partnerships, joint ventures, consortia or other agreements, arrangements, or understandings of any kind relating to the licenses being auctioned, including any agreements that address or communicate directly or indirectly bids (including specific prices), bidding strategies (including the specific licenses on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls or is controlled by the applicant, is a party.<sup>94</sup> In connection with the agreement disclosure requirement, the applicant must certify under penalty of perjury in its FCC Form 175 that it has described, and identified each party to any such agreements, arrangements, or understandings to which it (or any party that controls it or that it controls) is a party.<sup>95</sup> Moreover, since each applicant must maintain the accuracy and completeness of the information in its pending auction

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<sup>90</sup> Due to the large inventory of licenses available in Auction 108, an applicant will select the license areas (i.e., counties) on which it may want to bid on its FCC Form 175 rather than individual licenses.

<sup>91</sup> 47 CFR § 1.2105(b)(2).

<sup>92</sup> See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2376, para. 165 (“If the Commission receives only one application that is acceptable for filing for a particular license, mutual exclusivity would be lacking and the Commission would be prohibited from using competitive bidding to award the license.”).

<sup>93</sup> Any applicant that submits a short-form application but fails to timely submit a sufficient upfront payment or otherwise qualify to participate in the bidding will retain its status as an applicant in Auction 108 and will remain subject to the Commission’s rules prohibiting certain communications. See 47 CFR § 1.2105(c).

<sup>94</sup> *Id.* § 1.2105(a)(2)(viii), (a)(4). As defined for purposes of this rule, a controlling interest includes all individuals or entities with positive or negative *de jure* or *de facto* control of the applicant. *Id.* § 1.2105(a)(4)(i). This definition is modeled on a similar term used in section 1.2110(c) (definitions for designated entities), though it differs in some respects from that rule. Compare *id.* § 1.2105(a)(4)(i) with *id.* § 1.2110(c)(2).

<sup>95</sup> *Id.* § 1.2105(a)(2)(viii). As discussed below, an applicant may continue negotiating, discussing, or communicating with respect to a new agreement after the FCC Form 175 filing deadline, provided that the communications involved do not relate both to the licenses being auctioned and to bids or bidding strategies or post-auction market structure. See Section II.H.3. (Scope of Prohibition on Certain Communications; Prohibition on Joint Bidding Agreements), below.

application,<sup>96</sup> if it enters into any agreement relating to the licenses being auctioned after the FCC Form 175 filing deadline, then that agreement is subject to these same disclosure requirements.

43. For purposes of making the required agreement disclosures on the FCC Form 175, if parties agree in principle on all material terms prior to the application filing deadline, then each party to the agreement that is submitting an auction application must provide a brief description of, and identify the other party or parties to, the agreement on its respective FCC Form 175,<sup>97</sup> even if the agreement has not been reduced to writing.<sup>98</sup> Parties that have not agreed in principle by the FCC Form 175 filing deadline should not describe, or include the names of parties to, the discussions on their applications.<sup>99</sup>

44. The Commission's rules generally prohibit joint bidding and other arrangements involving auction applicants (including any party that controls or is controlled by such applicants).<sup>100</sup> For purposes of the prohibition, a joint bidding arrangement includes any arrangement relating to the licenses being auctioned that addresses or communicates, directly or indirectly, bidding in the auction, bidding strategies, including arrangements regarding price or the specific licenses on which to bid, and any such arrangement relating to the post-auction market structure.<sup>101</sup>

45. This prohibition applies to joint bidding arrangements involving two or more nationwide providers,<sup>102</sup> as well as joint bidding arrangements involving a nationwide provider and one or more non-nationwide providers,<sup>103</sup> where at least one party to the arrangement is an applicant for the auction.<sup>104</sup> In the *Updating Part 1 Report and Order*, the Commission stated that entities that qualify as nationwide providers generally would be identified in procedures public notices released before each auction.<sup>105</sup> To that end, and consistent with the Commission's decisions in recent spectrum auctions and in the *2020 Communications Marketplace Report*,<sup>106</sup> we consider AT&T, T-Mobile, and Verizon to be "nationwide providers" for the purpose of implementing the competitive bidding rules in Auction 108.<sup>107</sup>

46. Under certain circumstances, a non-nationwide provider may enter into an agreement to form a consortium or a joint venture (as applicable) that results in a single party applying to participate in

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<sup>96</sup> 47 CFR §§ 1.65, 1.2105(b)(4).

<sup>97</sup> *Id.* § 1.2105(a)(2)(viii), (c)(1).

<sup>98</sup> See *Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules*, Public Notice, 11 FCC Rcd 9645, 9646 (WTB 1995) (clarifying standard for determining when a disclosable agreement exists, discussed in connection with an earlier version of section 1.2105 of the Commission's rules).

<sup>99</sup> See *id.*

<sup>100</sup> See 47 CFR § 1.2105(a)(2)(ix); see also *Updating Part 1 Report and Order*, 30 FCC Rcd at 7569-77, paras. 177-99.

<sup>101</sup> See *Updating Part 1 Report and Order*, 30 FCC Rcd at 7575, para. 195.

<sup>102</sup> *Id.* at 7571, 7573, paras. 182, 186.

<sup>103</sup> A "non-nationwide provider" refers to any provider of communications services that is not a "nationwide provider." See *id.*

<sup>104</sup> See 47 CFR § 1.2105(a)(2)(ix); see also *Updating Part 1 Report and Order*, 30 FCC Rcd at 7574-75, paras. 191-93.

<sup>105</sup> *Updating Part 1 Report and Order*, 30 FCC Rcd at 7571, para. 182 n.596.

<sup>106</sup> See, e.g., *Auction 110 Procedures Public Notice*, 36 FCC Rcd at 9287, para. 45; *Auction 107 Procedures Public Notice*, 35 FCC Rcd at 8413, para. 27. *Communications Marketplace Report*, GN Docket No. 20-60, 2020 Communications Marketplace Report, 36 FCC Rcd 2945, 2948, para. 9 (2020) (concluding that AT&T, T-Mobile, and Verizon Wireless are nationwide providers because "each have networks that they report cover a substantial majority of the country—at least 98% of the U.S. population and at least 84% of U.S. road miles—with their 4G LTE networks").

<sup>107</sup> See *Auction 108 Comment Public Notice*, 36 FCC Rcd at 652, para. 17. No commenters addressed this proposal.

an auction.<sup>108</sup> Specifically, a designated entity can participate in one consortium or joint venture in an auction,<sup>109</sup> and non-nationwide providers that are not designated entities may participate in an auction through only one joint venture.<sup>110</sup> A non-nationwide provider may enter into only one agreement to form a consortium or joint venture (as applicable), and such consortium or joint venture shall be the exclusive bidding vehicle for its members in the auction.<sup>111</sup> The general prohibition on joint bidding arrangements excludes certain agreements, including those that are solely operational in nature,<sup>112</sup> as defined in section 1.2105(a)(2)(ix)(A)-(C) of the Commission's rules.<sup>113</sup>

47. To implement the prohibition on joint bidding arrangements, the Commission's rules require each applicant to certify in its short-form application that it has disclosed any arrangements or understandings of any kind relating to the licenses being auctioned to which it (or any party that controls or is controlled by it) is a party.<sup>114</sup> The applicant must also certify that it (or any party that controls or is controlled by it) has not entered and will not enter into any arrangement or understanding of any kind relating directly or indirectly to bidding at auction with, among others, any other applicant or a nationwide provider.<sup>115</sup>

<sup>108</sup> See *Updating Part 1 Report and Order*, 30 FCC Rcd at 7573, 7574, 7576, paras. 187, 190, 198. While two or more non-nationwide providers may participate in an auction through a joint venture, a nationwide and a non-nationwide provider may not do so. See *id.* at 7575, para. 194; see 47 CFR § 1.2105(a)(2)(ix), (4)(ii).

<sup>109</sup> See *Updating Part 1 Report and Order*, 30 FCC Rcd at 7576-77, para. 198. Pursuant to section 1.2105(a)(4)(ii), a consortium is an entity formed to apply as a single applicant to bid at auction pursuant to an agreement by two or more separate and distinct legal entities that individually are eligible to claim the same designated entity benefits under section 1.2110, provided that no member of the consortium may be a nationwide provider. 47 CFR § 1.2105(a)(4)(ii).

<sup>110</sup> See *Updating Part 1 Report and Order*, 30 FCC Rcd at 7576-77, para. 198. Under the Commission's rules, a "joint venture" is "a legally cognizable entity formed to apply as a single applicant to bid at auction pursuant to an agreement by two or more separate and distinct legal entities, provided that no member of the joint venture may be a nationwide provider." 47 CFR § 1.2105(a)(4)(iii); see also *Updating Part 1 Report and Order*, 30 FCC Rcd at 7575, para. 194.

<sup>111</sup> *Updating Part 1 Report and Order*, 30 FCC Rcd at 7576-77, para. 198.

<sup>112</sup> See 47 CFR § 1.2105(a)(2)(ix)(A). Under the Commission's rules, agreements that are solely operational in nature are those that address operational aspects of providing a mobile service, such as agreements for roaming, device acquisition, and spectrum leasing and other spectrum use arrangements, provided that any such agreement does not both relate to the licenses at auction and address or communicate, directly or indirectly, bidding at auction (including specific prices to be bid) or bidding strategies (including the specific licenses on which to bid or not to bid) or post-auction market structure. *Id.* § 1.2105(a)(4)(iv); accord *Updating Part 1 Report and Order*, 30 FCC Rcd at 7576, para. 197.

<sup>113</sup> See 47 CFR § 1.2105(a)(2)(ix); see also *Updating Part 1 Report and Order*, 30 FCC Rcd at 7575-76, paras. 195-97.

<sup>114</sup> 47 CFR § 1.2105(a)(2)(viii).

<sup>115</sup> Section 1.2105(a)(2) requires the short-form application to contain, among other things:

(viii) Certification that the applicant has provided in its application a brief description of, and identified each party to, any partnerships, joint ventures, consortia or other agreements, arrangements or understandings of any kind relating to the licenses being auctioned, including any agreements that address or communicate directly or indirectly bids (including specific prices), bidding strategies (including the specific licenses on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls as defined in paragraph (a)(4) of this section or is controlled by the applicant, is a party.

(ix) Certification that the applicant (or any party that controls as defined in paragraph (a)(4) of this section or is controlled by the applicant) has not entered and will not enter into any partnerships, joint ventures, consortia or other agreements, arrangements, or understandings of any kind relating to the

(continued....)

48. Although the Commission's rules do not prohibit auction applicants from communicating about matters that are within the scope of an excepted agreement that has been disclosed in an FCC Form 175,<sup>116</sup> the Commission reminds applicants that certain discussions or exchanges could nonetheless touch upon impermissible subject matters,<sup>117</sup> and that compliance with the Commission's rules will not insulate a party from enforcement of the antitrust laws.<sup>118</sup>

49. Applicants should bear in mind that a winning bidder will be required to disclose, in its post-auction long-form application, the specific terms, conditions, and parties involved in any agreement relating to the licenses being auctioned into which it had entered prior to the time bidding was completed.<sup>119</sup> This applies to any bidding consortium, joint venture, partnership, or other agreement, arrangement, or understanding of any kind entered into relating to the competitive bidding process, including any agreements relating to the licenses being auctioned that address or communicate directly or indirectly bids (including specific prices), bidding strategies (including the specific licenses on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls or is controlled by the applicant, is a party.<sup>120</sup>

### E. Ownership Disclosure Requirements

50. Each applicant must comply with the applicable Part 1 ownership disclosure requirements and provide information required by sections 1.2105 and 1.2112, and, where applicable, section 1.2110, of the Commission's rules.<sup>121</sup> Specifically, in completing FCC Form 175, an applicant

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licenses being auctioned that address or communicate, directly or indirectly, bidding at auction (including specific prices to be bid) or bidding strategies (including the specific licenses on which to bid or not to bid), or post-auction market structure with: any other applicant (or any party that controls or is controlled by another applicant); with a nationwide provider that is not an applicant (or any party that controls or is controlled by such a nationwide provider); or, if the applicant is a nationwide provider, with any non-nationwide provider that is not an applicant (or with any party that controls or is controlled by such a non-nationwide provider), other than:

(A) Agreements, arrangements, or understandings of any kind that are solely operational as defined under paragraph (a)(4) of this section;

(B) Agreements, arrangements, or understandings of any kind to form consortia or joint ventures as defined under paragraph (a)(4) of this section;

(C) Agreements, arrangements or understandings of any kind with respect to the transfer or assignment of licenses, provided that such agreements, arrangements or understandings do not both relate to the licenses at auction and address or communicate, directly or indirectly, bidding at auction (including specific prices to be bid), or bidding strategies (including the specific licenses on which to bid or not to bid), or post-auction market structure.

47 CFR § 1.2105(a)(2)(viii)-(ix); see also *Updating Part 1 Report and Order*, 30 FCC Rcd at 7570-78, paras. 180-201.

<sup>116</sup> 47 CFR § 1.2105(a)(2)(viii), (a)(2)(ix)(A)-(C), (c)(1).

<sup>117</sup> See *Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures et al.*, Third Report and Order and Second Further Notice of Proposed Rule Making, 13 FCC Rcd 374, 467-68, para. 163 (1997) (*Part 1 Third Report and Order*); see generally *Guidance Regarding the Prohibition of Certain Communications During the Incentive Auction, Auction 1000*, AU Docket No. 14-252 et al., 30 FCC Rcd 10794 (WTB 2015) (*Prohibited Communications Guidance Public Notice*).

<sup>118</sup> See 47 CFR § 1.2109(d); see also *Updating Part 1 Report and Order*, 30 FCC Rcd at 7571, para. 181; *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd at 10809, para. 43.

<sup>119</sup> 47 CFR § 1.2107(d); see also *id.* § 1.2105(a)(2)(ix)(A)-(C), (a)(2)(viii).

<sup>120</sup> 47 CFR § 1.2107(d); see also *id.* § 1.2105(a)(2)(ix)(A)-(C), (a)(2)(viii).

<sup>121</sup> Section 1.2105 requires the disclosure on the FCC Form 175 of the applicant's ownership information as set forth (continued....)

must fully disclose information regarding the real party- or parties-in-interest in the applicant or application and the ownership structure of the applicant, including both direct and indirect ownership interests of 10% or more, as prescribed in sections 1.2105 and 1.2112 and, where applicable, section 1.2110 of the Commission's rules.<sup>122</sup> Each applicant is responsible for ensuring that information submitted in its short-form application is complete and accurate.

51. In certain circumstances, an applicant may have previously filed an FCC Form 602 ownership disclosure information report or filed an auction application for a previous auction in which ownership information was disclosed. If the applicant used the same FCC Registration Number (FRN) the applicant is using to submit its FCC Form 175, the most current ownership information contained in any such filing will automatically be pre-filled into certain ownership sections on the applicant's FCC Form 175,<sup>123</sup> if such information is in an electronic format compatible with FCC Form 175.<sup>124</sup> Each applicant must carefully review any ownership information automatically entered into its FCC Form 175, including any ownership attachments, to confirm that all information supplied on FCC Form 175 is complete and accurate as of the application filing deadline. Any information that needs to be corrected or updated must be changed directly in FCC Form 175.

#### **F. Foreign Ownership Disclosure Requirements**

52. Section 310 of the Communications Act requires the Commission to review foreign investment in radio station licenses and imposes specific restrictions on who may hold certain types of radio licenses.<sup>125</sup> Section 310 applies to applications for initial radio licenses, applications for assignments and transfers of control of radio licenses, and spectrum leasing arrangements under the Commission's secondary market rules.<sup>126</sup> In completing FCC Form 175, an applicant is required to disclose information concerning foreign ownership of the applicant. If an applicant has foreign ownership interests in excess of the applicable limit or benchmark set forth in section 310(b), then it may seek to participate in Auction 108 as long as it has filed a petition for declaratory ruling with the Commission prior to the FCC Form 175 filing deadline.<sup>127</sup> An applicant must certify in its FCC Form 175 that, as of the deadline for filing its application to participate in the auction, the applicant either is in compliance with the foreign ownership provisions of section 310 or has filed a petition for declaratory ruling requesting Commission approval to exceed the applicable foreign ownership limit or benchmark in section 310(b) that is pending before, or has been granted by, the Commission.<sup>128</sup>

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in sections 1.2105 and 1.2112. See 47 CFR §§ 1.2105(a)(2)(ii)(B), 1.2112. In addition, each applicant should ensure that its disclosures comply with the ownership disclosure requirements in the Part 1 rules. See generally *Updating Part 1 Report and Order*, 30 FCC Rcd at 7498-521, 7578-82, paras. 9-64, 202-10.

<sup>122</sup> 47 CFR §§ 1.2105(a)(2)(ii)(A), (B), 1.2110, 1.2112.

<sup>123</sup> The FCC Form 175 Instructions provide additional details on pre-filled information.

<sup>124</sup> Applicants are encouraged to submit an FCC Form 602 ownership report or update any ownership information on file with the Commission in an FCC Form 602 ownership report prior to starting a short-form application for Auction 108 to ensure that their most recent ownership information is pre-filled into their short-form application.

<sup>125</sup> See 47 U.S.C. § 310(a), (b).

<sup>126</sup> See *Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, IB Docket No. 11-133, Second Report and Order, 28 FCC Rcd 5741, 5747-48, para. 7 (2013). The Commission amended its foreign ownership rules in *Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, GN Docket No. 15-236, Report and Order, 31 FCC Rcd 11272 (2016). The rules are now codified in 47 CFR §§ 1.5000-1.5004.

<sup>127</sup> 47 CFR §§ 1.2105(a)(2)(vi) ("The Commission will accept applications certifying that a request for waiver or other relief from the requirements of section 310 is pending."), 1.5000 (providing procedures for submitting petitions for declaratory ruling seeking relief from section 310's foreign ownership provisions).

### G. Information Procedures During the Auction Process

53. Consistent with past practice in many prior spectrum license auctions,<sup>129</sup> we adopt the proposal to limit information available in Auction 108 in order to prevent the identification of bidders placing particular bids until after the bidding has closed.<sup>130</sup> Specifically, we will not make public until after bidding has closed: (1) the license areas that an applicant selects for bidding in its short-form application, (2) the amount of any upfront payment made by or on behalf of an applicant for Auction 108, (3) any applicant's bidding eligibility, and (4) any other bidding-related information that might reveal the identity of the bidder placing a bid.

54. The limited information procedures used in past auctions have helped safeguard against potential anticompetitive behavior such as retaliatory bidding and collusion. TeleGuam requests that before bidding begins we make publicly available a list of all applicants, as well as each applicant's bidding eligibility and license selections, and argues that such information will "aid in the bid formation process."<sup>131</sup> We note that, consistent with past auctions, we will release a list of all applicants, including those found qualified to bid, before bidding commences,<sup>132</sup> however, we decline to release each applicant's bidding eligibility and license area selections in advance of the auction. The limited information procedures we adopt here have been effective in past auctions to safeguard against potential anticompetitive behavior such as retaliatory bidding and collusion,<sup>133</sup> and TeleGuam offers no compelling reason to depart from our now-established practice of implementing these procedures in wireless spectrum auctions.<sup>134</sup> We find that the competitive benefits associated with limiting information disclosure support adoption of such procedures and outweigh any potential benefits of full disclosure.<sup>135</sup>

55. Once bidding begins in Auction 108, under the limited information procedures (sometimes also referred to as anonymous bidding), information to be made public after each round of bidding will include, for each license, the aggregate demand, the posted price of the completed round, and

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<sup>128</sup> See *id.* § 1.2105(a)(2)(v), (vi). Additional information concerning foreign ownership disclosure requirements is provided in the FCC Form 175 Instructions.

<sup>129</sup> See, e.g., *Auction 110 Procedures Public Notice*, 36 FCC Rcd at 9286-87, paras. 37-42; *Auction 107 Procedures Public Notice*, 35 FCC Rcd at 8417-18, paras. 35-40; *Auction 105 Procedures Public Notice*, 35 FCC Rcd at 2153-54, paras. 36-41; see also 47 CFR § 1.2104(h).

<sup>130</sup> See *Auction 108 Comment Public Notice*, 36 FCC Rcd at 653, paras. 18-21.

<sup>131</sup> TeleGuam May 3, 2021, Comments at 8.

<sup>132</sup> See, e.g., *Auction of Flexible-Use Service Licenses in the 3.45-3.55 GHz Band for Next Generation Wireless Services; 33 Applicants Qualified to Bid in Auction 110*, AU Docket No. 21-62, Public Notice, DA 21-1165 (OEA/WTB 2021); *Auction of Flexible-Use Service Licenses in the 3.7-3.98 GHz Band; 57 Applicants Qualified to Bid in Auction 107*, AU Docket No. 20-25, Public Notice, 35 FCC Rcd 12829 (OEA/WTB 2020); see also paragraph 38 (stating that a list of qualified bidders will be released prior to the mock auction), above.

<sup>133</sup> See *Auction of AWS-1 and Broadband PCS Licenses Rescheduled for August 13, 2008; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 78*, AU Docket No. 08-46, Public Notice, 23 FCC Rcd 7496, 7536, para. 157 (WTB 2008) (recognizing that limited information procedures may have overall competitive benefits from reduced opportunities for bid signaling, retaliatory bidding, or other anti-competitive strategic bidding) (*Auction 78 Procedures Public Notice*); *Auction of 700 MHz Band Licenses Scheduled for July 19, 2011; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 92*, AU Docket No. 10-248, Public Notice, 26 FCC Rcd 3342, 3372, para. 128 & n.150 (WTB 2011) (finding that the competitive benefits associated with limited information disclosure procedures support adoption of such procedures).

<sup>134</sup> We note that limited information procedures have also recently been adopted for a broadcast auction. See *Auction 112 Procedures Public Notice* at 12-13, paras. 35-40.

<sup>135</sup> See *Auction 78 Procedures Public Notice*, 23 FCC Rcd at 7536, para. 157.

the clock price for the next round. The identities of bidders placing specific bids will *not* be disclosed until after the close of bidding.<sup>136</sup>

56. Throughout the auction, bidders will have access to additional information related to their own bidding and bidding eligibility through the Commission’s bidding system. Specifically, after the bids of a round have been processed, the bidding system will inform each bidder of its processed demand, whether the bidder has a proxy instruction in place for each license, and its eligibility for the next round.

57. After the close of bidding, bidders’ license area selections, upfront payment amounts, bidding eligibility, bids, and other bidding-related actions will be made publicly available.<sup>137</sup>

58. We warn applicants that direct or indirect communication to other applicants or the public disclosure of non-public information (e.g., reductions in eligibility, identities of bidders) could violate the Commission’s rule prohibiting certain communications.<sup>138</sup> **Therefore, to the extent an applicant believes that such a disclosure is required by law or regulation, including regulations issued by the U.S. Securities and Exchange Commission (SEC), we strongly urge that the applicant consult with Commission staff in the Auctions Division before making such disclosure.**

## H. Prohibited Communications and Compliance with Antitrust Laws

59. The rules prohibiting certain communications set forth in section 1.2105(c) apply to each “applicant” in Auction 108.<sup>139</sup> Section 1.2105(c)(1) of the Commission’s rules provides that, subject to specified exceptions, “[a]fter the short-form application filing deadline, all applicants are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other or any nationwide provider [of communications services] that is not an applicant, or, if the applicant is a nationwide provider, any non-nationwide provider that is not an applicant, in any manner the substance of their own, or each other’s, or any other applicants’ bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after the down payment deadline . . . .”<sup>140</sup>

### 1. Entities Subject to Section 1.2105(c)

60. An “applicant” for purposes of this rule includes all “controlling interests” in the entity submitting the FCC Form 175 auction application, as well as all holders of interests amounting to 10% or more of the entity (including institutional investors and asset management companies), and all officers and directors of that entity.<sup>141</sup> Under section 1.2105(c), a party that submits an application becomes an “applicant” under the rule, which goes into effect at the application deadline, and that status does not change based on later developments.<sup>142</sup>

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<sup>136</sup> See *Auction 108 Comment Public Notice*, 36 FCC Rcd at 653, para. 20.

<sup>137</sup> Bids placed according to a bidder’s proxy instructions will be available, but a bidder’s proxy instructions will not be disclosed. See Section IV.G.4. Proxy Bids), below.

<sup>138</sup> See 47 CFR § 1.2105(c); see also Section II.H. (Prohibited Communications and Compliance with Antitrust Laws), below.

<sup>139</sup> See 47 CFR § 1.2105(c).

<sup>140</sup> *Id.* § 1.2105(c)(1). AT&T argues that “[t]he Commission should separately re-examine its quiet period rules more generally.” AT&T May 3, 2021, Comments at 6 n.8. This request is beyond the scope of this proceeding.

<sup>141</sup> 47 CFR § 1.2105(c)(5)(i).

<sup>142</sup> See *Star Wireless, LLC v. FCC*, 522 F.3d 469, 473-74 (D.C. Cir. 2008). Thus, an auction applicant that does not correct deficiencies in its application, fails to submit a timely and sufficient upfront payment, or does not otherwise become qualified, remains an “applicant” for purposes of the rule and remains subject to the prohibition on certain communications until the Auction 108 down payment deadline.

61. As proposed in the *Auction 108 Comment Public Notice*,<sup>143</sup> we consider AT&T, T-Mobile, and Verizon to be “nationwide providers” for the purposes of the prohibited communications rule for Auction 108.<sup>144</sup>

## 2. Prohibition Applies Until Down Payment Deadline

62. The prohibition in section 1.2105(c) on certain communications begins at an auction’s short-form application filing deadline and ends at the auction’s down payment deadline after the auction closes, which will be announced in a future public notice.<sup>145</sup>

## 3. Scope of Prohibition on Certain Communications; Prohibition on Joint Bidding Agreements

63. Section 1.2105(c) of the Commission’s rules prohibits certain communications between applicants for an auction, regardless of whether the applicants seek permits or licenses in the same geographic area or market.<sup>146</sup> The rule also applies to communications by applicants with non-applicant nationwide providers of communications services and by nationwide applicants with non-applicant, non-nationwide providers.<sup>147</sup> The rule further prohibits “joint bidding arrangements,” including arrangements relating to the permits or licenses being auctioned that address or communicate, directly or indirectly, bidding at the auction, bidding strategies, including arrangements regarding price or the specific permits or licenses on which to bid, and any such arrangements relating to the post-auction market structure.<sup>148</sup> The rule allows for limited exceptions for communications within the scope of any arrangement consistent with the exclusion from the Commission’s rule prohibiting joint bidding, provided such arrangement is disclosed on the applicant’s auction application.<sup>149</sup> Applicants may communicate pursuant to any pre-existing agreements, arrangements, or understandings relating to the licenses being auctioned that are solely operational or that provide for the transfer or assignment of licenses, provided that such agreements, arrangements, or understandings are disclosed on their applications and do not both relate to the licenses at auction and address or communicate bids (including amounts), bidding strategies, or the particular permits or licenses on which to bid or the post-auction market structure.<sup>150</sup>

64. In addition to express statements of bids and bidding strategies, the prohibition against communicating “in any manner” includes public disclosures as well as private communications and indirect or implicit communications.<sup>151</sup> Consequently, an applicant must take care to determine whether its auction-related communications may reach another applicant.<sup>152</sup>

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<sup>143</sup> *Auction 108 Comment Public Notice*, 36 FCC Rcd at 652-53, para. 17. No commenters objected to this proposal.

<sup>144</sup> See Section II.D. (Disclosure of Agreements and Bidding Arrangements), above; see also *Updating Part 1 Report and Order*, 30 FCC Rcd at 7571, para. 140 & n.596.

<sup>145</sup> 47 CFR § 1.2105(c)(1).

<sup>146</sup> See *Updating Part 1 Report and Order*, 30 FCC Rcd at 7577, para. 199; 47 CFR § 1.2105(a)(2)(ix), (c)(1).

<sup>147</sup> 47 CFR § 1.2105(c)(1); see also *Updating Part 1 Report and Order*, 30 FCC Rcd at 7577, para. 199.

<sup>148</sup> See 47 CFR § 1.2105(a)(2)(ix); *Updating Part 1 Report and Order*, 30 FCC Rcd at 7575, para. 195.

<sup>149</sup> See 47 CFR § 1.2105(a)(2)(viii), (ix)(A)-(C); *Updating Part 1 Report and Order*, 30 FCC Rcd at 7576-77, paras. 197-99.

<sup>150</sup> See 47 CFR § 1.2105(a)(2)(ix)(A)-(C); *Updating Part 1 Report and Order*, 30 FCC Rcd at 7576-77, paras. 197-99 see generally *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd 10794 (providing further guidance on complying with the rule).

<sup>151</sup> See *Updating Part 1 Report and Order*, 30 FCC Rcd at 7577, para. 199; *Cascade Access, LLC*, Forfeiture Order, 28 FCC Rcd 141, 144, para. 7 (EB 2013) (rejecting argument that the communication was not prohibited because it did not reveal the “substance” of Cascade’s bids or bidding strategies).

65. Parties subject to section 1.2105(c) should take special care in circumstances where their officers, directors, and employees may receive information directly or indirectly relating to any applicant's bids or bidding strategies. Such information may be deemed to have been received by the applicant under certain circumstances. For example, Commission staff have found that, where an individual serves as an officer and director for two or more applicants, the bids and bidding strategies of one applicant are presumed to be conveyed to the other applicant through the shared officer, which creates an apparent violation of the rule.<sup>153</sup>

66. Subject to the limited exceptions for communications within the scope of any arrangement consistent with the exclusion from the Commission's rule prohibiting joint bidding, section 1.2105(c)(1) prohibits applicants from communicating with specified other parties only with respect to "their own, or each other's, or any other applicant's bids or bidding strategies."<sup>154</sup> The *Prohibited Communications Guidance Public Notice* released in advance of the broadcast incentive auction (Auction 1000) reviewed the scope of the prohibition generally, as well as in that specific auction's forward auction of spectrum licenses and reverse auction to relinquish broadcast licenses.<sup>155</sup> As the Commission explained therein, a communication conveying "bids or bidding strategies (including post-auction market structure)" must also relate to the "licenses being auctioned" in order to be covered by the prohibition.<sup>156</sup> Thus, the prohibition is limited in scope and does not apply to all communications between or among the specified parties. The Commission consistently has made clear that application of the rule prohibiting communications has never required total suspension of essential ongoing business.<sup>157</sup> Entities subject to the prohibition may negotiate agreements during the prohibition period, provided that the communications involved do not relate to both: (1) the licenses being auctioned and (2) bids or bidding strategies or post-auction market structure.<sup>158</sup>

67. Accordingly, business discussions and negotiations that do not convey information about the bids or bidding strategies, including the post-auction market structure, of an applicant are not prohibited by the rule.<sup>159</sup> Moreover, not all auction-related information is covered by the prohibition. For example, communicating merely whether a party has or has not applied to participate in Auction 108 will not violate the rule.<sup>160</sup> In contrast, communicating, among other things, how a party will participate, including specific geographic areas selected, specific bid amounts, and/or whether or not the party is placing bids, would convey bids or bidding strategies and would be prohibited.<sup>161</sup>

68. While section 1.2105(c) does not prohibit business discussions and negotiations among auction applicants that are unrelated to the auction, each applicant must remain vigilant not to

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<sup>152</sup> We remind applicants that they must determine whether their communications with other parties are permissible under the rule once the prohibition begins at the deadline for submitting applications, even before the public notice identifying applicants is released.

<sup>153</sup> See, e.g., *Letter to Auction 109 Applicant Paul S. Alexander, Jr. Concerning Non-qualified Status*, AU Docket No. 21-39, Letter Order, DA 21-781, at 4-5 (OEA/MB July 1, 2021) (finding a violation of the prohibited communications rule where an individual applicant reported being the officer of another applicant).

<sup>154</sup> 47 CFR § 1.2105(c)(1).

<sup>155</sup> See generally *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd 10794.

<sup>156</sup> *Id.* at 10806, para. 33.

<sup>157</sup> See, e.g., *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567, 6770-71, para. 492 (2014).

<sup>158</sup> *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd at 10806-07, paras. 33-34.

<sup>159</sup> *Id.* at 10806, para. 32.

<sup>160</sup> See *id.* at 10796, paras. 6-7 (interpreting similar rule language in 47 CFR § 1.2205).

<sup>161</sup> See *id.* at 10796-97, paras. 8-9.

communicate, directly or indirectly, information that affects, or could affect, bids or bidding strategies. Certain discussions might touch upon subject matters that could convey price or geographic information related to bidding strategies. Such subject areas include, but are not limited to, management, sales, local marketing agreements, and other transactional agreements.

69. We caution applicants that bids or bidding strategies may be communicated outside of situations that involve one party subject to the prohibition communicating privately and directly with another such party. 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.”<sup>162</sup> Moreover, the Commission found a violation of the rule against prohibited communications when an applicant 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,”<sup>163</sup> and it 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.”<sup>164</sup>

70. Likewise, when completing a short-form application, each applicant should avoid any statements or disclosures that may violate section 1.2105(c), particularly in light of the limited information procedures in effect for Auction 108. Specifically, an applicant should avoid including any information in its short-form application that might convey information regarding its license area selections, such as referring to counties or other geographic areas in describing agreements, including any information in application attachments that will be publicly available that may otherwise disclose the applicant’s license area selections, or using applicant names that refer to licenses being offered.

71. Applicants also should be mindful that communicating non-public application or bidding information publicly or privately to another applicant may violate section 1.2105(c) even though that information subsequently may be made public during later periods of the application or bidding processes.

#### 4. Communicating with Third Parties

72. Section 1.2105(c) does not prohibit an applicant from communicating bids or bidding strategies to a third party, such as a consultant or consulting firm, counsel, or lender. An applicant should take appropriate steps, however, to ensure that any third party it employs for advice pertaining to its bids or bidding strategies does not become a conduit for prohibited communications to other specified parties, as that would violate the rule.<sup>165</sup> For example, an applicant might require a third party, such as a lender, to sign a non-disclosure agreement before the applicant communicates any information regarding bids or bidding strategy to the third party.<sup>166</sup> Within third-party firms, separate individual employees, such as attorneys or auction consultants, may advise individual applicants on bids or bidding strategies, as long as such firms implement firewalls and other compliance procedures that prevent such individuals from communicating the bids or bidding strategies of one applicant to other individuals representing separate

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<sup>162</sup> *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, para. 12 (1994) (*Competitive Bidding Memorandum Opinion and Order*).

<sup>163</sup> *Mercury PCS II, LLC*, Notice of Apparent Liability for Forfeiture, 12 FCC Rcd 17970, 17976, para. 17 (1997).

<sup>164</sup> *Mercury PCS II, LLC*, Memorandum Opinion and Order, 13 FCC Rcd 23755, 23760, para. 11 (1998).

<sup>165</sup> See, e.g., *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd at 10798, para. 13 (interpreting similar rule language in 47 CFR § 1.2205).

<sup>166</sup> *Id.*

applicants.<sup>167</sup> Although firewalls and/or other procedures should be used, their existence is not an absolute defense to liability if a violation of the rule has occurred.<sup>168</sup>

73. As the Commission has noted in other spectrum auctions, in the case of an individual, the objective precautionary measure of a firewall is not available.<sup>169</sup> As a result, an individual that is privy to bids or bidding information of more than one applicant presents a greater risk of becoming a conduit for a prohibited communication.<sup>170</sup> We will take the same approach to interpreting the prohibited communications rule in Auction 108. We emphasize that whether a prohibited communication has taken place in a given case will depend on all the facts pertaining to the case, including who possessed what information, what information was conveyed to whom, and the course of bidding in the auction.<sup>171</sup>

74. We remind potential applicants that they may discuss the short-form application or bids for specific licenses or license areas with the counsel, consultant, or expert of their choice *before* the short-form application deadline. Furthermore, the same third-party individual could continue to give advice after the short-form deadline regarding the application, provided that no information pertaining to bids or bidding strategies, including license areas, or counties, selected on the short-form application, is conveyed to that individual.

75. Applicants also should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become conduits for the communication of prohibited bidding information. For example, even though communicating that it has applied to participate in the auction will not violate the rule, an applicant's statement to the press that it intends to stop bidding in an auction could give rise to a finding of a section 1.2105 violation.<sup>172</sup> Similarly, an applicant's public statement of intent not to place bids during bidding in Auction 108 could also violate the rule.

#### 5. Section 1.2105(c) Certifications

76. By electronically submitting its FCC Form 175, each applicant for Auction 108 certifies its compliance with section 1.2105(c) of the rules.<sup>173</sup> The mere filing of a certifying statement as part of an application, however, will not outweigh specific evidence that a prohibited communication has

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<sup>167</sup> *Id.*; see also *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, 11978, para. 12 (WTB 1998) (*Nevada Wireless Order*) (strongly encouraging applicants to implement any firewall procedures necessary and to provide information in their auction applications regarding the procedures).

<sup>168</sup> See *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd at 10799, para. 14; *Nevada Wireless Order*, 13 FCC Rcd at 11978, para. 13.

<sup>169</sup> See, e.g., *Auctions of Upper Microwave Flexible Use License for Next Generation Wireless Services; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auctions 101 (28 GHz) and 102 (24 GHz)*, AU Docket No. 18-85, Public Notice, 33 FCC Rcd 7575, 7602, para. 72 (WTB 2018) (citing *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd at 10800, para. 15) (*Auctions 101 and 102 Procedures Public Notice*).

<sup>170</sup> *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd at 10800, para. 15.

<sup>171</sup> See *id.*

<sup>172</sup> Cf. *Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction*, Public Notice, 13 FCC Rcd 341, 347-48 (WTB 1998) ("Public 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.").

<sup>173</sup> See 47 CFR § 1.2105(a)(2)(ix). In accordance with the *Updating Part 1 Report and Order*, if an applicant has a non-controlling interest with respect to more than one application, then the applicant must certify that it has established internal control procedures to preclude any person acting on behalf of the applicant from possessing information about the bids or bidding strategies of more than one applicant or communicating such information with respect to either applicant to another person acting on behalf of and possessing such information regarding another applicant. *Updating Part 1 Report and Order*, 30 FCC Rcd at 7577, para. 199.

occurred, nor will it preclude the initiation of an investigation when warranted.<sup>174</sup> Any applicant found to have violated these communication prohibitions may be subject to sanctions.<sup>175</sup>

## 6. Duty to Report Prohibited Communications

77. Section 1.2105(c)(4) requires that any applicant that makes or receives a communication that appears to violate section 1.2105(c) must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs.<sup>176</sup> Each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.<sup>177</sup>

## 7. Procedures for Reporting Prohibited Communications

78. A party reporting any information or communication pursuant to sections 1.65(a), 1.2105(a)(2), or 1.2105(c)(4) must take care to ensure that any report of a prohibited communication does not itself give rise to a violation of section 1.2105(c). For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other parties specified under the rule through the use of Commission filing procedures that allow such materials to be made available for public inspection.

79. An applicant must file only a single report concerning a prohibited communication and must file that report with the Commission personnel expressly charged with administering the Commission's auctions.<sup>178</sup> This rule is designed to minimize the risk of inadvertent dissemination of information in such reports.<sup>179</sup> Any reports required by section 1.2105(c) must be filed consistent with the instructions set forth in this Public Notice.<sup>180</sup> For Auction 108, such reports must be filed with the Chief of the Auctions Division, Office of Economics and Analytics, by the most expeditious means available. Any such report should be submitted by email to the Auctions Division Chief and sent to [auCTION108@fcc.gov](mailto:auCTION108@fcc.gov). If you choose instead to submit a report in hard copy, contact Auctions Division staff at [auCTION108@fcc.gov](mailto:auCTION108@fcc.gov) or (202) 418-0660 for guidance.

80. Given the potential competitive sensitivity of public disclosure of information in such a report, a party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by

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<sup>174</sup> *Updating Part 1 Report and Order*, 30 FCC Rcd at 7577, para. 199; *Nevada Wireless Order*, 13 FCC Rcd at 11978, para. 13; *see also Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689, para. 12.

<sup>175</sup> *See, e.g., AT&T Services, Inc.*, Notice of Apparent Liability For Forfeiture 34 FCC Rcd 7660 (EB 2019) (sanctioning AT&T for violating the prohibited communications rule and for failing to timely report the violation). *See also* 47 CFR §§ 1.2105(c), 1.2109(d).

<sup>176</sup> *Id.* § 1.2105(c)(4); *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17553-55, paras. 13-17.

<sup>177</sup> *See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands et al.*, WT Docket No. 06-150 et al., Second Report and Order, 22 FCC Rcd 15289, 15395, paras. 285-86 (2007); *see also* 47 CFR § 1.65(a); *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17550-51, para. 9; *Procedural Amendments to Commission Part 1 Competitive Bidding Rules*, WT Docket No. 10-18, Order, 25 FCC Rcd 521, 523, para. 8 (2010) (*Part 1 Procedural Amendments Order*).

<sup>178</sup> *Part 1 Procedural Amendments Order*, 25 FCC Rcd at 522, para. 4. This process differs from filing procedures used in connection with other Commission rules and processes, which may call for submission of filings to the Commission's Office of the Secretary or ECFS. Filing through the Office of Secretary or ECFS could allow the report to become publicly available and might result in the communication of prohibited information to other auction applicants.

<sup>179</sup> *Id.*

<sup>180</sup> *See id.*

following the procedures specified in section 0.459 of the Commission's rules.<sup>181</sup> We encourage such parties to coordinate with the Auctions Division staff about the procedures for submitting such reports.<sup>182</sup>

### **8. Winning Bidders Must Disclose Terms of Agreements**

81. Each applicant that is a winning bidder will be required to provide as part of its long-form application any agreement or arrangement it has entered into and a summary of the specific terms, conditions, and parties involved in any agreement it has entered into.<sup>183</sup> This applies to any bidding consortia, joint venture, partnership, or agreement, understanding, or other arrangement entered into relating to the competitive bidding process, including any agreement relating to the post-auction market structure.<sup>184</sup> Failure to comply with the Commission's rules can result in enforcement action.<sup>185</sup>

### **9. Additional Information Concerning Prohibition on Certain Communications in Commission Auctions**

82. A summary listing of documents issued by the Commission and OEA/WTB addressing the application of section 1.2105(c) is available on the Commission's auction web page at [www.fcc.gov/summary-listing-documents-addressing-application-rule-prohibiting-certain-communications](http://www.fcc.gov/summary-listing-documents-addressing-application-rule-prohibiting-certain-communications).

### **10. Antitrust Laws**

83. Regardless of compliance with the Commission's rules, applicants remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace.<sup>186</sup> Compliance with the disclosure requirements of section 1.2105(c)(4) will not insulate a party from enforcement of the antitrust laws.<sup>187</sup> For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submits a short-form application.<sup>188</sup> The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws: for example, actual or potential competitors may not agree to divide territories in order to minimize competition, regardless of

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<sup>181</sup> See 47 CFR § 0.459. Filers requesting confidential treatment of documents must be sure that the cover page of the filing prominently displays that the documents seek confidential treatment. For example, a filing might include a cover page stamped with "Request for Confidential Treatment Attached" or "Not for Public Inspection." Any such request must cover all the material to which the request applies. *Id.* § 0.459(a)(1). On July 7, 2020, the Commission announced that the hand-delivery filing location at FCC Headquarters was permanently closed, effective immediately. *FCC Announces Closure of Filing Window at FCC Headquarters and Permanent Change in the Location and Hours for Receiving Hand-Carried Filings*, Public Notice (OMD July 7, 2020). Because hand-delivery of confidential materials is no longer possible, the public is directed to submit such materials in accordance with the procedures described in that public notice and in *Amendment of the Commission's Rules of Practice and Procedure*, Order, 35 FCC Rcd 5450 (OMD 2020). *Id.* at 1.

<sup>182</sup> See Section VI. (Procedural Matters), below.

<sup>183</sup> 47 CFR § 1.2107(d); see also Section V.C. (Long-Form Application (FCC Form 601), below. Such agreements must have been entered into prior to the filing of short-form applications pursuant to section 1.2105. 47 CFR § 1.2107(d); see *id.* § 1.2105(a)(2)(viii), (c).

<sup>184</sup> 47 CFR § 1.2107(d).

<sup>185</sup> See, e.g., *id.* § 1.2109(d).

<sup>186</sup> See, e.g., *Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures*, WT Docket No. 97-82, Third Further Notice of Proposed Rulemaking, 14 FCC Rcd 21558, 21560-61, para. 4 & n.17 (1999).

<sup>187</sup> See *Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689, para. 12; see also Press Release, Dep't of Justice, Justice Department Sues Three Firms Over FCC Auction Practices (Nov. 10, 1998), [www.justice.gov/archive/atr/public/press\\_releases/1998/2068.htm](http://www.justice.gov/archive/atr/public/press_releases/1998/2068.htm).

<sup>188</sup> See, e.g., *Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, PP Docket No. 93-253, Fourth Memorandum Opinion and Order, 9 FCC Rcd 6858, 6869, para. 59 & n.125 (1994).

whether they split a market in which they both do business, or whether they merely reserve one market for one and another market for the other.<sup>189</sup>

84. To the extent we become aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, we may refer such allegations to the United States Department of Justice for investigation.<sup>190</sup> 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, then it may be subject to a forfeiture and may be prohibited from participating further in Auction 108 and in future auctions, among other sanctions.<sup>191</sup>

### **I. Provisions for Small Businesses and Rural Service Providers**

85. A bidding credit represents an amount by which a bidder's overall payment across all of the licenses won will be discounted, subject to the caps discussed below. As set forth in section 1.2110 of the Commission's rules,<sup>192</sup> and as described below, the designated entity rules include, but are not limited to: (1) a two-pronged standard for evaluating eligibility for small business benefits,<sup>193</sup> (2) an attribution rule for certain disclosable interest holders of applicants claiming designated entity benefits,<sup>194</sup> (3) updated gross revenue amounts defining eligibility for small business benefits,<sup>195</sup> (4) a bidding credit for eligible rural service providers,<sup>196</sup> and (5) caps on the total amount of designated entity benefits any eligible winning bidder may receive.<sup>197</sup>

86. In Auction 108, designated entity bidding credits will be available to applicants demonstrating eligibility for a small business or a rural service provider bidding credit and subsequently winning license(s). These bidding credits will not be cumulative—an applicant is permitted to claim either a small business bidding credit or a rural service provider bidding credit, but not both.<sup>198</sup> Each applicant must also certify that it is eligible for the claimed bidding credit in its FCC Form 175.<sup>199</sup> In addition to the information provided below, each applicant should review carefully the Commission's decisions regarding the designated entity provisions as well as the Part 1 rules.<sup>200</sup>

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<sup>189</sup> *Id.*

<sup>190</sup> *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388, para. 226.

<sup>191</sup> *See id.*; 47 CFR § 1.2109(d).

<sup>192</sup> 47 CFR § 1.2110.

<sup>193</sup> *Id.* § 1.2110(b)(3); *see Updating Part 1 Report and Order*, 30 FCC Rcd at 7507-10, paras. 29-34.

<sup>194</sup> 47 CFR § 1.2110(c)(2)(ii)(J); *see Updating Part 1 Report and Order*, 30 FCC Rcd at 7512-16, paras. 42-52. For purposes of this rule, a disclosable interest holder of an applicant seeking designated entity benefits is defined as any individual or entity holding a 10% or greater interest of any kind in the designated entity, including but not limited to, a 10% or greater interest in any class of stock, warrants, options, or debt securities in the applicant or licensee. 47 CFR § 1.2110(c)(2)(ii)(J). The Commission also clarified its designated entity reporting requirements under 47 CFR § 1.2110(n). *See Updating Part 1 Report and Order*, 30 FCC Rcd at 7562-63, paras. 162-67.

<sup>195</sup> 47 CFR § 1.2110(f)(2); *see Updating Part 1 Report and Order*, 30 FCC Rcd at 7523-25, paras. 72-75.

<sup>196</sup> 47 CFR § 1.2110(f)(4); *see Updating Part 1 Report and Order*, 30 FCC Rcd at 7530-38, paras. 88-108.

<sup>197</sup> *See* 47 CFR § 1.2110(f)(2)(ii), (f)(4)(ii); *see also Updating Part 1 Report and Order*, 30 FCC Rcd at 7539-48, paras. 110-30.

<sup>198</sup> *See Updating Part 1 Report and Order*, 30 FCC Rcd at 7538, para. 108; *accord* 47 CFR § 1.2110(f)(2)(i), (4)(i).

<sup>199</sup> *See* 47 CFR § 1.2105(a)(2)(iv).

<sup>200</sup> *See generally Updating Part 1 Report and Order*, 30 FCC Rcd 7493; *see also, 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, 910-912, paras. 47-52 (2006) (*CSEA/Part 1 Report and Order*); *Second Report and Order and Second Further Notice of Proposed Rule Making*, 21 FCC Rcd (continued....)

87. In particular, we remind applicants applying for designated entity bidding credits that they should take due account of the requirements of the Commission’s rules and implementing orders regarding *de jure* and *de facto* control of such applicants.<sup>201</sup> These rules include a prohibition, which applies to all applicants (whether they seek bidding credits or not), against changes in ownership of the applicant that would constitute an assignment or transfer of control after the initial filing deadline for FCC Form 175.<sup>202</sup> **Applicants should not expect to receive any opportunities to revise their ownership structure after the filing of their short- and long-form applications, including making revisions to their agreements or other arrangements with interest holders, lenders, or others in order to address potential concerns relating to compliance with the designated entity bidding credit requirements.** This policy will help to ensure compliance with the Commission’s rules applicable to the award of bidding credits prior to the conduct of the auction, which will involve competing bids from those that do and do not seek bidding credits, and thus preserves the integrity of the auction process. We also believe that this will meet the Commission’s objectives in awarding licenses through the competitive bidding process.<sup>203</sup>

### 1. Small Business Bidding Credit

88. For Auction 108, bidding credits will be available to eligible small businesses and consortia thereof, subject to the caps discussed below. Under the service rules applicable to the 2.5 GHz band licenses to be offered in Auction 108, the level of bidding credit available is determined as follows:

- A bidder that qualifies as a “small business”—i.e., one with attributed average annual gross revenues that do not exceed \$55 million for the preceding five years<sup>204</sup>—is eligible to receive a 15% discount on its overall payment.<sup>205</sup>
- A bidder that qualifies as a “very small business”—i.e., one with attributed average annual gross revenues that do not exceed \$20 million for the preceding five years<sup>206</sup>—is eligible to receive a 25% discount on its overall payment.<sup>207</sup>

89. In adopting this two-tiered approach in the *2.5 GHz Report and Order*, the Commission observed that this approach would provide consistency and predictability for small businesses.<sup>208</sup>

90. Small business bidding credits are not cumulative; an eligible applicant may receive either the 15% or the 25% bidding credit on its overall payment, but not both.<sup>209</sup> The Commission’s (Continued from previous page) \_\_\_\_\_  
4753 (2006); Order on Reconsideration of the Second Report and Order, 21 FCC Rcd 6703 (2006).

<sup>201</sup> See, e.g., 47 CFR §§ 1.2110, 1.2111.

<sup>202</sup> *Id.* § 1.2105(b)(2). This may, in some circumstances, include changes of an applicant’s officers or directors.

<sup>203</sup> The Commission’s objectives when awarding licenses through competitive bidding include “the development and rapid deployment of new technologies, products, and services for the benefit of the public . . . without administrative or judicial delays” and “promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses.” 47 U.S.C. § 309(j)(3)(A)-(B); see also *2.5 GHz Report and Order*, 34 FCC Rcd at 5477, para. 87 (“We believe our part 1 rules will allow market forces to determine its highest and best use, and thus will enable the Commission to meet its goal of spurring more efficient and effective use of the 2.5 GHz band”).

<sup>204</sup> 47 CFR § 27.1219(a)(1).

<sup>205</sup> *Id.* § 27.1219(b).

<sup>206</sup> *Id.* § 27.1219(a)(2).

<sup>207</sup> *Id.* § 27.1219(b).

<sup>208</sup> *2.5 GHz Report and Order*, 34 FCC Rcd at 5478-79, para. 89.

<sup>209</sup> See *Updating Part 1 Report and Order*, 30 FCC Rcd at 7538, para. 108; see also 47 CFR § 1.2110(f)(4)(i).

unjust enrichment provisions also apply to a winning bidder that uses a bidding credit and subsequently seeks to assign or transfer control of its license within a certain period to an entity not qualifying for at least the same level of small business bidding credit.<sup>210</sup>

91. Each applicant claiming a small business bidding credit must disclose the gross revenues for the preceding five years for each of the following: (1) the applicant, (2) its affiliates, (3) its controlling interests, and (4) the affiliates of its controlling interests.<sup>211</sup> The applicant must also submit an attachment that lists all parties with which the applicant has entered into any spectrum use agreements or arrangements for any licenses that may be won by the applicant in Auction 108.<sup>212</sup> In addition, to the extent that an applicant has an agreement with any disclosable interest holder for the use of more than 25% of the spectrum capacity of any license that may be won in Auction 108, the applicant must disclose the identity and the attributable gross revenues of any such disclosable interest holder.<sup>213</sup> This attribution rule will be applied on a license-by-license basis.<sup>214</sup> As a result, an applicant may be eligible for a bidding credit on some, but not all, of the licenses for which it is bidding in Auction 108.<sup>215</sup> If an applicant is applying as a consortium of small businesses, then the disclosures described in this paragraph must be provided for each consortium member.<sup>216</sup>

## 2. Rural Service Provider Bidding Credit

92. An eligible applicant may request a 15% discount on its overall payment using a rural service provider bidding credit,<sup>217</sup> subject to the cap discussed below.<sup>218</sup> To be eligible for a rural service provider bidding credit, an applicant must: (1) be a service provider that is in the business of providing commercial communications services and, together with its controlling interests, affiliates, and the affiliates of its controlling interests, has fewer than 250,000 combined wireless, wireline, broadband, and cable subscribers; and (2) serve predominantly rural areas.<sup>219</sup> Rural areas are defined as counties with a population density of 100 or fewer persons per square mile.<sup>220</sup> An applicant seeking a rural service provider bidding credit must provide the number of subscribers served as of the short-form application

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<sup>210</sup> 47 CFR § 1.2111. Thus, for example, the Commission's unjust enrichment provisions would not apply to a winning bidder that uses the 15% small business bidding credit and seeks to transfer control of its license to an entity that qualifies for either the 15% small business bidding credit or the rural service provider bidding credit. *See* Section II.I.2. (Rural Service Provider Bidding Credit), below. The provisions would apply, however, if that same winning bidder uses the 25% small business bidding credit, unless the proposed transferee also qualifies for the 25% small business bidding credit.

<sup>211</sup> 47 CFR §§ 1.2110(b)(1)(i), 1.2112(b)(1)(iv).

<sup>212</sup> *See id.* § 1.2112(b)(1)(iii).

<sup>213</sup> *See id.* § 1.2110(c)(2)(ii)(J).

<sup>214</sup> *Id.*

<sup>215</sup> *See id.*

<sup>216</sup> *See id.* §§ 1.2110(b)(4)(i), 1.2110(c)(6), 1.2110(k), 1.2112(b)(1)(vi).

<sup>217</sup> *Id.* § 27.1219(c). The Commission determines eligibility for bidding credits, including the rural service provider bidding credit, on a service-by-service basis. *See* 47 CFR § 1.2110(f)(1); *Updating Part 1 Report and Order*, 30 FCC Rcd at 7529, para. 85.

<sup>218</sup> Rural 2.5 Consortium requests that the Commission increase the Rural Service Provider Bidding Credit discount to 25%. Rural 2.5 Consortium May 3, 2021, Comments at 2, 6. The Commission set the Rural Service Provider Bidding Credit discount at 15% for Auction 108 in the *2.5 GHz Report and Order*. *2.5 GHz Report and Order*, 34 FCC Rcd at 5479-80, para. 90. Rural 2.5 consortium's request is thus outside the scope of this proceeding.

<sup>219</sup> 47 CFR § 1.2110(f)(4)(i)(A)-(B).

<sup>220</sup> *Id.* § 1.2110(f)(4)(i)(B); *Updating Part 1 Report and Order*, 30 FCC Rcd at 7536-37, para. 104.

deadline.<sup>221</sup> An applicant may count any subscriber as a single subscriber even if that subscriber receives more than one service.<sup>222</sup>

93. Each applicant seeking a rural service provider bidding credit must disclose the number of its subscribers, along with the number of subscribers of its affiliates, controlling interests, and the affiliates of its controlling interests.<sup>223</sup> The applicant must also submit an attachment that lists all parties with which the applicant has entered into any spectrum use agreements or arrangements for any licenses that may be won by the applicant in Auction 108.<sup>224</sup> In addition, to the extent that an applicant has an agreement with any disclosable interest holder for the use of more than 25% of the spectrum capacity of any license that may be won in Auction 108, the identity and the attributable subscribers of any such disclosable interest holder must be disclosed.<sup>225</sup> Like applicants seeking eligibility for small business bidding credits, eligible rural service providers may also form a consortium.<sup>226</sup> If an applicant is applying as a consortium of rural service providers, then the disclosures described in this paragraph, including the certification, must be provided for each consortium member.<sup>227</sup>

### 3. Caps on Bidding Credits

94. Eligible applicants claiming either a small business or rural service provider bidding credit will be subject to specified caps on the total bidding credit discount that they may receive.<sup>228</sup> We adopt the bidding credit caps for Auction 108 at the amounts proposed for the reasons discussed by the Commission in the *Auction 108 Comment Public Notice*.<sup>229</sup> Specifically, we adopt a \$25 million cap on the total bidding credit discount that may be awarded to an eligible small business,<sup>230</sup> and a \$10 million cap on the total bidding credit discount that may be awarded to an eligible rural service provider.<sup>231</sup> Additionally, to create parity among eligible small businesses and rural service providers competing against each other in smaller markets, no winning designated entity bidder may receive more than \$10 million in bidding credit discounts in total for licenses won in counties located within any partial economic area (PEA) with a population of 500,000 or less.<sup>232</sup> RWA supports the caps as proposed in the *Auction 108 Comment Public Notice*,<sup>233</sup> while CCA requests that the caps be adjusted upward.<sup>234</sup>

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<sup>221</sup> 47 CFR § 1.2110(f)(4)(i)(A).

<sup>222</sup> *Updating Part 1 Report and Order*, 30 FCC Rcd at 7534, para. 98 & n.326. For instance, a subscriber receiving both wireline telephone service and broadband service would be counted as a single subscriber. *Id.*

<sup>223</sup> 47 CFR § 1.2112(b)(1)(v); *see also id.* § 1.2110(f)(4)(i)(C).

<sup>224</sup> *See id.* § 1.2112(b)(1)(iii).

<sup>225</sup> *See id.* § 1.2110(c)(2)(ii)(J).

<sup>226</sup> *See id.* § 1.2110(b)(4)(i), (c)(6).

<sup>227</sup> *Id.* § 1.2112(b)(1)(vi).

<sup>228</sup> 47 CFR § 1.2110(f)(2)(ii), (4)(ii); *Updating Part 1 Report and Order*, 30 FCC Rcd at 7541, para. 114.

<sup>229</sup> *See Auction 108 Comment Public Notice*, 36 FCC Rcd at 650-51, paras. 11-13.

<sup>230</sup> Bidding credit discounts of 15% are available to entities whose average gross revenues for the preceding five years does not exceed \$55 million, and discounts of 25% are available to entities whose average gross revenues for the preceding five years does not exceed \$20 million. *See 2.5 GHz Report and Order*, 34 FCC Rcd at 5478-79, para. 89.

<sup>231</sup> *Id.* at 650-51, paras. 11-13.

<sup>232</sup> *See Auction 108 Comment Public Notice*, 34 FCC Rcd at 651, para. 13. If an applicant seeking a small business bidding credit does not claim the full \$10 million in bidding credits in those smaller markets, then it may apply the remaining balance to its winning bids on licenses in larger markets, up to the aggregate \$25 million cap.

<sup>233</sup> RWA May 3, 2021, Comments at 2-4.

95. We decline CCA's request to set the small business bidding credit cap at \$40 million and the rural service provider cap at \$25 million. We are unpersuaded by CCA's suggestion that the adoption of a \$25 million small business credit cap and a \$10 million rural service provider cap inhibited participation by these entities in recent auctions.<sup>235</sup> As RWA argues, the caps adopted for Auction 108 are the same as those adopted for Auctions 101, 102, 103, 105, and 107, and its members and other designated entities were able to fully participate in these recent spectrum auctions without being "unduly constrained" by the caps.<sup>236</sup> CCA further argues that "recent 5G spectrum auctions reveal that these caps did not prevent the concentration of auctioned licenses with a few large carriers" and cites Auction 107 as an example of such concentration.<sup>237</sup> CCA fails to explain how designated entities' bids and bidding strategies were affected by the caps in Auction 107 and how a higher cap in that auction would have changed the results. Conversely, RWA supports the cap for licenses won in PEAs with a population of 500,000 or less to help promote competition by providing a ceiling for certain entities that may seek to accumulate spectrum as an investment.<sup>238</sup> CCA contends that "[r]aising the proposed caps could prompt robust participation from small and rural carriers in" Auction 108.<sup>239</sup> However, RWA argues that the rural service provider cap will not inhibit any eligible entities from participating in Auction 108.<sup>240</sup> In addition, in recent spectrum auctions, no bidders have exceeded the rural service provider cap and only four winning bidders have exceeded the small business cap.<sup>241</sup> We are not persuaded that the caps proposed in the *Auction 108 Comment Public Notice* would constrain the ability of any eligible small business or rural service provider to participate fully and fairly in Auction 108.

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<sup>234</sup> CCA May 3, 2021, Comments at 8-9; CCA May 27, 2021, Reply at 4-5. Mile One also suggests that rather than increasing the bidding credit caps, the Commission should utilize a regime based on tax credits and rules exceptions for consortiums comprised of small and medium-sized businesses. Mile One May 4, 2021, *Ex Parte* at 5-6. The Commission adopted service rules for the 2.5 GHz band, including provisions to assist designated entities, in the *2.5 GHz Report and Order*. See *2.5 GHz Report and Order*, 34 FCC Rcd at 5478-80, paras. 88-92. In that Order, the Commission concluded that utilizing bidding credits in competitive bidding for the 2.5 GHz band is an effective tool to achieve its statutory objective of promoting the participation of designated entities in the provision of spectrum-based service. *Id.* at 5478, para. 88. Accordingly, we decline Mile One's request, which is outside the scope of this proceeding.

<sup>235</sup> See CCA May 3, 2021, Comments at 8-9.

<sup>236</sup> See RWA May 3, 2021, Comments at 2-3.

<sup>237</sup> See CCA May 3, 2021, Comments at 9.

<sup>238</sup> See RWA May 3, 2021, Comments at 3-4.

<sup>239</sup> *Id.* Conversely, RWA notes "[i]n all of these auctions [Auctions 101, 102, 103, 105, 107] (particularly Auction 105), members of RWA and other small and rural providers were able to participate and take advantage of these bidding credits without being unduly constrained by the respective caps that had been adopted." RWA May 3, 2021, Comments at 3.

<sup>240</sup> See *id.*

<sup>241</sup> See *Auction 108 Comment Public Notice*, 36 FCC Rcd at 650-51, para. 12 n.32 (noting that no bidder seeking a small business bidding credit exceeded the cap in Auctions 101, 102, 103, or 105); *id.* at 651, para. 13 n.36 (noting that no bidder seeking a rural service provider credit exceeded the cap in Auctions 101, 102, 103, or 105). Since the *Auction 108 Comment Public Notice* was released, bidding in Auctions 107 and 110 concluded. In Auction 107, only one bidder exceeded the small business cap and no bidders exceeded the rural service provider cap; in Auction 110, three bidders exceeded the small business cap and none exceeded the rural service provider cap. See *Auction 107 Closing Public Notice*, 36 FCC Rcd at 4318, Attach. A; *Auction 110 Closing Public Notice*, DA 22-39, Attach. A.

#### 4. Attributable Interests

##### a. Controlling Interests and Affiliates

96. Pursuant to section 1.2110 of the Commission's rules, an applicant's eligibility for designated entity benefits is determined by attributing the gross revenues (for those seeking small business benefits) or subscribers (for those seeking rural service provider benefits) of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests.<sup>242</sup> Controlling interests of an applicant include individuals and entities with either *de facto* or *de jure* control of the applicant.<sup>243</sup> Typically, ownership of greater than 50% of an entity's voting stock evidences *de jure* control.<sup>244</sup> *De facto* control is determined on a case-by-case basis based on the totality of the circumstances.<sup>245</sup> The following are some common indicia of *de facto* control:

- the entity constitutes or appoints more than 50% 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; and
- the entity plays an integral role in management decisions.<sup>246</sup>

97. Additionally, for attribution purposes, officers and directors of an applicant seeking a bidding credit are considered to have a controlling interest in the applicant.<sup>247</sup> Applicants should refer to section 1.2110(c)(2) of the Commission's rules and the FCC Form 175 Instructions to understand how certain interests are calculated in determining control for purposes of attributing gross revenues.

98. Affiliates of an applicant or controlling interest include an individual or entity that: (1) directly or indirectly controls or has the power to control the applicant, (2) is directly or indirectly controlled by the applicant, (3) is directly or indirectly controlled by a third party that also controls or has the power to control the applicant, or (4) has an "identity of interest" with the applicant.<sup>248</sup> The Commission's definition of an affiliate of the applicant encompasses both controlling interests of the applicant and affiliates of controlling interests of the applicant.<sup>249</sup> For more information on the application requirements regarding controlling interests and affiliates, applicants should refer to sections 1.2110(c)(2) and (c)(5) respectively,<sup>250</sup> as well as the FCC Form 175 Instructions.

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<sup>242</sup> 47 CFR § 1.2110(b)(1), (f)(4)(i)(C)(1).

<sup>243</sup> *Id.* § 1.2110(c)(2)(i).

<sup>244</sup> *Id.*

<sup>245</sup> *See id.*; *see also, e.g., Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, PP Docket No. 93-253, Fifth Memorandum Opinion and Order, 10 FCC Rcd 403, 447-49, 451, 455-56, paras. 80-82, 85-86, 95-96 (1994); *Intermountain Microwave*, Public Notice, 12 FCC 2d 559, 559-60 (1963) (*Intermountain Microwave*); *Application of Ellis Thompson Corp.*, CC Docket No. 94-136, Memorandum Opinion and Order and Hearing Designation Order, 9 FCC Rcd 7138, 7138-39, paras. 9-11 (1994); *Application of Baker Creek Communications, L.P.*, Memorandum Opinion and Order, 13 FCC Rcd 18709, 18713-14, paras. 7-8 (WTB 1998); *Northstar Wireless, LLC, SNR Wireless LicenseCo, LLC, Applications for New Licenses in the 1695-1710 MHz, 1755-1780 MHz and 2155-2180 MHz Bands*, Memorandum Opinion and Order, 30 FCC Rcd 8887, 8889-91, paras. 4-9 (2015), *aff'd on this issue and remanded on other grounds sub nom. SNR Wireless LicenseCo, LLC v. FCC*, 868 F.3d 1021 (D.C. Cir. 2017), *cert. denied*, 138 S. Ct. 2674 (2018).

<sup>246</sup> 47 CFR § 1.2110(c)(2)(i)(A)-(C).

<sup>247</sup> *Id.* § 1.2110(c)(2)(ii)(F).

<sup>248</sup> *Id.* § 1.2110(c)(5).

<sup>249</sup> *Id.*

<sup>250</sup> *Id.* § 1.2110(c)(2), (c)(5).

99. An applicant seeking a small business bidding credit must demonstrate its eligibility for the bidding credit by: (1) meeting the applicable small business size standard, based on the controlling interest and affiliation rules discussed above; and (2) retaining control, on a license-by-license basis, over the spectrum associated with the licenses for which it seeks small business benefits.<sup>251</sup> For purposes of the first prong of the standard, applicants should note that control and affiliation may arise through, among other things, ownership interests, voting interests, management and other operating agreements, or the terms of any other types of agreements—including spectrum lease agreements—that independently or together create a controlling, or potentially controlling, interest in the applicant’s or licensee’s business as a whole.<sup>252</sup> In addition, once an applicant demonstrates eligibility as a small business under the first prong, it must also be eligible for benefits on a license-by-license basis under the second prong.<sup>253</sup> As part of making the FCC Form 175 certification that it is qualified as a designated entity under section 1.2110, an applicant is certifying that it does not have any spectrum use or other agreements that would confer either *de jure* or *de facto* control of any license it seeks to acquire with bidding credits.<sup>254</sup>

100. Applicants should note that, under this standard for evaluating eligibility for small business bidding credits, if an applicant executes a spectrum use agreement that does not comply with the Commission’s relevant standard of *de facto* control,<sup>255</sup> then it will be subject to unjust enrichment obligations for the benefits associated with that particular license, as well as the penalties associated with any violation of section 310(d) of the Communications Act and related regulations, which require Commission approval of transfers of control.<sup>256</sup> If that spectrum use agreement (either alone or in combination with the designated entity controlling interest and attribution rules described above) goes so far as to confer control of the applicant’s overall business, then the gross revenues of the additional interest holders will be attributed to the applicant, which could render the applicant ineligible for all current and future small business benefits on all licenses.<sup>257</sup>

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<sup>251</sup> See *id.* § 1.2110(b)(3); *Updating Part 1 Report and Order*, 30 FCC Rcd at 7507-10, paras. 29-34.

<sup>252</sup> *Updating Part 1 Report and Order*, 30 FCC Rcd at 7507, para. 30; see also, e.g., 47 CFR § 1.2110(c)(5)(vii)-(x) (explaining how affiliation can arise where one concern has the power to control or potentially control the other concern). As discussed below, except under the limited provisions provided for spectrum manager lessors, the Commission’s decision to discontinue its policy requiring designated entity licensees to operate as primarily facilities-based providers of service directly to the public does not alter the rules that require the Commission to consider whether any particular use agreement may confer control of or create affiliation with the applicant. See *Updating Part 1 Report and Order*, 30 FCC Rcd at 7509, para. 33.

<sup>253</sup> 47 CFR § 1.2110(b)(3); see *Updating Part 1 Report and Order*, 30 FCC Rcd at 7507, 7509, paras. 29, 33.

<sup>254</sup> See 47 CFR § 1.2105(a)(2)(iv); *Updating Part 1 Report and Order*, 30 FCC Rcd at 7509-10, paras. 33-34; see also 47 CFR § 1.2110(c)(2)(ii)(A). For instance, if an applicant has a spectrum use agreement on a particular license that calls into question whether, under the Commission’s affiliation rules, the user’s revenues should be attributed to the applicant for that particular license, rather than for its overall business operations, the applicant could be ineligible to acquire or retain benefits with respect to that particular license. By taking this license-by-license approach, an applicant need not be eligible for small business benefits on each of the spectrum licenses it holds in order to demonstrate its overall eligibility for such benefits. *Updating Part 1 Report and Order*, 30 FCC Rcd at 7509, para. 33.

<sup>255</sup> See 47 CFR § 1.9010 (defining *de facto* control for spectrum leasing arrangements); see also *Intermountain Microwave*, 12 FCC 2d at 559-60 (describing *de facto* control for non-leasing situations); 47 CFR § 1.2110(c)(2) (defining *de facto* control for designated entities); *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15324, para. 61 (incorporating the *Intermountain Microwave* principles of control into section 1.2110 of the Commission’s rules).

<sup>256</sup> *Updating Part 1 Report and Order*, 30 FCC Rcd at 7509, para. 34. Although in this scenario the applicant may not be eligible for a bidding credit and may be subject to the Commission’s unjust enrichment rules, the applicant need not be eligible for small business benefits on each of the spectrum licenses it holds in order to demonstrate its overall eligibility for such benefits.

<sup>257</sup> *Id.* This rule does not alter the full dilution requirement in 47 CFR § 1.2110(c)(2)(ii)(A). Except where the (continued....)

### b. Limitation on Spectrum Use

101. Under section 1.2110(c)(2)(ii)(J) of the Commission's rules, the gross revenues (or the subscribers, in the case of a rural service provider) of an applicant's disclosable interest holder are attributable to the applicant, on a license-by-license basis, if the disclosable interest holder has an agreement with the applicant to use, in any manner, more than 25% of the spectrum capacity of any license won by the applicant and acquired with a bidding credit during the five-year unjust enrichment period for the applicable license.<sup>258</sup> For purposes of this requirement, a disclosable interest holder of an applicant seeking designated entity benefits is defined as any individual or entity holding a 10% or greater interest of any kind in the applicant, including but not limited to, a 10% or greater interest in any class of stock, warrants, options, or debt securities in the applicant or licensee.<sup>259</sup> Any applicant seeking a bidding credit for licenses won in Auction 108 will be subject to this attribution rule and must make the requisite disclosures.<sup>260</sup>

102. Certain disclosable interest holders may be excluded from this attribution rule. Specifically, an applicant claiming the rural service provider bidding credit may have spectrum license use agreements with a disclosable interest holder, without having to attribute the disclosable interest holder's subscribers, so long as the disclosable interest holder is independently eligible for a rural service provider credit and the disclosable interest holder's spectrum use and any spectrum use agreements are otherwise permissible under the Commission's existing rules.<sup>261</sup> If applicable, the applicant must attach to its FCC Form 175 any additional information as may be required to indicate any license (or license area) that may be subject to this attribution rule or to demonstrate its eligibility for the exception from this attribution rule.<sup>262</sup> Consistent with the Commission's limited information procedures, we intend to withhold from public disclosure all information contained in any such attachments until after the close of Auction 108.

### c. Exceptions from Attribution Rules for Small Businesses and Rural Service Providers

103. Applicants claiming designated entity benefits may be eligible for certain exceptions from the Commission's attribution rules.<sup>263</sup> For example, in calculating an applicant's gross revenues under the controlling interest standard, the Commission will not attribute to the applicant the personal net worth, including personal income, of its officers and directors.<sup>264</sup> However, to the extent that the officers and directors of the applicant are controlling interest holders of other entities, the gross revenues of those

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leasing standard of *de facto* control applies under sections 1.9010 and 1.9020 of the secondary market rules, the criteria of *Intermountain Microwave* and *Ellis Thompson* will continue to apply to every Commission licensee for purposes of assessing whether it can demonstrate that it retains *de facto* control of its business venture and spectrum license. 47 CFR §§ 1.9010, 1.9020; *Application of Ellis Thompson Corporation*, Summary Decision, 10 FCC Rcd 12554, 12555-56, para. 9 (ALJ 1995). In the *Updating Part 1 Report and Order*, the Commission also modified section 1.9020 of its rules to apply the same *de facto* control standard to designated entity spectrum manager lessors that it applies to non-designated entity spectrum manager lessors. *Updating Part 1 Report and Order*, 30 FCC Rcd at 7510-11, paras. 35-39; *see* 47 CFR § 1.9020.

<sup>258</sup> 47 CFR § 1.2110(c)(2)(ii)(J); *Updating Part 1 Report and Order*, 30 FCC Rcd at 7512-16, paras. 42-53.

<sup>259</sup> 47 CFR § 1.2110(c)(2)(ii)(J).

<sup>260</sup> *See* Sections II.I.1. (Small Business Bidding Credit), II.I.2. (Rural Service Provider Bidding Credit), above.

<sup>261</sup> 47 CFR § 1.2110(c)(2)(ii)(J); *see also* *Updating Part 1 Report and Order*, 30 FCC Rcd at 7513, para. 46.

<sup>262</sup> To the extent an Auction 108 applicant is required to submit any such additional information, the applicant must not disclose details of its submission to others as it would reveal information regarding its license selection(s).

<sup>263</sup> *See, e.g.*, 47 CFR § 1.2110(b)(4).

<sup>264</sup> *See id.* § 1.2110(c)(2)(ii)(F); *Part 1 Third R&O Second Recon/Part 1 Fifth R&O Recon*, 18 FCC Rcd at 10185-86, paras. 8-9.

entities will be attributed to the applicant.<sup>265</sup> Moreover, if an officer or director operates a separate business, then the gross revenues derived from that business would be attributed to the applicant.<sup>266</sup>

104. The Commission has also exempted from attribution to the applicant the gross revenues of the affiliates of a rural telephone cooperative's officers and directors, if certain conditions specified in section 1.2110(b)(4)(iii) of the Commission's rules are met.<sup>267</sup> An applicant claiming this exemption must provide, in an attachment, an affirmative statement that the applicant, affiliate and/or controlling interest is an eligible rural telephone cooperative within the meaning of section 1.2110(b)(4)(iii), and the applicant must supply any additional information as may be required to demonstrate eligibility for the exemption from the attribution rule.<sup>268</sup>

105. An applicant claiming a rural service provider bidding credit may be eligible for an exception from the Commission's attribution rules as an existing rural partnership. To qualify for this exception, an applicant must be a rural partnership providing service as of July 16, 2015, and each member of the rural partnership must individually have fewer than 250,000 combined wireless, wireline, broadband, and cable subscribers.<sup>269</sup> Because each member of the rural partnership must individually qualify for the bidding credit, by definition, a partnership that includes a nationwide provider as a member will not be eligible for the benefit.<sup>270</sup>

106. Finally, a consortium of small businesses or rural service providers may seek an exception from the Commission's attribution rules. Under the Commission's rules, a consortium of small businesses or rural service providers is a conglomerate organization composed of two or more entities, each of which individually satisfies the definition of small business or rural service provider.<sup>271</sup> A consortium must provide additional information for each member demonstrating each member's eligibility for the claimed bidding credit in order to show that the applicant satisfies the eligibility criteria for the bidding credit.<sup>272</sup> The gross revenue or subscriber information of each consortium member will not be aggregated for purposes of determining the consortium's eligibility for the claimed bidding credit. This information must be provided, however, to ensure that each consortium member qualifies for the bidding credit sought by the consortium.

#### **J. Tribal Lands Bidding Credit**

107. A winning bidder that intends to use its license(s) to deploy facilities and provide services to qualifying Tribal lands that have a wireline penetration rate equal to or below 85% is eligible to receive a Tribal lands bidding credit.<sup>273</sup> A Tribal lands bidding credit is in addition to, and separate from, any

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<sup>265</sup> *Part 1 Third R&O Second Recon/Part 1 Fifth R&O Recon*, 18 FCC Rcd at 10186, para. 9.

<sup>266</sup> *See Part 1 Third R&O Second Recon/Part 1 Fifth R&O Recon*, 18 FCC Rcd at 10186, para. 9.

<sup>267</sup> *See* 47 CFR § 1.2110(b)(4)(iii); *see also Part 1 Third R&O Second Recon/Part 1 Fifth R&O Recon*, 18 FCC Rcd at 10186-94, paras. 10-18; *Part 1 Fifth R&O Second Recon*, 20 FCC Rcd at 1945-50, paras. 9-18.

<sup>268</sup> 47 CFR § 1.2110(b)(4)(iii); *see also Part 1 Third R&O Second Recon/Part 1 Fifth R&O Recon*, 18 FCC Rcd at 10186-95, paras. 10-20; *Part 1 Fifth R&O Second Recon*, 20 FCC Rcd at 1945-50, paras. 9-18.

<sup>269</sup> *See* 47 CFR § 1.2110(f)(4)(i)(C)(2); *Updating Part 1 Report and Order*, 30 FCC Rcd at 7536, para. 102. Thus, the Commission will essentially evaluate eligibility for an existing rural wireless partnership on the same basis as it would for an applicant applying for a bidding credit as a consortium of rural service providers. *See Updating Part 1 Report and Order*, 30 FCC Rcd at 7536, para. 102 & n.336.

<sup>270</sup> *Updating Part 1 Report and Order*, 30 FCC Rcd at 7536, para. 103. We also note that members of such partnerships that fall under this exception may also apply as individual applicants or members of a consortium (to the extent that it is otherwise permissible to do so under the Commission's rules) and seek eligibility for a rural service provider bidding credit. *Id.* at 7536, 7582, paras. 103, 210.

<sup>271</sup> 47 CFR § 1.2110(c)(6).

<sup>272</sup> *See* Sections II.I.1. (Small Business Bidding Credit), II.I.2. (Rural Service Provider Bidding Credit), above.

other bidding credit for which a winning bidder may qualify. Unlike other bidding credits that are requested prior to an auction, a winning bidder applies for a Tribal lands bidding credit after the auction when it files its FCC Form 601 post-auction application.<sup>274</sup>

### K. Provisions Regarding Former and Current Defaulters

108. Pursuant to the rules governing competitive bidding, each applicant must make certifications regarding whether it is a current or former defaulter or delinquent.<sup>275</sup> A current defaulter or delinquent is not eligible to participate in Auction 108,<sup>276</sup> but a former defaulter or delinquent may participate so long as it is otherwise qualified and makes an upfront payment that is 50% more than would otherwise be necessary.<sup>277</sup> Accordingly, each applicant must certify under penalty of perjury on its FCC Form 175 that it, its affiliates, its controlling interests, and the affiliates of its controlling interests are not in default on any payment for a Commission construction permit or license (including down payments) and that they are not delinquent on any non-tax debt owed to any Federal agency.<sup>278</sup> Additionally, an applicant must certify under penalty of perjury whether it (along with its controlling interests) has ever been in default on any payment for a Commission construction permit or license (including down payments) or has ever been delinquent on any non-tax debt owed to any Federal agency, subject to the

(Continued from previous page) \_\_\_\_\_

<sup>273</sup> 47 CFR §§ 1.2107(e), 1.2110(f)(3)(i); *2.5 GHz Report and Order*, 34 FCC Rcd at 5480, para. 92. See also *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services*, GN Docket No. 14-177 et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014, 8100-01, para. 253 (2016).

<sup>274</sup> For additional information on the procedure to claim a tribal lands bidding credit, see Section V.E. (Tribal Lands Bidding Credit), below.

<sup>275</sup> 47 CFR § 1.2105(a)(2)(xi), (xii).

<sup>276</sup> An applicant is considered a “current defaulter” or a “current delinquent” when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, is in default on any payment for any Commission construction permit or license (including a down payment) or is delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for auction applications. See *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317, para. 42 & n.142; *Wireless Telecommunications Bureau Reminds Prospective Broadband PCS Spectrum Auction Applicants of Default and Delinquency Disclosure Requirements*, Public Notice, 19 FCC Rcd 21920, 21920 (2004) (*Auction Default Disclosure Public Notice*). This public notice may be found at [www.fcc.gov/auction/58](http://www.fcc.gov/auction/58).

<sup>277</sup> 47 CFR §§ 1.2105(a)(2)(xii), (b)(1), 1.2106(a). For purposes of evaluating the certifications under sections 1.2105(a)(2)(xi) and (xii), we clarify that “non-tax debt owed to any Federal agency” includes, within the meaning of the rule, all amounts owed under Federal programs, including contributions to the Universal Service Fund (USF), Telecommunications Relay Services Fund, and the North American Numbering Plan Administration, notwithstanding that the administrator of any such fund may not be considered a Federal “agency” under the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996) (codified in relevant parts at 31 U.S.C. §§ 3716 (administrative offset), 3717 (interest and penalty on claims)); see also 47 CFR §§ 1.1901, 1.1911, 1.1912, 1.1940. For example, an applicant with a past due USF contribution as of the auction application filing deadline would be disqualified from participating in Auction 108 under the Commission’s rules. 47 CFR § 1.2105(a)(2)(xi), (b)(1). If, however, the applicant cures the overdue debt prior to the auction application filing deadline (and such debt does not fall within one of the exclusions described in paragraph 109 of this Public Notice), then it may be eligible to participate in Auction 108 as a former defaulter under the Commission’s rules. See *id.* §§ 1.2105(a)(2)(xii), 1.2106(a). For additional information on upfront payments and related forms, see Section III.F. (Upfront Payments), below.

<sup>278</sup> 47 CFR § 1.2105(a)(2)(xi); see also *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317, para. 42 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.”).

<sup>279</sup> 47 CFR § 1.2105(a)(2)(xii). *Updating Part 1 Report and Order*, 30 FCC Rcd at 7568, para. 175 (interpreting the (continued....))

exclusions described below.<sup>279</sup> For purposes of making these certifications, the term “controlling interest” is defined in section 1.2105(a)(4)(i) of the Commission rules.<sup>280</sup>

109. Under the Commission’s rule regarding applications by former defaulters, an applicant is considered a “former defaulter” or a “former delinquent” when, as of the FCC Form 175 filing deadline, the applicant or any of its controlling interests has defaulted on any Commission construction permit or license or has been delinquent on any non-tax debt owed to any Federal agency, but has since remedied all such defaults and cured all of the outstanding non-tax delinquencies.<sup>281</sup> For purposes of the certification under section 1.2105(a)(2)(xii), the applicant may exclude from consideration any cured default on a Commission construction permit or license or cured delinquency on a non-tax debt owed to a Federal agency for which any of the following criteria are met: (1) the notice of the final payment deadline or delinquency was received more than seven years before the FCC Form 175 filing deadline, (2) the default or delinquency amounted to less than \$100,000, (3) the default or delinquency was paid within two quarters (i.e., six months) after receiving the notice of the final payment deadline or delinquency, or (4) the default or delinquency was the subject of a legal or arbitration proceeding and was cured upon resolution of the proceeding.<sup>282</sup> With respect to the first exclusion, notice to a debtor may include notice of a final payment deadline or notice of delinquency and may be express or implied depending on the origin of any Federal non-tax debt giving rise to a default or delinquency.<sup>283</sup> Additionally, for the third exclusion, the date of receipt of the notice of a final default deadline or delinquency by the intended party or debtor will be used for purposes of verifying receipt of notice.<sup>284</sup>

110. In addition to this Public Notice, applicants are encouraged to review previous guidance on default and delinquency disclosure requirements in the context of the auction short-form application process.<sup>285</sup> Parties are also encouraged to consult with Auctions Division staff if they have any questions about default and delinquency disclosure requirements.

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former-defaulter certification in section 1.2105(a)(2)(xii) as applying to applicants and controlling interests).

<sup>280</sup> 47 CFR § 1.2105(a)(4)(i).

<sup>281</sup> 47 CFR § 1.2105(a)(2)(xii); *Updating Part 1 Report and Order*, 30 FCC Rcd at 7568, para. 175. In 2015, the Commission narrowed the scope of the individuals and entities to be considered for purposes of the former defaulter rule. *Updating Part 1 Report and Order*, 30 FCC Rcd at 7568, para. 175; see 47 CFR § 1.2105(a)(2)(xii), (a)(4).

<sup>282</sup> 47 CFR § 1.2105(a)(2)(xii), (a)(4); *Updating Part 1 Report and Order*, 30 FCC Rcd at 7566-68, paras. 173-75. Additionally, for purposes of the certification required on an FCC Form 175, a debt will not be deemed to be in default or delinquent until after the expiration of a final payment deadline. See, e.g., *Expedited Clarification of Sections 1.2105(a) and 1.2106(a) of the Commission's Rules*, Letter Order, 19 FCC Rcd 22907, 22907-08 (WTB 2004). Thus, to the extent that the rules providing for payment of a specific federal debt permit payment after an original payment deadline accompanied by late fee(s), such debts would not be in default or delinquent for purposes of applying the former defaulter rules until after the late payment deadline. In addition, we provide the following regarding defaults on Commission licenses: any winning bidder that fails to timely pay its post-auction down payment or the balance of its final winning bid amount(s) or is disqualified for any reason after the close of an auction will be in default and subject to a default payment. 47 CFR § 1.2109(c). Commission staff provide individual notice of the amount of such a default payment as well as procedures and information required by the Debt Collection Improvement Act of 1996, including the payment due date and any charges, interest, and/or penalties that accrue in the event of delinquency. See, e.g., 31 U.S.C. §§ 3716, 3717; 47 CFR §§ 1.1911, 1.1912, 1.1940. For purposes of the certifications required on an FCC Form 175, such notice provided by Commission staff assessing a default payment arising out of a default on a winning bid constitutes notice of the final payment deadline with respect to a default on a Commission license.

<sup>283</sup> *Updating Part 1 Report and Order*, 30 FCC Rcd at 7566, para. 173 & n.556.

<sup>284</sup> *Id.* at 7567, para. 173 & n.559.

<sup>285</sup> See *Auction Default Disclosure Public Notice*, 19 FCC Rcd at 21920.

111. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission has previously adopted rules, including a provision referred to as the “red light rule,” that implement its obligations under the Debt Collection Improvement Act of 1996, which governs the collection of debts owed to the United States.<sup>286</sup> Under the red light rule, applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission will not be processed.<sup>287</sup> When adopting that rule, the Commission explicitly declared, however, that its competitive bidding rules “are not affected” by the red light rule.<sup>288</sup> As a consequence, the Commission’s adoption of the red light rule does not alter the applicability of any of its competitive bidding rules, including the provisions and certifications of sections 1.2105 and 1.2106, with regard to current and former defaults or delinquencies.

112. We remind each applicant, however, that any indication in the Commission’s Red Light Display System, which provides information regarding debts currently 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.<sup>289</sup> Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant’s lack of current “red light” status is not necessarily determinative of its eligibility to participate in an auction (or whether it may be subject to an increased upfront payment obligation). Moreover, a prospective applicant in Auction 108 should note that any long-form applications filed after the close of bidding will be reviewed for compliance with the Commission’s red light rule,<sup>290</sup> and such review may result in the dismissal of a winning bidder’s long-form application.<sup>291</sup> We encourage each applicant to carefully review all records and other available Federal agency databases and information sources to determine whether the applicant, or any of its affiliates, or any of its controlling interests, or any of the affiliates of its controlling interests, owes or was ever delinquent in the payment of non-tax debt owed to any Federal agency.

#### **L. Optional Applicant Status Identification**

113. Applicants owned by members of minority groups and/or women, as defined in section 1.2110(c)(3),<sup>292</sup> and rural telephone companies, as defined in section 1.2110(c)(4),<sup>293</sup> may identify themselves regarding this status in filling out their FCC Form 175 applications. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of various groups in its auctions.<sup>294</sup>

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<sup>286</sup> *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 Debtors*, MD Docket No. 02-339, Report and Order, 19 FCC Rcd 6540 (2004) (*Debt Collection Report and Order*).

<sup>287</sup> *Id.*

<sup>288</sup> *Id.* at 6541, para. 3 n.11 (specifically noting the current defaulter and former defaulter certifications of 47 CFR § 1.2105(a)(2)(x) and (xi) and stating that “[t]hese rules are not affected by the red light rule”).

<sup>289</sup> *Auction Default Disclosure Public Notice*, 19 FCC Rcd at 21921-22 (addressing relationship between Commission’s Red Light Display System and short-form application default and delinquency disclosure requirements for auction applicants). To access the Commission’s Red Light Display System, go to <https://apps.fcc.gov/redlight/login.cfm>.

<sup>290</sup> *See Debt Collection Report and Order*, 19 FCC Rcd at 6540-42, paras. 1, 3-5; *see also* 47 CFR § 1.1114.

<sup>291</sup> Applicants that have their long-form applications dismissed will be deemed to have defaulted and will be subject to default payments under 47 CFR §§ 1.2104(g) and 1.2109(c).

<sup>292</sup> 47 CFR § 1.2110(c)(3).

<sup>293</sup> *Id.* § 1.2110(c)(4).

<sup>294</sup> For instance, designated entities are defined as small businesses (including businesses owned by members of minority groups and/or women), rural telephone companies, and rural service providers. *Id.* § 1.2110(a).

**M. Modifications to FCC Form 175****1. Only Minor Modifications Allowed**

114. After the initial FCC Form 175 filing deadline, an Auction 108 applicant will be permitted to make only minor amendments to its application consistent with the Commission's rules.<sup>295</sup> Major amendments to an FCC Form 175 (e.g., change of license area selection, changes in ownership that would constitute an assignment or transfer of control of the applicant, change in the required certifications, change in applicant's legal classification that results in a change in control, or change in claimed eligibility for a higher percentage of bidding credit) will not be permitted after the initial FCC Form 175 filing deadline.<sup>296</sup> If an amendment reporting changes is a "major amendment," as described in section 1.2105(b)(2), the major amendment will not be accepted and may result in the dismissal of the application.<sup>297</sup>

**2. Duty to Maintain Accuracy and Completeness of FCC Form 175**

115. Pursuant to section 1.65 of the Commission's rules, each applicant has a continuing obligation to maintain the accuracy and completeness of information furnished in a pending application, including a pending application to participate in Auction 108.<sup>298</sup> Consistent with the requirements for prior spectrum auctions, an applicant for Auction 108 must furnish additional or corrected information to the Commission within five business days after a significant occurrence, or amend its FCC Form 175 no more than five business days after the applicant becomes aware of the need for the amendment.<sup>299</sup> An applicant is obligated to amend its pending application even if a reported change may result in the dismissal of the application because it is subsequently determined to be a major modification.

**3. Modifying an FCC Form 175**

116. As noted above, a party seeking to participate in Auction 108 must file an FCC Form 175 electronically via the FCC's Auction Application System. During the initial filing window, an applicant will be able to make any necessary modifications to its FCC Form 175 in the Auction Application System. An applicant that has certified and submitted its FCC Form 175 before the close of the initial filing window may continue to make modifications as often as necessary until the close of that window;

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<sup>295</sup> See *id.* § 1.2105(b)(2). Minor amendments include any changes that are not major, such as: the deletion or addition of authorized bidders (to a maximum of three); revision of addresses and telephone numbers of the applicant, its responsible party, and its contact person; correcting typographical errors; and supplying or correcting information as requested to support the certifications made in the application. *Id.*

<sup>296</sup> See *id.*; see also *Two Way Radio of Carolina, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 12035 (1999) (*Two Way Radio*) (holding that auction applicant was not allowed to change its designated entity status after application filing deadline).

<sup>297</sup> See 47 CFR § 1.2105(b)(2) ("An application will be considered to be newly filed if it is amended by a major amendment and may not be resubmitted after applicable filing deadlines."). Any change in control of an applicant—resulting from a merger, for example—will be considered a major amendment, and the application will consequently be dismissed. The Commission reiterates that, even if an applicant's FCC Form 175 is dismissed, the applicant would remain subject to the communication prohibitions of 47 CFR § 1.2105(c) until the down payment deadline for Auction 108. See *id.* § 1.2105(b)(2) for more examples of major amendments.

<sup>298</sup> See *id.* §§ 1.65(a), 1.2105(b)(4). For purposes of sections 1.65 and 1.2105(b)(4), an applicant's FCC Form 175 and associated attachments will remain pending until the release of a public notice announcing the close of the auction. However, we remind Auction 108 applicants that they remain subject to the section 1.2105(c) prohibition on certain communications until the post-auction deadline for making down payments on winning bids. See Section II.H.2. (Prohibition Applies Until Down Payment Deadline), above.

<sup>299</sup> See 47 CFR § 1.2105(b)(4). We remind each applicant of its duty to continuously maintain the accuracy of information submitted in its auction application. See, e.g., *Vermont Telephone Company, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 14130, 14134, para. 11 (EB 2011).

however, the applicant must re-certify and re-submit its FCC Form 175 before the close of the initial filing window to confirm and effect its latest application changes. After each submission, a confirmation page will be displayed stating the submission time and submission date.

117. An applicant will also be allowed to modify its FCC Form 175 in the Auction Application System, except for certain fields,<sup>300</sup> during the resubmission filing window and after the release of the public notice announcing the qualified bidders for an auction. During these times, if an applicant needs to make permissible minor changes to its FCC Form 175 or must make changes in order to maintain the accuracy and completeness of its application pursuant to sections 1.65 and 1.2105(b)(4), then it must make the change(s) in the Auction Application System and re-certify and re-submit its application to confirm and effect the change(s).

118. An applicant's ability to modify its FCC Form 175 in the Auction Application System will be limited between the closing of the initial filing window and the opening of the application resubmission filing window, and between the closing of the resubmission filing window and the release of the public notice announcing the qualified bidders for an auction. During these periods, an applicant will be able to view its submitted application, but will be permitted to modify only the applicant's address, responsible party address, and contact information (e.g., name, address, telephone number) in the Auction Application System. An applicant will not be able to modify any other pages of the FCC Form 175 in the Auction Application System during these periods. If, during these periods, an applicant needs to make other permissible minor changes to its FCC Form 175, or changes to maintain the accuracy and completeness of its application pursuant to sections 1.65 and 1.2105(b)(4), then the applicant must submit a letter briefly summarizing the changes to its FCC Form 175 via email to [auction108@fcc.gov](mailto:auction108@fcc.gov). The email summarizing the changes must include a subject line referring to Auction 108 and the name of the applicant, for example, "Re: Changes to Auction 108 Auction Application of XYZ Corp." Any attachments to the email must be formatted as Adobe® Acrobat® (PDF) or Microsoft® Word documents. An applicant that submits its changes in this manner must subsequently modify, certify, and submit its FCC Form 175 application(s) electronically in the Auction Application System once it is again open and available to applicants.

119. Applicants should also note that even at times when the Auction Application System is open and available to applicants, the system will not allow an applicant to make certain other permissible changes itself (e.g., correcting a misstatement of the applicant's legal classification).<sup>301</sup> If an applicant needs to make a permissible minor change of this nature, then it must submit a written request by email to the Auctions Division Chief, via [auction108@fcc.gov](mailto:auction108@fcc.gov) requesting that the Commission manually make the change on the applicant's behalf. Once Commission staff has informed the applicant that the change has been made in the Auction Application System, the applicant must then re-certify and re-submit its FCC Form 175 in the Auction Application System to confirm and effect the change(s).

120. As with filing the FCC Form 175, any amendment(s) to the application and related statements of fact must be certified by an authorized representative of the applicant with authority to bind the applicant. Applicants should note that submission of any such amendment or related statement of fact constitutes a representation by the person certifying that he or she is an authorized representative with such authority and that the contents of the amendment or statement of fact are true and correct.

121. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System. Further, as discussed above, parties submitting information related to their applications should use caution to ensure that their submissions do not contain confidential information or communicate information that would violate section 1.2105(c) or the limited information

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<sup>300</sup> Specifically, an applicant will not be allowed to modify electronically in the Auction Application System the applicant's legal classification, the applicant's name, or the certifying official.

<sup>301</sup> This is the case because certain fields on the FCC Form 175 will no longer be changeable by the applicant after the initial filing window closes.

procedures adopted for Auction 108. An applicant seeking to submit, outside of the Auction Application System, information that might reflect non-public information, such as an applicant's county selection(s), upfront payment amount, or bidding eligibility, should consider including in its email a request that the filing or portions of the filing be withheld from public inspection until the end of the prohibition on certain communications pursuant to section 1.2105(c).

122. Questions about FCC Form 175 amendments should be directed to the Auctions Division at (202) 418-0660.

### III. PREPARING FOR BIDDING IN AUCTION 108

#### A. Due Diligence

123. We remind each potential bidder that it is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the licenses that it is seeking in Auction 108 and that it is required to certify, under penalty of perjury, that it has read this Public Notice and has familiarized itself with the auction procedures and the service rules for the 2.5 GHz band. **The Commission makes no representations or warranties about the use of this spectrum or these licenses for particular services. Each applicant should be aware that a Commission auction represents an opportunity to become a Commission licensee, subject to certain conditions and regulations. This includes the established authority of the Commission to alter the terms of existing licenses by rulemaking, which is equally applicable to licenses awarded by auction.<sup>302</sup> A Commission auction does not constitute an endorsement by the Commission of any particular service, technology, or product, nor does a Commission license constitute a guarantee of business success.**

124. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. In particular, we encourage each potential bidder to perform technical analyses and/or refresh its previous analyses to assure itself that, should it become a winning bidder for any Auction 108 license, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements.<sup>303</sup> We urge each applicant to inspect any prospective sites for communications facilities located in, or near, the geographic area for which it plans to bid, confirm the availability of such sites, and to familiarize itself with the Commission's rules regarding the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), and any other environmental statutes that may apply.<sup>304</sup>

125. As noted above, applicants must carefully consider potential encumbrances on existing licenses. We note in particular that there will be a substantial number of licenses in inventory where the amount of unassigned area or unassigned spectrum is very small. For example, there could be licenses in Channel Block 2 where as little as .333 megahertz of spectrum is unassigned.<sup>305</sup> There are also a substantial number of licenses where the area with unassigned spectrum is smaller than one square mile. Each applicant should carefully research the existence of incumbent licenses and the technical and economic implications for commercial use of the 2.5 GHz band.

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<sup>302</sup> See, e.g., *Cellco P'ship v. FCC*, 700 F.3d 534, 542 (D.C. Cir. 2012); *Celtronix Telemetry, Inc. v. FCC*, 272 F.3d 585, 589 (D.C. Cir. 2001) (citing 47 U.S.C. § 309(j)(6)(D)).

<sup>303</sup> As noted above, the new mapping tool is being made available to all potential bidders in Auction 108, and the public generally, concurrently with the release of this Public Notice. It can be found under the Education tab on the Auction 108 website. Potential applicants are reminded, however, that this mapping tool is merely a graphical aid for potential applicants and does not represent official licensing information; all information should be confirmed in ULS for any specific license or area.

<sup>304</sup> 42 U.S.C. § 4321 *et seq.*; 54 U.S.C. § 300101 *et seq.*; 47 CFR pt. 1, subpt. I.

<sup>305</sup> The J guard band channels are each 1/3 megahertz wide.

126. We also encourage each applicant in Auction 108 to continue to conduct its own research throughout the auction in order to determine the existence of pending or future administrative or judicial proceedings that might affect its decision on continued participation in the auction. Each applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on licenses available in an auction. The due diligence considerations mentioned in this Public Notice do not constitute an exhaustive list of steps that should be undertaken prior to participating in Auction 108. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon the specific facts and circumstances related to its interests. For example, applicants should pay particular attention to the results of applications filed in the Rural Tribal Priority Window, which will determine the final inventory of licenses available for bidding in Auction 108.<sup>306</sup> We emphasize again that licenses granted through applications received during the Rural Tribal Priority Window have incumbent status *vis-à-vis* licenses awarded in Auction 108. In other words, any winning bidder awarded a license in Auction 108 will not be allowed to operate within the license area of a successful Rural Tribal Priority Window applicant, even if that application remains pending today or at the time of issuance of the overlay license.<sup>307</sup> In addition, we remind applicants that the tools made available to assess the available licenses in Auction 108, including the mapping tool described in Section I.C. (Description of Licenses to Be Offered in Auction 108), above, may not represent official licensing information and all information should be confirmed in ULS for any specific license or area.

127. **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 the licenses available in Auction 108.** Each potential bidder is responsible for undertaking research to ensure that any licenses won in the auction will be suitable for its business plans and needs. Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

128. 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, it must 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.

## B. Licensing Considerations

### 1. Incumbency Issues

129. Potential applicants in Auction 108 should carefully review the new rules applicable to the 2.5 GHz band as well as the results of applications filed in the Rural Tribal Priority Window, which will determine the final license inventory for Auction 108, when developing business plans, assessing market conditions, and evaluating the availability of equipment for 2.5 GHz operations.<sup>308</sup> Each applicant

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<sup>306</sup> See *2.5 GHz Report and Order*, 34 FCC Rcd at 5463-69, paras. 47-65. Updates regarding applications filed during the Rural Tribal Priority Window are available at: [www.fcc.gov/rural-tribal-window-updates](http://www.fcc.gov/rural-tribal-window-updates). In particular, we recommend that potential Auction 108 applicants monitor the status of Rural Tribal Priority Window applications and any waiver requests that may be attached to an application. See, e.g., Petition for Waiver, Osni Ponca, LLC, File No. 0009185897 (filed Sep. 2, 2020). Rural Tribal Priority Window applications, and any waivers attached to an application, can be found at: [www.fcc.gov/25-ghz-rural-tribal-application-details](http://www.fcc.gov/25-ghz-rural-tribal-application-details). Users should consult ULS to confirm the exact status of an application.

<sup>307</sup> See 47 CFR § 27.1206(b)(2)(ii) (GSA of county-based 2.5 GHz licenses excludes overlapping, co-channel incumbent GSAs, including Rural Tribal Priority Window licenses).

<sup>308</sup> See *2.5 GHz Report and Order*, 34 FCC Rcd at 5450-69, paras. 14-65. See generally AU Docket No. 20-429.

should closely follow releases from the Commission concerning these issues and consider carefully the technical and economic implications for commercial use of the 2.5 GHz band.

## 2. International Coordination

130. Potential bidders seeking licenses for geographic areas adjacent to the Canadian and Mexican borders should be aware that the use of the 2.5 GHz frequencies they acquire in Auction 108 are subject to current and future agreements with the governments of Canada and Mexico.

131. The Commission routinely works with the United States Department of State and Canadian and Mexican government officials to ensure the efficient use of the spectrum as well as interference-free operations in the border areas near Canada and Mexico. Until such time as any adjusted agreements, as needed, between the United States, Mexico, and/or Canada can be agreed to, operations in the 2.5 GHz band must not cause harmful interference across the border, consistent with the terms of the agreements currently in force.

## 3. Environmental Review Requirements

132. Licensees must comply with the Commission's rules for environmental review under the NEPA, the NHPA, and any other environmental statutes that may apply.<sup>309</sup> Licensees and other applicants that propose to build certain types of communications facilities for licensed service must follow Commission procedures implementing obligations under NEPA and NHPA prior to constructing the facilities.<sup>310</sup> Under NEPA, a licensee or applicant must assess if certain environmentally sensitive conditions specified in the Commission's rules are relevant to the proposed facilities, and prepare an environmental assessment when applicable.<sup>311</sup> If an environmental assessment is required, then facilities may not be constructed until environmental processing is completed. Under NHPA, a licensee or applicant must follow the procedures in section 1.1320 of the Commission's rules,<sup>312</sup> the *Nationwide Programmatic Agreement for Collocation of Wireless Antennas*, and the *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*.<sup>313</sup> Compliance with section 106 of the NHPA requires Tribal consultation, and if construction of the communications facilities would have adverse effects on historic or Tribally significant properties, an environmental assessment must be prepared.<sup>314</sup>

## 4. Mobile Spectrum Holdings Policies

133. We remind bidders of the Commission's mobile spectrum holdings policies applicable to the 2.5 GHz band. Specifically, the Commission did not impose a pre-auction bright-line limit on acquisitions of the 2.5 GHz band. The Commission determined that "EBS white space spectrum should be considered 'available' for purposes of the spectrum screen."<sup>315</sup> In addition, the Commission

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<sup>309</sup> 42 U.S.C. § 4321 *et seq.*; 54 U.S.C. § 300101 *et seq.*; 47 CFR Chapter 1, pt. 1, subpt. I.

<sup>310</sup> See *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, Second Report and Order, 33 FCC Rcd 3102 (2018) (amending the Commission's rules concerning the types of deployments that are subject to review pursuant to NHPA and NEPA).

<sup>311</sup> 47 CFR § 1.1307. This assessment may require consultation with expert agencies having environmental responsibilities, such as U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, and the Federal Emergency Management Agency, among others.

<sup>312</sup> *Id.* § 1.1320.

<sup>313</sup> *Id.* pt. 1, Appendices B and C.

<sup>314</sup> *Id.* § 1.1307; see also *Implementation of State and Local Governments' Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012*, WT Docket No. 19-250, RM-11849, Declaratory Ruling and Notice of Proposed Rulemaking, 35 FCC Rcd 5977, 6000-03, paras. 45-50 (2020) (clarifying that no environmental assessment has to be filed if the parties enter into a memorandum of agreement to resolve all adverse effects).

eliminated the EBS white space discounts and ended the 5% exclusion of spectrum from the screen.<sup>316</sup> The Commission also concluded that it would perform case-by-case review of secondary market transactions to assess the effect of educational use restrictions in existing spectrum leases in particular local markets.<sup>317</sup>

### C. Bidder Education

134. Before the opening of the short-form filing window for Auction 108, detailed educational information will be provided in various formats to would-be participants on the Auction 108 web page. Specifically, we direct OEA to provide various materials on the pre-bidding processes in advance of the opening of the short-form application window, beginning with the release of step-by-step instructions for completing the FCC Form 175, which OEA will make available in the Education section of the Auction 108 website at [www.fcc.gov/auction/108](http://www.fcc.gov/auction/108). In addition, OEA will provide an online application procedures tutorial for the auction, covering information on pre-bidding preparation, completing short-form applications, and the application review process.

135. One commenter supports the Commission's practice of providing education resources to aid potential bidders, and urges the Commission to continue the practice in advance of Auction 108, specifically noting the benefit of providing education on the features of the ascending clock auction format, including intra-round bids.<sup>318</sup> In advance of the start of the mock auction, OEA will provide educational materials on the bidding procedures for Auction 108, including a user guide for the bidding system, bidding system file formats, and an online bidding procedures tutorial. These materials will provide detailed information on bidding features specific to the ascending clock auction format, including intra-round bidding and proxy bids. We recognize the importance of these materials to applicants' and bidders' comprehension of the bidding procedures we adopt herein. Accordingly, the educational materials shall be released as soon as reasonably possible to provide potential applicants and bidders with time to understand them and ask questions before bidding begins.

136. We believe that parties interested in participating in Auction 108 will find the interactive, online tutorials an efficient and effective way to further their understanding of the application and bidding processes. The online tutorials will allow viewers to navigate the presentation outline, review written notes, and listen to audio of the notes. Additional features of this web-based tool include links to auction-specific Commission releases, email links for contacting Commission staff, and screen shots of the online application and bidding systems. The online tutorials will be accessible in the Education section of the Auction 108 website at [www.fcc.gov/auction/108](http://www.fcc.gov/auction/108). Once posted, the tutorials will remain continuously accessible.

### D. Short-Form Applications: Due Before 6:00 p.m. ET on May 10, 2022

137. In order to be eligible to bid in Auction 108, an applicant must first follow the procedures to submit a short-form application (FCC Form 175) electronically via the Auction Application System,

(Continued from previous page) \_\_\_\_\_

<sup>315</sup> See *2.5 GHz Report and Order*, 34 FCC Rcd at 5482, para. 99.

<sup>316</sup> *Id.* at 5482-83, paras. 98-100.

<sup>317</sup> *Id.* at 5482-83, para. 100. Some parties suggest that imposition of spectrum caps for the 2.5 GHz band as one method to promote increased competition within the band. See Letter from Michael Calabrese, Director, Wireless Future Program, OTI, to Marlene H. Dortch, Secretary, FCC, AU Docket No. 20-429, at 1 (filed Feb. 10, 2022); Voqal Feb. 23, 2022, Comments at 6; Voqal Feb. 16, 2022, *Ex Parte* at 1-2; see also OTI and SHLB Feb. 23, 2022, Comments at 2-3 (arguing that the advantages of the multiple-round auction format to large nationwide and regional carriers are compounded by the lack of a cap on 2.5 GHz spectrum holdings). As noted by OTI and SHLB, the Commission did not place a cap on the amount of spectrum any one provider can acquire through this auction in the *2.5 GHz Report and Order*. OTI and SHLB Feb. 23, 2022, Comments at 1. It is beyond the scope of this proceeding to consider that request now.

<sup>318</sup> CCA Feb. 23, 2022, Comments at 6-7.

following the instructions set forth in the FCC Form 175 Instructions. The short-form application will become available with the opening of the initial filing window and must be submitted **prior to 6:00 p.m. ET on May 10, 2022. Late applications will not be accepted.** No application fee is required for short-form applications.<sup>319</sup>

138. Applications may be filed at any time beginning at noon ET on April 27, 2022, until the filing window closes at 6:00 p.m. ET on May 10, 2022. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. There are no limits or restrictions on the number of times an application can be updated or amended until the initial filing deadline on May 10, 2022.

139. An applicant must always click on the CERTIFY & SUBMIT button on the “Certify & Submit” screen to successfully submit its FCC Form 175 and any modifications; otherwise the application or changes to the application will not be received or reviewed by Commission staff. Additional information about accessing, completing, and viewing the FCC Form 175 is provided in the FCC Form 175 Instructions. Applicants requiring technical assistance should contact FCC Auctions Technical Support using the contact information provided in Section VI.D. (Contact Information), below.<sup>320</sup> In order to provide better service to the public, all calls to Technical Support are recorded.

## **E. Application Processing and Minor Modifications**

### **1. Public Notice of Applicants’ Initial Application Status and Opportunity for Minor Modifications**

140. After the deadline for filing auction applications, the Commission will process all timely submitted applications to determine whether each applicant has complied with the application requirements and provided all information concerning its qualifications for bidding. OEA will issue a public notice with applicants’ initial application status, identifying: (1) those that are complete; and (2) those that are incomplete or deficient because of defects that may be corrected. The public notice will include the deadline for resubmitting corrected applications and an electronic copy will be sent by email to the contact address listed in the FCC Form 175 for each applicant. In addition, each applicant with an incomplete application will be sent information on the nature of the deficiencies in its application, along with the name and contact information of a Commission staff member who can answer questions specific to the application.

141. After the initial application filing deadline on May 10, 2022, applicants can make only minor modifications to their applications.<sup>321</sup> Major modifications (e.g., change of license area selection, change in ownership that would constitute an assignment or transfer of control of the applicant, change in the required certifications, change in applicant’s legal classification that results in a change in control, or change in claimed eligibility for a higher percentage of bidding credit) will not be permitted.<sup>322</sup> After the deadline for resubmitting corrected applications, an applicant will have no further opportunity to cure any deficiencies in its application or provide any additional information that may affect Commission staff’s

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<sup>319</sup> Each Auction 108 winning bidder must, however, submit a filing fee with each separate long-form application. 47 CFR § 1.1102. The Commission recently adopted a new long-form application filing fee that includes an amount to recover costs for processing the short form. *Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission’s Rules*, MD Docket No. 20-270, Report and Order, 35 FCC Rcd 15089, 15104-06, paras. 45-51 (2020) (adopting a filing fee for geographic-based wireless license long-form applications).

<sup>320</sup> We caution applicants that the Commission periodically performs scheduled maintenance of its IT systems. During scheduled maintenance activities, which typically occur over the weekends, every effort is made to minimize any downtime to auction-related systems, including the Auction Application System. However, there are occasions when auction-related systems may be temporarily unavailable.

<sup>321</sup> See Section II.M. (Modifications to FCC Form 175), above.

<sup>322</sup> 47 CFR § 1.2105(b)(2); see also *Two Way Radio*, 14 FCC Rcd at 12039, para. 8.

ultimate determination of whether and to what extent the applicant is qualified to participate in Auction 108.

142. Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the applicant's FCC Form 175, unless the applicant's certifying official or contact person notifies Commission staff in writing that another representative is authorized to speak on the applicant's behalf.<sup>323</sup> Authorizations may be sent by email to [auction108@fcc.gov](mailto:auction108@fcc.gov).

## **2. Public Notice of Applicants' Final Application Status After Upfront Payment Deadline**

143. After Commission staff reviews resubmitted applications and upfront payments, OEA will release a public notice identifying applicants that have become qualified bidders for the auction. A *Qualified Bidders Public Notice* will be issued before bidding in the auction begins. Qualified bidders are those applicants with submitted FCC Form 175 applications that are deemed timely filed and complete and that have made a sufficient upfront payment.

### **F. Upfront Payments**

144. In order to be eligible to bid in Auction 108, a sufficient upfront payment and a complete and accurate FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be submitted before 6:00 p.m. ET on June 23, 2022. After completing its short-form application, an applicant will have access to an electronic pre-filled version of the FCC Form 159. An accurate and complete FCC Form 159 must accompany each payment. Proper completion of this form is critical to ensuring correct crediting of upfront payments. Payers using the pre-filled FCC Form 159 are responsible for ensuring that all the information on the form, including payment amounts, is accurate. Instructions for completing FCC Form 159 for Auction 108 are provided below.

#### **1. Making Upfront Payments by Wire Transfer for Auction 108**

145. Upfront payments for Auction 108 must be wired to, and will be deposited in, the U.S. Treasury.<sup>324</sup>

146. Wire transfer payments for Auction 108 must be received before 6:00 p.m. ET on June 23, 2022.<sup>325</sup> No other payment method is acceptable.<sup>326</sup> To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules and other specific bank wire transfer requirements, such as an in-person written request before a specified time of day) with their bankers several days before they plan to make the wire transfer, and must allow sufficient time for the transfer to be initiated and completed before the deadline. The following information will be needed:

ABA Routing Number: 021030004  
Receiving Bank: TREAS NYC  
33 Liberty Street  
New York, NY 10045

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<sup>323</sup> In no event, however, will the Commission send auction registration materials to anyone other than the contact person listed on the applicant's FCC Form 175 or respond to a request for replacement registration materials from anyone other than the authorized bidder, contact person, or certifying official listed on the applicant's FCC Form 175. See Section III.G. (Auction Registration), below.

<sup>324</sup> See Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, Division P, Title I, 132 Stat. 348, 1080 (2018). For more information on calculating upfront payments and the impact of upfront payments on bidding eligibility, see Section III.F.3. (Upfront Payments and Bidding Eligibility), below.

<sup>325</sup> An applicant must initiate the wire transfer through its bank, authorizing the bank to wire funds from the applicant's account to the proper account at the U.S. Treasury.

<sup>326</sup> The Commission will not accept checks, credit cards, or automated clearing house (ACH) payments.

BENEFICIARY: FCC  
45 L Street, NE, 3<sup>rd</sup> Floor  
Washington, DC 20554  
ACCOUNT NUMBER: **827000001002**  
Originating Bank Information (OBI Field): (Skip one space between each information item)  
“**AUCTIONPAY**”  
APPLICANT FCC REGISTRATION NUMBER (FRN): (use the same FRN as used on the applicant’s FCC Form 159, block 21)  
PAYMENT TYPE CODE: (same as FCC Form 159, block 24A: “**U108**”)

NOTE: The beneficiary account number (BNF Account Number) is specific to the upfront payments for Auction 108. Do not use a BNF Account Number from a previous auction.

147. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must print and fax a completed FCC Form 159 (Revised 2/03) to the FCC at (202) 418-2843. Alternatively, the completed form can be scanned and sent as an attachment to an email to [RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov). On the fax cover sheet or in the email subject header, write “Wire Transfer – Auction Payment for Auction 108”. To meet the upfront payment deadline, an applicant’s payment must be credited to the Commission’s account for Auction 108 before the deadline.<sup>327</sup>

148. Each applicant is responsible for ensuring timely submission of its upfront payment and for timely filing of an accurate and complete FCC Form 159. An applicant should coordinate with its financial institution well ahead of the due date regarding its wire transfer and allow sufficient time for the transfer to be initiated and completed prior to the deadline.<sup>328</sup> The Commission repeatedly has cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer.<sup>329</sup> **Each applicant also is responsible for obtaining confirmation from its financial institution that its wire transfer to the U.S. Treasury was successful and from Commission staff that its upfront payment was timely received and that it was deposited into the proper account.** As a regulatory requirement, the U.S. Treasury screens all payments from all financial institutions before deposits are made available to specified accounts. If wires are suspended, the U.S. Treasury may direct questions regarding any transfer to the financial institution initiating the wire. Each applicant must take care to assure that any questions directed to its financial institution(s) are addressed promptly. To receive confirmation from Commission staff, contact Scott Radcliffe of the Office of Managing Director’s Revenue & Receivables Operations Group/Auctions at (202) 418-7518 or Theresa Meeks at (202) 418-2945.

149. Please note the following information regarding upfront payments:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction 108 go to an account number different from the accounts used in previous FCC auctions.

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<sup>327</sup> See, e.g., *Four Corners Broadcasting, LLC—Request for Waiver of Section 1.2106(a), Closed Broadcast Auction 88*, Letter Order, 25 FCC Rcd 9046, 9050 (WTB 2010).

<sup>328</sup> Among other things, the Commission cautions each applicant to plan ahead regarding any potential delays in its or its financial institution’s ability to complete wire transfers due to the COVID-19 pandemic.

<sup>329</sup> See, e.g., *Spectrum Acquisitions, Inc. Application to Participate in Auction 73—Request for Waiver of Upfront Payment Deadline*, Letter Order, 23 FCC Rcd 4765 (WTB 2008).

150. Failure to deliver a sufficient upfront payment as instructed herein by the upfront payment deadline will result in dismissal of the short-form application and disqualification from participation in the auction.

## 2. Completing and Submitting FCC Form 159

151. The following information supplements the standard instructions for FCC Form 159 (Revised 2/03) and is provided to help ensure correct completion of FCC Form 159 for upfront payments for Auction 108. Applicants need to complete FCC Form 159 carefully, because:

- **Mistakes may affect bidding eligibility; and**
- **Lack of consistency between information provided in FCC Form 159 (Revised 2/03), FCC Form 175, long-form application (FCC Form 601), and correspondence about an application may cause processing delays.**

152. Therefore, appropriate cross-references between the FCC Form 159 Remittance Advice and the short-form application (FCC Form 175) are described below.

| <b>Block Number</b> | <b>Required Information</b>  |
|---------------------|--|
| 1                   | LOCKBOX # — Leave Blank  |
| 2                   | Payer Name — Enter the name of the person or company making the payment. If the applicant itself is the payer, this entry would be the same name as in FCC Form 175.   |
| 3                   | Total Amount Paid — Enter the amount of the upfront payment associated with the FCC Form 159 (Revised 2/03).   |
| 4-8                 | Street Address, City, State, ZIP Code — Enter the street mailing address (not post office box number) where mail should be sent to the payer. If the applicant is the payer, these entries would be the same as FCC Form 175 from the Applicant Information section. |
| 9                   | Daytime Telephone Number — Enter the telephone number of a person knowledgeable about this upfront payment.  |
| 10                  | Country Code — For addresses outside the United States, enter the appropriate postal country code (available from the Mailing Requirements Department of the U.S. Postal Service).   |
| 11                  | Payer FRN — Enter the payer's 10-digit FCC Registration Number (FRN) registered in the Commission Registration System (CORES).   |
| 21                  | Applicant FRN (Complete only if applicant is different than payer) — Enter the applicant's 10-digit FRN registered in CORES.   |
| 24A                 | Payment Type Code — Enter "U108".  |
| 25A                 | Quantity — Enter the number "1".   |
| 26A                 | Fee Due — Amount of Upfront Payment  |
| 27A                 | Total Fee — Will be the same amount as 26A.  |
| 28A                 | FCC Code 1 — Enter the number "108" (indicating Auction 108).  |

### NOTES:

- Do not use Remittance Advice (Continuation Sheet), FCC Form 159-C, for upfront payments.

- **If applicant is different from the payer, complete blocks 13 through 21 for the applicant, using the same information shown on FCC Form 175.** Otherwise leave them blank.
- No signature is required on FCC Form 159 for auction payments
- Since credit card payments will not be accepted for upfront payments for an auction, leave Section E blank.

### 3. Upfront Payments and Bidding Eligibility

153. The Commission has authority to determine appropriate upfront payments for each license being auctioned, taking into account such factors as the efficiency of the auction process and the potential value of similar licenses.<sup>330</sup> An upfront payment is a refundable deposit made by each applicant seeking to participate in bidding to establish its eligibility to bid on licenses.<sup>331</sup> Upfront payments that are related to the inventory of licenses being auctioned protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of bidding.<sup>332</sup>

154. Applicants that are former defaulters must pay upfront payments 50% greater than non-former defaulters.<sup>333</sup> For purposes of classification as a former defaulter or a former delinquent, defaults and delinquencies of the applicant itself and its controlling interests are included.<sup>334</sup>

155. An applicant must make an upfront payment sufficient to obtain bidding eligibility on the licenses on which it will bid.<sup>335</sup> We adopt the proposals to set upfront payments based on the total potential MHz-pops of each license offered in the auction and to determine an applicant's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids in any single round, based on the amount of the upfront payment.<sup>336</sup> In order to bid for a license, qualified bidders must have a current eligibility level that meets or exceeds the number of bidding units assigned to that license. **At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one license in one of the license areas selected on its FCC Form 175 for Auction 108, or else the applicant will not become qualified to participate in the auction.** The total upfront payment does not affect the total dollar amount the bidder may bid.

156. In the *Auction 108 Comment Public Notice*, the Commission proposed to require applicants to submit upfront payments based on \$0.003 per MHz-pop with a minimum of \$500 per license.<sup>337</sup> The Commission received several comments on the proposal to use the total potential MHz-

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<sup>330</sup> See *Part 1 Order*, 12 FCC Rcd at 5697-98, para. 16; see also *Part 1 Third Report and Order*, 13 FCC Rcd at 425, para. 86; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2377-79, paras. 169-75; 47 CFR §§ 0.131(c), 0.21(m), 0.271(a).

<sup>331</sup> 47 CFR § 1.2106. *Auction 108 Comment Public Notice*, 36 FCC Rcd at 653, para. 22.

<sup>332</sup> See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2378, 2379, paras. 171,-176.

<sup>333</sup> 47 CFR § 1.2106(a); see also *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317, para. 42; Section II.K. (Provisions Regarding Former and Current Defaulters), above.

<sup>334</sup> 47 CFR § 1.2105(a)(2)(xii); *Updating Part 1 Report and Order*, 30 FCC Rcd at 7568, para. 175. For this purpose, the term "controlling interest" is defined in 47 CFR § 1.2105(a)(4)(i).

<sup>335</sup> 47 CFR § 1.2106; *Auction 108 Comment Public Notice*, 36 FCC Rcd at 653, para. 22.

<sup>336</sup> See *Auction 108 Comment Public Notice*, 36 FCC Rcd at 653, paras. 22-26.

<sup>337</sup> *Id.* at 653, para. 22. In the *Auction 108 Further Comment Public Notice*, OEA and WTB sought comment on whether the use of the clock-1 auction format would warrant any change to the minimum opening bids previously proposed. *Auction 108 Further Comment Public Notice* at 9, para. 28. We note that the upfront payment amounts proposed for the 17.5 megahertz channel block were based on 16.5 megahertz of continuous spectrum. See *Auction 108 Comment Public Notice.*, Attach. A; Section I.C. (Description of Licenses to Be Offered in Auction 108), above.

pops of each license to set the upfront payment amount (discussed in this section) and minimum opening bid amount (discussed in Section IV.G.1. (Minimum Opening Bids), below). Some commenters argue that upfront payments and minimum opening bids should be based on the MHz-pops of the available white space rather than the total potential MHz-pops of each license.<sup>338</sup> Some of these commenters argue that setting upfront payments and minimum opening bids based on the total potential MHz-pops of each license could mislead potential bidders into thinking that they will obtain more geographic rights than are available in the auction.<sup>339</sup> Commenters that oppose the use of total potential MHz-pops in setting upfront payments and minimum opening bids also assert that in some situations using this methodology could result in amounts that do not reflect the value of the license, and therefore may deter participation by smaller bidders or result in unsold licenses.<sup>340</sup> One commenter further suggests that we adopt a tiered approach to setting upfront payments and minimum opening bids, to better reflect potential differences in demand by market size.<sup>341</sup>

157. We are not persuaded that we should modify the proposed approach to set upfront payments and minimum opening bids based on the total potential MHz-pops of each license. The extent to which the available white space in the overlay licenses is considered useful or available by any particular bidder may vary greatly, depending upon the specific business plans of the bidder, the likelihood of existing encumbrances being removed, and whether the bidder is the licensee or lessee of the encumbering spectrum.<sup>342</sup> Therefore, we do not agree that setting the upfront payments and minimum opening bids on more complex calculations such as available white space would necessarily result in fairer or more accurate estimates of a license's value. Similarly, we are not persuaded that using a tiered approach to setting these amounts will better reflect differences in market demand, given the bidder-specific and heterogeneous nature of the overlay licenses.<sup>343</sup>

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<sup>338</sup> See NEBSA May 27, 2021, Reply at 3-4; T-Mobile May 3, 2021, Comments at 22-25; T-Mobile May 27, 2021, Reply at 9-12; Verizon May 3, 2021, Comments at 5; WISPA May 27, 2021, Reply at 16; SoniqWave Feb. 23, 2022, Comments at 12; Verizon Feb. 23, 2022, Comments at 4; WISPA Feb. 23, 2022, Comments at 15-16; DISH Feb. 23, 2022, Comments at 4. *But see* Select Spectrum May 3, 2021, Comments at 3 (agreeing with the FCC's upfront payment proposal for the single round auction design); Blooston Feb. 24, 2022, *Ex Parte* at 3 (stating that minimum opening bid and upfront payment amounts as originally proposed remain reasonable for the Clock-1 auction design).

<sup>339</sup> T-Mobile May 3, 2021, Comments at 26; *see* Verizon May 3, 2021, Comments at 4 (setting upfront payments and minimum opening bids based on available white space would reduce the comparative information advantage of incumbent licensees and lessees).

<sup>340</sup> *See* Verizon May 3, 2021, Comments at 9; WISPA May 3, 2021, Comments at 26-27; NACEPF/Mobile Beacon May 3, 2021, Comments at 4-7; WISPA May 3, 2021, Comments at 26; T-Mobile May 27, 2021, Reply at 13-14; NEBSA May 27, 2021, Reply at 4; DISH May 27, 2021, Reply at 4.

<sup>341</sup> Verizon agrees that minimum opening bids and upfront payments should be calculated based on \$0.006 per MHz-pop for rural counties but proposes that minimum opening bids and upfront payments for non-rural counties should be calculated based on \$0.03 per MHz pop. Verizon May 3, 2021, Comments at 9, Verizon Feb 23, 2022, Comments at 4; *see also* T-Mobile May 27, 2021, Reply at 12 (citing Verizon's proposal).

<sup>342</sup> *See Auction 108 Comment Public Notice*, 36 FCC Rcd at 653, para. 22 ("Given the uncertain total amount of available white space spectrum in each 2.5 GHz band license pending resolution of Rural Tribal Priority Window applications and other factors, we propose to base upfront payments on the total potential MHz-pops of each license offered in the auction, rather than on available white space in each block.").

<sup>343</sup> For example, NACEPF/Mobile Beacon opposes Verizon's proposal to set upfront payments in non-rural counties at a higher price per MHz-pop because it ignores the prevalence of encumbrances in the 2.5 GHz band, which "obliterate any meaningful distinction between urban and rural license areas." NACEPF/Mobile Beacon May 27, 2021, Reply at 6 (arguing that the Commission should reject Verizon's proposal to use a higher price per MHz-pop for non-rural counties).

158. We reiterate that the upfront payment and minimum opening bid amount for each license that we adopt today are not a reflection of the amount of white space currently available for that license. Potential bidders may review the mapping tool made available concurrently with this Public Notice to better understand license areas and available white space, and we remind potential bidders of their responsibility to perform their own due diligence and to review information for a specific license or area in ULS.

159. No parties commented on using \$0.003 per MHz-pop, subject to a minimum of \$500 per license. Because upfront payments protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of bidding, we adopt the proposal.<sup>344</sup> For the 49.5-megahertz and 50.5-megahertz channel blocks, the calculation will be based on 50 megahertz, which is beneficial for the purpose of allowing switch bids because it will result in the same number of bidding units, as described below, for each of those channel blocks within a county.<sup>345</sup> For the 17.5-megahertz channel block, the calculation will be based on the 16.5 megahertz of contiguous spectrum not including the 1-megahertz guard band.<sup>346</sup> The upfront payment amount per license is set forth in the “Attachment A” file.

160. For the reasons set forth in the *Auction 108 Comment Public Notice*, we also adopt the proposal to assign each license a specific number of bidding units, equal to one bidding unit per \$100 of the upfront payment, which is necessary for implementing the activity requirement described in Section IV.F. (Activity Rule) below, and facilitates the efficient conduct of the auction.<sup>347</sup> The number of bidding units for a given license is fixed and does not change during the auction as prices change. Thus, in calculating its upfront payment amount, an applicant should determine the **maximum** number of bidding units on which it may wish to bid in any single round, and submit an upfront payment amount covering that number of bidding units. In order to make this calculation, an applicant should add together the bidding units for the licenses on which it seeks to be active in any given round. **Applicants should check their calculations carefully, as there is no provision for increasing a bidder’s eligibility after the upfront payment deadline.**

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<sup>344</sup> The results of the upfront payment calculations will be rounded as follows: Results below \$1,000 will be rounded down to the nearest \$100; results between \$1,000 and \$10,000 will be rounded down to the nearest \$1,000; results between \$10,000 and \$100,000 will be rounded down to the nearest \$10,000; and results above \$100,000 will be rounded down to the nearest \$100,000. *See Auction 108 Comment Public Notice*, 36 FCC Rcd at 653, para. 22.

<sup>345</sup> See Section IV.G.5. (Bid Types), below.

<sup>346</sup> We use the 16.5 megahertz of contiguous spectrum and exclude the 1-megahertz guard band for comparability with the larger blocks that consist of contiguous spectrum only.

<sup>347</sup> *See Auction 108 Comment Public Notice*, 36 FCC Rcd at 654, para. 24.

| Example: Upfront Payments and Bidding Eligibility |       |               |           |               |                 |
|---|-------|---------------|-----------|---------------|-----------------|
| County  | State | Channel Block | Bandwidth | Bidding Units | Upfront Payment |
| Lake  | IN    | 2             | 50.5 MHz  | 700           | \$70,000        |
| Porter  | IN    | 2             | 50.5 MHz  | 200           | \$20,000        |

Under the clock-1 format, if a bidder wishes to bid on the 50.5-megahertz license in both of the above counties in a round, it must have selected both counties on its FCC Form 175 and purchased at least 900 bidding units (700 + 200) of bidding eligibility. If a bidder only wishes to bid on one, but not both, purchasing 700 bidding units would meet the eligibility requirement for the 50.5-megahertz license in either county. The bidder would be able to bid on the license in either county, but not both at the same time. If the bidder purchased only 200 bidding units, the bidder would have enough eligibility to bid for the license in Porter County but not for the one in Lake County.

161. If an applicant is a former defaulter, it must calculate its upfront payment for the maximum number of licenses on which it plans to bid by multiplying the number of bidding units on which it wishes to be active by 1.5.<sup>348</sup> In order to calculate the number of bidding units to assign to former defaulters, the Commission will calculate the number of bidding units a non-former defaulter would get for the upfront payment received, divide that number by 1.5, and round the result up to the nearest bidding unit.<sup>349</sup>

#### G. Auction Registration

162. All qualified bidders for Auction 108 are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight delivery. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID® tokens that will be required to place bids.

163. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder for Auction 108 that has not received this mailing by noon on July 20, 2022, should call the Auctions Hotline at (717) 338-2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all the registration materials.

164. In the event that a SecurID® token is lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request a replacement. To request a replacement, call the Auction Bidder Line at the telephone number provided in the registration materials or the Auction Hotline at (717) 338-2868.

<sup>348</sup> See 47 CFR § 1.2106(a).

<sup>349</sup> If a former defaulter fails to submit a sufficient upfront payment to establish eligibility to bid on at least one license, the applicant will not be eligible to bid in Auction 108. *Implementation of Section 309(j) of the Communications Act—Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses et al.*, MM Docket No. 97-234, First Report and Order, 13 FCC Rcd 15920, 15980, para. 153 (1998). The applicant, however, will retain its status as an applicant in Auction 108 and will remain subject to 47 CFR § 1.2105(c). See *Applications of Star Wireless, LLC*, Forfeiture Order, 19 FCC Rcd 18626, 18628, para. 4 & n.19 (EB 2004), *granted in part sub nom. Star Wireless, LLC and Northeast Communications of Wisconsin, Inc.*, Order on Review, 22 FCC Rcd 8943 (2007), *petition for review denied, Star Wireless, LLC v. FCC*, 522 F.3d 469 (D.C. Cir. 2008).

## H. Remote Electronic Bidding via the FCC Auction Bidding System

165. Bidders will be able to participate in Auction 108 over the Internet using the FCC Auction Bidding System (bidding system). Only qualified bidders are permitted to bid.

166. Each authorized bidder must have his or her own SecurID® token, which the Commission will provide at no charge. Each applicant will be issued three SecurID® tokens. A bidder cannot bid without his or her SecurID® token. In order to access the bidding function of the bidding system, bidders must be logged in during the bidding round using the passcode generated by the SecurID® token and a personal identification number (PIN) created by the bidder. **For security purposes, the SecurID® tokens and a telephone number for bidding questions are only mailed to the contact person at the contact address listed on the FCC Form 175.** Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 108. Please note that the SecurID® tokens can be recycled, and the Commission requests that bidders return the tokens to the FCC. Pre-addressed envelopes will be provided to return the tokens once the auction has ended.

167. **The Commission makes no warranties whatsoever, and shall not be deemed to have made any warranties, with respect to the bidding system, including any implied warranties of merchantability or fitness for a particular purpose. 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 use, revenue, or business information, or any other direct, indirect, or consequential damages) arising out of or relating to the existence, furnishing, functioning, or use of the bidding system. Moreover, no obligation or liability will arise out of the Commission's technical, programming, or other advice or service provided in connection with the bidding system.**

168. To the extent an issue arises with the bidding system itself, the Commission will take all appropriate measures to resolve such issues quickly and equitably. Should an issue arise that is outside the bidding system or attributable to a bidder, including, but not limited to, a bidder's hardware, software, or Internet access problem that prevents the bidder from submitting a bid prior to the end of a round, the Commission shall have no obligation to resolve or remediate such an issue on behalf of the bidder. Similarly, if an issue arises due to bidder error using the bidding system, the Commission shall have no obligation to resolve or remediate such an issue on behalf of the bidder. Accordingly, after the close of a bidding round, the results of bid processing will not be altered absent evidence of any failure in the bidding system.

## I. Mock Auction

169. All qualified bidders will be eligible to participate in a mock auction.<sup>350</sup> The mock auction, which will begin on July 26, 2022, will enable qualified bidders to become familiar with the bidding system and to practice submitting bids prior to the auction. We recommend that all qualified bidders, including all their authorized bidders, participate to assure that they can log in to the bidding system and gain experience with the bidding procedures. Participating in the mock auction may reduce the likelihood of a bidder making a mistake during the auction. Details regarding the mock auction will be announced in the *Qualified Bidders Public Notice* for Auction 108.

## J. Auction Delay, Suspension, or Cancellation

170. At any time before or during the bidding process, OEA, in conjunction with WTB, may delay, suspend, or cancel bidding in Auction 108 in the event of a natural disaster, technical obstacle, network interruption, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding.<sup>351</sup> This approach has proven effective in resolving exigent circumstances in previous auctions,

<sup>350</sup> Only those bidders that are qualified to bid in Auction 108 will be eligible to participate in the mock auction.

and we find no reason to depart from it here. OEA will notify participants of any such delay, suspension, or cancellation by public notice and/or through the bidding system's announcement function. If the bidding is delayed or suspended, then OEA may, in its sole discretion, elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety.<sup>352</sup> We emphasize that we will exercise this authority at our discretion.

#### K. Fraud Alert

171. As is the case with many business investment opportunities, some unscrupulous parties may attempt to use Auction 108 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, 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.

172. Information about deceptive telemarketing investment schemes is available from the FCC, as well as the FTC and SEC. Additional sources of information for potential bidders and investors may be obtained from the following sources:

- the FCC's Consumer Call Center at (888) 225-5322 or by visiting [www.fcc.gov/general/frauds-scams-and-alerts-guides](http://www.fcc.gov/general/frauds-scams-and-alerts-guides)
- the FTC at (877) FTC-HELP ((877) 382-4357) or by visiting <https://consumer.ftc.gov/>
- the SEC at (202) 942-7040 or by visiting [www.sec.gov/investor](http://www.sec.gov/investor)

173. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Consumer League's Fraud Center at <https://fraud.org/> or (202) 835-3323, Ext. 815.

#### IV. BIDDING PROCEDURES

174. The *Auction 108 Comment Public Notice* and the *Auction 108 Further Comment Public Notice* sought comment on three different auction formats for Auction 108: a single-round auction format with user-defined package bidding, a simultaneous multiple-round (SMR) auction format, and an ascending clock auction format.<sup>353</sup> The *Auction 108 Inventory Comment Public Notice* also sought comment on the previously-detailed auction procedures in light of additions to the initial license inventory.<sup>354</sup> As discussed below, there are arguments for and against each auction format. After

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<sup>351</sup> See 47 CFR § 1.2104(i); *Auction 108 Comment Public Notice*, 36 FCC Rcd at 655, para. 27.

<sup>352</sup> *Auction 108 Comment Public Notice*, 36 FCC Rcd at 655, para. 27; see also 47 CFR §§ 0.271, 0.21(m).

<sup>353</sup> *Auction 108 Comment Public Notice*, 36 FCC Rcd at 656-71, paras. 34-98; *Auction 108 Further Comment Public* at 2-14, paras. 4-56.

<sup>354</sup> See *Auction 108 Inventory Comment Public Notice* at 1, 4, paras. 1, 7.

consideration of the record, we find on balance the record supports using an ascending clock auction format for Auction 108 by which bidding will be conducted simultaneously for all licenses available in the auction and bidders will be able to bid for specific licenses. Accordingly, we select the “clock-1” auction format for Auction 108. This format will be similar to the clock phase of past Commission ascending clock auctions, but rather than offering multiple generic spectrum blocks in a category in a geographic area,<sup>355</sup> it will offer only a single frequency-specific license in a category in a county. Thus, by using a supply of 1 in each category, a clock-1 auction format allows bidders to bid on frequency-specific licenses and negates the need for an assignment phase, which have been typical of past Commission ascending clock auctions.<sup>356</sup>

175. In response to the *Auction 108 Comment Public Notice*, we received numerous comments that were split fairly evenly between parties that favored the single-round auction format and those that favored an SMR auction.<sup>357</sup> OEA and WTB subsequently released the *Auction 108 Further Comment Public Notice*, suggesting an alternative clock auction format that would address two frequently-cited commenter concerns.<sup>358</sup> Specifically, the clock-1 format would be familiar to bidders that have participated in FCC auctions previously (addressing concerns about the unfamiliarity of the single-round format) and would incorporate elements to help mitigate a drawback of an SMR auction—its likely long duration—by both potentially shortening the length of the auction and making it easier for bidders to participate in a longer auction.<sup>359</sup> In response to the *Auction 108 Further Comment Public Notice*, we again received comments in favor of the single-round auction format and others in favor of the multiple-round clock-1 auction. Many commenters that originally supported an SMR auction format in response to the *Auction 108 Comment Public Notice* support use of the clock-1 format as proposed in the *Auction 108 Further Comment Public Notice*.<sup>360</sup> These commenters generally agree that the clock-1 auction format would alleviate some of the concerns raised in the Auction 108 Comment Public Notice regarding the duration of an SMR auction format.<sup>361</sup> Other commenters disagree that the clock-1 format would resolve their basic issues with a multiple-round auction.<sup>362</sup> Each group of commenters, those supporting a single-round format on the one hand and those supporting a multiple-round format on the other, includes nationwide carriers, regional carriers, rural carriers, incumbent licensees and small businesses.<sup>363</sup>

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<sup>355</sup> See, e.g., *Auction 110 Procedures Public Notice*, 36 FCC Rcd at 9324-36, paras. 170-230; *Auction 107 Procedures Public Notice*, 35 FCC Rcd at 8451-61, paras. 152-201; *Auction 105 Procedures Public Notice*, 35 FCC Rcd at 2188-202, paras. 157-215.

<sup>356</sup> See, e.g., *Auction 110 Procedures Public Notice*, 36 FCC Rcd at 9336, para. 231 (describing the assignment phase as an opportunity for bidders to indicate their preferences for specific frequency licenses corresponding to the generic blocks won during the clock phase of the Auction 110.)

<sup>357</sup> See *Auction 108 Further Comment Public Notice* at 2, para. 3.

<sup>358</sup> *Id.* at 2-3, para. 4.

<sup>359</sup> *Id.*

<sup>360</sup> The commenters that originally supported an SMR format for Auction 108 included CCA, RWA, Rural 2.5, TeleGuam, T-Mobile, U.S. Cellular, and Verizon. CCA, TeleGuam, Verizon, U.S. Cellular and T-Mobile have since filed comments supporting the clock-1 format for Auction 108 as proposed in the *Auction 108 Further Comment Public Notice*. See note 364, below.

<sup>361</sup> CCA Feb. 23, 2022, Comments at 2, 6; TeleGuam Feb. 23, 2022, Comments at 1; T-Mobile Feb. 23, 2022, Comments at 3; U.S. Cellular Feb. 23, 2022, Comments at 5, 7-8; Verizon Feb. 23, 2022, Comments at 3.

<sup>362</sup> WISPA Feb. 23, 2022, Comments at 5-8; AT&T Feb. 23, 2022, Comments at 2-6; SoniqWave Feb. 23, 2022, Comments at 2-12; DISH Feb. 23, 2022, Comments at 1. Such commenters also argue that price discovery, one of the features of a multiple-round auction that is endorsed by supporters of that format, is not necessary in light of the specific circumstances of this auction. See, e.g., AT&T May 3, 2021, Comments at 7; NACEPF/Mobile Beacon May 27, 2021, Reply at 7-8.

Recognizing that there are advantages and disadvantages to each auction format for each individual bidder, on the whole, we find that for Auction 108 the clock-1 format balances these competing interests.<sup>364</sup>

176. The Commission has used a clock auction format for a number of auctions in recent years, both for spectrum auctions and reverse auctions for Universal Service Fund support, and a wide variety of entities have participated successfully in these auctions.<sup>365</sup> Consequently, we are confident that many parties interested in participating in Auction 108 will be familiar with the clock auction format.<sup>366</sup>

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<sup>363</sup> The commenters that support a multiple-round auction format, either SMR or clock-1, include CCA, whose members include small rural carriers, regional carriers, and nationwide providers; Rural 2.5 Consortium, whose members include rural providers; RWA, whose members include independent rural wireless carriers and wireless carriers associated with rural telephone companies; TeleGuam, an incumbent local exchange carrier that provides telecommunications services in Guam; Blooston, a law firm filing on behalf of its rural and independent telephone carrier and wireless service provider clients; a coalition of 19 small carriers; U.S. Cellular; T-Mobile; and Verizon. *See* CCA Feb. 23, 2022, Comments at 1 (supporting the clock-1 auction format); Rural 2.5 Consortium May 3, 2021, Comments at 1-2 (supporting an SMR auction format); RWA May 17, 2022, Reply at 1-2 (supporting an SMR auction format); TeleGuam Feb. 23, 2022, Comments at 1 (supporting the clock-1 auction format); Blooston Feb. 24, 2022, *Ex Parte* at 1-2, 9 (supporting the clock-1 auction format); Letter from Mark Nazé, CEO, Cellcom, et al. to Jessica Rosenworcel, Acting Chairwoman, FCC, AU Docket No. 20-429 (filed Oct. 11, 2021) (Cellcom et al. Oct. 11, 2021, *Ex Parte*) (group of 19 small carriers supporting an SMR auction format); U.S. Cellular Feb. 23, 2022, Comments at 1-2 (supporting the clock-1 auction format); T-Mobile Feb. 23, 2022, Comments at 1-2 (supporting the clock-1 auction format); Verizon Feb. 23, 2022, Comments at 1-2 (supporting the clock-1 auction format). The commenters that support the single-round, sealed bid auction format are Aeronet Wireless Broadband LLC (Aeronet), a broadband provider that provides service in Puerto Rico; Voqal, an incumbent 2.5 GHz licensee; WISPA, whose members include fixed-wireless broadband service providers; SoniqWave, a WISPA member and an incumbent 2.5 GHz licensee and lessee; the School, Health, and Libraries Broadband Coalition (SHLB), whose members includes, schools, libraries and other anchor institutions; NACEPF/Mobile Beacon; Select Spectrum; AT&T; and DISH. *See* Aeronet Feb. 23, 2022, Comments at 1-2; Voqal Feb. 23, 2022, Comments at 1-2; WISPA Feb. 23, 2022, Comments at 1-3; OTI and SHLB Feb. 23, 2022, Comments at 2; NACEPF/Mobile Beacon May 3, 2021, Comments at 2-3; Select Spectrum May 3, 2021, Comments at 1-3; AT&T Feb. 23, 2022, Comments at 1-2; DISH Feb. 23, 2022, Comments at 1.

<sup>364</sup> Our conclusion is buttressed by the record. For example, Blooston noted that “[w]hile each potential bidding format has its own benefits and drawbacks. . . an ascending clock format, together with the ability to submit intra-round bids and availability of proxy bidding, offers a reasonable alternative [to the SMR and single-round formats].” Blooston Feb. 24, 2022, *Ex Parte* at 1-2.

<sup>365</sup> *See, e.g., Auction of Flexible-Use Service Licenses in the 3.45-3.55 GHz Band for Next-Generation Wireless Services; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 110; Bidding to Begin October 5, 2021*, AU Docket No. 21-62, Public Notice, 36 FCC Rcd 9272, 9324-25, paras. 170-75 (OEA/WTB 2021) (*Auction 110 Procedures Public Notice*); *Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020; Notice and Filing Requirements and Other Procedures for Auction 904*, AU Docket No. 20-34 et al., Public Notice, 35 FCC Rcd 6077, 6146, paras. 209-12 (2020) (*Auction 904 Procedures Public Notice*); *Auction 107 Procedures Public Notice*, 35 FCC Rcd at 8451, paras. 154-56.

<sup>366</sup> *See, e.g.,* CCA Feb. 23, 2022, Comments at 5 (noting that “[t]he ascending clock auction format is also already familiar to many potential bidders . . . and industry participants are well-accustomed to many of the proposed features of Auction 108. This familiarity will help ensure that a wide array of bidders win licenses and gain access to spectrum that will allow them to introduce next-generation wireless services.” (citation omitted)) We disagree with WISPA’s assertion that proxy bidding and intra-round bidding render the clock-1 unfamiliar relative to past clock auctions. *See* WISPA Feb. 23, 2022, Comments at 10. Both features have been part of past Commission clock auctions. Intra-round bidding has been a regular feature of all Commission clock auctions, and proxy bidding has been provided as an option to bidders in reverse clock auctions. *See, e.g., Auction 110 Procedures Public Notice*, 36 FCC Rcd at 9332, paras. 209-10 (adopting intra-round bidding as part of an ascending clock auction); *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6154-55, paras. 241-43 (adopting proxy bidding as part of a reverse clock auction). Although Auction 108 will be the first time that proxy bidding is offered as an option in an ascending (continued...)

We are also confident that any parties that are not already familiar with the clock auction format will easily become familiar via the educational materials that will be provided before the auction.

177. Commenters that prefer a multiple round auction format, whether SMR or clock-1, indicate that they prefer such a format because the bidding strategies they are accustomed to using depend upon the pricing and demand information that is revealed in a multiple-round auction—i.e., “price discovery”.<sup>367</sup> Further, some commenters feel that it would be easier to manage aggregations and budget risk over multiple rounds of bidding, in spite of the package bidding and either/or features that would have been incorporated into the single-round auction format to address those needs.<sup>368</sup> While we are not persuaded that price discovery is always a necessary ingredient for an economically rational auction,<sup>369</sup> we recognize that bidders are accustomed to managing their bidding strategies and budget constraints through round-by-round bidding and find that this familiarity may encourage more participation in the auction.<sup>370</sup>

178. As noted in the *Auction 108 Comment Public Notice* with respect to the SMR auction format, a multiple-round auction with license-by-license bidding for approximately 8,000 licenses may take a very long time to complete.<sup>371</sup> A number of commenters support the single-round format because they assert that they do not have the resources to manage a long auction.<sup>372</sup> The clock auction format we adopt, however, addresses this concern in part by incorporating intra-round bidding, which allows the auction to run with larger bidding increments without the risk of overshooting the equilibrium price. With larger bidding increments, the auction may be completed in fewer rounds, thus shortening the duration of the auction. The clock-1 format also provides for proxy bidding, which allows a bidder to submit instructions to the bidding system to submit bids on its behalf in future rounds up to a price at which the bidder wishes to stop bidding for the license. The use of proxy bidding is entirely optional, although we anticipate that a bidder with limited resources to monitor every round of the auction will find it to be very helpful.

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clock auction, we reiterate that proxy bidding is optional, and any party that wishes to take advantage of this feature will have access to educational materials in order to learn how to use it.

<sup>367</sup> See, e.g., Blooston Feb. 24, 2022, *Ex Parte* at 2; CCA Feb. 23, 2022, Comments at 3; U.S. Cellular May 3, 2021, Comments at 2-5; see also *Auction 108 Comment Public Notice* 36 FCC Rcd at 658, para. 37 (discussing price discovery).

<sup>368</sup> US Cellular May 3, 2021, Comments at 5; CCA May 3, 2021, Comments at 6-8 (arguing that a multiple-round auction with the opportunity for price discovery is a better tool for reducing exposure risk for small carriers than package bidding).

<sup>369</sup> Compare T-Mobile May 3, 2021, Comments at 2 (calling price discovery the “hallmark of what makes an auction economically rational”) with, e.g., NACEPF/Mobile Beacon May 27, 2021, Reply at 7-8. (asserting that price discovery is less important for Auction 108 “because of the large amount of information participants already have with which to calibrate their bids”). See *Auction 108 Comment Public Notice* 36 FCC Rcd at 658, para. 37 (noting that significant amount of information available that could be used to evaluate the value of 2.5 GHz spectrum, such as information in ULS regarding secondary market transactions and spectrum values from recent mid-band spectrum auctions). But see U.S. Cellular Feb. 23, 2022, Comments at 3-4 (claiming that, because the overlay licenses available in Auction 108 vary significantly from market-to-market, bidders cannot rely on secondary market information or the results of recent mid-band spectrum auctions in formulating their valuations).

<sup>370</sup> See CCA May 3, 2022, Comments at 3-5 (noting that a multiple-round format that allows for price discovery will encourage broader and more efficient participation by small and mid-sized carriers, in part, because it will provide them with “comfort that they are bidding at competitive levels”); U.S. Cellular May 27, 2021, Reply at 4-5 (noting that comments from local and regional carriers “stressed the importance of price discovery to their successful participation in [Auction 108]”); see also, Cellcom et al. Oct. 1, 2021, *Ex Parte* at 1 (advocating for an SMR auction format primarily because it allows for price discovery).

<sup>371</sup> *Auction 108 Comment Public Notice*, 36 FCC Rcd at 657, para. 35.

<sup>372</sup> E.g., NACEPF/Mobile Beacon May 3, 2021, Comments at 7; WISPA May 3, 2021, Comments at 10.

179. Commenters opposing a single-round auction asserted that it is particularly complex and that preparations for bidding would require modeling the full auction process, including solving a combinatorial optimization.<sup>373</sup> We do not find this argument determinative because bidders would need to perform similar due diligence and valuation analyses for the auction, regardless of the auction format. Similarly, we are not persuaded that a single-round auction format would be particularly attractive to “speculators,” as several commenters claim.<sup>374</sup> To the extent that a bidder would look to purchase licenses at low prices with the intent of reselling, a multiple-round auction would appear to offer comparable opportunities for such strategies. Moreover, performance requirements, which promote the deployment of wireless services and deter speculation, would apply equally to licenses acquired under either format.<sup>375</sup>

180. We also recognize the concerns of WISPA and others that a multiple-round auction can provide an advantage to an entity that bids on a large number of licenses by allowing it to leverage savings from licenses that it wins at less than its valuation in order to bid more for other licenses than its stand-alone valuation would otherwise indicate (“cost-averaging”).<sup>376</sup> Some commenters claim that the potential advantage to larger entities of cost-averaging will reduce participation by smaller entities.<sup>377</sup> While some smaller entities may be less likely to participate in a multiple-round auction, other smaller entities assert that a multiple-round auction would in fact be more likely to encourage participation.<sup>378</sup> Accordingly, balancing all the competing concerns and preferences raised in the record, we adopt the clock-1 format for Auction 108 because we find it is the best choice for this auction considering all the circumstances.

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<sup>373</sup> T-Mobile May 3, 2021, Comments at 14; RWA May 17, 2021, Reply at 2; U.S. Cellular May 3, 2021, Comments, Attach. at 11.

<sup>374</sup> See, e.g., CCA May 3, 2021, Comments at 5-6; T-Mobile May 27, 2021, Reply at 13; U.S. Cellular May 27, 2021, Reply at 12; *but see* WISPA May 27, 2021, Reply at 15 (arguing that speculators would be deterred by a single-round auction with pay-as-bid pricing).

<sup>375</sup> See 47 CFR 27.14(u).

<sup>376</sup> See, e.g., WISPA May 3, 2021, Comments at 4, 8-9, 13-14, 17; SoniqWave May 3, 2021, Comments at 5 n.12; AT&T May 27, 2021, Reply at 2; Aeronet Feb 23, 2022, Comments at 1-2; OTI and SHLB Feb. 23, 2022, Comments at 3; *but see* Verizon May 3, 2021, Comments at 5 (arguing that lack of price discovery is a bigger deterrent to small and rural carriers participation than the potential for cost-averaging).

<sup>377</sup> Commenters arguing that smaller entities would be more likely to participate in a single-round auction include Aeronet, Voqal, DISH, Mile One, and Select Spectrum. Aeronet February 23, 2022, Comments at 1; Voqal Feb. 23, 2022, Comments at 9; DISH May 27, 2021, Reply at 2-5; Mile One May 4, 2021, *Ex Parte* at 4; Select Spectrum May 3, 2021, Comments at 1. Voqal argues that a single-round, pay-as-bid auction format is the only effective option for promoting digital equity and inclusion because it is the only option that gives smaller bidders a fighting chance. Voqal Feb. 23, 2022, Comment at 8. Likewise, WISPA argues that a single-round auction will increase the likelihood that historically underserved and persistent poverty rural areas will receive winning bids. WISPA Feb. 23, 2022, Comments at 12. We are not persuaded that a single-round auction would necessarily increase digital equity and inclusion to a greater extent than a multiple-round auction. It is not clear that a single-round auction would increase participation by smaller bidders, and thereby increase the number of licenses sold through the auction. Rather many smaller bidders indicate that a multiple-round auction would better serve them. See, e.g., Cellcom et al. Oct. 11, 2021, *Ex Parte* at 1. In any event, the bidding credits available in this auction are an effective tool for promoting the participation of designated entities, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women, in the provision of spectrum-based service. See *2.5 GHz Report and Order*, 34 FCC Rcd at 5478, para. 88.

<sup>378</sup> Commenters arguing that smaller entities would be more likely to participate in a multiple-round auction include CCA, T-Mobile, U.S. Cellular, Rural 2.5, RWA, and TeleGuam. CCA May 3, 2021, Comments at 2; T-Mobile May 27, 2021, Reply at 14; U.S. Cellular May 27, 2021, Reply at 4, 11; Rural 2.5 May 3, 2021, Comments at 5; RWA May 17, 2021, Reply at 1-2, 4; TeleGuam May 3, 2021, Comments at 8.

181. We direct OEA, in conjunction with WTB, to prepare and release, concurrently with this Public Notice, an updated technical guide (Auction 108 Technical Guide) that provides the mathematical details of the adopted auction design and algorithms for the clock phase of Auction 108. The information in the Auction 108 Technical Guide, which is available in the Education section of the Auction 108 website ([www.fcc.gov/auction/108](http://www.fcc.gov/auction/108)), supplements our decisions in this Public Notice.<sup>379</sup>

#### **A. Clock-1 Auction Design**

182. Under the clock-1 format that we adopt, each bidder will be able to bid for licenses in the license areas selected on its short-form application, where a specific license will be identified by a category and a county. The auction will proceed in a series of rounds, with bidding conducted simultaneously for all licenses available in the auction. Consistent with prior FCC clock auctions, for each bidding round, the bidding system will announce a clock price for each license, and a bidder will indicate its demand for licenses at the prices associated with the current round.<sup>380</sup>

183. The clock price for a license will increase from round to round if more than one bidder indicates demand for that license. The bidding rounds will continue until, for all licenses—that is, all categories in all counties—the number of bidders demanding each license does not exceed one. Once bidding rounds stop, the bidder with demand for a license becomes the winning bidder.

#### **B. Single Licenses in Three Bidding Categories**

184. Auction 108 will offer geographic overlay licenses for unassigned spectrum in the 2.5 GHz (2496–2690 MHz) band offered in up to three channel blocks of spectrum—49.5 megahertz, 50.5 megahertz, and 17.5 megahertz blocks—licensed on a county basis.<sup>381</sup> For bidding in this clock auction, in the counties where available, we adopt bidding categories as follows: the 49.5 megahertz channel block is bidding category 1 (C1); the 50.5 megahertz channel block is bidding category 2 (C2); and the 17.5 megahertz channel block is bidding category 3 (C3).<sup>382</sup> Therefore, the combination of a bidding category and a county would define a single specific license, and bidding for a category and a county under the clock-1 auction format would constitute license-by-license bidding.<sup>383</sup>

#### **C. Bidding Rounds**

185. Auction 108 will consist of sequential bidding rounds, each followed by the release of round results. We will conduct bidding simultaneously for all licenses—all categories in all counties available in the auction. In the first bidding round of Auction 108, a bidder will indicate, for each category and county, whether it demands the license at the minimum opening bid price. Before each subsequent bidding round, the bidding system will announce a start-of-round price and a clock price for each license, and during the round, qualified bidders will indicate the licenses for which they wish to bid at the prices associated with the current round. Bidding rounds will be open for predetermined periods of

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<sup>379</sup> The Auction 108 Technical Guide details the adopted procedures for Auction 108.

<sup>380</sup> The prices associated with the round are prices between the start-of-round price and the clock price, inclusive.

<sup>381</sup> *2.5 GHz Report and Order*, 34 FCC Rcd at 5480, 5481, paras. 93, 96; *see also Auction 108 Comment Public Notice*, 36 FCC Rcd at 646, para. 2.

<sup>382</sup> *Auction 108 Further Comment Public Notice* at 5, para. 13. Specifically, the C1 channel block includes channels A1–A3, B1–B3, C1–C3 (49.5 megahertz); the C2 channel block includes channels D1–D3, the J channels, and channels A4–G4 (50.5 megahertz); and the C3 channel block includes channels G1–G3 and the relevant K channels (16.5 megahertz of contiguous spectrum and 1 megahertz of the K channels associated with the G channel group). *See* para. 7, above.

<sup>383</sup> In previous FCC clock auctions with multiple generic blocks in a category, the combination of a category and a geographic area is referred to as a “product.” *See, e.g., Auction 110 Procedures Public Notice*, 36 FCC Rcd at 9324, para. 173. In this clock auction with a supply of one block in each category, a “product” is a single license.

time. Bidders will be subject to activity and eligibility rules that govern the pace at which they participate in the auction.

186. For each category and county—that is, each license—the clock price will increase from round to round if more than one bidder indicates demand for that license. The bidding rounds will continue until, for every license, demand does not exceed one. At that point, the bidder still indicating demand for a license will be the winning bidder.

187. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of bidding. Details on viewing round results, including the location and format of downloadable results files for each round, will be released concurrent with or prior to that public notice.

188. We will conduct Auction 108 over the Internet. A bidder will be able to submit its bids using the bidding system's *upload* function, which allows bid files in a comma-separated values (CSV) text format to be uploaded.<sup>384</sup>

189. The bidding system will allow a bidder to submit bids only for licenses in license areas (i.e., counties) the bidder selected on its FCC Form 175 and for which the bidder has sufficient bidding eligibility.

190. During each round of the bidding, a bidder will be able to modify its bids placed in the current bidding round. It can do so by uploading a new file of all its bids, including the modifications, which would replace bids previously submitted in the round. The system will take the last bid file submission as that bidder's bids for the round. We urge bidders to verify their bids in each round. Information on how to do so will be made available in educational materials that OEA will provide, including a bidding system user guide and an online bidding procedures tutorial.

191. We adopt the proposal that OEA retain the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies.<sup>385</sup> Several commenters support this proposal.<sup>386</sup> This will allow OEA to change the amount of time for bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors.

#### **D. Stopping Rule**

192. For Auction 108, we will employ a simultaneous stopping rule approach, which means all licenses remain available for bidding until bidding stops on every license.<sup>387</sup> Specifically, bidding will close for all licenses after the first round in which demand does not exceed one for any license. Consequently, under this approach, it is not possible to determine in advance how long Auction 108 will last.

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<sup>384</sup> T-Mobile proposes that bidders have the option to submit bids manually, in addition to the upload function. T-Mobile Feb. 23, 2022, Comments at 10-11 (arguing manual bidding is especially helpful in the final rounds of the auction). This would not be feasible in the auction bidding system, given the very large auction inventory. The auction system's bid upload feature has been used in several recent spectrum auctions without any issues. .

<sup>385</sup> *Auction 108 Comment Public Notice*, 36 FCC Rcd at 664, paras. 68.

<sup>386</sup> *See, e.g.*, CCA Feb. 23, 2022, Comments at 4-5; T-Mobile Feb. 23, 2022, Comments at 6-7; US Cellular Feb. 23, 2022, Comments at 6.

<sup>387</sup> *Auction 108 Comment Public Notice*, 36 FCC Rcd at 664-65, para. 69 ; *Auction 108 Further Comment Public Notice* at 6-7, para. 19. The Commission has discretion to establish stopping rules before or during multiple round auctions in order to complete the auction within a reasonable time. 47 CFR § 1.2104(e).

193. One commenter proposes that OEA and WTB retain the discretion to employ a special stopping rule.<sup>388</sup> Specifically, T-Mobile proposes that, when bidder activity falls below a certain level, OEA and WTB announce that the auction will close after an additional number of rounds.<sup>389</sup> We decline to accept this proposal because stopping bidding after a set number of rounds could be perceived as unfair and arbitrary since it would require existing competition to be resolved randomly.<sup>390</sup> We are confident that OEA's existing discretionary tools, such as adjusting the bidding schedule as discussed above, will be adequate to speed up the auction if it is proceeding at an unduly slow pace.<sup>391</sup>

#### **E. Availability of Bidding Information**

194. We adopt the proposal to make public after each clock phase bidding round, for each license, the aggregate demand, the posted price of the last completed round,<sup>392</sup> and the clock price for the next round.<sup>393</sup> The identities of bidders making specific bids will not be disclosed until after the close of bidding in the auction.<sup>394</sup>

195. Each bidder will have access to additional information related to its own bidding and bid eligibility.<sup>395</sup> Specifically, after the bids of a round have been processed, the bidding system will inform each bidder of the licenses it currently demands (its processed demand), whether it has proxy instructions for those licenses, and its eligibility for the next round.

#### **F. Activity Rule**

196. *Activity Requirement.* For the reasons set forth in the *Auction 108 Comment Public Notice*, we adopt the proposal to employ an activity rule that requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating.<sup>396</sup> For this clock auction, a bidder's activity in a round for purposes of the activity rule will be the sum of the bidding units associated with the bidder's demands as applied by the auction system during bid processing. Bidders are required to be active on a specific percentage (the *activity requirement percentage*) of their current bidding eligibility during each round of the auction. Failure to maintain the requisite activity level will result in a

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<sup>388</sup> T-Mobile Feb. 23, 2022, Comments at 9-10.

<sup>389</sup> *Id.* at 9 (suggesting the Bureaus announce that the auction will close after an additional five to ten rounds in order to accelerate the auction if activity slows).

<sup>390</sup> Some commenters oppose the stopping rule proposed by T-Mobile. *E.g.*, AT&T, Feb. 23, 2022, Comments at 7 (arguing that the rule would tilt the auction in T-Mobile's favor); U.S. Cellular Feb. 23, 2022, Comments at 8 (arguing that even though average activity across all licenses may fall, activity in smaller markets may continue in order to reach price equilibrium).

<sup>391</sup> *See* para. 191, above; U.S. Cellular Feb. 23, 2022, Comments at 5 (supporting use of traditional auction management tools to ensure the auction closes within a reasonable amount of time). Other auction management tools that OEA retains the discretion to use for Auction 108 include adjusting the clock price increment percentage, para. 209, below, and adjusting the activity requirement percentage, para. 197, below.

<sup>392</sup> The posted price for each license will serve as the start-of-round price for the next round. In general, the posted price of the previous round is the start-of-round price of the previous round if supply exceeds demand; the clock price of the previous round if demand exceeds supply; or the price at which a reduction caused demand to equal supply. Note that, for Auction 108, supply equals one. *See* Auction 108 Technical Guide for more details.

<sup>393</sup> *Auction 108 Further Comment Public Notice* at 7, para. 20.

<sup>394</sup> *Id.* Bids placed according to a bidder's proxy instructions will be made available, but a bidder's proxy instructions will not be disclosed.

<sup>395</sup> *Id.* at 7, para. 21.

<sup>396</sup> *Auction 108 Comment Public Notice*, 36 FCC Rcd at 665-66, paras. 72-73; *Auction 108 Further Comment Public Notice* at 7, para. 22.

reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place bids in subsequent rounds of the auction.

197. We adopt the proposal to require that bidders maintain a fixed, high level of activity in each round of Auction 108 in order to maintain bidding eligibility.<sup>397</sup> The clock auction requires a high level of certainty about bidder demand in order to set accurate prices and provide reliable information to bidders. Consistent with past practice, bidders must be active on between 90% and 100% of their bidding eligibility in all clock rounds, with the specific percentage within this range to be set for each round by OEA.<sup>398</sup> Thus, the activity rule will be satisfied when a bidder has bidding activity on blocks with bidding units that total 90% to 100% of its current eligibility in the round. OEA will set the activity requirement percentage initially at 95%.<sup>399</sup> If the activity rule is met, then the bidder's eligibility will not change for the next round. If the activity rule is not met in a round, then the bidder's eligibility will be reduced to an amount that brings the bidder into compliance with the rule.<sup>400</sup> Bidding activity will be based on the bids that are applied by the FCC auction bidding system. That is, if a bidder bids to reduce its demand for a license, but the FCC auction bidding system cannot apply the request because demand for that license would fall below one, then the bidder's activity would reflect its unreduced demand.<sup>401</sup>

198. OEA retains the discretion to change the activity requirement percentage during the auction.<sup>402</sup> The bidding system will announce any such changes in advance of the round in which they would take effect, giving bidders adequate notice to adjust their bidding strategies.

199. *Contingent Bidding Limit.* Because a bidder's eligibility for the next round is calculated based on the bidder's demands as applied by the auction system during bid processing, a bidder's eligibility may be reduced even if the bidder submitted bids with activity that exceeds the required activity for the round.<sup>403</sup> To help a bidder avoid potentially having its eligibility reduced as a result of submitted bids that could not be applied during bid processing, we adopt procedures to allow a bidder to

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<sup>397</sup> *Auction 108 Comment Public Notice*, 36 FCC Rcd at 666, para. 73; *Auction 108 Further Comment Public Notice* at 7-8, para. 23

<sup>398</sup> See, e.g., *Auction 110 Procedures Public Notice*, 36 FCC Rcd at 9328, para. 192 (adopting an activity rule with an activity requirement percentage range of 90% to 100%). An activity requirement percentage range below that which we adopt here would create uncertainty regarding the exact level of bidder demand, interfere with the basic clock-price setting and winner determinations, provide less helpful information to bidders, and prolong the auction unduly. *Auction 105 Procedures Public Notice*, 35 FCC Rcd at 2193, para. 178.

<sup>399</sup> Verizon and TeleGuam favor a 100% activity requirement in order to move the auction along more quickly. Verizon May 3, 2021, Comments at 7-8; TeleGuam May 3, 2021, Comments at 7. However, in previous FCC clock auctions, an initial activity requirement percentage of somewhat less than 100% (e.g., 95%) has proved useful in giving bidders a degree of flexibility in bidding at the start of the auction. See, e.g., *Auction 110 Procedures Public Notice*, 36 FCC Rcd at 9328, para. 192. We recognize that a higher activity requirement generally speeds up the pace of an auction, and as OEA has done in previous auctions, it may use its discretion to increase the activity requirement percentage during Auction 108.

<sup>400</sup> With a 95% activity requirement, for example, a bidder not meeting the requirement would have its eligibility reduced to the number of bidding units that equals its activity divided by 0.95.

<sup>401</sup> Under the clock-1 format, the FCC auction bidding system would not apply a bid to reduce demand for an individual license if the reduction would cause the aggregate demand for that license to drop to zero (i.e., below the available supply of one). See Section IV.H.1. (No Excess Supply Rule for Bids to Reduce Demand), below.

<sup>402</sup> 47 CFR §§ 0.271, 0.21(m).

<sup>403</sup> This may occur, for example, if the bidder bids to reduce its demand for licenses X and Y (with 10 bidding units each) from one to zero and bids to increase its demand for license Z (with 20 bidding units) from zero to one. If the bidder's demand can be reduced for license X but not for license Y (because no other bidder has processed demand for license Y), the increase for license Z cannot be applied, and absent other bidding activity the bidder's eligibility would be reduced. See Sections IV.H.1. (No Excess Supply Rule for Bids to Reduce Demand) and IV.H.3. (Processed Demand), below, for further details on bid processing.

submit bids with associated bidding activity greater than its current bidding eligibility.<sup>404</sup> However, we emphasize that even under these additional procedures, the bidder's activity as applied by the auction system during bid processing will not exceed the bidder's current bidding eligibility.<sup>405</sup> That is, even if a bidder submits bids with associated bidding units exceeding 100% of its current bidding eligibility, its processed activity cannot exceed its eligibility.

200. Under these procedures, after Round 1,<sup>406</sup> a bidder may submit bids with bidding units totaling up to a *contingent bidding limit* greater than or equal to the bidder's current bidding eligibility for the round times a *contingent bidding percentage* equal to or greater than 100%.<sup>407</sup> We adopt an initial contingent bidding percentage of 120%, which will apply starting in Round 2. We find that 120% provides a useful amount of flexibility to a bidder trying to guard against loss of eligibility when requesting a reduction in its demand.<sup>408</sup> This limit will be subject to change in subsequent rounds within a range of 100% to 140%. If it appears that the contingent bidding limit is being misused, OEA may use its discretion to change the contingent bidding limit percentage. In any bidding round, the auction bidding system will advise the bidder of its current bidding eligibility, its required bidding activity, and its contingent bidding limit. The Auction 108 Technical Guide provides examples of use of the contingent bidding limit, and bidders are encouraged to review them.

201. As with the activity requirement percentage, OEA will retain the discretion to change the contingent bidding percentage during the auction and will announce any such changes in advance of the round in which they would take effect.<sup>409</sup>

202. For Auction 108, we will not provide for activity rule waivers to preserve a bidder's eligibility. We note that our procedures to permit a bidder to submit bids with bidding activity greater than its eligibility, within the precise limits set forth above, and allowing bidders to submit proxy instructions will address some of the circumstances under which a bidder risks losing bidding eligibility and otherwise could wish to use a bidding activity waiver, while minimizing any potential adverse impacts on bidder incentives to bid sincerely and on the price setting mechanism of the clock auction. This approach not to allow waivers is consistent with the ascending clock auction procedures used in other FCC clock auctions.<sup>410</sup> The clock auction relies on precisely identifying the point at which demand

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<sup>404</sup> For example, depending upon the bidder's overall bidding eligibility and the contingent bidding percentage, a bidder could submit an "additional" bid or bids that would be considered (in price point order with its other bids) and applied as available eligibility permits during the bid processing.

<sup>405</sup> See Section IV.H.3. (Processed Demand), below.

<sup>406</sup> In Round 1, a bidder will be allowed to submit bids with bidding units totaling up to the bidder's initial bidding eligibility.

<sup>407</sup> The Commission has previously referred to the *contingent bidding limit* as the *activity upper limit*, and similarly, to the *contingent bidding percentage* as the *activity limit percentage*. See *Auction 105 Procedures Public Notice*, 35 FCC Rcd at 2194-95, paras. 182-84; *Auction 107 Procedures Public Notice*, 35 FCC Rcd at 8455-56, paras. 172-76. We modified those terms before Auction 110 to remind bidders that bids submitted using the contingent bidding limit will be applied only under certain circumstances. For Round 1, the contingent bidding limit will be 100% of the bidder's initial bidding eligibility.

<sup>408</sup> An initial contingent bidding limit percentage of 120% has worked effectively in past wireless auctions. See, e.g., *Auction 110 Procedures Public Notice* 36 FCC Rcd at 9329, para. 195-96 (declining to adopt a contingent bidding limit percentage of 110% or lower because a higher percentage could prove useful to smaller entities whose lower total bidding eligibility may give them less flexibility to shift bids). No comments were filed addressing the contingent bidding limit.

<sup>409</sup> 47 CFR §§ 0.271, 0.21(m).

<sup>410</sup> See *Broadcast Incentive Auction Scheduled to Begin on March 29, 2016; Procedures for Competitive Bidding in Auction 1000, Including Initial Clearing Target Determination, Qualifying to Bid, and Bidding in Auctions 1001 (Reverse) and 1002 (Forward)*, AU Docket No. 14-252, WT Docket No. 12-269, GN Docket No. 12-268, MB (continued....)

decreases to equal supply to determine winning bidders and final prices. Allowing waivers would create uncertainty with respect to the exact level of bidder demand and would interfere with the basic clock price-setting and winner determination mechanism. Moreover, uncertainty about the level of demand would affect the way bidders' requests to reduce demand are processed by the bidding system, as addressed below.<sup>411</sup>

## **G. Acceptable Bids**

### **1. Minimum Opening Bids**

203. As is typical for each auction,<sup>412</sup> the Commission sought comment on the use of a minimum opening bid amount and/or reserve price, as mandated by section 309(j) of the Communications Act.<sup>413</sup> We will establish minimum opening bid amounts for Auction 108. The bidding system will not accept bids lower than the minimum opening bids for each license. Based on our experience in past auctions, setting minimum opening bid amounts judiciously is an effective tool for accelerating the competitive bidding process.<sup>414</sup>

204. We establish the minimum bid amounts in Auction 108 using the total potential MHz-pops of each license offered in the auction, rather than on available white space in each block. We base these calculations on \$0.006 per MHz-pop, with a minimum of \$500 per license.<sup>415</sup> Consistent with our calculations for upfront payments and bidding units, for the 49.5-megahertz and 50.5-megahertz blocks, we base the calculation on 50 megahertz.<sup>416</sup> For the 17.5-megahertz channel block, the calculation will be based on the 16.5 megahertz of contiguous spectrum not including the 1-megahertz guard band.<sup>417</sup> Additionally, when calculating minimum bid amounts, we round the results of calculations as follows: results below \$1,000 will be rounded down to the nearest \$100; results between \$1,000 and \$10,000 will be rounded down to the nearest \$1,000; results between \$10,000 and \$100,000 will be rounded down to the nearest \$10,000; and results above \$100,000 will be rounded down to the nearest \$100,000. The rounding procedures will lessen the differences between minimum bid amounts for licenses in counties with similar population instead of reflecting relatively small differences in total potential MHz-pops that are not necessarily representative of the available white space.

205. As discussed in Section III.F.3. (Upfront Payments and Bidding Eligibility), above, we received several comments on the proposal to set the minimum opening bid and upfront payment amount based on the total potential MHz-pops of each license. As discussed above, we decline to calculate

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Docket No. 15-146, Public Notice, 30 FCC Rcd 8975, 9077, para. 213 (2015); *Auctions 101 and 102 Procedures Public Notice*, 33 FCC Rcd at 7650, para. 245; *Auction 103 Procedures Public Notice*, 34 FCC Rcd at 5591, para. 195; *Auction 105 Procedures Public Notice*, 35 FCC Rcd at 2196, para. 188; *Auction 107 Procedures Public Notice*, 35 FCC Rcd at 8456-57, para. 178; *Auction 110 Procedures Public Notice*, 36 FCC Rcd at 9329-30, para. 199.

<sup>411</sup> See Sections IV.H.1. (No Excess Supply Rule for Bids to Reduce Demand) and IV.H.3 (Processed Demand), below.

<sup>412</sup> See, e.g., *Auction 110 Comment Public Notice*, 36 FCC Rcd at 6120, paras. 69-72.

<sup>413</sup> *Auction 108 Further Comment Public Notice* at 9, para. 28; *Auction 108 Comment Public Notice*, 36 FCC Rcd at 660, 667, paras. 46-47, 78-82, Attach. A (proposing minimum opening bid amounts for each license calculated based on \$0.006 per MHz pop, with a minimum of \$500 per license); see also 47 U.S.C. § 309(j)(4)(F).

<sup>414</sup> See, e.g., *Auction 97 Procedures Public Notice*, 29 FCC Rcd at 8440, para. 193.

<sup>415</sup> We believe this will help meet our statutory objective of recovering for the public a portion of the value of the spectrum. See 47 USC 309(j)(3)(C).

<sup>416</sup> See para. 159, above.

<sup>417</sup> We use the 16.5 megahertz of contiguous spectrum and exclude the 1-megahertz guard band for comparability with the larger blocks that consist of contiguous spectrum only.

minimum opening bids based on available white space rather than total potential MHz pops of each license.<sup>418</sup>

206. Two commenters suggest that we increase minimum opening bid amounts in some or all counties to help expedite the bidding.<sup>419</sup> However, minimum opening bids are intended to be a starting point for bidding, rather than a reflection of final prices. A critical factor is that minimum opening bids are not set above the market clearing price, which is unknown prior to the auction and, if overestimated, could result in unsold licenses, and we are confident that the amounts we adopt are sufficiently low yet reasonable and will not deter auction participation. While higher minimum opening bids might get bidders closer to the final price more rapidly, they could overshoot the market clearing price for some licenses. Accordingly, we decline to adopt the commenters' suggestions.

207. The minimum opening bid amounts for each license offered in Auction 108 are set forth in the "Attachment A" file on the Auction 108 website at [www.fcc.gov/auction/108](http://www.fcc.gov/auction/108).

## 2. Clock Price Increments

208. We adopt the procedures regarding clock price increments as described in the *Auction 108 Further Comment Public Notice*.<sup>420</sup> Therefore, after bidding in the first round and before each subsequent round, for each license, the FCC auction bidding system will announce the start-of-round price<sup>421</sup> and the clock price for the upcoming round—that is, the lowest price and the highest price at which bidders can indicate their demand for the license during the round. As long as aggregate demand for the license exceeds one, the start-of-round price will be equal to the clock price from the prior round. If aggregate demand equaled one at a price in a previous round, then the start-of-round price for the next round will be equal to the price at which aggregate demand equaled one. If aggregate demand was zero in the previous round, then the start-of-round price for the next round will not increase.

209. We will set the clock price for a license for a round by adding a percentage increment to the start-of-round price.<sup>422</sup> We will set the initial increment percentage at 10%, and OEA may adjust within a range of 5% to 30% inclusive as rounds continue.<sup>423</sup> Commenters addressing the clock price increments generally support OEA's discretion to set the bid increment between 5% and 30%.<sup>424</sup> We recognize that an increment larger than the initial 10% may be useful in managing the length of the auction, and OEA may increase the percentage increment during the auction, but OEA will take bidding activity into account before deciding to do so and will announce any change in advance.<sup>425</sup> To ensure that

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<sup>418</sup> See paras. 156-57, above.

<sup>419</sup> T-Mobile Feb. 18, 2022, *Ex Parte* at 3 (advocating minimum opening bids based on \$.01 per MHz-pop); Verizon Feb. 23, 2022, Comments at 4 (advocating that minimum opening bids in non-rural counties should be set at \$0.03 per MHz-pop).

<sup>420</sup> *Auction 108 Further Comment Public Notice* at 9, para. 30.

<sup>421</sup> The start-of-round price is also referred to as the posted price of the previous round.

<sup>422</sup> For example, if the start-of-round price for a license is \$10,000, and the percentage increment is 20%, then the clock price for the round will be \$12,000. The result of the clock price calculation will be rounded up to the nearest \$1,000 for results above \$10,000; rounded up to the nearest \$100 for results below \$10,000 but above \$1,000; and rounded up to the nearest \$10 for results below \$1,000.

<sup>423</sup> An initial bid increment percentage of 10% has proved successful in past clock auctions. See, e.g., *Auction 110 Procedures Public Notice*, 36 FCC Rcd at 9331, para. 207.

<sup>424</sup> T-Mobile May 27, 2021, Reply at 14 (suggesting that the Commission could adjust bid increments to speed up the pace of the auction); Blooston Feb. 24, 2022, *Ex Parte* at 3; US Cellular Feb. 23, 2022, Comments at 6 n.18; T-Mobile Feb. 23, 2022, Comments at 5.

<sup>425</sup> T-Mobile advocates setting the initial clock price increment to a high percentage, such as 30%, and maintaining it as the auction continues. T-Mobile Feb. 23, 2022, Comments at 7. Conversely, U.S. Cellular cautions against an "unnecessarily fast auction pace" which "would not provide bidders with the time they need to properly analyze the (continued....)

an increase in the percentage increment does not result in an unduly large increase for a license, the total dollar amount of the increment (the difference between the clock price and the start-of-round price) will be capped at a certain amount. We will set this cap on the increment initially at \$10 million and OEA may adjust the cap as rounds continue.<sup>426</sup> The 5% to 30% increment range and cap will allow us to set a percentage that manages the auction pace and takes into account bidders' needs to evaluate their bidding strategies while moving the auction along quickly.

### 3. Intra-Round Bids

210. As described in the *Auction 108 Further Comment Public Notice*,<sup>427</sup> in any round after the first round, we will permit a bidder to make intra-round bids by indicating a point between the start-of-round price and the clock price at which its demand for a license changes.<sup>428</sup> In placing an intra-round bid for a license, a bidder will indicate a specific price and the changed quantity it demands (either zero or one) if the price for the license should increase beyond that price. For example, if a bidder has processed demand for a license at the start-of-round price of \$200, but no longer wants the license if the price increases by more than \$10, the bidder would indicate a bid quantity of zero at a price of \$210. Similarly, if the bidder wishes to reduce its demand to zero if the price increases at all above \$200, the bidder would indicate a bid quantity of zero at the start-of-round price of \$200.

211. Intra-round bids are optional; a bidder may choose to express its demands only at the start-of-round price or the clock price. Using intra-round bidding will allow the auction system to use relatively large percentage increments, thereby speeding up the auction,<sup>429</sup> without running the risk that a jump in the clock price will overshoot the market clearing price—the point at which only one bidder demands the license—because bidders can specify a price lower than the clock price.

212. Intra-round bid amounts will be limited to multiples of \$10 for prices below \$10,000; to multiples of \$100 for prices between \$10,000 and \$100,000, inclusive; and to multiples of \$1,000 for prices above \$100,000. One commenter argues against this limitation, claiming that it may require a bidder to modify its bidding tools.<sup>430</sup> We adopt the limitation as stated, however, because it deters anti-competitive strategic bidding,<sup>431</sup> in which case the public interest benefits outweigh the inconvenience to bidders with existing tools.

### 4. Proxy Bids

213. We adopt the proposal to provide each bidder with the option to use proxy bidding under the clock-1 format.<sup>432</sup> Accordingly, a bidder will be allowed to submit a proxy instruction to the bidding (Continued from previous page) \_\_\_\_\_ critical valuation information they will acquire through the price discovery made possible by the clock-1 format, and to adjust their bidding strategies accordingly.” U.S. Cellular Feb. 23, 2022, Comments at 6 n.18.

<sup>426</sup> See *Auction 105 Procedures Public Notice*, 35 FCC Rcd at 2198, para. 194 (establishing an initial cap on the increment at \$10 million in the auction of county-sized Priority Access Licenses).

<sup>427</sup> *Auction 108 Further Comment Public Notice* at 10, para. 32.

<sup>428</sup> Multiple comments support the use of intra-round bids to more efficiently conduct Auction 108 under a multiple-round format. See T-Mobile May 3, 2021, Comments at 7; T-Mobile Feb. 18, 2022, *Ex Parte* at 4-5 (suggesting the use of intra-round bids to speed up bidding in the context of an SMR auction); U.S. Cellular Feb. 23, 2022, Comments at 6 (supporting the use of intra-round bids in the clock-1 format). DISH opposed incorporating intra-round bids into an SMR auction, claiming it would render a familiar format unfamiliar. DISH May 27, 2021, Reply at 6-7. Although intra-round bidding may be unfamiliar in the context of an SMR auction, intra-round bidding has been used in all Commission clock auctions. See *Auction 108 Further Comment Public Notice* at 3, para. 4.

<sup>429</sup> See T-Mobile May 3, 2021, Comments at 7; T-Mobile May 27, 2021, Reply at 14.

<sup>430</sup> Verizon Feb. 23, 2022, Comments at 3-4.

<sup>431</sup> Specifically, these rounding rules deter the use of trailing digits for bid signaling. See *Application of Mercury PSC II, LLC*, Memorandum Opinion and Order, 13 FCC Rcd 23755, 23760, para. 11 (1998) (using trailing digits for bid signaling is a violation of the prohibited communications rule).

system to *reduce* its demand for a license to zero at a price higher than the current round's clock price.<sup>433</sup> Proxy instructions to *increase* a bidder's demand for a license at a given price will not be permitted.<sup>434</sup>

214. Under these procedures, if a proxy instruction has been submitted, the bidding system will automatically submit a proxy bid to maintain the bidder's demand for the license in every subsequent round as long as the clock price for the round is less than the proxy instruction price. In the first round in which the clock price is greater than or equal to the proxy instruction price, the bidding system will submit a proxy bid on behalf of the bidder to reduce the bidder's demand for that license to zero at the proxy instruction price. For example, if a bidder has processed demand for a license with a clock price of \$1,000, but the bidder is willing to purchase the license for a price up to \$1,800, the bidder could submit a proxy instruction to reduce its demand for the license to 0 at \$1,800. In that case, the bidding system will submit proxy bids to maintain the bidder's demand for the license in each subsequent round as long as the clock price is less than \$1,800.

215. In the case that a bid to reduce demand, placed according to proxy instructions or submitted by the bidder in the round, is not applied during bid processing, the bidding system will automatically generate a proxy instruction at the bid price and, in the following rounds, submit proxy bids on behalf of the bidder according to that proxy instruction. For example, suppose that the start-of-round price for a license is \$10,000, the clock price is \$12,000, and a bidder with processed demand for the license submits a bid to reduce its demand to 0 at price \$11,500. If the bid is not applied during bid processing (e.g., because there were no other bids for the license in the round), in the following round the bidding system will submit a proxy bid on behalf of the bidder to reduce demand for the license to 0 at price \$11,500. The proxy instruction preserves in the bidding system the bidder's interest in retaining demand for the license at a price no higher than \$11,500, which may help avoid having the license sold later in the auction to another bidder at a price less than what the initial bidder is willing to pay.<sup>435</sup>

216. In any round, a bidder can remove or modify any existing proxy instructions or proxy bids for the round by uploading a new bid file, including the modifications, which would replace any bids and proxy instructions previously submitted. The system will take the last bid file submission as that bidder's bids and proxy instructions.

217. As is the case for intra-round bid amounts, proxy instruction prices will be limited to multiples of \$10 for prices below \$10,000; to multiples of \$100 for prices between \$10,000 and \$100,000, inclusive; and to multiples of \$1,000 for prices above \$100,000. Proxy instructions will not be publicly released either during or after the auction.

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<sup>432</sup> *Auction 108 Further Comment Public Notice* at 10-11, paras. 35-39. A number of commenters support the use of proxy bidding as a means of alleviating the burden of monitoring a multiple-round auction. T-Mobile Feb. 23, 2022, Comments at 4; U.S. Cellular Feb. 23, 2022, Comments at 7-8; CCA Feb. 23, 2022, Comments at 5; *see also* WISPA Feb. 23, 2022, Comments at 13-14 (arguing that proxy bidding will be of marginal utility in this auction).

<sup>433</sup> A bidder would submit its proxy instructions along with its bids, using the bidding system's *upload* function described in Section IV.C. (Bidding Rounds), above.

<sup>434</sup> Proxy bids to increase demand would be much less useful because a bidder increasing its demand generally must manage its bidding eligibility by more active participation in the round.

<sup>435</sup> For instance, suppose that there were no other bids for the license in the round and thus the start-of-round price for the following round is \$10,000. If there are no further bids in the auction for the license, the bidder would win the license at \$10,000. However, after many rounds with no further activity on the license, another bidder may bid and, absent the proxy instruction, potentially win the license at a price above the start-of-round price of \$10,000 but below \$11,500. A proxy bid placed at \$11,500 (according to the automatically generated proxy instruction) would prevent the license from being sold to another bidder at a price the initial bidder would have been willing to pay.

## 5. Bid Types

218. Under the clock-1 auction format adopted for Auction 108, as in other FCC spectrum clock auctions, a bidder will indicate in each round the licenses it demands at the prices associated with the round.<sup>436</sup> Bidders will be permitted to make two types of bids: simple bids and switch bids.

219. A “simple” bid indicates a desired quantity (in this auction, one or zero) at a price. A bidder that is willing to maintain its demand for a license at the new clock price would bid for the license at the clock price, indicating that it is willing to pay up to that price, if need be, for the license. A bidder that wishes to change the quantity it demands for a license (relative to its processed demand from the previous round) would express the price (either the clock price or an intra-round price) at which it wishes to change its demand.

220. A “switch” bid allows the bidder to request to move its demand for a license from C1 to C2, or vice versa, within the same county at a price for the “from” category (either the clock price or an intra-round price).<sup>437</sup> “Switch” bids are allowed only in counties with both an available category 1 license and an available category 2 license.

221. Bids to maintain demand will always be applied by the auction bidding system during bid processing. Simple bids to change demand and switch bids will not necessarily be applied during bid processing. See Section IV.H. (Bid Processing) below for details on bid processing.

222. We will not incorporate any form of package bidding or “either/or” procedures, as were described in the *Auction 108 Comment Public Notice* for the single-round format, into the clock-1 auction format for Auction 108.<sup>438</sup> Package bidding and “either/or” procedures would add significant complexity, and likely be computationally intractable, in a multiple-round auction format, for both bidders and the bidding system, particularly given that the 2.5 GHz band plan has an inventory of approximately 8,000 licenses.<sup>439</sup> A bidder may bid on multiple individual licenses in a county and on licenses in multiple counties; we do not see significant additional benefit from permitting package bidding or “either/or” bidding in this context.

223. One commenter proposes to limit a bidder’s ability to move its bids from one county to another county later in the auction in order to deter speculative bidding and to avoid unnecessarily prolonging the auction.<sup>440</sup> Other commenters oppose such a restriction because they believe the restriction would disadvantage smaller bidders or undermine the advantages of a clock-1 auction format, such as the ability to adjust bidding strategies as pricing information is revealed through the auction.<sup>441</sup> As noted in the *Auction 108 Further Comment Public Notice*, such a limitation could interfere with price

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<sup>436</sup> See, e.g., *Auction 110 Procedures Public Notice*, 36 FCC Rcd at 9332, para. 211.

<sup>437</sup> See Auction 108 Technical Guide for more details on switch bids and other auction procedures.

<sup>438</sup> See WISPA Feb. 23, 2022, Comments at 14 (asking if package bidding and “either/or” bids would be allowed under the clock-1 auction format).

<sup>439</sup> See U.S. Cellular May 3, 2021, Comments at 5-6 (arguing that package bidding disadvantages smaller bidders).

<sup>440</sup> T-Mobile May 3, 2021, Comments at 7-8. T-Mobile initially made this point in the context of the SMR auction format, although T-Mobile in later comments includes this point in the context of “switch bids,” which erroneously suggests that bids to move demand from one county to another could be considered a “switch bid.” T-Mobile Feb. 23, 2022, Comments at 7-8. We note that “switch bids” are narrowly defined in the clock auction as a bid type; “switch bids” were never contemplated to include moving bids from licenses in one county to licenses in another county.

<sup>441</sup> See U.S. Cellular Feb. 23, 2022, Comments at 6 n.13 (opposing any limit on switch bidding because it would interfere with price arbitrage across potentially substitutable licenses); SoniqWave Feb. 23, 2022, Comments at 2 n.4 (asserting that the proposal would provide T-Mobile with a bidding advantage); AT&T Feb. 23, 2022, Comments at 7 (asserting that this proposal would defeat the purpose of the clock-1 format); WISPA Feb. 23, 2022, Comments at 8 (arguing that a limit on moving bids across counties would only benefit T-Mobile).

arbitrage by preventing a bidder from switching to a license that the bidder perceives as a better value.<sup>442</sup> Therefore, we will not impose any such limit on moving bids from licenses in one county to licenses in another county.<sup>443</sup>

## 6. Missing Bids

224. Under the clock-1 auction format, a bidder is required to indicate its demands in every round or have a proxy instruction in place, even if its demands at the new round's prices are unchanged from the previous round.<sup>444</sup> If a bidder does not submit a new bid for a license for which it had processed demand from the previous round and does not have a proxy instruction in place, the system will consider that a missing bid.

225. Missing bids are treated by the auction bidding system as requests to reduce demand to a quantity of zero for the license. If these requests are applied, then a bidder's bidding activity, and its bidding eligibility for the next round, may be reduced.<sup>445</sup> Unlike in previous FCC clock auctions for spectrum licenses, under the clock-1 format for Auction 108, a bidder is permitted to enter proxy instructions. Thus, a bidder that is unable to indicate its demands in every round can avoid having missing bids by entering appropriate proxy instructions.

## H. Bid Processing

226. We adopt bid processing procedures that the auction bidding system will use, after each bidding round, to process bids to change demand to determine the *processed demand* of each bidder for each license and a *posted price* for each license that will serve as the start-of-round price for the next round.

### 1. No Excess Supply Rule for Bids to Reduce Demand

227. Under the clock-1 auction format, the FCC auction bidding system will not allow a bidder to reduce its demand for a license if the reduction would cause aggregate demand to fall below one. Therefore, if a bidder has been bidding for a specific license but submits a simple bid to reduce its demand to zero for the license if the price should increase above the price in its bid, the FCC auction bidding system will treat the bid as a request to reduce demand that will be applied only if the "no excess supply" rule would be satisfied. Similarly, if a bidder submits a switch bid to move its demand from the C1 license to the C2 license in the same county, the FCC auction bidding system will treat the bid as a request that will be applied only if the "no excess supply" rule would be satisfied for C1 in the county, and vice versa.<sup>446</sup>

### 2. Eligibility Rule for Bids to Increase Demand

228. The bidding system will not allow a bidder to increase its demands for licenses if the total number of bidding units associated with the bidder's demands exceeds the bidder's bidding eligibility for the round. Therefore, if a bidder submits a simple bid to add a license for which it did not have processed demand in the previous round, the FCC auction bidding system will treat the bid as a request to increase demand that will be applied only if that would not cause the bidder's processed activity to exceed its eligibility.<sup>447</sup>

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<sup>442</sup> See *Auction 108 Further Comment Public Notice* at 9, para. 31 n.51.

<sup>443</sup> We note, however, that a bidder's ability to move bids from one license to another is governed by its bidding eligibility and the bid processing procedures described in Section IV.H. (Bid Processing), below.

<sup>444</sup> See, e.g., *Auction 110 Procedures Public Notice*, 36 FCC Rcd at 9329, para. 198.

<sup>445</sup> See the discussion of missing bids in the Auction 108 Technical Guide.

<sup>446</sup> Note, however, if a bid to reduce demand is not applied, the bidder will not be asked to pay more for the license than the highest price it agreed to pay. See Section IV.H.4. (Price Determination), below.

### 3. Processed Demand

229. We adopt the procedures described in the *Auction 108 Further Comment Public Notice* to determine the order in which the bidding system will process bids after a round ends.<sup>448</sup> After a round ends, the bidding system will first consider and apply all bids to maintain demand, and then it will process bids to change demand in order of price point, where the price point represents the percentage of the bidding interval for the round. The bidding system will process bids to change demand in ascending order of price point, first considering intra-round bids in order of price point and then bids at the clock price. The system will consider bids at the lowest price point across all licenses, then look at bids at the next price point across all licenses, and so on.<sup>449</sup> As it considers each submitted bid during bid processing, the FCC auction bidding system will determine whether there is excess demand for a license at that point in the processing in order to determine whether a bidder's request to reduce demand for that license can be applied. Likewise, the auction bidding system will evaluate the activity associated with the bidder's most recently determined demands at that point in the processing to determine whether a request to increase demand can be applied.

230. Because in any given round some bidders may request to increase demand for licenses while others may request reductions, the price point at which a bid is considered by the auction bidding system can affect whether it is applied. In addition, bids that were not applied because demand would fall below one or because the bidder's activity (as applied by the auction system) would exceed its eligibility will be held in a queue and considered, again in price point order, if there should be excess demand or if the bidder's activity (as applied by the auction system) is reduced sufficiently later in the processing after other bids are processed.

231. Therefore, once a round closes, the auction system will process bids to change demand by first considering the bid submitted at the lowest price point and determining whether that bid can be applied given bidders' demands as determined at that point in the bid processing. If the bid can be applied, the licenses that the bidder holds at that point in the processing will be adjusted, and aggregate demand for the license will be recalculated accordingly. If the bid cannot be applied, the unfulfilled bid will be held in a queue to be considered later during bid processing for that round. The FCC auction bidding system will then consider the bid submitted at the next lowest price point, applying it or not given the most recently determined demands of bidders. Any unfulfilled requests will again be held in the queue, and aggregate demand will again be recalculated. Every time a bid is applied, the unfulfilled bids held in the queue will be reconsidered, in the order of the original price points of the bids (and by pseudo-random number, in the case of tied price points). The auction bidding system will not carry over unfulfilled bid requests to the next round, however.<sup>450</sup> The bidding system will advise bidders of the status of their bids when round results are released.

### 4. Price Determination

232. As described in the *Auction 108 Further Comment Public Notice*, the FCC auction bidding system further will determine, based on aggregate demand, the posted price for each license for the round that will serve as the start-of-round price for the next round.<sup>451</sup> The price for a license will

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<sup>447</sup> The eligibility rule for bids to increase demand is always satisfied for switch bids because the bidder's processed activity does not change when a switch bid is applied (since, in a given county, the C1 and C2 licenses have the same number of bidding units).

<sup>448</sup> See *Auction 108 Further Comment Public Notice* at 13-14, paras. 49-51.

<sup>449</sup> If there are multiple bids at a single price point, the system would process bids in order of a bid-specific pseudo-random number.

<sup>450</sup> The bidding system, however, would generate a proxy bid in the case of bids to reduce to zero that are not applied. See Section IV.G.4. (Proxy Bids), above.

<sup>451</sup> *Auction 108 Further Comment Public Notice* at 14, paras. 52-55.

increase from round to round as long as there is excess demand for the license but will not increase if only a single bidder demands the license.

233. If, at the end of a round, the aggregate demand for a license exceeds the supply of one, the posted price will equal the clock price for the round. If a reduction in demand was applied during the round and caused demand to fall to one, the posted price will be the price at which the reduction was applied. If aggregate demand is zero, or aggregate demand is one and no bid to reduce demand was applied for the license, then the posted price will equal the start-of-round price for the round. The range of acceptable bid amounts for the next round will be set by adding the percentage increment to the posted price.

234. Under the clock-1 auction format, if a bid to reduce demand is not applied, it is because there is not excess demand for the license and, therefore, the posted price will not increase. Hence, a bidder that makes a bid to reduce demand that cannot be applied will not face a price for the license that is higher than its bid price.

235. After the bids of the round have been processed, if the stopping rule has not been met, the FCC auction bidding system will announce clock prices to indicate a range of acceptable bids for the next round. Each bidder will be informed of the licenses for which it has processed demand and of the aggregate demand for each license.

#### **I. Winning Bids**

236. Under the clock-1 auction format, a bidder with processed demand for a license at the time the stopping rule is met will become the winning bidder for the license. The final price for a license will be the posted price for the final round.<sup>452</sup>

### **V. POST-AUCTION PROCEDURES**

237. The public notice announcing the close of the bidding and auction results will be released within several days after bidding has ended in Auction 108. This public notice will also establish the deadlines for submitting down payments, final payments, and the long-form applications (FCC Form 601) for the auction.

#### **A. Down Payments**

238. The Commission's rules provide that, unless otherwise specified by public notice, within 10 business days after the release of the auction closing public notice for Auction 108, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission to 20% of the net amount of its winning bids (less any bidding credits, if applicable).<sup>453</sup>

#### **B. Final Payments**

239. Each winning bidder will be required to submit the balance of the net amount for each of its winning bids within 10 business days after the deadline for submitting down payments.<sup>454</sup>

#### **C. Long-Form Application (FCC Form 601)**

240. The Commission's rules provide that, within 10 business days after release of the auction closing public notice, winning bidders must electronically submit a properly completed post-auction

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<sup>452</sup> This and other bid processing details are addressed in the Auction 108 Technical Guide.

<sup>453</sup> See 47 CFR § 1.2107(b).

<sup>454</sup> See *id.* § 1.2109(a) (requiring auction winners to pay the balance of their winning bids "within ten (10) business days following the release of a public notice establishing the payment deadline," "[u]nless otherwise specified by public notice" (emphasis added)); see also *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 907-09, paras. 43-46.

application (FCC Form 601), including the applicable filing fee,<sup>455</sup> for the license(s) they won through the auction.<sup>456</sup>

241. A winning bidder claiming eligibility for a small business bidding credit or a rural service provider bidding credit must demonstrate its eligibility for the bidding credit sought in its FCC Form 601 post-auction application.<sup>457</sup> Further instructions on these and other filing requirements will be provided to winning bidders in the auction closing public notice for Auction 108.

242. Winning bidders organized as bidding consortia must comply with the FCC Form 601 post-auction application procedures set forth in section 1.2107(g) of the Commission's rules.<sup>458</sup> Specifically, license(s) won by a consortium must be applied for as follows: (a) an individual member of the consortium or a new legal entity comprising two or more individual consortium members must file for licenses covered by the winning bids; (b) each member or group of members of a winning consortium seeking separate licenses will be required to file a separate FCC Form 601 for its/their respective license(s) in their legal business name; (c) in the case of a license to be partitioned or disaggregated, the member or group filing the applicable FCC Form 601 shall include the parties' partitioning or disaggregation agreement with the FCC Form 601; and (d) if a designated entity credit is sought (either small business or rural service provider), the applicant must meet the applicable eligibility requirements in the Commission's rules for the credit.<sup>459</sup>

#### **D. Ownership Disclosure Information Report (FCC Form 602)**

243. Within 10 business days after release of the auction closing public notice for Auction 108, each winning bidder must also comply with the ownership reporting requirements in sections 1.913, 1.919, and 1.2112 of the Commission's rules by submitting an ownership disclosure information report for wireless telecommunications services (FCC Form 602) with its FCC Form 601 post-auction application.<sup>460</sup>

244. If a winning bidder already has a complete and accurate FCC Form 602 on file in the FCC's Universal Licensing System (ULS), then it is not necessary to file a new report, but the winning bidder must certify in its FCC Form 601 application that the information on file with the Commission is complete and accurate. If the winning bidder does not have an FCC Form 602 on file, or if the form on file is not complete and accurate, then the winning bidder must submit a new one.

245. When a winning bidder submits an FCC Form 175, ULS automatically creates an ownership record. **This record is not an FCC Form 602, but it may be used to pre-fill the FCC Form 602 with the ownership information submitted on the winning bidder's FCC Form 175 application.** A winning bidder must review the pre-filled information and confirm that it is complete and accurate as

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<sup>455</sup> A winning bidder is required to submit an application filing fee with each long-form application. 47 CFR § 1.1102(d), tbl. 3 to para. (d). The Commission recently adopted a new long-form application filing fee that includes an amount to recover costs for processing the short-form application. *Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules*, MD Docket No. 20-270, Report and Order, 35 FCC Rcd 15089, 15104-06, paras. 45-51 (2020) (adopting a filing fee for geographic-based wireless license long-form applications). Currently, the fee for filing Form 601 is \$3,175 per application. 47 CFR § 1.1102(d), tbl. 3 to para. (d).

<sup>456</sup> 47 CFR § 1.2107(c).

<sup>457</sup> *Id.* § 1.2112(b).

<sup>458</sup> *Id.* § 1.2107(g); see also *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 911-12, paras. 51-52; *Updating Part 1 Report and Order*, 30 FCC Rcd at 7535, para. 101.

<sup>459</sup> 47 CFR § 1.2107(g); see also *id.* § 1.2110(b)(4)(i), (c)(6); *Updating Part 1 Report and Order*, 30 FCC Rcd at 7535-36, 7574, 7583-86, paras. 101-03, 190, 214-26.

<sup>460</sup> 47 CFR §§ 1.913(a)(2), 1.919, 1.2107(f), 1.2112.

of the filing date of the FCC Form 601 post-auction application before certifying and submitting the FCC Form 602. Further instructions will be provided to winning bidders in the auction closing public notice.

#### **E. Tribal Lands Bidding Credit**

246. As noted above, a winning bidder that intends to use its license(s) to deploy facilities and provide services to qualifying Tribal lands that have a wireline penetration rate equal to or below 85 percent is eligible to receive a Tribal lands bidding credit as set forth in sections 1.2107 and 1.2110(f) of the Commission's rules.<sup>461</sup> A Tribal lands bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

247. Unlike other bidding credits that are requested prior to an auction, a winning bidder applies for a Tribal lands bidding credit after the auction when it files its FCC Form 601 post-auction application.<sup>462</sup> When initially filing the post-auction application, the winning bidder will be required to advise the Commission whether it intends to seek a Tribal lands bidding credit, for each license won in a particular auction, by checking the designated box(es).<sup>463</sup> After stating its intent to seek a Tribal lands bidding credit, the winning bidder will have 180 days from the close of the applicable post-auction application filing window to amend its application to select the specific qualifying Tribal lands to be served and provide the required Tribal government certifications.<sup>464</sup> Licensees receiving a Tribal lands bidding credit are subject to performance criteria as set forth in section 1.2110(f)(3)(vii).<sup>465</sup> For additional information on the Tribal lands bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rulemaking proceeding regarding Tribal lands bidding credits and related public notices.

#### **F. Default and Disqualification**

248. Any winning bidder that defaults or is disqualified after the close of an auction (i.e., fails to remit the required down payment by the specified deadline, fails to submit a timely long-form application, fails to make a full and timely final payment, or is otherwise disqualified) is liable for default payments as described in section 1.2104(g)(2).<sup>466</sup> A default payment consists of a deficiency payment, equal to the difference between the amount of the bidder's winning bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.<sup>467</sup>

249. The percentage of the applicable bid to be assessed as an additional payment for defaults in a particular auction is established in advance of the auction. For the reasons set forth in the *Auction 108 Comment Public Notice*, we adopt the proposal to set the additional default payment for Auction 108 at 15% of the applicable bid for winning bids.<sup>468</sup>

250. Finally, in the event of a default, the Commission has the discretion to re-auction the license or offer it to the next highest bidder (in descending order) at its final bid amount.<sup>469</sup> In addition, if

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<sup>461</sup> *Id.* §§ 1.2107, 1.2110(f).

<sup>462</sup> *Id.* § 1.2107(e).

<sup>463</sup> Instructions for applicants seeking a Tribal lands bidding credit will be provided, after the close of bidding, in Filing Instructions for FCC Form 601 and FCC Form 602.

<sup>464</sup> 47 CFR § 1.2110(f)(3)(ii).

<sup>465</sup> *Id.* § 1.2110(f)(3)(vii).

<sup>466</sup> *Id.* § 1.2104(g)(2).

<sup>467</sup> *Id.*

<sup>468</sup> See *Auction 108 Comment Public Notice*, 36 FCC Rcd at 655, para. 30.

<sup>469</sup> 47 CFR § 1.2109(b)-(c).

a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, then the Commission may declare the applicant and its principals ineligible to bid in future auctions and may take any other action that it deems necessary, including institution of proceedings to revoke any existing authorizations held by the applicant.<sup>470</sup>

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

251. If a refund is due, the Bidder must request a refund in writing with the information listed below and to the email listed below. All refunds of upfront payment balances will be returned to the payer of record as identified on the FCC Form 159, or on the wire transfer, unless the payer submits written authorization instructing otherwise. Bidders are encouraged to use the **Refund Information** icon found on the *Auction Application Manager* page or the **Refund Form** link available on the *Auction Application Submit Confirmation* page in the FCC Auction Application System to access the form. After the required information is completed on the blank form, the form should be printed, signed, and submitted to the Commission by mail, fax, or email as instructed below.

252. If you have elected not to access the Refund Form through the *Auction Application Manager* page, the Commission is requesting that all information listed below be supplied in writing.

Name, address, contact and phone number of Bank  
ABA Number (capable to accept ACH payments)  
Account Number to Credit  
Name of Account Holder  
FCC Registration Number (FRN)

The refund request must be submitted by fax to the Revenue & Receivables Operations Group/Auctions at (202) 418-2843, by email to [RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov).

NOTE: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Scott Radcliffe at (202) 418-7518 or Theresa Meeks at (202) 418-2945.

## **VI. PROCEDURAL MATTERS**

### **A. Paperwork Reduction Act Analysis**

253. The Office of Management and Budget (OMB) has approved the information collections in the Application to Participate in an FCC Auction, FCC Form 175.<sup>471</sup> This Public Notice does not contain new or substantively modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. Therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.<sup>472</sup> The Commission will be submitting a non-substantive change request to OMB concerning OMB 3060-0600 related to the certification requirement for Auction 108 applicants adopted herein, and the Commission will not require Auction 108 applicants to make this certification on FCC Form 175 until OMB has approved the non-substantive change request.

### **B. Congressional Review Act**

254. The Commission has determined, and Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is “non-major” under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this *Auction 108*

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<sup>470</sup> *Id.* § 1.2109(d); *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2382, para. 198.

<sup>471</sup> OMB Control No. 3060-0600.

<sup>472</sup> *See* 44 U.S.C. § 3506(c)(4).

*Procedures Public Notice* to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

### C. Supplemental Final Regulatory Flexibility Analysis

255. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>473</sup> a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) was incorporated in the *Auction 108 Comment Public Notice* released in January 2021.<sup>474</sup> In February 2022, a Second Supplemental Initial Regulatory Flexibility Analysis (Second Supplemental IRFA) was incorporated in the *Auction 108 Further Comment Public Notice*, and a Third Supplemental Initial Regulatory Flexibility Analysis (Third Supplemental IRFA) was incorporated in the *Auction 108 Revised Inventory Public Notice*.<sup>475</sup> The Commission sought public comment on the proposals in all three public notices, including comments on the three supplemental IRFAs. No comments were filed addressing the Supplemental IRFA, Second Supplemental IRFA, or Third Supplemental IRFA.<sup>476</sup> This Public Notice establishes the procedures to be used for Auction 108. This Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) reflects actions taken in this *Public Notice*, and supplements the Final Regulatory Flexibility Analyses completed by the Commission in the *2.5 GHz Report and Order* and other Commission orders pursuant to which Auction 108 will be conducted.<sup>477</sup> This present Supplemental FRFA conforms to the RFA.<sup>478</sup>

256. *Need for, and Objectives of, the Rules.* This Public Notice resolves all open issues, and addresses comments filed in response to the *Auction 108 Comment Public Notice*, the *Auction 108 Further Comment Public Notice*, and the *Auction 108 Revised Inventory Public Notice*. This Public Notice implements auction procedures for those entities that seek to bid in Auction 108 to acquire new flexible-use geographic overlay licenses in the 2.5 GHz band. Auction 108 will offer the single largest contiguous portion of available mid-band spectrum below 3 GHz, and the licenses made available in this auction will help extend 5G service beyond the most populated areas. The Public Notice adopts procedural rules and terms and conditions governing Auction 108, and the post-auction application and payment processes, as well as sets the minimum opening bid amounts for new flexible-use overlay licenses in the 2.5 GHz band that will be offered in Auction 108.

257. To promote the efficient and fair administration of the competitive bidding process for all Auction 108 participants, we adopt the following procedures for Auction 108:

- a requirement that any applicant seeking to participate in Auction 108 certify in its short-form application, under penalty of perjury, that it has read the public notice adopting procedures for Auction 108 and that it has familiarized itself with those procedures and the requirements for a license and operating facilities in the 2.5 GHz band;
- provision of discretionary authority to OEA, in conjunction with WTB, to delay, suspend, or cancel bidding in Auction 108 for any reason that affects the ability of the competitive bidding process to be conducted fairly and efficiently;

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<sup>473</sup> 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>474</sup> *Auction 108 Comment Public Notice*, 36 FCC Rcd at 671, paras. 101-19.

<sup>475</sup> *Auction 108 Further Comment Public Notice*, at 14-18, paras. 58-69; *Auction 108 Inventory Comment Public Notice*, at 4-7, paras 9-20.

<sup>476</sup> *Auction 108 Comment Public Notice*, 36 FCC Rcd at 671, paras. 101-19; *Auction 108 Further Comment Public Notice*, at 14-18, paras. 58-69; *Auction 108 Inventory Comment Public Notice*, at 4-7, paras 9-20.

<sup>477</sup> See *2.5 GHz Report and Order*, Appx. B, 34 FCC Rcd at 5503-10, paras. 1-28.

<sup>478</sup> See 5 U.S.C. § 604.

- establishment of bidding credit caps for eligible small businesses, very small businesses, and rural service providers in Auction 108;
- designation of AT&T, T-Mobile, and Verizon Wireless as nationwide providers for purposes of the prohibition of certain communications;
- use of anonymous bidding/limited information procedures which will not make public until after bidding has closed: (1) the license areas that an applicant selects for bidding in its short-form application (FCC Form 175), (2) the amount of any upfront payment made by or on behalf of an applicant for Auction 108, (3) any applicant's bidding eligibility, and (4) any other bidding-related information that might reveal the identity of the bidder placing a bid;
- establishment of an additional default payment of 15% under section 1.2104(g)(2) of the rules in the event that a winning bidder defaults or is disqualified after the auction;
- a specific upfront payment amount for each license available in Auction 108;
- establishment of a bidder's initial bidding eligibility in bidding units based on that bidder's upfront payment through assignment of a specific number of bidding units for each license;
- establishment of minimum opening bid amounts based on \$0.006 per MHz-pop, with a minimum of \$500 per license;
- use of an ascending clock auction format for Auction 108 under which each qualified bidder will indicate in successive clock bidding rounds its demand for the single frequency-specific license in each category in each county. Categories are determined based on the framework set forth in the *2.5 GHz Report and Order*, in which the 49.5 megahertz block is bidding category 1 (C1); the 50.5 megahertz block is bidding category 2 (C2); and the 17.5 megahertz block is bidding category 3 (C3);
- use of a simultaneous stopping rule for Auction 108, under which all licenses remain available for bidding until bidding stops on every license;
- retention by OEA of discretion to adjust the bidding schedule as necessary in order to manage the pace of Auction 108;
- permission for bidders to make two types of bids: simple bids and switch bids. A "simple" bid indicates a desired quantity (one or zero) at a price (either the clock price or an intra-round price). A "switch" bid allows the bidder to request to move its demand for a license from C1 to C2, or vice versa, within the same county at a price for the "from" category (either the clock price or an intra-round price);
- use of information procedures which would make public after each round of Auction 108, for each category in each county, the aggregate demand, the posted price of the last completed round, and the clock price for the next round;
- use of an activity rule that would require bidders to be active on between 90% and 100% of their bidding eligibility in all clock rounds with the activity requirement percentage initially set at 95%;
- use of a contingent bidding limit that would allow a bidder to submit bids with associated bidding activity greater than its current bidding eligibility, and establishment of an initial contingent bidding percentage at 120%, which would be subject to change in subsequent rounds within a range of 100% to 140%;
- a specific minimum opening bid amount for licenses available in Auction 108;

- an option to permit a bidder to submit a proxy instruction to reduce its demand for a license to zero at a price higher than the current round's clock price and a requirement that bidders indicate their demands in every round or submit appropriate proxy instructions;
- establishment of acceptable bid amounts, including clock price increments and intra-round bids, along with a methodology for calculating such amounts; and
- establishment of a methodology for processing bids and requests to reduce and increase demand subject to the no excess supply rule for bids to reduce demand and the eligibility rule for bids to increase demand.

258. The procedures for the conduct of Auction 108 constitute the more specific implementation of the competitive bidding rules contemplated by Parts 1 and 27 of the Commission's rules and the underlying rulemaking orders, including the *2.5 GHz Report and Order*, and relevant competitive bidding orders, and are fully consistent therewith.<sup>479</sup>

259. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* There were no comments filed that specifically address the information in the Supplemental IRFA, Second Supplemental IRFA, or Third Supplemental IRFA. One commenter, Mile One styled a proposal for the Commission to facilitate "pairing infrastructure providers and small innovators in commercial market trial programs" as a comment to the *Auction 108 Comment Public Notice Supplemental IRFA*.<sup>480</sup> The substance of this proposal, however, does not specifically address the information in the Supplemental IRFA or the procedures and policies proposed in the *Auction 108 Comment Public Notice* and is outside of the scope of the procedures established in the *Auction 108 Further Comment Public Notice* and the *Auction 108 Revised Inventory Public Notice*.

260. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.* Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the SBA and to provide a detailed statement of any changes made to the proposed procedures as a result of those comments.<sup>481</sup> The Chief Counsel did not file any comments in response to the procedures that were proposed in the *Auction 108 Comment Public Notice*, *Auction 108 Further Comment Public Notice*, or *Auction 108 Revised Inventory Public Notice*.

261. *Description and Estimate of the Number of Small Entities to Which the Rules Will Apply.* The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules and policies adopted herein.<sup>482</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>483</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>484</sup> A "small business concern" is one

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<sup>479</sup> See generally *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2360-75, paras. 68-159.

<sup>480</sup> Mile One May 4, 2021, *Ex Parte* at 7-9.

<sup>481</sup> 5 U.S.C. § 604(a)(3).

<sup>482</sup> *Id.*

<sup>483</sup> *Id.* § 601(6).

<sup>484</sup> *Id.* § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

which: (1) is independently owned and operated, (2) is not dominant in its field of operation, and (3) satisfies any additional criteria established by the SBA.<sup>485</sup>

262. As noted above, a regulatory flexibility analysis was incorporated into the *2.5 GHz Report and Order*. That order provides the underlying authority for the procedures proposed in the *Auction 108 Comment Public Notice*, *Auction 108 Further Comment Public Notice*, and *Auction 108 Revised Inventory Public Notice*, and that are adopted herein for Auction 108. In the *2.5 GHz Report and Order* Regulatory Flexibility Analysis, the Commission described in detail the small entities that might be significantly affected. In this Public Notice, in the Supplemental FRFA, we hereby incorporate by reference the descriptions and estimates of the number of small entities from the regulatory flexibility analysis in the *2.5 GHz Report and Order*.<sup>486</sup>

263. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* The Commission designed the auction application process to minimize reporting and compliance requirements for small businesses and other applicants. In the first part of the Commission's two-phased auction application process, parties desiring to participate in an auction file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications, and to having reviewed this Public Notice.<sup>487</sup> Eligibility to participate in bidding is based on an applicant's short-form application and certifications, as well as its upfront payment. In the second phase of the process, winning bidders file a more comprehensive long-form application. Thus, an applicant that fails to become a winning bidder does not need to file a long-form application or provide the additional showings and more detailed demonstrations required of a winning bidder.

264. Applicants that wish to participate in Auction 108 are required to certify that they have read this Public Notice and the procedures adopted herein for Auction 108, and are familiar with the procedures and requirements for obtaining a license and operating facilities in the 2.5 GHz band. The certification requirement allows applicants to educate themselves about the procedures for participation in Auction 108, and their obligation to stay abreast of relevant information before bidding in Auction 108 begins, and throughout the entire Auction 108 process. Adoption of this requirement may help small entities and other applicants avoid, among other things, rule violations or technical error that could prevent them from becoming a qualified bidder or obtaining a license after placing a winning bid. Moreover, the requirement will ensure that small entity applicants are aware of the detailed educational materials, such as interactive, online tutorials and technical guides, made available by the Commission to enhance the understanding of the pre-bidding and bidding processes, and should minimize the need for small entity applicants to hire outside engineers, legal counsel, or other auction experts.

265. We mentioned above some of the resources that the Commission makes available to small entities and other applicants. In light of all of the information, resources, and guidance we make available to potential and actual participants at no cost, we do not expect that the processes and procedures adopted in this Public Notice will require small entities to hire attorneys, engineers, consultants, or other professionals to participate in Auction 108 and comply with the procedures we adopt. Although we cannot quantify the cost of compliance with the procedures adopted for Auction 108, we do not believe that the cost of compliance will unduly burden small entities that choose to participate in the auction. We note that the processes and procedures are consistent with existing Commission policies and procedures used in prior auctions. Thus, some small entities may already be familiar with such procedures and have the processes and procedures in place to facilitate compliance resulting in minimal incremental costs to comply. For those small entities that may be new to the Commission's auction process, the various resources that will be made available, including, but not limited to, the mock auction, remote electronic bidding, and access to hotlines for both technical and auction assistance, should

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<sup>485</sup> 15 U.S.C. § 632.

<sup>486</sup> See *2.5 GHz Report and Order*, Appx. B, 34 FCC Rcd at 5504-07, paras. 6-15.

<sup>487</sup> See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2376-77, paras. 163-66.

help facilitate participation without the need to hire professionals. These resources are in addition to the resources discussed above that small entities and other applicants will be able to access. By providing these resources as well as the resources discussed below, we expect small entities that use the available resources to experience lower participation and compliance costs.

266. *Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”<sup>488</sup>

267. The Commission has taken steps to minimize any economic impact of our auction procedures on small entities through, among other things, the many free resources we provide to potential auction participants. As mentioned above, consistent with the past practices in prior auctions, small entities that are potential participants will have access to detailed educational information and Commission personnel to help guide their participation in Auction 108, which should alleviate any need to hire professionals. For example, small entities and other would-be participants will also be provided with various materials on the pre-bidding process in advance of the short-form application filing window, which includes step-by-step instructions on how to complete FCC Form 175. The Commission has taken steps to ensure that the application system is simple to use, and that FCC Form 175 is easy to complete. For example, the application will pre-fill ownership information that an applicant has previously provided in an FCC Form 175 for prior auctions or in an FCC Form 602 filing.

268. In addition, small entities will have access to the web-based, interactive online tutorials produced by Commission staff to familiarize themselves with auction procedures, filing requirements, bidding procedures, and other matters related to an auction. We have also made available resources to assist applicants in conducting due diligence research regarding potential encumbrances in the 2.5 GHz band, including a mapping tool to help identify and view existing licenses and Rural Tribal Priority Window applications in the Commission’s Universal Licensing System (ULS) database.

269. After the initial application stage, auction participants whose applications have been deemed incomplete have the opportunity to correct certain errors. An applicant whose application is deemed incomplete will receive a letter from the Commission identifying the specific errors in their application and providing contact information for a specific FCC staff member who has been assigned to provide assistance. Additionally, after the application process is complete and the Commission has identified the applicants who will be qualified to bid in Auction 108, all qualified bidders for Auction 108 will automatically be registered for the auction, and registration materials will be distributed prior to the auction by overnight delivery. Applicants are not required to take any further steps until bidding commences.

270. Prior to the start of bidding, eligible bidders will be given an opportunity to become familiar with auction procedures and the bidding system by participating in a mock auction. Eligible bidders will have access to a user guide for the bidding system, bidding file formats, and an online bidding procedures tutorial in advance of the mock auction. Further, we will conduct Auction 108 electronically over the Internet using a web-based auction system that eliminates the need for small entities and other bidders to be physically present in a specific location. These mechanisms are made available to facilitate participation in Auction 108 by all eligible bidders and may result in significant cost savings for small entities that use them. Moreover, the adoption of bidding procedures in advance of the

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<sup>488</sup> 5 U.S.C. § 604(a)(6).

auction, consistent with statutory directive, is designed to ensure that the auction will be administered predictably and fairly for all participants, including small businesses.

271. Small entities and other auction participants may seek clarification of, or guidance on, complying with competitive bidding rules and procedures, reporting requirements, and using the bidding system at any stage of the auction process. Additionally, an FCC Auctions Hotline will provide small entities one-on-one access to Commission staff for information about the auction process and procedures. Further, the FCC Auctions Technical Support Hotline is another resource that provides technical assistance to applicants, including small entities, on issues such as access to or navigation within the electronic FCC Form 175 and use of the bidding system.

272. The Commission also makes various databases and other sources of information, including the Auctions program websites and copies of Commission decisions, available to the public without charge, providing a low-cost mechanism for small entities to conduct research prior to and throughout the auction. Prior to the start of bidding, and at the close of Auction 108, we will post public notices on the Auctions website that articulate the procedures and deadlines for the auction. The Commission makes this information easily accessible and without charge to benefit all Auction 108 applicants, including small entities, thereby lowering their administrative costs to comply with the Commission's competitive bidding rules.

273. Another step taken to minimize the economic impact for small entities participating in Auction 108 is the Commission's adoption of bidding credits for small businesses and rural service providers. In accordance with the service rules applicable to the 2.5 GHz band licenses to be offered in Auction 108, bidding credit discounts will be available to eligible small businesses and small business consortia on the following basis: (1) a bidder with attributed average annual gross revenues that do not exceed \$55 million for the preceding five years is eligible to receive a 15% discount on its overall payment; or (2) a bidder with attributed average annual gross revenues that do not exceed \$20 million for the preceding five years is eligible to receive a 25% discount on its overall payment. Eligible applicants can receive only one of the available small business bidding credits—not both.

274. An eligible rural service provider may request a 15% discount on its overall payment using a rural service provider bidding credit. To be eligible for a rural service provider bidding credit, an applicant must: (1) be a service provider that is in the business of providing commercial communications services and, together with its controlling interests, affiliates, and the affiliates of its controlling interests, has fewer than 250,000 combined wireless, wireline, broadband, and cable subscribers; and (2) serve predominantly rural areas. Rural areas are defined as counties with a population density of 100 or fewer persons per square mile. Eligible applicants can request either a small business bidding credit or a rural service provider bidding credit, but not both.

275. The total bidding credit discount that may be awarded to an eligible small business is capped at \$25 million and there is a \$10 million cap on the total bidding credit discount that may be awarded to an eligible rural service provider. In addition, to create parity among eligible small businesses and rural service providers competing against each other in smaller markets, we adopt a \$10 million cap on the overall amount of bidding credits that any winning designated entity may apply to winning licenses in markets with a population of 500,000 or less. Based on the technical characteristics of the 2.5 GHz band and our analysis of past auction data, we anticipate that our caps will allow the majority of small businesses to take full advantage of the bidding credit program, thereby lowering the relative costs of participation for small businesses. While eligible entities will have the opportunity to compete at auction without being unduly constrained, the caps are reasonable enough to ensure that ineligible entities are not encouraged to undercut our rules, thereby achieving our dual statutory goals of benefitting designated entities and at the same time preventing unjust enrichment.

276. A Tribal lands bidding credit will also be available to winning bidders that intend to deploy facilities and provide services to qualifying Tribal lands that have a wireline penetration rate equal

to or below 85 percent.<sup>489</sup> The Tribal lands bidding credit is in addition to, and separate from, any other bidding credit winning bidders may qualify to claim. Therefore, small entities that are eligible for the small or rural bidding credit can also claim the Tribal lands bidding credit, provided they meet the requirements of sections 1.2107 and 1.2110(f) of the Commission's rules.

277. These procedures for the conduct of Auction 108 constitute the more specific implementation of the competitive bidding rules contemplated by Parts 1 and 27 of the Commission's rules and the underlying rulemaking orders, including the *2.5 GHz Report and Order* and relevant competitive bidding orders, and are fully consistent therewith.<sup>490</sup>

278. *Report to Congress.* The Commission will send a copy of this *Auction 108 Procedures Public Notice*, in a report to Congress pursuant to the Congressional Review Act.<sup>491</sup> In addition, the Commission will send a copy of the *Auction 108 Procedures Public Notice*, including the Supplemental FRFA to the Chief Counsel for Advocacy of the SBA. A copy of the *Auction 108 Procedures Public Notice*, and the Supplemental FRFA, (or summaries thereof) will also be published in the Federal Register.<sup>492</sup>

#### D. Contact Information

279. For further information concerning this proceeding, contact the offices listed below:

##### General Auction 108 Information

General Auction Questions  
Auction Process and Procedures

##### 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 108 Legal Information

Auction Rules, Policies, Regulations, including  
Reports of Section 1.2105(c) Violations and  
Application Major Modifications

##### Auctions Division, OEA

(202) 418-0660  
Lyndsey Grunewald (Attorney)  
Daniel Habib (Attorney)  
Scott Mackoul (Attorney)

##### 2.5 GHz Band Licensing Information

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

##### Broadband Division, WTB

(202) 418-2487  
Madelaine Maior (Attorney)  
Nadja Sodos-Wallace (Attorney)

##### Technical Support

Electronic Filing  
FCC Auction System (Hardware/Software  
Issues)

##### 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

<sup>489</sup> 47 CFR §§ 1.2107, 1.2110(f).

<sup>490</sup> See generally *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2360-75, paras. 68-159.

<sup>491</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>492</sup> *Id.* § 604(b).

**Payment Information**

Wire Transfers  
Refunds

**FCC Revenue & Receivables Operations  
Group/Auctions**

Scott Radcliffe at (202) 418-7518,  
or Theresa Meeks at (202) 418-2945, or  
(fax) (202) 418-2843, or email to  
[RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov)

**Auction Bidder Line**

Will be furnished only to qualified bidders

**Press Information****Office of Media Relations**

Anne Veigle  
(202) 418-0500

**FCC Forms**

(800) 418-3676 (outside Washington, DC)  
(202) 418-3676 (in the Washington area)  
[www.fcc.gov/forms](http://www.fcc.gov/forms)

**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](mailto:fcc504@fcc.gov)

**Small Businesses**

Additional information for small and  
disadvantaged businesses

**Office of Communications Business****Opportunities**

(202) 418-0716  
[OCBOinfo@fcc.gov](mailto:OCBOinfo@fcc.gov)  
[www.fcc.gov/ocbo](http://www.fcc.gov/ocbo)

**FCC Internet Sites**

[www.fcc.gov](http://www.fcc.gov)  
[www.fcc.gov/auction/108](http://www.fcc.gov/auction/108)

By the Commission, March 21, 2022: Commissioner Carr issuing a statement.

- FCC -

## APPENDIX

Commenter / *Ex Parte* Filer Short Names

| Short Name                 | Name of Filer(s)   |
|----------------------------|--|
| AeroNet                    | AeroNet Wireless Broadband, LLC  |
| Archdiocese of Detroit     | Archdiocese of Detroit   |
| Archdiocese of Los Angeles | Archdiocese of Los Angeles Education & Welfare Corporation   |
| Archdiocese of New York    | Department of Education, Archdiocese of New York   |
| AT&T                       | AT&T Services, Inc.  |
| Blooston                   | Blooston Rural Carriers  |
| Broadband Properties       | Broadband Properties Corp.   |
| Catholic Bishop of Chicago | Catholic Bishop of Chicago   |
| Catholic Church of Hawaii  | Roman Catholic Church in the State of Hawaii   |
| CCA                        | Competitive Carriers Association   |
| CTN                        | Catholic Technology Network  |
| DeSales                    | DeSales Media Group, Inc.  |
| DISH                       | DISH Network Corporation   |
| iCatholic Media            | iCatholic Media, Inc.  |
| James Wilson               | James D Wilson   |
| Miami School Board         | School Board of Miami-Dade County, Florida, School Board of Broward County, Florida, School Board of Palm Beach County, Florida, and Florida Atlantic University |
| Mile One                   | Mile One Broadband Consortium, Inc.  |
| NACEPF/Mobile Beacon       | North American Catholic Educational Programming Foundation, Inc. and Mobile Beacon   |
| NEBSA                      | National EBS Association   |
| OCF                        | Orange Catholic Foundation   |
| OTI                        | New America's Open Technology Institute and the Schools, Health and Libraries Broadband (SHLB) Coalition   |
| RCCC                       | Roman Catholic Communications Corporation of the Bay Area  |
| Rural 2.5 Consortium       | Rural 2.5 Consortium   |
| RWA                        | Rural Wireless Association, Inc.   |
| Select Spectrum            | Select Spectrum  |
| SoniqWave                  | SoniqWave Networks LLC   |
| Source for Learning        | The Source for Learning, Inc.  |
| Stanford                   | The Board of Trustees of the Leland Stanford Junior University   |
| TeleGuam                   | TeleGuam Holdings LLC d/b/a GTA  |
| T-Mobile                   | T-Mobile USA, Inc.   |
| University of Colorado     | The Regents of the University of Colorado  |
| U.S. Cellular              | United States Cellular Corporation   |
| Verizon                    | Verizon  |
| Voqal                      | Instructional Telecommunications Foundation, Inc. dba Voqal USA  |
| WISPA                      | Wireless Internet Service Providers Association  |

**STATEMENT OF  
COMMISSIONER BRENDAN CARR**

Re: *Auction of Flexible-Use Licenses in the 2.5 GHz Band for Next-Generation Wireless Services*,  
Public Notice, AU Docket No. 20-429.

In July 2019, a majority of the Commission voted to advance America's 5G leadership by deciding to both modernize and auction a key swath of mid-band spectrum at 2.5 GHz. In January 2021, the Commission proposed the procedural rules necessary to conduct that auction. These actions were part of the last Administration's efforts to free up an unprecedented amount of mid-band spectrum—and we did so despite significant pushback in nearly every case. We auctioned off 70 MHz of mid-band spectrum at 3.5 GHz. We modernized the rules for 50 MHz of mid-band spectrum at 4.9 GHz. We authorized the use of 30 MHz of mid-band spectrum in the L Band. We opened up 45 MHz of mid-band spectrum at 5.9 GHz. We pushed out an additional 1,200 MHz of mid-band spectrum at 6 GHz. And we successfully auctioned off 280 MHz of mid-band spectrum in the C-Band.

While some might argue that today's 2.5 GHz Public Notice—which largely adopts procedures the agency previously proposed—isn't exactly a headline grabbing decision, for my part I am glad we are taking this last step to get the 2.5 GHz auction across the finish line. Last March, I called for the Commission to complete this auction in 2021, which our January 2021 Public Notice would have enabled—an action that would not have put this auction quite so close to the expiration of our auction authority—but I am pleased we are setting an auction start date now.

Of course, there is a lot more we need to do to stay on track—to meet the pace and cadence of the Commission's prior work on mid-band spectrum. In a speech one year ago this month, I offered up several additional steps that I thought we could get done in 2021. For one, we could authorize very low power devices to operate in the 6 GHz band and also allow client-to-client device communications in that band. For another, we could seek comment on increasing the power levels for CBRS operations in the 3.5 GHz band. For still another, we could start a proceeding to look at updating the rules that apply to unlicensed operations in the mid-band swath of spectrum known as U-NII-2C—perhaps even permitting very low power operations there. And in 2022 and beyond, we could then shift our focus to the Lower 3 GHz band and several additional spectrum bands.

Shifting focus back to the specifics of today's item, I think the Commission's January 2021 proposal to use a simultaneous multi-round (SMR) auction format made a lot of sense, given that we are not dealing with generic or fungible licenses in this auction. Nonetheless, I think it is important that we get going with this auction, so I am voting to approve of the decision to use an ascending clock format.

In closing, I want to thank the staff of the Office of Economics and Analytics and the Wireless Telecommunications Bureau for their work.