

4. Analog signal power measurements.
 5. Digital signal power measurements.
 6. Transverse balance measurements.
 7. On-hook impedance measurements.
 8. Billing protection measurements.
 9. Hearing aid compatibility measurements. Specifically demonstrate an understanding of magnetic field strength measurements (ANSI/EIA/TIA-RS-504) and acoustics measurements (ANSI/EIA/TIA-579-1991 and ANSI/EIA/TIA-470-A-1987))
 10. Automatic redialing.
- H. Have detailed knowledge for conveying information to FCC required by FCC procedures for telephone terminal equipment.

VII. Clarification of TCB Requirements

TCB Acceptance of Test Data and Sub-Contracting.

A TCB may accept test data from a manufacturer or independent laboratory for purposes of equipment certification. The TCB shall review the test data and must be confident that the product meets the relevant requirements before it approves product. Alternatively, the TCB may perform the required tests itself on a contract basis with the applicant for certification of the product. In such situations, the TCB may subcontract a portion of, or all, the required testing to an independent laboratory. In such cases, the TCB is responsible for all tests performed by the subcontractor and must maintain appropriate oversight of the subcontractor to ensure reliability of the test results. A subcontractor that is accredited to ISO/IEC Guide 25 should not normally require any additional accreditation by the TCB.

TCB Auditing Requirements

In the Report and Order, the Commission noted that ISO/IEC Guide 65 requires a certification body to perform surveillance activities. The Commission did not specify a number or percentage of products that a TCB should test to satisfy this guideline, since our experience has shown that different levels of scrutiny are required for different products to ensure compliance. We will rely on TCBs to use judgment in complying with this guideline. In general, a TCB is expected to test at least several samples each year for the various types of products it certified. The TCB may perform other types of surveillance, provided such activities are no more burdensome than type testing on the grantee of certification. This will provide TCBs some flexibility in determining continuing compliance of products that they certify. If a product fails to comply

with the FCC Rules during the auditing process, the TCB shall immediately notify the grantee and the FCC. A follow-up report shall also be provided to the FCC within 30 days of the action taken by the grantee to correct the situation. The TCB shall also submit to the FCC within 30 days of such a request, reports of surveillance activities carried out by the TCB. A TCB may also be required to test a product certified by the TCB and report its findings to the FCC within 30 days to support compliance investigations.

Records Retention

The TCB shall retain for five years all documentation associated with the approval of a product subject to certification by the Commission.

Multiple Sites

A TCB may be accredited for multiple test sites in accordance with guidelines established by NIST.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 99-23165 Filed 9-3-99; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[DA 99-1591]

Auction of 929 and 931 MHz Paging Service Spectrum; Report No. AUC-99-26-B (Auction No. 26)

AGENCY: Federal Communications Commission.

ACTION: Public Notice.

SUMMARY: This Public Notice announces the procedures and minimum opening bids for the upcoming Paging 929 and 931 MHz Upper Bands Auction ("Upper Bands Auction"). This document gives auction notice and filing requirements for 2,499 paging upper band licenses scheduled for February 24, 2000 and announces minimum opening bids and other procedural issues. On June 7, 1999, the Wireless Telecommunications Bureau ("Bureau") released a Public Notice seeking comment on the establishment of reserve prices or minimum opening bids for the Upper Bands auction. In addition, the Bureau sought comment on a number of procedures to be used in the Upper Bands auction. The Bureau received four comments and no replies in response to the Paging Upper Bands Public Notice.

DATES: This auction is scheduled for February 24, 2000.

FOR FURTHER INFORMATION CONTACT:

Auctions and Industry Analysis

Division: Lisa Hartigan, Operations or Arthur Lechtman, Legal Branch at (202) 418-0660; Bob Reagle, Auctions Analysis at (717) 338-2807.

Commercial Wireless Division:

Cynthia Thomas, Policy and Rules Branch (202) 418-7240; Charlene Lagerwerff, Licensing and Technical Analysis Branch (202) 418-1385.

Media Contact: Meribeth McCarrick at (202) 418-0654.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released August 12, 1999. The text of the public notice, including all attachments, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800. It is also available on the Commission's website at <http://www.fcc.gov>.

1. *The Upper Band Licenses to Be Auctioned:* The licenses available in this auction consist of 12 channels in the 929 MHz band and 37 channels in the 931 MHz band. The following tables contain the Block/Frequency Cross-Reference List for the 929 MHz and 931 MHz bands:

929 MHz PAGING CHANNELS

Block	Frequency
License Suffix:	
A	929.0125
B	929.1125
C	929.2375
D	929.3125
E	929.3875
F	929.4375
G	929.4625
H	929.6375
I	929.6875
J	929.7875
K	929.9125
L	929.9625

931 MHz PAGING CHANNELS

Block	Frequency
License Suffix:	
AA	931.0125
AB	931.0375
AC	931.0625
AD	931.0875
AE	931.1125
AF	931.1375
AG	931.1625
AH	931.1875
AI	931.2125
AJ	931.2375
AK	931.2625

931 MHz PAGING CHANNELS—
Continued

Block	Frequency
AL	931.2875
AM	931.3125
AN	931.3375
AO	931.3625
AP	931.3875
AQ	931.4125
AR	931.4375
AS	931.4625
AT	931.4875
AU	931.5125
AV	931.5375
AW	931.5625
AX	931.5875
AY	931.6125
AZ	931.6375
BA	931.6625
BB	931.6875
BC	931.7125
BD	931.7375
BE	931.7625
BF	931.7875
BG	931.8125
BH	931.8375
BI	931.8625
BJ	931.9625
BK	931.9875

One license will be awarded for each of these spectrum blocks in each of the 51 geographic areas known as Major Economic Areas ("MEAs"), resulting in a total of 2,499 Upper Bands paging licenses. These licenses are listed in Attachment A to this Public Notice. The licenses designated for the Upper Band auction comprise various portions of the following areas: (a) the continental United States, (b) the Northern Mariana Islands, (c) Guam, (d) American Samoa, (e) the United States Virgin Islands, and (f) Puerto Rico.

Auction Date: The auction will begin on Thursday, February 24, 2000. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

Auction Title: The 929 and 931 MHz Upper Bands Paging Auction—Auction No. 26.

Bidding Methodology: Simultaneous multiple round bidding. Bidding will be permitted only from remote locations, either electronically (by computer) or telephonically.

Pre-Auction Deadlines:

Auction Seminar—January 7, 2000
Short Form Application (FCC Form 175)—January 20, 2000; 5:30 p.m. ET
Upfront Payments (via wire transfer)—February 7, 2000; 6:00 p.m. ET
Orders for Remote Bidding Software—February 11, 2000; 5:30 p.m. ET

Mock Auction—February 22, 2000

Telephone Contacts:

Auctions Hotline—(888) CALL-FCC (888) 225-5322, press Option #2 or (717) 338-2888 (direct dial)

(For Bidder Information Packages, General Auction Information, and Seminar Registration. Hours of service: 8 a.m.–5:30 p.m. ET.)

FCC Technical Support Hotline (202) 414-1250 (voice), (202) 414-1255 (TTY)

(For technical assistance with installing or using FCC software. Hours of service: 8 a.m.–6 p.m. ET, Monday–Friday)

List of Attachments available at the FCC:

Attachment A—Summary of Paging 929 and 931 MHz Licenses to be Auctioned, Upfront Payments, Minimum Opening Bids

Attachment B—Existing 929 MHz Licensees and 931 MHz Licensees

Attachment C—Guidelines for Completion of FCC Forms 175 and 159, and Exhibits

Attachment D—Electronic Filing and Review of FCC Form 175

Attachment E—How to Monitor FCC Auctions Online

Attachment F—Accessing the FCC Network Using Windows 95/98

Attachment G—FCC Remote Bidding Software Order Form

Attachment H—Summary Listing of Documents from the Commission and the Wireless Telecommunications Bureau Addressing Application of the Anti-Collusion Rules

Attachment I—Auction Seminar Registration Form

Attachment J—Exponential Smoothing Formula and Example

1. Synopsis

2. Background: In 1997 and 1998, the Commission adopted rules governing geographic licensing of Common Carrier Paging ("CCP") and exclusive 929 MHz Private Carrier Paging ("PCP"), and established procedures for auctioning mutually exclusive applications for these licenses. See, *Second Report and Order and Further Notice of Proposed Rulemaking*, ("Paging Second Report and Order") 62 FR 11616 (March 12, 1997) and 62 FR 11638 (March 12, 1997); *Memorandum Opinion and Order on Reconsideration and Third Report and Order*, ("Paging Reconsideration Order" and "Third Report and Order") 64 FR 33762 (June 24, 1999). In order to facilitate the geographic licensing program, the Commission dismissed pending mutually exclusive applications and applications filed after July 31, 1996. The Commission

provided for a transition to geographic area licensing for exclusive, non-nationwide channels in the bands allocated for paging and developing a standard methodology for providing protection to incumbent licensees from co-channel interference for the 929–930 MHz and 931–932 MHz paging bands. The Commission proposed the first in a series of auctions of Paging service licenses to commence December 7, 1999, *First Paging Service Spectrum Auction Scheduled for December 7, 1999; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures*, Public Notice, DA 99-1103 (released June 7, 1999), ("Upper Bands Public Notice") 64 FR 36009 (July 2, 1999).

Scheduling: Due to concerns raised about the timing of the Auction No. 26, the Wireless Telecommunications Bureau ("Bureau") has rescheduled the auction to commence on February 24, 2000. Parties responding to the *Upper Bands Public Notice* raised several reasons for delaying the auction, including anticipated computer software problems associated with the roll-over into the Year 2000 ("Y2K"). The Bureau recognizes that preparing their existing businesses for the Y2K roll-over while preparing for an auction could present formidable problems for potential bidders. Accordingly, the Bureau is providing information now about the auction, and allowing for the submission of Short-Form Applications (FCC Form 175) twenty days after the onset of Y2K. The Bureau believes that this new schedule provides sufficient time for potential bidders to prepare their computer systems for the auction and correct any problems that might have been caused by Y2K.

Incumbent Licensees: Incumbent (nongeographic) paging licensees operating under their existing authorizations are entitled to full protection from co-channel interference. See *Paging Second Report and Order* and *Paging Reconsideration Order*. Geographic area licensees are likewise afforded co-channel interference protection from incumbent licensees. See *Paging Reconsideration Order*. Adjacent geographic area licensees are obligated to resolve possible interference concerns of adjacent geographic area licensees by negotiating a mutually acceptable agreement with the neighboring geographic licensee. Incumbency issues are further discussed.

Due Diligence: Potential bidders are reminded that there are a number of incumbent licensees already licensed and operating on frequencies that will be subject to the upcoming auction.

Geographic area licensees in accordance with the Commission's Rules must protect such incumbents from harmful interference. See 47 CFR 22.503(i). These limitations may restrict the ability of such geographic area licensees to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license areas.

3. In addition, potential bidders seeking licenses for geographic areas adjacent to the Canadian and Mexican border should be aware that the use of some or all of the channels they acquire in the auction could be restricted as a result of agreements with Canada or Mexico on the use of 929 and 931 MHz spectrum in the border area.

4. Potential bidders should also be aware that certain applications (including those for modification), waiver requests, petitions to deny, petitions for reconsideration, and applications for review are pending before the Commission that relate to particular applicants or incumbent licensees. In addition, certain decisions reached in the paging proceeding are subject to judicial appeal and may be the subject of additional reconsideration or appeal. The Bureau notes that resolution of these matters could have an impact on the availability of spectrum for MEA licensees in the 929 and 931 MHz bands. In addition, while the Commission will continue to act on pending applications, requests and petitions, some of these matters may not be resolved by the time of the auction.

5. Potential bidders are solely responsible for investigating and evaluating the degree to which such pending matters may affect spectrum availability in areas where they seek MEA licenses.

6. To aid potential bidders, Attachment B to this Public Notice lists matters pending before the Commission that relate to licenses or applications for the 929 MHz and 931 MHz service. The Commission makes no representations or guarantees that the listed matters are the only pending matters that could affect spectrum availability in the 929 or 931 MHz bands.

7. Parties may submit additions or corrections to the list, provided such additions or corrections are filed with the Commission within ten (10) business days from release of this Public Notice. Such submissions should be limited to identifying pleadings or papers previously filed with the Commission. No new pleadings or arguments on the merits will be accepted as explicitly provided by Commission Rules. See 47 CFR 1.45(c).

8. Corrections and additions must be filed with the Office of the Secretary,

Federal Communications Commission, 445 Twelfth St., SW, Washington, DC 20554. One copy of each submission should also be delivered to the Commission's duplicating contractor, International Transcription Service, Inc., ("ITS"), 445 Twelfth Street, SW, CY-B402, Washington, DC 20554, while an additional courtesy copy should be sent to Cyndi Thomas, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 Twelfth St., SW, Room 4-A164, Washington, DC 20554. Parties filing additions or corrections should include the internal reference number of this Public Notice (DA 99-1591) on their submissions. Parties are also reminded that some of the proceedings are restricted and governed by the Commission's ex parte rules. Accordingly, any submission filed pursuant to this Public Notice that is directed to the merits or outcome of any restricted proceeding must be served on all parties to that restricted proceeding. See generally 47 CFR 1.1200-1.1216.

9. Copies of the pleadings relating to the 931 MHz band identified in Attachment B are available for public inspection and copying during normal reference room hours at: Office of Public Affairs (OPA), Reference Operations Division, 445 Twelfth Street, SW, Room CY-C314, Washington, DC 20554. Copies of the pleadings relating to the 929 MHz band identified in Attachment B are available for public inspection and copying during normal reference room hours at: Wireless Telecommunications Bureau (Gettysburg), Public Reference Room, 1270 Fairfield Road, Gettysburg, PA 17325.

10. In addition, potential bidders may research the Bureau's licensing databases on the World Wide Web in order to determine which frequencies are already licensed to incumbent licensees. Because some of the incumbent paging licensing records have not yet been converted to the Bureau's new Universal Licensing System (ULS), potential bidders may have to select other databases to perform research for the frequency(s) of interest. The research options will allow potential bidders to download licensing data, as well as to perform queries online.

11. *929 MHz band Incumbent Licenses:* Licensing records for the 929 MHz band are contained in the Bureau's Land Mobile database (not ULS) and may be researched on the internet at <http://www.fcc.gov/wtb> by selecting the "Databases" link at the top of the page. Potential bidders may download a copy of the licensing database by selecting

"Download the Wireless Databases" and choosing the appropriate files under "Land Mobile Database Files—47 CFR parts 74, 90, and 95." Alternatively, potential bidders may query the Bureau's licensing records online by selecting "Search the Wireless Database Online."

12. *931 MHz band Incumbent Licenses:* Licensing records for the 931 MHz band are contained in the Bureau's ULS and may be researched on the internet at <http://www.fcc.gov/wtb/uls> by selecting the "License Search" button in the left frame. Potential bidders may query the database online and download a copy of their search results if desired. The Bureau recommends that potential bidders select the "Frequency" option under License Search, specify the desired frequency, and use the "GeoSearch" button at the bottom of the screen to limit their searches to a particular geographic area. Detailed instructions on using License Search (including frequency searches and the GeoSearch capability) and downloading query results are available online by selecting the "?" button at the bottom right-hand corner of the License Search screen.

13. Potential bidders should direct questions regarding the search capabilities to the FCC Technical Support Hotline at (202) 414-1250 (voice) or (202) 414-1255 (TTY), or via email at ulscomm@fcc.gov. The hotline is available Monday through Friday, from 8:00 AM to 6:00 PM Eastern Time. In order to provide better service to the public, all calls to the hotline are recorded.

14. The Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the database. Potential bidders are strongly encouraged to physically inspect any sites located in or near the geographic area for which they plan to bid.

Participation: Those wishing to participate in the auction must: Submit a short form application (FCC Form 175) electronically by January 20, 2000. Submit a sufficient upfront payment and a FCC Remittance Advice Form (FCC Form 159) by February 7, 2000.

Comply with all provisions outlined in this Public Notice.

Prohibition of Collusion: To ensure the competitiveness of the auction process, the Commission's Rules prohibit applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements. See *Paging*

Reconsideration Order, 47 CFR 1.2105(c). This prohibition begins with the filing of short-form applications, and ends on the down payment due date. Bidders competing for the same license(s) are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he/she is authorized to represent in the auction. Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or consulting firm), a violation could similarly occur. At a minimum, in such a case, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.

15. The Bureau, however, cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred nor will it preclude the initiation of an investigation when warranted. In the Upper Band auction, for example, the rule would apply to any applicants bidding for the same MEA. Therefore, applicants that apply to bid for "all markets" would be precluded from communicating with all other applicants after filing the FCC Form 175. However, applicants may enter into bidding agreements before filing their FCC Form 175 short-form applications, as long as they disclose the existence of the agreement(s) in their Form 175 short-form applications. See 47 CFR 1.2105(c). By signing their FCC 175 short form applications, applicants are certifying their compliance with § 1.2105(c). In addition, § 1.65 of the Commission's Rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. See 47 CFR 1.65. Thus, § 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders are therefore required to make such notification to the Commission immediately upon discovery.

Relevant Authority: Prospective bidders must familiarize themselves thoroughly with the Commission's

Rules relating to Upper Band, contained in title 47, part 22 and part 90 of the Code of Federal Regulations, and those relating to application and auction procedures, contained in title 47, part 1 of the Code of Federal Regulations.

16. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, "Terms") contained in the *Second Report and Order* in PP Docket No. 93-253, 59 FR 22980 (April 1994); the *Second Memorandum Opinion and Order* in PP Docket No. 93-253, 59 FR 44272 (August 1994); the *Erratum to the Second Memorandum Opinion and Order* in PP Docket No. 93-253 (released October 19, 1994); Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96-18 *Notice of Proposed Rulemaking*, 61 FR 6199 (February 16, 1996) ("Paging Notice"); Revision of part 22 and part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96-18, *First Report and Order*, 61 FR 21380 (May 10, 1996) ("Paging First Report and Order"); Revision of part 22 and part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96-18, *Order on Reconsideration of First Report and Order*, 61 FR 34375 (July 2, 1996) ("First Paging Reconsideration"); Revision of part 22 and part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, *Second Report and Order and Further Notice of Proposed Rulemaking*, ("Paging Second Report and Order"); Revision of part 22 and part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, *Memorandum Opinion and Order on Reconsideration and Third Report and Order*, FCC 99-98 (released May 24, 1999) ("Paging Reconsideration Order" and "Paging Third Report and Order").

17. The terms contained in the Commission's Rules, relevant orders, public notices and bidder information package are not negotiable. The Commission may amend or supplement the information contained in its public notices or the bidder information package at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission Rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Internet node via anonymous ftp@ftp.fcc.gov or the FCC World Wide Web site at http://

www.fcc.gov/wtb/auctions.

Additionally, documents may be obtained for a fee by calling the Commission's copy contractor, International Transcription Service, Inc. (ITS), at (202) 314-3070. When ordering documents from ITS, please provide the appropriate FCC number (e.g., FCC 99-98 for the *Paging Third Report and Order*).

Bidder Alerts: All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

18. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

19. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use the Upper Bands Auction 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 the minimum investment is less than \$25,000.
- The sales representative makes verbal representations that: (a) the Internal Revenue Service ("IRS"), Federal Trade Commission ("FTC"), Securities and Exchange Commission ("SEC"), FCC, or other government agency has approved the investment; (b)

the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

20. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 362-2222 and from the SEC at (202) 942-7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876-7060. Consumers who have concerns about specific Upper Band proposals may also call the FCC National Call Center at (888) CALL-FCC (888) 225-5322).

2. Bidder Eligibility and Small Business Provisions

A. General Eligibility Criteria

21. This auction offers 2,499 licensees in the 929 and 931 MHz bands. In the *Paging Second Report and Order and Paging Reconsideration Order*, the Commission adopted small business provisions to promote and facilitate the participation of small business in the Upper Bands Auction and in the provision of this and other commercial mobile radio services. General eligibility to provide Upper Bands service, subject to any restrictions outlined in the Commission's rules, is afforded to entities that are not precluded under 47 CFR 22.217 and 22.223.

(i) Determination of Revenues

22. For purposes of determining which entities qualify as very small businesses or small businesses, the Commission will consider the gross revenues of the applicant, its controlling interests, and the affiliates of the applicant and its controlling interests. Therefore, the gross revenues of all of the entities must be disclosed *separately and in the aggregate* as Exhibit C to an applicant's FCC Form 175. The Commission does not impose specific equity requirements on controlling interests. Once principals or entities with a controlling interest are determined, only the revenues of those principals or entities will be counted in determining small business eligibility. The term "control" includes both *de facto* and *de jure* control of the applicant. Typically, *ownership of at least 50.1 percent of an entity's voting stock evidences de jure control*. *De facto* control is determined on a case-by-case basis. See 47 CFR 1.211(b)(4). The

following are some common indicia of control:

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

(ii) Small or Very Small Business Consortia

23. A consortium of small businesses, or very small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which *individually* satisfies the definition of small or very small business in § 22.223. Thus, each consortium member must disclose its gross revenues along with those of its affiliates, controlling interests, and controlling interests' affiliates. The Bureau notes that although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for small or very small business credits, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

(iii) Application Showing

24. Applicants should note that they will be required to file supporting documentation as Exhibit C to their FCC Form 175 short form applications to establish that they satisfy the eligibility requirements to qualify as a small business or very small business (or consortiums of small or very small businesses) for this auction. See 47 CFR 22.217 and 1.2105. Specifically, for the Upper Bands Auction, applicants applying to bid as small or very small businesses (or consortiums of very small businesses) will be required to file as Exhibit C to their FCC Form, 175 short form applications, all information required under §§ 1.2105(a) and 1.2112(a). In addition, these applicants must disclose, *separately and in the aggregate*, the gross revenues for the preceding three years of each of the following: (a) the applicant; (b) the applicant's affiliates; (c) the applicant's controlling interests; and (d) the affiliates of the applicant's controlling interests. Certification that the average gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its

affiliates, and its controlling interests, a schedule of gross revenues for *each* of the preceding three years, as well as a statement of total average gross revenues for the three-year period. If the applicant is applying as a consortium of very small or small businesses, this information must be provided for each consortium member.

B. Bidding Credits

25. Applicants that qualify under the definitions of small business, and very small business (or consortia of very small, or small businesses as are set forth in 47 CFR 22.223, are eligible for a bidding credit that represents the amount by which a bidder's winning bids are discounted. The size of an Upper Bands bidding credit depends on the average gross revenues for the preceding three years of the bidder and its controlling interests and affiliates:

- A bidder with average gross revenues of not more than \$15 million for the preceding three years receives a 25 percent discount on its winning bids for Upper Bands licenses ("small business"); See 47 CFR 22.223(b)(1)(ii).
- A bidder with average gross revenues of not more than \$3 million for the preceding three years receives a 35 percent discount on its winning bids for Upper Bands licenses ("very small business"). See 47 CFR 22.223(b)(1)(i).

26. Bidding credits are not cumulative: qualifying applicants receive either the 25 percent or the 35 percent bidding credit, but not both.

27. Upper Bands bidders should note that unjust enrichment provisions apply to winning bidders that use bidding credits and subsequently assign or transfer control of their licenses to an entity not qualifying for the same level of bidding credit. Finally, bidders should also note that there are no installment payment plans in the Upper Bands Auction.

3. Pre-Auction Procedures

A. Short-Form Application (FCC Form 175)—Due January 20, 2000

28. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be submitted electronically and received at the Commission by 5:30 p.m. ET on January 20, 2000. Late applications will not be accepted.

29. There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment. See II.C, *infra*.

(i) Electronic Filing

30. Applicants must file their FCC Form 175 applications electronically. See 47 CFR 1.2105(a). Applications may generally be filed at any time from January 7, 2000 until 5:30 p.m. ET on January 20, 2000. Applicants are strongly encouraged to file early, and applicants are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on January 20, 2000.

31. Applicants must press the "Submit Form 175" button on the "Submit" page of the electronic form to successfully submit their FCC Forms 175. Information about accessing the FCC Form 175 is included in Attachment D. Technical support is available at (202) 414-1250 (voice) or (202) 414-1255 (text telephone (TTY)); the hours of service are 8 a.m.-6 p.m. ET, Monday-Friday.

(ii) Completion of the FCC Form 175

32. Applicants should carefully review 47 CFR 1.105, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment C. Applicants are encouraged to begin preparing the required attachments for FCC Form 175 prior to submitting the form. Attachments C and D provide information on the required attachments and appropriate formats.

(iii) Electronic Review of FCC Form 175

33. The FCC Form 175 review software may be used to review and print applicants' FCC Form 175 information. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. For this reason, it is important that applicants do not include their Taxpayer Identification Numbers (TINs) on any Exhibits to their FCC Form 175 applications. There is no fee for accessing this system. See Attachment D for details.

B. Application Processing and Minor Corrections

34. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (a) those applications accepted for filing (including FCC account numbers and the licenses for which they applied); (b) those applications rejected; and (c) those

applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

35. As described more fully in the Commission's Rules, after the January 20, 2000, short form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (e.g. change their license selections, change the certifying official, change control of the applicant, or change bidding credit eligibility).

C. Upfront Payments—Due February 7, 2000

36. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159. All upfront payments must be received at Mellon Bank in Pittsburgh, PA, by 6:00 p.m. ET on February 7, 2000.

Please note that:

All payments must be made in U.S. dollars.

All payments must be made by wire transfer.

Upfront payments for Auction No. 26 go to a lockbox number different from the ones used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.

Failure to deliver the upfront payment by the February 7, 2000 deadline will result in dismissal of the application and disqualification from participation on the auction.

(i) Making Auction Payments by Wire Transfer

37. Wire transfer payments must be received by 6:00 p.m. ET on February 7, 2000. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261

Receiving Bank: Mellon Pittsburgh

BNF: FCC/AC 911-6878

OBI Field: (Skip one space between each information item)

"AUCTIONPAY"

TAXPAYER IDENTIFICATION NO.

(Same as FCC Form 159, block 26)

PAYMENT TYPE CODE (enter "A26U")

FCC CODE 1 (same as FCC Form 159, block 23A: "26")

PAYER NAME (same as FCC Form 159, block 2)

LOCKBOX NO. #358400

Note: The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

38. Applicants must fax a completed FCC Form 159 to Mellon Bank at (412) 236-5702 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer—Auction Payment for Auction Event No. 26." bidders may confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

(ii) FCC Form 159

39. A completed FCC Remittance Advice Form (FCC Form 159) must accompany each upfront payment. Proper completion of FCC Form 159 is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment C.

(iii) Amount of Upfront Payment

40. In the *Part 1 Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making*, the Commission delegated to the Bureau the authority and discretion to determine an appropriate upfront payment for each license being auctioned. In the Upper Bands Public Notice, the Bureau proposed upfront payments for the Upper Bands Auction. Specifically, the Bureau proposed calculating the upfront payment on a license-by-license basis, using the following formula:

$\$0.0008 * \text{Pops}$ (the result rounded to the nearest hundred for levels below \$10,000 and to the nearest thousand for levels above \$10,000) with a minimum of no less than \$2,500 per license.

41. Commenters request the adoption of a different upfront payment formula. They claim that upfront payments failing to adequately account for levels of incumbency are not a rational method of ensuring the bona fides of bidders, but rather, a penalty against prospective bidders. Commenters conclude that upfront payments for each license should reflect incumbency levels. Accordingly the commenters ask that the Commission adopt a formula similar to the 900 MHz SMR Auction, whereby incumbency levels are subtracted from the pops prior to formulating the payment.

42. Although the Commission rejects the commenters' request to include incumbency levels on a license-by-license basis in the upfront payment formula, it recognizes that the proposed

formula should be adjusted to reflect generally high levels of incumbency in the service. Upon re-examination of the proposed formula, the Commission will modify it as follows:

S.0004 * Pops (the result rounded to the nearest hundred for levels below \$10,000 and to the nearest thousand for levels about \$10,000) with a minimum of no less than \$2,500 per license.

43. The revised formula cuts in half the initial proposal for upfront payments but retains the \$2,500 minimum level. The upfront payment is a refundable deposit meant to help ensure sincere bidding and to establish initial eligibility levels for use with the activity rules discussed in section 4.A.ii. Incorporating incumbency calculations for each of the 2,499 licenses in the auction would be an overly complex and burdensome process that would not further the purpose of an upfront payment, and as such, a general reduction in the formula is a more appropriate action.

44. Please note that upfront payments are not attributed to specific licenses, but instead will be translated to bidding units to define a bidder's maximum bidding eligibility. For Auction No. 26, the amount of the upfront payment will be translated into bidding units on a one-to-one basis, e.g., a \$25,000 upfront payment provides the bidder with 25,000 bidding units. The total upfront payment defines the maximum amount of bidding units on which the applicant will be permitted to bid (including standing high bids) in any single round of bidding. Thus, an applicant does not have to make an upfront payment to cover all licenses for which the applicant has selected on FCC form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold high bids at any given time.

45. In order to be able to place a bid on a license, in addition to having specified that license on the FCC Form 175, a bidder must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on the FCC Form 175, or else the applicant will not be eligible to participate in the auction.

46. In calculating its upfront payment amount, an applicant should determine the *maximum* number of bidding units it may wish to bid on in any single round, and submit an upfront payment covering that number of bidding units.

In order to make this calculation, an applicant should add together the upfront payments for all licenses on which it seeks to bid in any given round. Bidders should check their calculations carefully as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

Note: An applicant may, on its FCC Form 175, apply for every license being offered, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment.

(iv) Applicant's Wire Transfer Information for Purposes of Refunds

47. To ensure that refunds are processed in an expeditious manner, the Commission is requesting that all pertinent information be supplied to the FCC no later than February 7, 2000. Should the payer fail to submit the requested information, the refund will be returned to the original payer. The Commission will use wire transfers for all Auction No. 26 refunds. Please fax Wire Transfer Instructions to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Michelle Bennett or Gail Glasser, at (202) 418-2843. For additional information please call (202) 418-1995.

Name of Bank
ABA Number
Contact and Phone Number
Account Number to Credit
Name of Account Holder
Correspondent Bank (if applicable)
ABA Number
Account Number
(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in 5.D., *infra*.

D. Auction Registration

48. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and that have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

49. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, each containing part of the confidential identification codes required to place bids. These mailings will be sent only

to the contact person at the applicant address listed in the FCC Form 175.

50. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Friday, February 18, 2000 should contact the Auctions Hotline at 1-(888) 225-5322 (option #2) or (717) 338-2888. Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

51. Qualified bidders should note that lost login codes, passwords or bidder identification numbers can be replaced only by appearing *in person* at the FCC Auction Headquarters located at 445 12th St., Washington, D.C. 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacement codes. Qualified bidders requiring replacement codes must call technical support prior to arriving at the FCC to arrange preparation of new codes.

E. Remote Electronic Bidding Software

52. Qualified bidders are allowed to bid electronically or telephonically. Those choosing to bid electronically must purchase remote electronic bidding software for \$175.00 by February 11, 2000. (Auction software is tailored to a specific auction, so software from prior auctions will not work for Auction No. 26.) A software order form is included in this public notice. If bidding telephonically, the appropriate phone number will be supplied in the second Federal Express mailing of confidential login codes.

F. Auction Seminar

53. On January 7, 2000, the FCC will sponsor a free seminar for the Upper Bands Auction at the Federal Communications Commission, located at 445 12th Street, S.W., Washington, D.C. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC remote bidding software, and the Paging Upper Band service and auction rules. The seminar will also provide a unique opportunity for prospective bidders to ask questions of FCC staff.

54. To register, complete the registration form included with this Public Notice and submit it by Wednesday, January 5, 2000. Registrations are accepted on a first-come, first-served basis.

G. Mock Auction

55. All applicants whose FCC form 175 and 175-S have been accepted for filing will be eligible to participate in a mock auction on February 22, 2000. The mock auction will enable applicants to become familiar with the electronic software prior to the auction. Free demonstration software will be available for use in the mock auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

4. Auction Event

56. The first round of the auction will begin on February 24, 2000. The initial round schedule will be announced in a Public Notice listing the qualified bidders, to be released approximately 10 days before the start of the auction.

A. Auction Structure

(i) Simultaneous Multiple Round Auction

57. In the *Upper Bands Public Notice*, the Commission proposed to award the 2,499 licenses in the Upper Bands in a single, simultaneous multiple round auction. One commenter requests that the Commission conduct auctions for the lower band frequencies before it conducts auctions for the 929 MHz and 931 MHz frequencies. This commenter argues that this sequence of auctions would reduce the economic hardship on small carriers on the lower bands that have been subject to the application freeze pending the start of any auctions. The Commission notes that the commenter made similar requests in WT Docket No. 96-18 and PR Docket No. 93-253.

58. In the *Paging Reconsideration Order*, the Commission directed the Bureau to resolve this issue after receiving comments pursuant to the release of the *Upper Bands Public Notice*. The commenter claim of general economic hardship for some licensees fails to reach the level of a compelling reason for altering its auction sequence at this juncture. Moreover, although the Commission has corrected the paging information database for the upper bands, the process of correcting the lower bands database remains. Auctioning the lower bands first under these circumstances would seriously delay the paging auctions. By auctioning the upper bands first, the Commission satisfies its statutory obligation to provide fast and efficient communications service to the public.

59. Commenters further request that if the Upper Bands Auction occurs first, the Bureau should break the licenses up into smaller regional areas prior to

auction and provide for five auctions instead of one. The Commission concludes that it is operationally feasible and appropriate to auction all 2,499 Upper Bands licenses through a single, simultaneous multiple round auction. Enhancements to the Commission's Automated Auction System software will allow bidders to easily view and access the licenses in Auction 26, including license group viewing options and search and sort capabilities. The commenter has failed to persuade us that the current structure would be burdensome or harmful to potential bidders. An auction of this nature provides for an economy of scale, whereas having five separate auctions could cause significant administrative burdens, to participants in multiple auctions and unnecessarily protract the auction process. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction. This approach, the Commission believes, allows bidders to take advantage of any synergies that exist among licenses and is most administratively efficient.

(ii) Maximum Eligibility and Activity Rules

60. In the *Upper Bands Public Notice*, the Commission proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder. The Commission received no comments on this issue.

61. For the Upper Bands Auction the Bureau will adopt this proposal. The amount of the upfront payment submitted by a bidder determines the initial maximum eligibility (in bidding units) for each bidder. Note again that upfront payments are not attributed to specific licenses, but instead will be translated into bidding units to define a bidder's initial maximum eligibility. The total upfront payment defines the maximum number of bidding units on which the applicant will initially be permitted to bid. As there is no provision for increasing a bidder's maximum eligibility during the course of an auction (as described under "Auction Stages" as set forth in part 4.A.(iv)), prospective bidders are cautioned to calculate their upfront payments carefully.

62. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until the end before participating. Bidders are required to be active on a specific percentage of their

maximum eligibility during each round of the auction.

63. A bidder is considered active on a license in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits an acceptable bid in the current fund (see "Minimum Accepted Bids" in Part 4.B.(iii), *infra*). A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. The minimum required activity level is expressed as a percentage of the bidder's maximum bidding eligibility, and increases as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions as set forth under "Auction Stages" in Part 4.A.(iv) and "Stage Transitions" in Part 4.A.(v), *infra*, the Commission adopts them for the Upper Bands Auction.

(iii) Activity Rule Waivers and Reducing Eligibility

64. In the *Upper Bands Public Notice*, the Commission proposed that each bidder in the auction would be provided five activity rule waivers that may be used in any round during the course of the auction. The commenter objects to this proposal and instead requests that the Commission allocate activity rule waivers for each stage of the auction (e.g., two or three per stage), with the caveat that any unused waivers could not be carried over to a subsequent stage. The commenter claims that this approach would give applicants sufficient flexibility consistent with the Commission's goals but would eliminate the use of waivers to keep the auction open for an inordinate period of time.

65. Based upon its experience in previous auctions, the Commission adopts its proposal that each bidder be provide five activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. The Commission is satisfied that its practice of providing five waivers over the course of the auction provides a sufficient number of waivers and maximum flexibility to the bidders, while safeguarding the integrity of the auction system. The Commission sees no evidence to support commenter's claim that the use of waivers under the guidelines could delay the closing of the auction rather than stimulate participation.

66. The FCC auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any round where a bidder's activity level is below the minimum required unless: (a) there are no activity rule waivers available; or (b) bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

67. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the reduce eligibility function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in "Auction Stages" (see Part 4.A.(iv)). Once eligibility had been reduced, a bidder will not be presented to regain its lost bidding eligibility.

68. Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open.

(iv) Auction Stages

69. The Commission concludes that the auction will be composed of three States, which are each defined by an increasing activity rule. The Commission will adopt its proposals for the activity rules. Paragraphs 70 through 73 provide activity levels for each stage of the auction. The Commission reserves the discretion to further alter the activity percentages before and/or during the auction.

70. *Stage One*: During the first stage of the auction, a bidder desiring to maintain its current eligibility will be required to be active on licenses that represent at least 80 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the sum of bidding units of

the bidder's standing high bids and valid bids during the current round by five-fourths ($5/4$).

71. *Stage Two*: During the second stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 90 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage Two, reduced eligibility for the next round will be calculated by multiplying the sum of bidding units of the bidder's standing high bids and valid bids during the current round by ten-ninths ($10/9$).

72. *Stage Three*: During the third stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). In this stage, reduced eligibility for the next round will be calculated by multiplying the sum of bidding units of the bidder's standing high bids and valid bids during the current round by fifty-fortyninths ($50/49$).

CAUTION: Since activity requirements increase in each auction stage, bidders must carefully check their current activity during the bidding period of the first round following a stage transition. This is especially critical for bidders that have standing high bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required minimum activity level by using the bidding software's bidding module.

73. Because the foregoing procedures have proven successful in maintaining proper pace in previous auctions, the Commission adopts them for the Upper Bands Auction.

(v) Stage Transitions

74. In the *Upper Bands Public Notice*, the Commission proposed that the auction would advance to the next stage (i.e., from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is below 10 percent for three consecutive rounds of bidding in each Stage. However, the Commission further proposed that the Bureau would retain the discretion to change stages unilaterally by announcement during the auction. This

determination, would be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Commission received no comments on this subject.

75. The Commission adopts its proposal. Thus, the auction will start in Stage One. Under the Commission's general guidelines it will advance to the next stage (i.e., from Stage One to Stage Two, and from Stage Two to Stage Three) when, in each of three consecutive rounds of bidding, the high bid has increased on 10 percent or less of the licenses being auctioned (as measured in bidding units). However, the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Commission believes that these stage transition rules, having proven successful in prior auctions, are appropriate for use in the Paging Upper Bands Auction.

(vi) Auction Stopping Rules

76. In the *Paging Reconsideration Order*, the Commission upheld the hybrid simultaneous/license-by-license stopping rule that had been adopted for the paging auctions in the *Paging Second Report and Order*, but retained discretion for the Bureau to use another stopping rule after seeking further comment on this issue in the pre-auction process. For the Upper Bands Auction, the Bureau proposed to employ a simultaneous stopping rule. The Bureau concluded that its proposal to conduct a series of auctions for the upper and lower bands would eliminate the risk of unnecessarily protracted auctions, and likewise, the need for a hybrid-stopping rule. The Commission also sought comment on a modified version of the simultaneous stopping rule. The modified version of the stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this modified stopping. The Bureau further

sought comment on whether this modified stopping rule should be used unilaterally or only in stage three of the auction.

77. The Bureau also proposed retaining the discretion to keep an auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn. In addition, the Commission proposed that the Bureau reserve the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the Bureau invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. The Commission proposed to exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time.

78. All four commenters support the use of the hybrid license by license stopping rule. Commenters state that the sheer volume of the auction, coupled with the number of encumbered areas requires the modified approach. They claim that there will be numerous MEAs in which the bidding will be light, and even some instances where no bids at all are placed in the first round. Other geographic areas are likely to inspire intense bidding wars. They also urge the use of the hybrid rule because the simultaneous stopping rule would encourage speculators.

79. The Commission adopts its proposals concerning the stopping rule. Adoption of these rules, the Commission believes, is most appropriate for the Upper Bands Auction because its experience in prior auctions demonstrates that the simultaneous stopping rule balanced the interests of administrative efficiency and maximum bidder participation. The substitutability between and among licenses in different geographic areas and the importance of preserving the ability of bidders to pursue backup strategies support the use of a simultaneous stopping rule. Further, the Commission also can regulate the pace of the auction by conducting more bidding rounds per day, employing bid increments that reflect activity levels as specific markets and accelerating stage changes.

80. Thus, bidding will remain open on all licenses until bidding stops on every license. The auction will close for all licenses when one round passes during which no bidder submits a new

acceptable bid on any license, applies a proactive waiver, or withdraws a previous high bid. After the first such round, bidding closes simultaneously on all licenses. In addition, the Bureau retains the discretion to close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this stopping rule procedure. The Commission will notify bidders in advance of implementing any change to its simultaneous stopping rule.

81. The Bureau also retains the discretion to keep the auction open even if no new acceptable bids or proactive waivers are submitted, and no previous high bids are withdrawn in a round. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use an activity rule waiver (if it has any left).

82. Further, in its discretion, the Bureau reserves the right to invoke the "special stopping rule." If the Commission invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. Before exercising this option, the Commission is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage (where bidders would be required to maintain a higher level of bidding activity), increasing the number of bidding rounds per day, and/or adjusting the amount of the minimum bid increments for the licenses.

(vii) Auction Delay, Suspension, or Cancellation

83. In the *Paging Upper Bands Public Notice*, the Commission proposed that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding.

84. Because this approach has proven effective in resolving exigent circumstances in previous auctions, the Commission will adopt its proposed auction cancellation rules. By public

notice or by announcement during the auction, the Bureau may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to: resume the auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Commission emphasizes that exercise of this authority is solely within the discretion of the bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

(I) Round Structure

85. The initial bidding schedule will be announced by public notice at least one week before the start of the auction, and will be included in the registration mailings. The round structure for each bidding round contains a single bidding round followed by the release of the round results. Details regarding round results formats and locations will be included in the bidder information package.

86. The Commission has 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. The Commission may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

(II) Reserve Price or Minimum Opening Bid

a. Background

87. The Balanced Budget Act of 1997 calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when Commission licenses are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission directed the Wireless Telecommunications Bureau ("Bureau") to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each

auction. Among other factors, the Bureau must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on valuation of the spectrum being auctioned. The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.

88. In the *Upper Bands Public Notice*, the Bureau proposed to establish minimum opening bids for the Upper Bands Auction and to retain discretion to lower the minimum opening bids. Specifically, for Auction No. 26, the Commission proposed the following license-by-license formulas for calculating minimum opening bids, based on the population ("pops") of the BTA:

\$.0001* Pops (the result to the nearest hundred for levels below \$10,000 and to the nearest thousand for levels above \$10,000) with a minimum of no less than \$2,500 per license.

In the alternative, the Bureau sought comment on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

b. Discussion

89. All of the commenters support minimum bids instead of reserve pricing, but request the Commission to take into account incumbency levels in its calculation formula. The commenters argue that the current formula inflates the market prices of the licenses by ignoring the level of incumbency. Moreover, they claim that this minimum bid could actually be the only bid issued in many markets.

90. The Commission will adopt minimum opening bids for the licenses in the Upper Bands Auction, which are reducible at the discretion of the Bureau. Congress has enacted a presumption that unless the Commission determines otherwise, minimum opening bids or reserve prices are in the public interest. Based on its experience in using minimum opening bids in other auctions, the Commission believes that minimum opening bids speed the course of the auction and ensure that valuable assets are not sold for nominal prices, without unduly interfering with the efficient assignment of licenses.

91. The commenters' arguments regarding the encumbrance of many of

the paging licenses have convinced the Commission that some proposed minimum bid values could be too high, and thus the Commission will establish minimum opening bids that are in many cases lower than its first proposed. Accordingly, the Commission will use the following formula for calculating minimum opening bids:

\$.0005* Pops (the result rounded to the nearest hundred for levels below \$10,000 and to the nearest thousand for levels above \$10,000) with a minimum of no less than \$2,500 per license.

92. The Commission does not accept the commenters' suggestion formula setting minimum opening bids using a license-by-license encumbrance adjustment. The Commission finds that such an approach would be unnecessarily complex and inappropriate. Because the Commission's minimum opening bids serve primarily as a starting point for bidding, and do not play the role of traditional reserve prices of maximizing revenue raised in the auction, there is no need to base them upon complicated formulas involving considerable license-specific information. Moreover, simple formulas do not disadvantage any prospective bidders, because the Commission does not expect generally that winning bids will be equal to the minimum opening values, but rather well above those opening values.

93. In addition, the Commission has not previously established minimum opening bid formulas on license-specific information such as encumbrance. While the Commission has differentiated among broad groups of licenses in setting minimum bid formulas in some past auctions (e.g., in the first LMDS auction, where the Commission established three "tiers," for the A and B Block licenses), here it finds there is no need to establish groups with differing formulas. In particular, the Commission is aware of no significant difference in the average encumbrance of the 929 and 931 licenses, or other factors that would suggest treating the 929 and 931 licenses differently. Finally, the Commission notes that license-by-license encumbrance cannot be determined with certainty, but must be estimated using assumptions about relevant factors such as the height of towers and power levels being used by incumbents. Thus, it is not clear that a more complex, license-by-license encumbrance would necessarily produce superior information upon which to base minimum opening bids.

94. The Commission concludes that the adopted formula presented here best meets the objectives of its authority in establishing reasonable minimum opening bids. The Commission has noted in the past that the reserve price and minimum opening bid provision is not a requirement to minimize auction revenue but rather a protection against assigning licenses at unacceptably low prices and that it must balance the revenue raising objective against its other public interest objectives in setting the minimum bid level. For the sake of auction integrity and fairness, minimum opening bids must be set in a manner that is consistent across licenses.

95. As a final safeguard against unduly high pricing, minimum opening bids are reducible at the discretion of the Bureau. This will allow the Bureau flexibility to adjust the minimum opening bids if circumstances warrant. The Commission emphasizes, however, that such discretion will be exercised, if at all, sparingly and early in the auction, i.e., before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureau will not entertain any bidder requests to reduce the minimum opening bid on specific licenses.

(III) Minimum Accepted Bids

96. In the *Upper Bands Public Notice*, the Commission proposed to use a smoothing methodology to calculate minimum bid increments. The Commission further proposed to retain the discretion to change the minimum bid increment if circumstances so dictate. One commenter commented on this particular issue. The commenter claims that the Bureau's approach will create unnecessarily large minimum bid increments because the increase would be based primarily on the number of bids. The result, the commenter says, would be that licensees would pay significantly more for authorizations without due justification.

97. The Commission disagrees with the commenter's theory and declines to accept it for the Upper Bands Auction. Instead, the Commission will adopt its proposal for a smoothing formula. The smoothing methodology is designed to vary the increment for a given license between a maximum and minimum value based on the bidding activity on that license. This methodology allows the increments to be tailored to the activity level of a license, decreasing the time it takes for active licenses to reach their final value. The formula used to calculate this increment is included as Attachment J.

98. The Commission adopts its proposal of initial values for the maximum of 0.2 or 20% of the license value, and a minimum of 0.1 or 10% of the license value. The Bureau retains the discretion to change the minimum bid increment if it determines that circumstances so dictate, such as raising the minimum increment toward the end of the auction to enable bids to reach their final values more quickly. The Bureau will do so by announcement in the Automated Auction System. Under its discretion the Bureau may also implement an absolute dollar floor for the bid increment to further facilitate a timely close of the auction. The Bureau may also use its discretion to adjust the minimum bid increment without prior notice of circumstances warrant. As an alternative approach, the Bureau may, in its discretion, adjust the minimum bid increment gradually over a number of rounds as opposed to single large changes in the minimum bid increment (e.g., by raising the increment floor by one percent every round over the course of ten rounds). The Bureau also retains the discretion to use alternate methodologies for the Upper Band Auction if circumstances warrant.

(IV) High Bids

99. Each bid will be date- and time-stamped when it is entered into the FCC computer system. In the event of tie bids, the Commission will identify the high bidder on the basis of the order in which the Commission receives bids. The bidding software allows bidders to make multiple submissions in a round. As each bid is individually date- and time-stamped according to when it was submitted, bids submitted by a bidder earlier in a round will have an earlier date and time stamp than bids submitted later in a round.

(V) Bidding

100. During a bidding round, a bidder may submit bids for as many licenses as it wishes, subject to its eligibility, as well as withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each bidding round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round, and the date- and time-stamp of that bid reflects the latest time the bid was submitted.

101. Please note that all bidding will take place remotely either through the automated bidding software or by telephonic bidding. (Telephonic bid

assistants are required to use a script when handling bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid, by placing their calls well in advance of the close of a round, because four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 26.

102. A bidder's ability to bid on specific licenses in the first round of the auction is determined by two factors: (1) The licenses applied for on FCC Form 175; and (2) the upfront payment amount deposited. The bid submission screens will be tailored for each bidder to include only those licenses for which the bidder applied on its FCC Form 175. A bidder also has the option to further tailor its bid submission screens to call up specified groups of licenses.

103. The bidding software requires each bidder to login to the FCC auction system during the bidding round using the FCC account number, bidder identification number, and the confidential security codes provided in the registration materials. Bidders are strongly encouraged to download and print bid confirmations *after* they submit their bids.

104. The bid entry screen of the Automated Auction System software for the Upper Band auction allows bidders to place multiple increment bids which will let bidders increase high bids from one to nine bid increments. A single bid increment is defined as the difference between the standing high bid and the minimum acceptable bid for a license.

105. To place a bid on a license, the bidder must enter a whole number between 1 and 9 in the bid increment multiplier (Bid Mult) field. This value will determine the amount of the bid (Amount Bid) by multiplying the bid increment multiplier by the bid increment and adding the result to the high bid amount according to the following formula:

$$\text{Amount Bid} = \text{High Bid} + (\text{Bid Mult} * \text{Bid Increment})$$

Thus, bidders may place a bid that exceeds the standing high bid by between one and nine times the bid increment. For example, to bid the minimum acceptable bid, which is equal to one bid increment, a bidder will enter "1" in the bid increment multiplier column and press submit.

106. For any license on which the FCC is designated as the high bidder (i.e., a license that has not yet received a bid in the auction or where the high bid was withdrawn and a new bid has not yet been placed), bidders will be limited to bidding only the minimum

acceptable bid. In both of these cases no increment exists for the licenses, and bidders should enter "1" in the Bid Mult field. Note that in this case, any whole number between 1 and 9 entered in the multiplier column will result in a bid value at the minimum acceptable bid amount. Finally, bidders are cautioned in entering numbers in the Bid Mult field because, as explained in the following section, a high bidder that withdraws its standing high bid from a previous round, even if mistakenly or erroneously made, is subject to bid withdrawal payments.

(VI) Bid Removal and Bid Withdrawal

107. In the *Upper Bands Public Notice*, the Commission proposed bid removal and bid withdrawal rules. With respect to bid withdrawals, the Commission proposed limiting each bidder to withdrawals in no more than two rounds during the course of the auction. The two rounds in which withdrawals are utilized, the Commission proposed, would be at the bidder's discretion. The commenter objects to this proposal because the volume of licenses being auctioned might require bidders to utilize more withdrawals. The Commission rejects the commenter's request.

108. In previous auctions, the Commission has detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While the Commission continues to recognize the important role that bid withdrawals play in an auction, i.e., reducing risk associated with efforts to secure various geographic area licenses in combination, the Commission concludes that, for the Upper Bands Auction, adoption of a limit on their use to two rounds is the most appropriate outcome. By doing so the Commission believes it strikes a reasonable compromise that will allow bidders to use withdrawals. The Commission's decision on this issue is based upon its experience in prior auctions, particularly the PCS D, E and F block auction, 800 MHz SMR auction, and is in no way a reflection of its view regarding the likelihood of any speculation or "gaming" in this Upper Bands Auction.

109. The Bureau will therefore limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals will still be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g), and 1.2109. Bidders should note that abuse of the

Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market. If a high bid is withdrawn, the license will be offered in the next round at the second highest bid price, which may be less than, or equal to, in the case of tie bids, the amount of the withdrawn bid, without any bid increment. The Commission will serve as a "place holder" on the license until a new acceptable bid is submitted on that license.

a. Procedures

110. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bid" function in the software, a bidder may effectively "unsubmit" any bid placed with that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed. This procedure, about which the Commission received no comments, will enhance bidder flexibility during the auction. Therefore, the Commission adopts these procedures for the Upper Bands Auction.

111. Once a round closes, a bidder may no longer remove a bid. However, in the next round, a bidder may withdraw standing high bids from previous rounds using the "withdraw bid" function (assuming that the bidder has not exhausted its withdrawal allowance). A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g) and 1.2109. The procedure for withdrawing a bid and receiving a withdrawal confirmation is essentially the same as the bidding procedure described in "High Bids," Part 4.B.(iv)

b. Calculation

112. Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. Specifically, a bidder ("Bidder X") that withdraws a high bid during the course of an auction is subject to bid withdrawal payment equal to the difference between the amount withdrawn and the amount of the subsequent winning bid. If a high bid is withdrawn on a license that remains unsold at the close of the auction, Bidder X will be required to make an interim payment equal to three (3) percent of the net amount of the withdrawn bid. This payment amount is deducted from any upfront payments or down payments that Bidder X has

deposited with the Commission. If, in a subsequent auction, that license receives a valid bid in an amount equal to or greater than the withdrawn bid amount, then no final bid withdrawal payment will be assessed, and Bidder X may request a refund of the interim three (3) percent payment. If, in a subsequent auction, the selling price for that license is less than Bidder X's withdrawn bid amount, then Bidder X will be required to make a final bid withdrawal payment equal to either the difference between Bidder X's net withdrawn bid and the subsequent net winning bid, or the difference between Bidder X's gross withdrawn bid and the subsequent gross winning bid, whichever is less.

(VII) Round Results

113. All of the commenters addressing the issue of disclosure support the Commission's proposal to disclose bidder identity, bid amounts, and withdrawal information during the course of the auction. The bids placed during a round will not be published until the conclusion of that bidding period. After a round closes, the FCC will compile reports of all bids placed, bids withdrawn, current high bids, new minimum accepted bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 26 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

(VIII) Auction Announcements

114. The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available on the FCC remote electronic bidding system, as well as the Internet and the FCC Bulletin Board System.

(IX) Other Matters

115. As noted in 3.B., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Filers must make these changes on-line, and submit a letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C.

20554 (and mail a separate copy to Arthur Lechtman, Auctions and Industry Analysis Division), briefly summarizing the changes. Questions about other changes should be directed to Arthur Lechtman of the FCC Auctions and Industry Analysis Division at (202) 418-0660.

5. Post-Auction Procedures

A. Down Payments and Withdrawn Bid Payments

116. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bids and bidders for each license, and listing withdrawn bid payments due.

117. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any applicable bidding credits). See 47 CFR 1.2107(b). In addition, by the same deadline all bidders must pay any withdrawn bid amounts due under 47 CFR 1.2104(g), as discussed in "Bid Removal and Bid Withdrawal," part 4.B.(VI). (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

B. Long-Form Application

118. Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application and required exhibits for each Upper Band license won through the auction. Winning bidders that are small businesses or very small businesses must include an exhibit demonstrating their eligibility for bidding credits. See 47 CFR 1.2112(b). Further filing instructions will be provided to auction winners at the close of the auction.

C. Default and Disqualification

119. Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidders (in descending order) at their final bids. See 47 CFR 1.2109(b) and (c). In addition, if a default or

disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, 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 licenses held by the applicant. See 47 CFR 1.2109(d).

D. Refund of Remaining Upfront Payment Balance

120. All applicants that submitted upfront payments but were not winning bidders for an Upper Bands license may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid.

121. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. However, bidders that reduce their eligibility and remain in the auction are not eligible for partial refunds of upfront payments until the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request which includes wire transfer instructions, a Taxpayer Identification Number ("TIN"), and a copy of their bidding eligibility screen print to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Shirley Hanberry, 445 12th Street, S.W., Room 1-A824, Washington, D.C. 20554.

122. Bidders can also fax their request to the Auctions Accounting Group at (202) 418-2843. Once the request has been approved, a refund will be sent to the address provided on the FCC Form 159.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Michelle Bennett or Gail Glasser at (202) 418-1995.

Federal Communications Commission.

Thomas Sugrue,

Chief, Wireless Telecommunications Bureau.

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BILLING CODE 6712-01-M

**FEDERAL EMERGENCY
MANAGEMENT AGENCY**

**Agency Information Collection
Activities: Proposed Collection;
Comment Request**

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed revised information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the collection requirements for participation in the National Flood Insurance Program (NFIP) Community Rating System (CRS).

SUPPLEMENTARY INFORMATION: The NFIP began in 1968. A central element in the NFIP is the promotion and implementation of a sound local floodplain management program. Communities must adopt minimum floodplain management standards in order to participate in the NFIP and receive the benefits of flood insurance. The Community Rating System (CRS) was designed by FEMA to encourage, through the use of flood insurance premium discounts, communities and states to undertake activities that will mitigate flooding and flood damage, beyond the minimum standards for NFIP participation. The National Flood Insurance Reform Act of 1994 codified the CRS.

The NFIP/CRS Coordinator's Manual includes a schedule and commentary. The Application Worksheets and CRS Application are published separately. Communities will use the manuals to apply for activity points leading up to a CRS rating and commensurate flood insurance premium discounts. The schedule describes the floodplain

management and insurance activities available to qualifying communities that undertake the selected additional activities that will reduce flood losses. To apply, communities submit to FEMA the attached application worksheets and requisite documentation. Once approved, the applications are reviewed and field verified by Insurance Service Organization (ISO), Commercial Risk Services, Inc., an insurance industry service organization with varied experience, especially with community fire rating.

Collection of Information

Title: Community Rating System (CRS) Program—Application Worksheets and Commentary.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 3067-0195.

Form Numbers: FEMA Form 81-83, FIA 15.

Abstract: The CRS Program establishes a system for FEMA to grade communities' floodplain management activities to determine flood insurance rates for communities. Communities exercising floodplain management activities that exceed Federal minimum standards qualify for lower insurance rates.

The January 1999 edition of the NFIP CRS Coordinator's Manual contains instructions for preparing the application worksheets that will be used to apply to the CRS Program for the 1999 through 2001 calendar years. The Application Worksheets and CRS Application are published separately. Communities will use the manuals to apply for activity points leading up to a CRS rating and commensurate flood insurance premium discounts. The schedule describes the floodplain management and insurance activities available to qualifying communities that undertake the selected additional activities that will reduce flood losses. Annually, all CRS participating communities must certify they are maintaining the activities for which they receive credit.

Affected Public: State, Local, or Tribal Government.

Estimated Total Annual Burden Hours: 9,260.

FEMA forms	Number of respondents (A)	Frequency of response (B)	Hours per response (C)	Annual burden hours (A B C)
81-83 (New, Modified and Cycle Applications)	220	1	29	6,380
81-83 (Recertification Applications)	720	1	4	2,880
Total	940	9,260