such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 17, 1994.

Linda M. Wagner,

Acting Assistant Director, Western Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T, of the Code of Federal Regulations is amended as set forth below:

PART 944—UTAH

1. The authority citation for part 944 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 944.15 is amended by adding paragraph (y) to read as follows:

§ 944.15 Approval of amendments to the Utah regulatory program.

* * * * *

(y) Revisions to Utah's significant permit revisions rules, including the deletion of Utah Admin. R. 645–303–224.400 and recodification of Utah Admin. R. 645–303–224.500 and .600, as Utah Admin. R. 645–303–224.400 and .500, respectively, as submitted to OSM on March 7, 1994, are approved effective May 24, 1994.

[FR Doc. 94–12605 Filed 5–23–94; 8:45 am]

BILLING CODE 4310–05–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–45

[FPMR Amendment H–189]

Sale of Surplus Government Personal Property

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation incorporates into the FPMR a reference to "Uniform Customs and Practices for Documentary Credits" (UCP) which is published by the International Chamber of Commerce (ICC), an international not-for-profit organization. To prevent copyright infringement, it is necessary to acknowledge the fact the UCP is copyrighted and may only be reproduced upon permission of ICC.

EFFECTIVE DATE: May 24, 1994.

FOR FURTHER INFORMATION CONTACT: Lester D. Gray, Jr., Director, Property Management Division (703–305–7240).

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a significant rule for the purposes of Executive Order 12866.

REGULATORY FLEXIBILITY ACT: This final rule is not required to be published in the **Federal Register** for notice and comment. Therefore, the Regulatory Flexibility Act does not apply.

List of Subjects in 41 CFR Part 101–45

Government property management, Surplus Government property.

For the reasons set forth in the preamble, 41 CFR Part 101–45 is amended as follows:

PART 101–45—SALE, ABANDONMENT, OR DESTRUCTION OF PERSONAL PROPERTY

1. The authority citation for Part 101–45 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 101–45.48—Exhibits

2. Section 101–45.4802 is revised to read as follows:

§ 101–45.4802 Sample Format—Irrevocable Letter of Credit.

(Name and address of Bank Issuing letter of Credit)
(Date)
(Number of Letter of Credit and reference)
Treasurer of the United States
Washington, DC 20220

Dear Madam: We hereby establish our irrevocable letter of credit No. _____ in your favor by order and for account of (name of company submitting bid) up to an aggregate amount of $_____ available by demand drafts drawn on us by a representative of (specify agencies to which directed: e.g., Department of the Army, Department of the Air Force, General Services Administration). Drafts must be accompanied by a written statement of the interested agency that the amount drawn under this credit represents (1) the deposit required as a guarantee to support an acceptable bid made by (name of bidder) to purchase material from the Government, or (2) payment in full for the property. Drafts drawn under this credit must be marked "drawn under letter of credit No. _____ of (name and address of issuing bank)."

Unless otherwise expressly stated herein, this credit is subject to the Uniform Customs and Practice for Commercial Documentary Credits© fixed by the 13th Congress of the International Chamber of Commerce. We hereby agree with you that the drafts drawn under and in compliance with the terms of this credit shall be duly honored on due presentation to the (name of the bank) if presented on or before _____.

Very truly yours, (Authorized signature of bank official).

3. Section 101–45.4803 is revised to read as follows:

§ 101–45.4803 General Instructions for Preparation of Irrevocable Letter of Credit.

Use either clause (1) or (2) of § 101–45.4802, as applicable.

Some Banks use language which varies from that shown in § 101.45.4802. Variations from the prescribed text maybe permitted if the meaning of the letter of credit prepared by the bank is the same. Each of the paragraphs of the prescribed letter of credit is an essential part of the agreement. No paragraphs shall be added and none shall be deleted.

A letter of credit may be addressed to a specific department or agency instead of "Treasurer of the United States." Letters of credit of this type shall be addressed to the head of the agency or department, as the Secretary of the Army, or the Administrator of General Services. Should this be done, the words "Treasurer of the United States for the account of" shall be deleted from the draft drawn under the letter of credit.

Each letter of credit must be clearly irrevocable and is not acceptable if the expiration date stated therein is less than 30 days from the date of the sale at which it is used.

Dated: May 12, 1994.

Julia M. Stasch,

Acting Administrator of General Services.

[FR Doc. 94–12561 Filed 5–23–94; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 424

[BPD–610–CN]

RIN 0938–AE06

Medicare Program; Diagnosis Codes on Physician Bills; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule; correction.

SUMMARY: In the March 4, 1994, issue of the **Federal Register** (FR Doc. 94–4900) (59 FR 10290), we implemented certain

provisions of section 1842(p) of the Social Security Act, which require that each bill or request for payment for a service furnished by a physician under Medicare Part B include appropriate diagnostic coding for the diagnosis or the symptoms of the illness or injury for which the Medicare beneficiary received care. This notice corrects an error made in that document.

FOR FURTHER INFORMATION CONTACT: Pat Brooks, R.R.A. (410) 966–5318.

SUPPLEMENTARY INFORMATION: In the March 4, 1994 final rule, we inadvertently failed to revise the regulations text to remove a parenthetical reference to bills for ambulance services. The requirement for diagnostic coding does not apply to bills for ambulance services. Therefore, we are making the following correction to the March 4, 1994 final rule:

§ 424.34 [Corrected]

On page 10299, in the first column, in § 424.34(b)(4), the last sentence of the paragraph, "(For example, a bill for ambulance service must specify the pick-up and delivery points.)", is removed.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 28, 1994.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 94–12456 Filed 5–23–94; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

RIN 3067–AC24

National Flood Insurance Program; Insurance Rates

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This final rule increases the National Flood Insurance Program (NFIP) chargeable (subsidized) rates, which apply to all structures located in communities participating in the Emergency Program of the NFIP and to certain structures in communities in the Regular Program of the NFIP. The rule is to help the NFIP satisfy the premium requirements for the historical average loss year and to reduce the general taxpayers' burden with a more equitable sharing of the costs of flood losses between general taxpayers and the insureds.

EFFECTIVE DATE: October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Charles M. Plaxico, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–3422.

SUPPLEMENTARY INFORMATION: On March 21, 1994, the Federal Emergency Management Agency (FEMA) published in the **Federal Register** (Vol. 59, Page 13298) a proposed rule to increase the chargeable (subsidized) rates. The chargeable (subsidized) rates, for which an increase was proposed, are the rates applicable to structures located in communities participating in the Emergency Program of the NFIP and to certain structures in communities in the Regular Program of the NFIP. They are countrywide rates for two broad building type classifications which, when applied to the amount of insurance purchased and added to the expense constant and Federal policy fee, produce a premium income somewhat less than the expense and loss payments incurred on the flood insurance policies issued on that basis. The funds needed to supplement the inadequate premium income are provided by the National Flood Insurance Fund. The subsidized rates are promulgated by the Administrator for use under the Emergency Program (added to the NFIP by the Congress in Section 408 of the Housing and Urban Development Act of 1969) and for use in the Regular Program on construction or substantial improvements started before the effective date of the initial Flood Insurance Rate Map (FIRM) or on or before December 31, 1974 (this additional grandfathering was added to the NFIP by Congress in section 103 of the Flood Disaster Protection Act of 1973), whichever is later.

FEMA proposed to increase the chargeable or subsidized rates as follows:

Type of structure	Rates per year per $100 coverage on	
	Structure	Contents
(1) Residential	$0.60	$0.70
(2) All other (including hotels and motels with normal occupancy of less than 6 months in duration)	.70	1.40

For comparison, the current subsidized rates are as follows:

Type of structure	Rates per year per $100 coverage on	
	Structure	Contents
(1) Residential	$0.55	$0.65
(2) All other (including hotels and motels with normal occupancy of less than 6 months in duration)	.65	1.30

A 45-day period (ending on May 5, 1994) was provided for review and comment on the proposed changes. No comments were received during the comment period. Therefore, the revision increasing the chargeable (subsidized) rates is incorporated into the final rule as proposed, without change.

National Environmental Policy Act

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4371 *et seq.*, and the implementing regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508, FEMA has prepared an environmental assessment of the issuance by FEMA of this final rule. The assessment concludes that there will be no significant impact on the human environment as a result of the issuance of the final rule. It is, therefore, found that the action does not constitute a major Federal action significantly affecting the quality of the human environment. On this basis, an Environmental Impact Statement will not be prepared. Copies of the environmental assessment are available for inspection at the Federal Emergency Management Agency, room 840, 500 C St., SW., Washington, DC 20472.

Executive Order 12866, Regulatory Planning and Review

This final rule is not a significant regulatory action as defined under Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735, October 4, 1993. To the extent possible, this rule adheres to the principles of regulation set forth in this Executive Order.

Paperwork Reduction Act

This final rule does not contain a collection of information requirement as described in section 3504(h) of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This final rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 61

Flood Insurance.

Accordingly, 44 CFR part 61 is amended as follows:

PART 61—INSURANCE COVERAGE AND RATES

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Section 61.9 is revised to read as follows:

§ 61.9 Establishment of chargeable rates.

(a) Pursuant to section 1308 of the Act, chargeable rates per year per $100 of flood insurance are established as follows for all areas designated by the Administrator under part 64 of this subchapter for the offering of flood insurance.

RATES FOR NEW AND RENEWAL POLICIES

Type of structure	Rates per year per $100 coverage on	
	Structure	Contents
(1) Residential	$0.60	$0.70
(2) All other (including hotels and motels with normal occupancy of less than 6 months in duration)	.70	1.40

(b) The contents rate shall be based upon the use of the individual premises for which contents coverage is purchased.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: May 18, 1994.

Elaine A. McReynolds,

Administrator, Federal Insurance Administration.

[FR Doc. 94–12628 Filed 5–23–94; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 24

[PP Docket No. 93–253, FCC 94–98]

Competitive Bidding

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted rules establishing service-specific rules for competitive bidding on licenses to be awarded for Personal Communications Services in the 900 MHz band ("narrowband PCS"). This action is taken to implement section 309(j) of the Communications Act of 1934, as amended. The new rules will promote the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas. These rules also will promote economic opportunity for small businesses and businesses owned by women and/or minorities.

EFFECTIVE DATE: June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Toni Simmons, Federal Communications Commission, Office of Plans and Policy, Washington, DC 20554 (202) 418–2030).

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Report and Order, PP Docket No. 93–253, adopted April 20, 1994, and released May 10, 1994. The full text of this Third Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street, NW., suite 140, Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, Telephone (202) 857–3800.

Paperwork Reduction Act

The Federal Communications Commission has submitted the following information collection request to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 USC section 3507. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, room 3225, New Executive Office Building, Washington, DC 20503, (202) 395–3561 For further information, contact Judy Boley, Federal Communications Commission, (202) 632–7513.

Please Note: The Commission has requested emergency review of this collection by May 25, 1994, under the provisions of 5 CFR § 1320.18.

Title: Implementation of section 309(J) of the Communications Act—Competitive Bidding, Third Report and Order, PP Docket No. 93–253.

Action: New collections.

Respondents: Individuals, state or local governments, non-profit organizations, business or other for-profit entities, including small businesses.

Frequency of Response: On occasion.

Estimate Annual Burden:

	No. of sections/forms respondents	Estimated average hrs per response	Estimated annual burden
Section 24.413(a)–(e)	17,770	1.00	17,770
Section 24.415	3,554	1.00	3,554
Section 24.419	50	20.00	1000
Section 24.425	10	3.00	30
Section 24.406	5,000	2	10,000
Section 24.439	100	.50	50
Section 24.413(f)	2,500	2.5	6,250
Section 24.430	100	20	2,000
Total Annual Burden	.....	.....	40,654

Needs and Uses: In the Third Report and Order in PP Docket No. 93–253 the Commission amended 47 CFR part 24 to add a new subpart F and G. Subpart F contains the general rules and requirements governing the competitive bidding process for narrowband PCS initial licenses. Subpart G contains general rules and requirements for

processing applications. Applicants are required to file certain information so that the Commission can determine whether the applicants are legally, technically and financially qualified to be licensed. Affected members of the public are any members of the public who wants to become a licensee. The foregoing estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates or any other aspect of the collections of information including suggestions for reducing the burden to the Federal Communications Commission, Records Management Division, Paperwork Reduction Project, Washington, DC 20554 and to the Office of the Management and Budget Paperwork Reduction Project, Washington, DC 20503.

Summary of the Third Report and Order

Introduction

1. In this Third Report and Order, we adopt service-specific rules for competitive bidding on licenses to be awarded for Personal Communications Services in the 900 MHz band ("narrowband PCS"). We conclude that because of the significant interdependence among narrowband PCS licenses and the relatively high expected value of such licenses, most narrowband PCS licenses will be awarded through a sequence of simultaneous multiple round auctions. We will also adopt a system of preferences designed to enhance access to narrowband PCS spectrum and achieve the congressional directive that our competitive bidding rules ensure the opportunity of small businesses and businesses owned by women and minorities to participate in the auction process.

2. Numerous comments and reply comments were filed by interested parties in response to the notice of proposed rule making (58 FR 53489 (October 15, 1993)) in this docket. These comments address the many proposals made in the notice regarding, among other things, narrowband PCS licenses.

Auction Eligibility

3. In the Second Report and Order (59 FR 22980 (May 4, 1994)), we concluded that narrowband PCS as a class of service was reasonably likely to satisfy the criteria of section 309(j) of the Communications Act. Also, the use of competitive bidding to award narrowband PCS licenses as compared to other licensing methods will speed the development and deployment of new services to the public and recover for the public a portion of the value of the spectrum.

Auction Design

4. The spectrum allocation, service definition and technical rules for narrowband PCS were completed by the Commission in the Narrowband PCS Memorandum Opinion and Order (59 FR 14115 (March 25, 1994)). We anticipated that advanced paging and messaging services would be the predominant narrowband services provided. Three megahertz of spectrum were allocated to narrowband PCS in three one megahertz bands (901–902 MHz, 930–931 MHz and 940–941 MHz). Two megahertz of this spectrum were divided into 50 kHz and 12.5 kHz channels and will be available for immediate licensing. The remaining one megahertz of narrowband PCS spectrum will be channelized and licensed in the future as this service develops.

5. *Simultaneous multiple round auction.* In This Report and Order, we adopt simultaneous multiple round auctions as our primary auction methodology for narrowband PCS licenses. We expect the value of most narrowband PCS licenses to be sufficiently high to warrant the use of simultaneous auctions. This type of auction will be most likely to deploy rapidly new narrowband PCS technologies and services, promote the development of competition for the provision of those and other services, and thus foster economic growth. We recognize, however, that simultaneous multiple round bidding may involve a greater degree of complexity than other competitive bidding methods and that it may present greater operational difficulties for both the Commission and for bidders.

6. *Alternative auction designs.* Because narrowband PCS licenses vary in terms of expected value and interdependence, we have determined that no single competitive bidding design will be optimal for all licenses. For this reason and because Congress directed us to test multiple alternative methodologies, we will adopt other auction designs as alternatives to our primary design. When we announce individual auctions to award specific groups of narrowband licenses, we will issue a public notice detailing the competitive bidding design and procedures to be used.

7. *Oral sequential and single round (sealed bid) auctions.* If, as a result of our auction experience, we determine that the operational costs or complexities associated with simultaneous multiple round auctions outweigh their benefits, we may decide to employ either oral sequential auctions or single round sealed bid auctions. In an oral sequential auction, licenses are put up for bid one at a time, so that bidding ends on one item before it begins on the next item. Oral sequential auctions generate valuable information about earlier auctioned licenses, which can assist bidders in valuing later auctioned licenses. However, if license values are interdependent oral sequential auctions are less likely than simultaneous auctions to award interdependent licenses to the parties who value them the most and to aggregate licenses efficiently, because bidders for licenses that are auctioned early must bid with less information about the value of licenses to be auctioned later, and have less opportunity to pursue backup bidding strategies. Nonetheless, because oral sequential auctions are generally less complex, and costly both for the FCC and for potential bidders, they may be appropriate to use where the expected value of the narrowband PCS licenses to be auctioned is low relative to the costs of conducting a more complex auction or where interdependence is less significant.

8. We may find, for some narrowband PCS licenses that even the lesser cost and complexity of oral sequential auctions are not justified by the revenues these licenses would be expected to generate. In such cases, we may choose to award licenses by single round sealed bidding where bids for all licenses are submitted simultaneously and the high bidder for each license is determined after a single round of bidding. Single round sealed bidding has the principal advantage of being relatively simple for bidders to understand and inexpensive for the FCC to administer and also can generally be completed fairly rapidly. However, because single round sealed bidding provides less information and flexibility to bidders than either simultaneous or sequential auctions, we will generally use this method only where there is less interdependence among individual licenses or groups of licenses and the expected value of the licenses to be auctioned is low relative to the cost of conducting a more complex auction. In addition, we may select this auction design where eligibility requirements limit participation to relatively few bidders.

9. *Combinatorial bidding.* Although we recognize that there are significant benefits associated with combinatorial

bidding, especially in terms of efficient aggregation of licenses, we conclude that simultaneous multiple round auctions offer many of these same advantages without the same degree of administrative and operational complexity and without biasing auction outcomes in favor of combination bids. Since simultaneous multiple round bidding is our preferred auction method for awarding narrowband PCS licenses, we think combinatorial bidding will be unnecessary in most narrowband PCS auctions. However, in circumstances where we do not use simultaneous multiple round bidding, we may permit combinatorial bidding.

Bidding Procedures

10. *Grouping of licenses.* Whether we use our preferred approach of a sequence of simultaneous multiple round auctions or sequential individual auctions, the Commission must choose which licenses will be auctioned together. The importance of the choice of license grouping increases with the degree of interdependence among the individual licenses or groups of licenses to be auctioned. Accordingly, we will group narrowband PCS licenses into the various simultaneous auctions by aggregating together those licenses exhibiting the greatest degree of interdependence so that there will be limited interdependence across groups.

11. Based on the foregoing, we will auction narrowband PCS licenses in the following license groupings. We will award all nationwide, regional and MTA (other than MTA response channels) licenses through a sequential series of simultaneous auctions. (However, as we gain experience we may determine that an alternative auction method or license grouping is more appropriate. Under these circumstances, as provided in the general procedural rules, we will announce before each auction the licenses to be auctioned and the type of competitive bidding method to be used, as well as the stopping rules and activity rules, if any, that will be used.) To maximize the information available to bidders and increase gradually the complexity of the narrowband PCS auctions as we gain more experience, we will begin by auctioning the ten nationwide narrowband licenses in one simultaneous multiple round auction. After the nationwide narrowband PCS auction is complete, we will auction the five regional blocks (30 licenses) together in one simultaneous multiple round auction. We subsequently will conduct another simultaneous multiple round auction for all of the 50/50 kHz paired, 50/12.5 kHz paired and the 50 kHz unpaired MTA licenses (357 licenses). Simultaneous multiple round auctions are appropriate for each of these license groupings because of the relatively high value and significant interdependence of the licenses.

12. After auctioning the MTA licenses, we will hold another simultaneous multiple round auction for the 50/12.5 kHz paired BTA licenses (984 licenses). Although most of the licenses are expected to have relatively low values, individually they are highly interdependent, and their aggregate value (compared to the cost of conducting a simultaneous auction) is sufficiently high to justify a simultaneous multiple round auction. Using this approach will also enable the Commission to gain valuable experience conducting simultaneous multiple round auctions involving large numbers of licenses.

13. Finally, we will auction the 12.5 kHz unpaired MTA (204 licenses) and the 12.5 kHz unpaired BTA response channel licenses (1,968 licenses) in a single round sealed bid auction because their values are low relative to the cost of conducting other more complex auctions. Under this auction method, however, bidders cannot be certain that they will be the high bidder on all of the licenses they seek to obtain because single round sealed bidding does not provides bidders with timely information about license values and bidders do not have the opportunity to increase their bid amounts during the course of the auction. Therefore, in this context we will allow bidders to bid on more licenses than they are eligible to be awarded under the existing aggregation limits, provided they specify in advance the order in which they wish to be awarded such licenses In the event that they are in high bidder on more licenses then they are permitted to hold. See 47 CFR 24.130(a) (limiting paging licensees to a maximum of two response channel licenses within the same geographic area). Bidders, however, will only be permitted to bid on response channel licenses for which they are otherwise eligible (i.e., they must operate at least one base station in the service area of the response channel for which they are applying). The Commission will only designate a bidder the winning bidder on the maximum number of licenses the bidder is eligible to hold. Under these circumstances, a high bidder will not be subject to the bid withdrawal penalty for those additional licenses for which it is not designated the winning bidder.

14. *Bid increments.* Where we use simultaneous multiple round auctions to award narrowband PCS licenses it is important to specify minimum bid increments. In these auctions, we may impose a minimum bid increment of 5 percent or $0.01 per pop per MHz, whichever is greater. This will provide flexibility for a wide range of different license values and will ensure timely closure of auctions, even where bidding begins at a very low dollar amount. The Commission retains the discretion in narrowband PCS auctions to set and, by announcement before or during the auction, vary the minimum bid increments for individual licenses or groups of licenses over the course of an auction. We will most likely reduce the minimum bid increment only in the later bidding rounds, as bidding begins to come to a close. In oral sequential auctions the auctioneer may within its sole discretion establish and vary the amount of the minimum bid increment in each round of bidding.

15. *Stopping rules for multiple round auctions.* Where we use simultaneous multiple round bidding, we believe that a simultaneous stopping rule is preferable, especially for the nationwide, regional and MTA narrowband PCS licenses, which are expected to have relatively high values and are fewer in number. Because of the large number of BTA licenses and their relatively low expected value, we may use either a hybrid stopping rule or allow markets to close individually in auctions for these licenses.

16. We will retain the discretion to declare at any point in a simultaneous multiple round auction that the auction will end after one additional round or some other specified number of additional rounds. We also reserve the discretion to vary the duration of bidding rounds or the interval at which bids are accepted in order to move the auction toward closure more quickly. We will announce by public notice, and may vary by announcement during an auction, the duration and intervals between bidding rounds.

17. *Activity rules.* In order to ensure that simultaneous auctions with simultaneous stopping rules close within a reasonable period of time, it is necessary to impose an activity rule to prevent bidders from waiting until the end of the auction before participating. The rule proposed by Professors Paul Milgrom and Robert Wilson ("Milgrom-Wilson rule") will best achieve the Commission's goal of affording bidders flexibility to pursue back up strategies, while at the same time ensuring that simultaneous auctions are concluded within a reasonable period of time. Therefore, to award higher value narrowband PCS licenses, we plan to

use the Milgrom-Wilson rule with a simultaneous stopping rule.

18. Under the Milgrom-Wilson rule, the minimum activity level, measured as a fraction of the self declared maximum eligibility, would increase during the course of the auction. The auction would be divided into three stages. During the first stage of the auction, bidders would be required to be active on licenses encompassing at least one-third of the MHz-pops for which they are eligible. In the second stage, bidders would be required to be active on licenses encompassing at least two-thirds of the MHz-pops for which they are eligible. In the third stage, bidders would be required to be active on licenses encompassing 100 percent of the MHz-pops for which they are eligible. Under this rule, bidders would be required to meet these activity levels to retain their desired eligibility. A shortfall in activity would reduce eligibility levels accordingly. However, bidders will be permitted five automatic waivers from the activity rule during the course of an auction. We also retain the discretion to use less complex activity rules.

Procedural, Payment, and Penalty Matters

19. *Pre-auction procedures.* We will follow the procedural, payment and penalty rules established in the Second Report and Order with certain minor modifications designed to address the characteristics of the narrowband PCS service. Before each scheduled narrowband PCS auction the Commission, or pursuant to delegated authority, a Bureau will release an initial Public Notice announcing the auction. This initial Public Notice will specify the license(s) to be auctioned and the time, place and method of competitive bidding to be used, including applicable bid procedures. The initial public notice will also specify the filing deadline for short-form applications.

20. All bidders will be required to submit short-form applications on FCC Form 175 by the date specified in the public notice. If only one application is received, the Commission will by public notice cancel the auction for this license and establish a date for the filing of a long-form application, the acceptance of which will trigger the procedures permitting petitions to deny. The Commission will issue a second Public Notice listing all defective applications and applicants will be given a chance to cure and resubmit applications with minor defects.

21. After reviewing the corrected applications, the Commission will release a third public notice announcing the names of all applicants whose applications have been accepted. These applicants will then be required to submit the full amount of their upfront payment to the Commission's lock-box bank by a date specified in the public notice. A fourth public notice announcing the names of all applicants that have been determined to be qualified to bid will then be issued. Each of these applicants will receive a bidder identification number and further instructions regarding auction procedures.

22. *Upfront payments.* We will require all auction participants to tender in advance to the Commission an upfront payment as a condition of bidding. We believe that a standard upfront payment formula of $0.02 per pop per MHz for the largest combination of MHz-pops a bidder anticipates bidding on in any single round of bidding is appropriate for narrowband PCS services. If licenses covering the nation are being auctioned simultaneously, a bidder will not be required to file an upfront payment representing national coverage unless it intends to bid on licenses covering the entire nation in any single bidding round. We will announce the upfront payment amount for each license in a public notice issued prior to the auction.

23. We believe that the minimum upfront payment of $2,500 established in the Second Report and Order may be too high for some narrowband licenses in sparsely populated areas, which may have values below this amount. Therefore, we will establish a lower minimum upfront payment of $1,000 for narrowband PCS applications. The specific procedures to be followed in the tendering and processing of upfront payments are set forth in Section 1.2106 of the Commission's rules.

24. *Down payment and full payment for licenses awarded by competitive bidding.* Winning bidders will be required to supplement their upfront payments with a down payment sufficient to bring their total deposits up to 20 percent of their winning bid(s). The down payment must be submitted by cashier's check or wire transfer to our lock-box bank by a date specified, generally within five business days following the close of the bidding. All auction winners, with the exception of certain designated entities, will be required to make full payment of the balance of the winning bids within five business days following the award of the license. Small Businesses will be permitted to pay 10 percent of their down payment amount within five businesses days after bidding is closed and the remaining 10 percent within five days after grant of the license. As discussed below, small businesses will also be permitted to pay the balance of their winning bid amount for certain licenses in installments over the term of the license. License grants will be conditioned on full payment of the bid amount.

25. *Default and disqualification.* Any bidder who withdraws a high bid during an auction before bidding closes, or defaults by failing to remit the required down payment within the prescribed time, will be required to reimburse the Commission in the amount of the difference between its high bid and the amount of the winning bid the next time the license is auctioned, if the subsequent winning bid is lower. After bidding closes, a defaulting or disqualified auction winner will be assessed an additional penalty of three percent of the subsequent winning bid or three percent of the amount of the defaulting bid, whichever is less. Deposits will be held by the FCC until full payment of the penalty. If default or disqualification involves such actions as gross misconduct, the Commission may declare the applicant ineligible to bid in future auctions and may take other actions including the revocation of Commission licenses.

26. If the down payment is timely made, a long-form application filed on FCC form 401 (as modified) will be required to be filed by a specified date, generally within 10 business days after the close of the auction. Upon acceptance for filing of the long-form application, the FCC will release a public notice announcing this fact thus triggering the filing window for petitions to deny. If the petitions to deny are denied, and the FCC finds the applicant qualified, the license will be granted to the auction winner.

27. As proposed, we adopt a modified version of the application requirements and processing rules in part 22 of the Commission's rules for narrowband PCS. These rules govern such matters as application filing and content requirements, waiver procedures, procedures for returning defective applications, and procedures regarding the modification of applications.

28. With regard to petitions to deny, we adopt expedited procedures consistent with the provisions of section 309(i)(2) of the Communications Act for narrowband PCS applications. A hearing need not be conducted before denial of a petition to deny if the Commission determines that an applicant is not qualified and no substantial issue of fact exists

concerning that determination. If the FCC identifies substantial and material issues of fact in need of resolution, section 309(i)(2) of the Act permits in any hearing submission for all or part of the evidence in written form and allows employees other than administrative law judges to conduct hearings.

29. As a general rule, when an auction winner defaults or is otherwise disqualified after having made the required down payment, the best course of action is to re-auction the license either to existing or new applicants. However, if the default occurs within five (5) businesses days after bidding has closed, the Commission retains the discretion to offer the license to the second highest bidder at its final bid level, or if that bidder declines the offer, to offer the license to other bidders (in descending order of their bid amounts) at their final bid levels.

30. If a new auction becomes necessary because of default or disqualification more than five (5) business days after bidding has ended the Commission will afford new parties an opportunity to file applications because so much time is likely to have passed that different parties may be interested in bidding and existing applicants may have different valuations of the license.

Procedures in Other Auction Designs

31. *Single round bidding.* Where we use sealed bidding, in addition to the information specified above, the initial public notice will specify the date on which sealed bids must be submitted. In single round sealed bid auctions, we will not require bidders to submit upfront payments because we believe that there is less risk of frivolous bidding when this auction design is used. We may, however, announce by public notice that bidders must tender the 20 percent down payment at the time they submit their buds in order to ensure payment of the penalty in case of bid withdrawal or default. In single round sealed bid auctions, we will require that bids be received on a date specified in the public notice and that bids clearly indicate the bidder's identification number and the auction and license to which the bid relates. Bidders submitting bids for more licenses than they are permitted to hold must also specify the order in which they wish to be awarded such licenses if they are the high bidder on more licenses then they are eligible to hold. After bids are submitted and evaluated, the Commission will issue a second public notice indicating all bidders who have made timely bid submissions. After release of the second public notice, the Commission will issue a third public notice announcing the high bidders on each license. (If a tie occurs, bidders will be afforded the opportunity to submit another bid and the highest bidder in this round will be designated the winning bidder.) If the 20 percent deposit has not already been submitted, then the high bidder will be required to submit the 20 percent down payment within five (5) business days after release of the public notice announcing the high bidders (if the 20 percent down payment has already been submitted, the Commission will simply deposit the high bidder's down payment).

32. In the case of single round bidding, the withdrawal and default penalties must be modified to reflect the fact that bids cannot be withdrawn during the course of an auction because there is only a single round of bidding. In this context, if a bid is withdrawn before the Commission releases the public notice announcing the high bidders, no harm is likely to occur and no penalty will be assessed because the Commission can easily designate in the public notice that the party with the next highest bid is the winning bidder. If, however, a high bidder in a single round auction defaults after release of the public notice announcing the high bidders, the licensing process is likely to be delayed. Therefore, in order to encourage bidders in single round auctions to avoid default and the associated delays, we will impose a default penalty if a high bidder withdraws, defaults or is otherwise disqualified after release of the public notice announcing the winning bidders. This penalty will be equal to the difference between the high bid amount and the amount of the next highest valid bid. A bid will be considered valid for this purpose if the bidder has not already been designated the winning bidder on more licenses than it is permitted to be awarded.

33. Bidders will be held to their bids on the maximum number of licenses they are permitted to hold. If there are multiple defaults each bidder will be responsible for the difference between its bid and the amount of the next highest valid bid. Holding each bidder in a single round auction responsible for the difference between its bid and the next highest valid bid will discourage cascading defaults, without penalizing bidders for bidding on more licenses than they are permitted to hold. Losing bidders, may decline a defaulted license without penalty if such default occurs more than 30 days after the Commission releases the initial public notice announcing the winning bidders. Where a bidder defaults or is disqualified more than 30 days after the release of the initial public notice announcing the winning bidders the Commission retains the discretion to either offer the license to the bidder with the next highest valid bid at its original bid price or re-auction the license. If the Commission re-auctions the license, new applications will be accepted and the additional three percent penalty will apply.

34. *Oral sequential auctions.* Where oral sequential bidding is employed, the general procedures described above will be followed with one exception. Qualified bidders will be required to bring a cashier's check for the full amount of their upfront payment to the auction site. Bidders will be required to display their upfront payment check as a condition of being issued a bidder identification number and admittance to the bidder section of the auction site. After bidding closes on a particular license, the high bidder will be asked to tender its upfront payment and sign a bid confirmation form. If the high bidder declines to tender the upfront payment and/or refuses to sign the bid confirmation form, no penalty will be assessed because the license would be immediately re-auctioned. The only damage from such withdrawal would be delay. And in an oral sequential auction such delay may be minimal. The standard default penalty and the additional three percent penalty will be assessed, however, if the bidder defaults on the 20 percent down payment, fails to pay for the license or is disqualified after the close of an auction.

Regulatory Safeguards

35. *Unjust enrichment provisions.* The transfer disclosure requirements in section 1.2111(a) of our rules, adopted in the Second Report and Order, will apply to all narrowband PCS licenses obtained through the competitive bidding process. Generally, applicants transferring their licenses within three years after the initial license grant will be required to file, together with their transfer application, the associated contracts for sale and all other documents disclosing the total consideration received in return for the transfer of its license.

36. *Performance requirements.* The narrowband PCS service rules contain specific performance requirements, such as the requirement to construct within a specified period of time. Failure to satisfy these construction requirements will result in forfeiture of the license. Therefore, additional performance requirements are not necessary.

37. *Rules prohibiting collusion.* The rules prohibiting collusion, adopted in the Second Report and Order, apply to

all auctionable services including narrowband PCS. Bidders will generally be required to identify on their Form 175 applications all parties with whom they have arrangements or agreements which relate to the competitive bidding process. Bidders will also be required to provide certifications that they have entered into no other agreements. After the short-form application is filed, and prior to the down payment of a winning bid, bidders are prohibited from collaborating or discussing the substance of their bids or bidding strategies with bidders not members of a bidding consortium previously identified in the short-form application.

38. Winning bidders are required to attach as an exhibit to the Form 401 application a detailed explanation of the terms, conditions and parties in any agreement relating to the competitive bidding process. All such arrangements must have been entered into prior to the filing of short-form applications. Specific instances of collusion in the competitive bidding process may result in investigation by the FCC or referral to the United States Department of Justice for investigation. Adjudicated violations of our rules or the anti-trust laws may result in forfeiture of payments, license revocations and prohibition from participation in future auctions.

Designated Entity Preferences

39. *Bidding credits.* In this Report and Order, we adopt specific preferences for narrowband PCS designed to ensure that designated entities are given the opportunity to participate in the competitive bidding process and the provision of narrowband PCS services. We will make a 25 percent bidding credit available to businesses owned by women and minorities bidding on the following licenses: (1) The nationwide license on Channel 5, Channel 8 and Channel 11; (2) all regional licenses on Channel 13 and Channel 17; (3) all MTA licenses on Channel 19, Channel 22, Channel 24; and (4) all BTA licenses on Channel 26.

40. Given the history of under-representation of minorities and women in telecommunications and the inability of these groups to access financing, we find that the best way we can accomplish these statutory mandates is to provide bidding credits exclusively to minority and female-owned businesses, regardless of their status as small or large entities. We think that a 25 percent bidding credit is sufficient to ensure minority and female entry. It is not so substantial, however, as to foster participation by firms that are not otherwise financially capable of building-out a narrowband PCS network. We will also monitor carefully the effectiveness of the 25 percent bidding credit in the narrowband PCS auctions and continually assess whether it is achieving the goal of ensuring that minority and women-owned firms participate successfully in auctions for this service.

41. To prevent unjust enrichment by women and minorities trafficking in licenses acquired through the use of bidding credits, we will impose a forfeiture requirement on transfers of such licenses to entities that are not owned by women or minorities. The penalty required will be reimbursement to the government for the amount of the bidding credit, plus interest, before transfer will be permitted. The amount of the penalty will be reduced over time. To ensure that only legitimate minority and women-owned firms are able to take advantage of bidding credits, strict eligibility criteria have been adopted (in the Second Report and Order). Also, to ensure that our rules are narrowly tailored while meeting the statutory goal of providing opportunities for women and minorities to participate in the telecommunications industry, publicly-traded companies are prohibited from taking advantage of bidding credits.

42. *Tax certificates.* Tax certificates will be issued to initial investors in minority and female-owned enterprises upon divestiture of their interests, and to licensees who transfer their authorizations to minority and female-owned businesses. In implementing this program, we will borrow from our existing tax certificate program and grant tax certificates, upon request, that will enable the licensees and investors to defer the gain realized upon a sale either by: (1) Treating it as an involuntary conversion under 26 U.S.C. 1033, with the recognition of gain avoided by the acquisition of qualified replacement property; or (2) electing to reduce the basis of certain depreciable property, or both.

43. Tax certificates will be available to initial investors who provide "start-up" financing and investors who purchase shares within the first year after license issuance. To be eligible for a tax certificate, such investor transactions must not reduce minority or female ownership or control in the entity below 50.1 percent. To prevent unjust enrichment, we will impose a one-year holding requirement on the transfer or assignment of narrowband PCS licenses obtained thorough the benefit of tax certificates.

44. *Installment payments.* We adopt installment payments for small businesses—including small businesses owned by women and minorities and rural telephone companies that meet the small business definition—bidding for any of the BTA, MTA or regional narrowband PCS licenses. These licenses are appropriately sized for development by bona fide small businesses. We estimate that the cost to build-out these licenses will be between $50,000 and $1.25 million.

45. The installment payment option will enable all small businesses to pay the full amount of their winning bid in installments (less the upfront payment, which must be paid in full, and the down payment, half of which is due five days after the auction closes and the other half five days after the application is granted). Generally, interest charges will be fixed at the time of licensing at a rate equal to the rate for 10 year U.S. Treasury obligations. Payments of interest only will be due for the first two years. Principal and interest will be amortized over the remaining years of the license. Timely payment of all installments will be a condition of the license grant. If a small business making installment payments seeks to transfer a license to a non-small business entity during the term of the license, we will require payment of the remaining principal balance as a condition of the license transfer.

Final Regulatory Flexibility Analysis

Need for and Purpose of the Action

46. This rulemaking proceeding was initiated to implement section 309(j) of the Communications Act, as amended. The rules adopted herein will carry out Congress' intent to establish a system of competitive bidding for narrowband PCS licenses. The rules adopted herein also will carry out Congress' intent to ensure that small businesses, rural telephone companies, and businesses owned by women and minorities are afforded an opportunity to participate in the provision of spectrum-based services.

Issues Raised in Response to the Initial Regulatory Flexibility Analysis

47. The IRFA noted that the proposals under consideration in the NPRM included the possibility of new reporting and recordkeeping requirements for a number of small business entities. No commenters responded specifically to the issues raised in the IRFA. We have made some modifications to the proposed requirements as appropriate.

Significant Alternatives Considered and Rejected

All significant alternatives have been addressed in the Second Report and Order.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies).

47 CFR Part 24

Communications common carriers, Communications equipment, Radio, Reporting and recordkeeping requirements.

Amendatory Text

Parts O and 24 of chapter I of title 47 of the Code of Federal Regulations are amended as follows:

PART O—COMMISSION ORGANIZATION

1. The authority citation for part O continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.91 is amended by adding a new paragraph (n) to read as follows:

§ 0.91 Functions of the Bureau.

* * * * *

(n) Develops, in coordination with the Office of Plans and Policy, policies for the selection of licenses from mutually exclusive applicants in the Common Carrier Service subject to competitive bidding; issues Public Notices announcing auctions for Common Carrier Service Licenses; specifies the licenses to be auctioned; the deadlines for filing short-form applications, filing fees, and submission of upfront payments; the time and place of the auction; the method of competitive bidding to be used; competitive bidding procedures including, but not limited to, designated entity preferences, applicable bid submission procedures, upfront payment requirements, activity rules, stopping rules, and bid withdrawal procedures.

PART 24—PERSONAL COMMUNICATIONS SERVICES

3. The authority citation for part 24 is revised to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309 and 332, unless otherwise noted.

4. Section 24.10 is revised to read as follows:

§ 24.10 Scope.

This subpart contains some of the procedures and requirements for filing applications for licenses in the personal communications services. You should also consult subparts F and G of this part. Other Commission rule parts of importance that may be referred to with respect to licensing and operation of radio services governed under this part include 47 CFR parts 0, 1, 2, 5, 15, 17 and 20.

5. Section 24.129 is revised to read as follows:

§ 24.129 Frequencies.

The following frequencies are available for narrowband PCS. All licenses on channels indicated with an (**) will be eligible for bidding credits as set forth in section 24.309(b) of this part if competitive bidding is used to award such licenses.

(a) Eleven frequencies are available for assignment on a nationwide basis as follows:

(1) Five 50 kHz channels paired with 50 kHz channels:

Channel 1: 940.00–940.05 and 901.00–901.05 MHz;
Channel 2: 940.05–940.10 and 901.05–901.10 MHz;
Channel 3: 940.10–940.15 and 901.10–901.15 MHz;
Channel 4: 940.15–940.20 and 901.15–901.20 MHz; and,
Channel 5: 940.20–940.25 and 901.20–901.25 MHz.**

(2) Three 50 kHz channels paired with 12.5 kHz channels:

Channel 6: 930.40–930.45 and 901.7500–901.7625 MHz;
Channel 7: 930.45–930.50 and 901.7625–901.7750 MHz; and,
Channel 8: 930.50–930.55 and 901.7750–901.7875 MHz.**

(3) Three 50 kHz unpaired channels:

Channel 9: 940.75–940.80 MHz;
Channel 10: 940.80–940.85 MHz; and,
Channel 11: 940.85–940.90 MHz.**

(b) Six frequencies are available for assignment on a regional basis as follows:

(1) Two 50 kHz channels paired with 50 kHz channels:

Channel 12: 940.25–940.30 and 901.25–901.30 MHz; and,
Channel 13: 940.30–940.35 and 901.30–901.35 MHz.**

(2) Four 50 kHz channels paired with 12.5 kHz channels:

Channel 14: 930.55–930.60 and 901.7875–901.8000 MHz;
Channel 15: 930.60–930.65 and 901.8000–901,8125 MHz;
Channel 16: 930.65–930.70 and 901.8125–901.8250 MHz; and,
Channel 17: 930.70–930.75 and 901.8250–901.8375 MHz.**

(c) Seven frequencies are available for assignment on a MTA basis as follows:

(1) Two 50 kHz channels paired with 50 kHz channels:

Channel 18: 940.35–940.40 and 901.35–901.40 MHz; and,
Channel 19: 940.40–940.45 and 901.40–901.45 MHz.**

(2) Three 50 kHz channels paired with 12.5 kHz channels:

Channel 20: 930.75–930.80 and 901.8375–901.8500 MHz;
Channel 21: 930.80–930.85 and 901.8500–901.8625 MHz; and,
Channel 22: 930.85–930.90 and 901.8625–901.8750 MHz.**

(3) Two 50 kHz unpaired channels:

Channel 23: 940.90–940.95 MHz; and,
Channel 24: 940.95–941.00 MHz.**

(d) Two 50 kHz channels paired with 12.5 kHz channels are available for assignment on a BTA basis:

Channel 25: 930.90–930.95 and 901.8750–901.8875 MHz; and,
Channel 26: 930.95–931.00 and 901.8875–901.9000 MHz.**

Note 1: Operations in markets or portions of markets which border other countries, such as Canada and Mexico, will be subject to on-going coordination arrangements with neighboring countries.

6. Sections 24.130 (b) and (c) are revised to read as follows

§ 24.130 Paging response channels.

* * * * *

(b) The following four 12.5 kHz unpaired channels are available for assignment on a MTA basis:

Channel A: 901.9000–901.9125 MHz;
Channel B: 901.9125–901.9250 MHz;
Channel C: 901.9250–901.9375 MHz; and,
Channel D: 901.9375–901.9500 MHz.

(c) The following four 12.5 kHz unpaired channels are available for assignment on a BTA basis.

Channel E: 901.9500–901.9625 MHz;
Channel F: 901.9625–901.9750 MHz;
Channel G: 901.9750–901.9875 MHz; and,
Channel H: 901.9875–902.0000 MHz.

7. Part 24 is amended by adding a new subpart F consisting of §§ 23.301 through 24.309 to read as follows:

Subpart F—Competitive Bidding Procedures for Narrowband PCS

Sec.

24.301 Narrowband PCS subject to competitive bidding.
24.302 Competitive bidding design for narrowband PCS licensing.
24.303 Competitive bidding mechanisms
24.304 Withdrawal, default and disqualification penalties.

24 305 Bidding applications (FCC Form 175 and 175–S Short-Form).
24.306 Submission of upfront payments and downpayments.
24.307 Long-Form applications.
24.308 License grant, denial, default, and disqualification.
24 309 Designated entities.

Subpart F—Competitive Bidding Procedures for Narrowband PCS

§ 24.301 Narrowband PCS subject to competitive bidding.

Mutually exclusive initial applications to provide narrowband PCS service are subject to competitive bidding procedures. The general competitive bidding procedures found in 47 CFR part 1, subpart Q, will apply unless otherwise provided in this part.

§ 24.302 Competitive bidding design for narrowband PSC licensing.

(a) The Commission will employ the following competitive bidding designs when choosing from among mutually exclusive initial applications to provide narrowband PCS service:

(1) Single round sealed bid auctions (either sequential or simultaneous);

(2) Sequential oral auctions;

(3) Simultaneous multiple round auctions.

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

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

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

§ 24.303 Competitive bidding mechanisms.

(a) *Sequencing.* The Commission will establish and may vary the sequence in which narrowband PCS licenses will be auctioned.

(b) *Grouping.* In the event the Commission uses either a simultaneous multiple round competitive bidding design or combinatorial bidding, the Commission will determine which licenses will be auctioned simultaneously or in combination.

(c) *Reservation Price.* The Commission may establish a reservation price, either disclosed or undisclosed, below which a license subject to auction will not be awarded.

(d) *Minimum Bid Increments.* The Commission may, by announcement before or during an auction, require minimum bid increments in dollar or percentage terms.

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

(f) *Activity Rules.* The Commission may establish activity rules which require a minimum amount of bidding activity. In the event that the Commission establishes an activity rule in connection with a simultaneous multiple round auction, each bidder will be entitled to request and will be automatically granted five (5) waivers of such rule during the course of a single auction.

§ 24.304 Withdrawal, default and disqualification penalties.

(a) When the Commission conducts a simultaneous multiple round auction pursuant to § 24.302(a)(3), the Commission will impose penalties on bidders who withdraw high bids during the course of an auction, or who default on payments due after an auction closes or who are disqualified.

(1) *Bid withdrawal prior to close of auction.* A bidder who withdraws a high bid during the course of an auction will be subject to a penalty equal to the difference between the amount bid and the amount of the winning bid the next time the license is offered by the Commission. No withdrawal penalty would be assessed if the subsequent winning bid exceeds the withdrawn bid. This penalty amount will be deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission.

(2) *Default or disqualification after close of auction.* If a high bidder defaults or is disqualified after the close of such an auction, the defaulting bidder will be subject to the penalty in paragraph (a)(1) of this section plus an additional penalty equal to three (3) percent of the subsequent winning bid. If the subsequent winning bid exceeds the defaulting bidder's bid amount, the 3 percent penalty will be calculated based on the defaulting bidder's bid amount. These amounts will be deducted from any upfront payments or down payments that the defaulting or disqualified bidder has deposited with the Commission.

(b) When the Commission conducts single round sealed bid auctions or sequential oral auctions, the Commission may modify the penalties to be paid in the event of bid withdrawal, default or disqualification; provided, however, that such penalties shall not exceed the penalties specified above.

(c) In the case of single round bidding for narrowband PCS licenses:

(1) If a bid is withdrawn before the Commission releases the initial public notice announcing the winning bidder(s), no bid withdrawal penalty will be assessed.

(2) If a bid is withdrawn after the Commission releases the initial public notice announcing the winning bidder(s), the bid withdrawal penalty will be equal to the difference between the high bid amount and the amount of the next highest valid bid. A bid will be considered valid for this purpose if the bidder has not already been designated the winning bidder on more licenses than it is permitted to be awarded. Losing bidders will only be subject to this bid withdrawal penalty for a period of 30 days after the Commission releases the initial public notice announcing the winning bidders.

(d) In the case of oral sequential bidding for narrowband PCS licenses:

(1) If a bid is withdrawn before the Commission has declared the bidding to be closed for the license bid on, no bid withdrawal penalty will be assessed.

(2) If a bid is withdrawn after the Commission has declared the bidding to be closed for the license bid on, the bid withdrawal penalty of § 1.2104(g) and paragraphs (a) (1) and (2) of this section will apply.

§ 24.305 Bidding application (FCC Form 175 and 175–S Short-Form).

All applicants for initial provision of narrowband PCS service must submit applications on FCC Forms 175 and 175–S pursuant to the procedures set forth in § 1.2105 of part 1 of this chapter. The Commission will issue a public notice announcing the date of a narrowband PCS auction, the licenses which are to be auctioned, and the date on or before which applicants intending to participate in an upcoming narrowband PCS auction must file their applications in order to be eligible for that auction. The public notice will also contain information necessary for completion of the application as well as other important information such as the materials which must accompany the Forms, any filing fee that must accompany the application or any

upfront payment that will need to be submitted, and the location where the application must be filed.

§ 24.306 Submission of upfront payments and down payments.

(a) Where the Commission uses simultaneous multiple round auctions or oral sequential auctions bidders will be required to submit an upfront payment pursuant to the procedures set forth in § 1.2106 of this chapter.

(b) Winning bidders in an auction must submit a down payment to the Commission in accordance with the procedures set forth in § 1.2107 (a) and (b) of this chapter.

§ 24.307 Long-Form applications.

Winning bidders will be required to submit long form applications on FCC Form 401, as modified, within ten (10) business days after being notified that they are the winning bidder. Applications on FCC Form 401 shall be submitted pursuant to the procedures set forth in subpart G of this part and § 1.2107 (c) and (d) of this chapter and any associated public notices. Only auction winners will be eligible to file applications on FCC Form 401 for initial narrowband PCS licenses in the event of mutual exclusivity between applicants filing Form 175. Winning bidders need not complete Schedule B to Form 401.

§ 24.308 License grant, denial, default, and disqualification.

(a) Winning Bidders are required to pay the balance of their winning bid in a lump sum payment within five (5) business days following the award of the license. Grant of the license will be conditioned upon full and timely payment of the winning bid amount.

(b) A bidder who withdraws its bid, defaults on a payment or is disqualified will be subject to the penalties specified in § 1.2109 of this chapter.

§ 24.309 Designated entities.

Designated entities entitled to preferences in the narrowband PCS service are small businesses and businesses owned by members of minority groups and/or women as defined in § 1.2110(b) of this chapter.

(a) *Installment payments.* Small businesses, including small businesses owned by women and/or minorities, will be eligible to pay the full amount of their winning bid on any regional, MTA or BTA license in installments over the term of the license pursuant to the terms set forth in § 1.2110(d) of this chapter.

(b) *Bidding credits.* Businesses owned by women and/or minorities, including small businesses owned by women and/or minorities will be eligible for a twenty-five percent (25) bidding credit when bidding on the following licenses:

(1) The nationwide licenses on Channel 5, Channel 8 and Channel 11;

(2) All regional licenses on Channel 13 and Channel 17;

(3) All MTA licenses on Channel 19, Channel 22, Channel 24; and

(4) All BTA licenses on Channel 26. See 47 CFR 24.129.

The bidding credit will reduce by 25 percent the bid price that businesses owned by women and/or minorities will be required to pay to obtain a license. The licenses that will be eligible for bidding credits are indicated by an (**) in § 24.129.

(c) *Tax certificates.* Any initial investor in a business owned by minorities and/or women and who provides "start-up" financing, which allows such business to acquire a narrowband PCS license(s), and any investor who purchases an ownership interest in a narrowband PCS licensee owned by minorities and/or women within the first year after license issuance, which allows for the stabilization of the entity's capital base, may, upon the sale of such investment or interest, request from the Commission a tax certificate, so long as such investor transaction does not reduce minority or female ownership or control in the entity below 50.1 percent. Any narrowband PCS licensee who assigns or transfers control of its license to a business owned by minorities and/or women may request that the Commission issue it a tax certificate.

(d) *Unjust enrichment.* Designated entities using installment payments, bidding credits or tax certificates to obtain a narrowband PCS license will be subject to the following unjust enrichment provisions:

(1) If a small business paying for a narrowband PCS license in installment payments seeks to transfer a license to a non-small business entity during the term of the license, the remaining principal balance must be repaid as a condition of the license transfer.

(2) Female and minority-owned businesses seeking to transfer a license to an entity that is not owned by women or minorities will be required to reimburse the government for the amount of the bidding credit, plus interest at the rate imposed for installment financing at the time the license was awarded, before transfer will be permitted. The amount of this penalty will be reduced over time as follows: a transfer in the first two years of the license term will result in a forfeiture of 100 percent of the value of the bidding credit; in year three of the licenses term the penalty will be 75 percent; in year four the penalty will be 50 percent and in year five the penalty will be 25 percent, after which there will be no penalty.

(3) Any business owned by minorities and or women that obtains a narrowband PCS license through the benefit of tax certificates shall not assign or transfer control of its license within one year of its license grant date. If the assignee or transferee is a business owned by minorities and or women, this paragraph shall not apply; Provided, however, that the assignee or transferee shall not assign or transfer control of the license within one year of the grant date of the assignment or transfer.

8. Part 24 is amended by adding a new subpart G consisting of §§ 24.403 through 24.444 to read as follows:

Subpart G—Interim Application, Licensing and Processing Rules for Narrowband PCS

Sec.

24.403 Authorization required.
24.404 Eligibility.
24.405 Formal and informal applications.
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SUBPART G—INTERIM APPLICATION, LICENSING AND PROCESSING RULES FOR NARROWBAND PCS

§ 24.403 Authorization required.

No person shall use or operate any device for the transmission of energy or communications by radio in the services authorized by this part except as provided in this part.

§ 24.404 Eligibility.

(a) *General.* Authorizations will be granted upon proper application if:

(1) The applicant is qualified under the applicable laws and the regulations, policies and decisions issued under the laws, including § 24.101 and 24.12;

(2) There are frequencies available to provide satisfactory service; and

(3) The public interest, convenience or necessity would be served by a grant.

(b) Alien ownership.

A narrowband PCS authorization to provide Commercial Mobile Radio Service may not be granted to or held by:

(1) Any alien or the representative of any alien.

(2) Any corporation organized under the laws of any foreign government.

(3) Any corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or any corporation organized under the laws of a foreign country.

(4) Any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license. A Narrowband PCS authorization to provide Private Mobile Radio Service may not be granted to or held by a foreign government or a representative thereof.

§ 24.405 Formal and informal applications.

(1) Except for an authorization under any of the conditions stated in section 308(a) of the Communications Act of 1934 (47 U.S.C. 308(a)), the Commission may grant only upon written application received by it, the following authorization: Station licenses; modifications of licenses; renewals of licenses; transfers and assignments of station licenses, or any right thereunder.

(b) Except as may be otherwise permitted by this part, a separate written application shall be filed for each instrument of authorization requested. Applications may be:

(1) "Formal applications" where the Commission has prescribed in this Part a standard form; or

(2) "Informal applications" (normally in letter form) where the Commission has not prescribed a standard form.

(c) An informal application will be accepted for filing only if:

(1) A standard form is not prescribed or clearly applicable to the authorization requested;

(2) It is a document submitted, in duplicate, with a caption which indicates clearly the nature of the request, radio service involved, location of the station, and the application file number (if known); and

(3) It contains all the technical details and informational showings required by the rules and states clearly and completely the facts involved and authorization desired.

§ 24.406 Filing of Narrowband PCS applications, fees, and numbers of copies.

(a) As prescribed by §§ 24.305, 24.307, and 24.409 of this part, standard formal application forms applicable to the narrowband PCS may be obtained from either:

(1) Federal Communications Commission, Washington, DC 20554; or

(2) By calling the Commission's Forms Distribution Center, (202) 632–3676.

(b) Applications for the initial provision of narrowband PCS service must be filed on FCC Form 175 in accordance with the rules in § 24.305 and 47 CFR part 1, subpart Q. In the event of mutual exclusivity between applicants filing FCC Form 175, only auction winners will be eligible to file subsequent long form applications on FCC Form 401 for initial narrowband PCS licenses. Mutually exclusive applications filed on Form 175 are subject to competitive bidding under those rules. Narrowband PCS applicants filing Form 401 need not complete Schedule B.

(c) All applications for Narrowband PCS radio station authorizations (other than applications for initial provision of narrowband PCS service filed on FCC Form 175) shall be submitted for filing to: Federal Communications Commission, Washington, DC 20554, Attention: Narrowband PCS Processing Section. Applications requiring fees as set forth at part 1, subpart G of this chapter must be filed in accordance with § 0.401(b).

(d) All correspondence or amendments concerning a submitted application shall clearly identify the name of the applicant, applicant identification number or Commission file number (if known) or station call sign of the application involved, and may be sent directly to the Common Carrier Bureau, Narrowband PCS Processing Station.

(e) Except as otherwise specified, all applications, amendments, correspondence, pleadings and forms (including FCC Form 175) shall be submitted on one original paper copy and with three microfiche copies, including exhibits and attachments thereto, and shall be signed as prescribed by Sec. 1.743. Filings of five pages or less are exempt from the requirement to submit on microfiche, as well as emergency filings like letters requesting special temporary authority. Those filing any amendments, correspondence, pleadings, and forms must simultaneously submit the original hard copy which must be stamped "original". In addition to the original hard copy, those filing pleadings, including pleadings under 47 CFR 1.2108 shall also submit 2 paper copies as provided in 47 CFR 1.51.

(1) Microfiche copies. Each microfiche copy must be a copy of the signed original. Each microfiche copy shall be a 148 mm × 105 mm negative (clear transparent characters appearing on an opaque background) at 24X to 27X reduction for microfiche or microfiche jackets. One of the microfiche sets must be a silver halide camera master or a copy made on silver halide film such as Kodak Direct Duplicatory Film. The microfiche must be placed in paper microfiche envelopes and submitted in a B6 (125 mm × 176 mm) or 5 × 7.5 inch envelope. All applicants must leave Row "A" (the first row for page images) of the first fiche blank for in-house identification purposes.

(2) All applications and all amendments must have the following information printed on the mailing envelope, the microfiche envelope, and on the title area at the top of the microfiche:

(i) The name of the applicant;

(ii) The type of application (e.g., nationwide, regional, MTA, BTA, response channel);

(iii) The month and year of the document;

(iv) Name of the document;

(v) File number, applicant identification number, and call sign, if assigned; and

(vi) The identification number and date of the Public Notice announcing the auction in response to which the application was filed (if applicable).

Each microfiche copy of pleadings shall include:

(A) The month and year of the document;

(B) Name of the document;

(C) Name of the filing party;

(D) File number, applicant identification number, and call sign, if assigned;

(E) The identification number and date of the Public Notice announcing the auction in response to which the application was filed (if applicable). Abbreviations may be used if they are easily understood.

§§ 24.407–24.408 [Reserved].

§ 24.409 Standard application forms and permissive changes or minor modifications for the narrowband Personal Communications Service.

(a) Applications for the initial provision of narrowband PCS service must be filed on FCC Forms 175 and 175–S.

(b) Subsequent application by auction winners or non-mutually exclusive applicants for narrowband PCS radio station(s) under part 24. FCC Form 401 ("Application for New or Modified Common Carrier Radio Station Under part 22") shall be submitted by each auction winner for each narrowband PCS license applied for on FCC Form 175. In the event that mutual exclusivity does not exist between applicants filing FCC Form 175, the Commission will so inform the applicant and the applicant will also file FCC Form 401. Blanket licenses are granted for each market frequency block. Applications for individual sites are not needed and will not be accepted. See § 24.11. Narrowband PCS applicants filing Form 401 need not complete Schedule B.

(c) Extensions of time and reinstatement. When a licensee cannot complete construction in accordance with the provisions of § 24.103, a timely application for extension of time (FCC Form 489) must be filed.

(d) License for mobile subscriber station—These stations are considered to be associated with and covered by the authorization issued to the carrier serving the land mobile station. No additional authorization is required.

§ 24.410 [Reserved].

§ 24.411 Miscellaneous forms.

(a) Licensee qualifications. FCC Form 430 ("Common Carrier and Satellite Radio Licensee Qualifications Report") shall be filed by Narrowband Personal Communications Service licensees only as required by Form 490 (Application for Assignment or Transfer of Control Under part 22).

(b) Renewal of station license. Except for renewal of special temporary authorizations, FCC Form 405 ("Application for Renewal of Station License") must be filed in duplicate by the licensee between thirty (30) and sixty (60) days prior to the expiration date of the license sought to be renewed.

§ 24.412 [Reserved].

§ 24.413 General application requirements.

(a) Each application (including applications filed on Forms 175 and 401) for a radio station authorization or for consent to assignment or transfer of control in the narrowband PCS shall disclose fully the real party or parties in interest and must include the following information:

(1) A list of its subsidiaries, if any. Subsidiary means any business five per cent or more whose stock, warrants, options or debt securities are owned by the applicant or an officer, director, stockholder or key management personnel of the applicant. This list must include a description of each subsidiary's principal business and a description of each subsidiary's relationship to the applicant.

(2) A list of its affiliates, if any. Affiliates means any business which holds a five per cent or more interest in the applicant, or any business in which a five per cent or more interest is held by another company which holds a five per cent interest in the applicant (e.g. Company A owns 5% of Company B and 5% of Company C; Companies B and C are affiliates).

(3) A list of the names, addresses, citizenship and principal business of any person holding five per cent or more of each class of stock, warrants, options or debt securities together with the amount and percentage held, and the name, address, citizenship and principal place of business of any person on whose account, if other than the holder, such interest is held. If any of these persons are related by blood or marriage, include such relationship in the statement.

(4) In the case of partnerships, the name and address of each partner, each partner's citizenship and the share or interest participation in the partnership. This information must be provided for all partners, regardless of their respective ownership interests in the partnership. A signed and dated copy of the partnership agreement must be included in the application. This information must be included in Exhibit V of the application.

(b) Each application for a radio station authorization in the narrowband PCS must:

(1) Submit the information required by the Commission's rules, requests, and application forms;

(2) Be maintained by the applicant substantially accurate and complete in all significant respects in accordance with the provisions of Sec. 1.65 of this chapter; and

(3) Show compliance with and make all special showings that may be applicable.

(c) Where documents, exhibits, or other lengthy showings already on file with the Commission contain information which is required by an application form, the application may specifically refer to such information, if:

(1) The information previously filed is over one A4 (21 cm×29.7 cm) or 8.5×11 inch (21.6 cm×27.9 cm) page in length, and all information referenced therein is current and accurate in all significant respects under § 1.65 of this chapter; and

(2) The reference states specifically where the previously filed information can actually be found, including mention of:

(i) the station call sign or application file number whenever the reference is to station files or previously filed applications;

(ii) The title of the proceeding, the docket number, and any legal citations, whenever the reference is to a docketed proceeding. However, questions on an application form which call for specific technical data, or which can be answered by a "yes" or "no" or other short answer shall be answered as appropriate and shall not be cross-referenced to a previous filing.

(d) In addition to the general application requirements of subpart F and §§ 1.2105, 24.413 and 24.415 of this part, applicants shall submit any additional documents, exhibits, or signed written statements of fact:

(1) As may be required by these rules; and

(2) As the Commission, at any time after the filing of an application and during the term of any authorization, may require from any applicant, permittee, or licensee to enable it to determine whether a radio authorization should be granted, denied, or revoked.

(e) Except when the Commission has declared explicitly to the contrary, an

informational requirement does not in itself imply the processing treatment of decisional weight to be accorded the response.

(f) All applicants (except applicants filing FCC Form 175) are required to indicate at the time their application is filed whether or not a Commission grant of the application may have a significant environmental impact as defined by 47 CFR 1.1307. If answered affirmatively, the requisite environmental assessment as prescribed in § 1.1311 of this chapter must be filed with the application and Commission environmental review must be completed prior to construction. See § 1.1312 of this chapter. All narrowband PCS licensees are subject to a continuing obligation to determine whether subsequent construction may have a significant environmental impact prior to undertaking such construction and to otherwise comply with §§ 1.1301 through 1.1319 of this chapter. See 47 CFR 1.1312.

§ 24.414 [Reserved].

§ 24.415 Technical content of applications; maintenance of list of station locations.

(a) All applications required by this part shall contain all technical information required by the application forms or associated public notice(s). Applications other than initial applications for a narrowband PCS license must also comply with all technical requirements of the rules governing the narrowband PCS (see subparts C and D as appropriate). The following paragraphs describe a number of general technical requirements.

(b) Each application (except applications for initial licenses filed on Form 175) for a radio station authorization for narrowband PCS must comply with the provisions of §§ 24.129 through 24.135.

(c)—(i) [Reserved]

(i) The location of the transmitting antenna shall be considered to be the station location. Narrowband PCS licensees must maintain a current list of all station locations, which must describe the transmitting antenna site by its geographical coordinates and also by conventional reference to street number, landmark, or the equivalent. All such coordinates shall be specified in terms of degrees, minutes, and seconds to the nearest second of latitude and longitude.

§ 24.416 Station antenna structures.

(a) Unless the narrowband PCS licensee has received prior approval from the FCC, no antenna structure, including radiating elements, tower, supports and all appurtenances, may be higher than 61 m (200 feet) above ground level at its site.

(b) Unless the narrowband PCS licensee has received prior approval from the FCC, no antenna structure at an airport or heliport that is available for public use and is listed in the Airport Directory of the current Airman's Information Manual or in either the Alaska or Pacific Airman's Guide and Chart Supplement; or at an airport or heliport under construction that is the subject of a notice or proposal on file with the FAA, and except for military airports, it is clearly indicated that the airport will be available for public use; or at an airport or heliport that is operated by the armed forces of the United States; or a place near any of these airports or heliports, may be higher than:

(1) 1 m above the airport elevation for each 100 m from the airport runway longer than 1 km within 6.1 km of the antenna structure.

(2) 2 m above the airport elevation for each 100 m from the nearest runway shorter than 1 km within 3.1 km of the antenna structure.

(3) 4 m above the airport elevation for each 100 m from the nearest landing pad within 1.5 km of the antenna structure.

(c) A narrowband PCS station antenna structure no higher than 6.1 m (10 feet) above ground level at its site or no higher than 6.1 m above any natural object or existing manmade structure, other than an antenna structure, is exempt from the requirements of paragraphs (a) and (b) of this section.

(d) Further details as to whether an aeronautical study and/or obstruction marking and lighting may be required, and specifications for obstruction marking and lighting are contained in part 17 of the FCC Rules, Construction, Marking and Lighting of Antenna Structures. To request approval to place an antenna structure higher than the limits specified in paragraphs (a), (b), and (c) of this section, the licensee must notify the Federal Aviation Administration (FAA) on FAA Form 7460–1 and the FCC on FCC Form 854.

§§ 24.417–24.418 [Reserved]

§ 24.419 Waiver of rules.

(a) *Request for waivers.* (1) Waivers of these rules may be granted upon application or by the Commission on its own motion. Requests for waivers shall contain a statement of reasons sufficient to justify a waiver. Waivers will not be granted except upon an affirmative showing:

(i) That the underlying purpose of the rule will not be served, or would be frustrated, by the application in a particular case, and that grant of the waiver is otherwise in the public interest; or

(ii) That the unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest. Applicants must also show the lack of a reasonable alternative.

(2) If the information necessary to support a waiver request is already on file, the applicant may cross-reference to the specific filing where it may be found.

(b) *Denial of waiver, alternate showing required.* If a waiver is not granted, the application will be dismissed as defective unless the applicant has also provided an alternative proposal which complies with the Commission's rules (including any required showings).

§ 24.420 Defective applications.

(a) Unless the Commission shall otherwise permit, an application will be unacceptable for filing and will be returned to the applicant with a brief statement as to the omissions or discrepancies if:

(1) The application is defective with respect to completeness of answers to questions, informational showings, execution, or other matters of a formal character; or

(2) The application does not comply with the Commission's rules, regulations, specific requirements for additional information or other requirements. See also 47 CFR 1.2105.

(b) Some examples of common deficiencies which result in defective applications under paragraph (a) of this section are:

(1) The application is not filled out completely and signed;

(2)–(4) [Reserved]

(5) The application (other than an application filed on FCC Form 175) does not include an environmental assessment as required for an action that may have a significant impact upon the environment, as defined in § 1.1307 of this chapter.

(6) [Reserved]

(7) The application is filed prior to the Public Notice issued under § 24.305 announcing the application filing date for the relevant auction or after the cutoff date prescribed in that public notice;

(c) [Reserved]

(d) If an applicant is requested by the Commission to file any documents or any supplementary or explanatory information not specifically required in the prescribed application form, a

failure to comply with such request within a specified time period will be deemed to render the application defective and will subject it to dismissal.

§ 24.421 Inconsistent or conflicting applications.

While an application is pending and undecided, no subsequent inconsistent or conflicting application may be filed by the same applicant, his successor or assignee, or on behalf or for the benefit of the same applicant, his successor or assignee.

§ 24.422 Amendment of application for Narrowband Personal Communications Service filed on FCC Form 175.

(a) The Commission will provide bidders a limited opportunity to cure defects in FCC Form 175 specified herein except for failure to sign the application and to make certifications, defects which may not be cured. See also 47 CFR 1.2105.

(b) In the Narrowband PCS, the only amendments to FCC Form 175 which will be permitted are minor amendments to correct minor errors or defects such as typographical errors. All other amendments to FCC Form 175, such as ownership changes or changes in the identification of parties to bidding consortia, will be considered to be major amendments. An FCC Form 175 which is amended by a major amendment will be considered to be newly filed and cannot be resubmitted after applicable filing deadlines. See also § 1.2105.

§ 24.423 Amendment of applications for Narrowband Personal Communications Service (other than applications filed on FCC Form 175).

This section applies to all applications for Narrowband Personal Communications Service other than applications filed on FCC Form 175.

(a) *Amendments as of right.* A pending application may be amended as a matter of right if the application has not been designated for hearing.

(1) Amendments shall comply with § 24.429, as applicable; and

(2) Amendments which resolve interference conflicts or amendments under § 24.429 may be filed at any time.

(b) The Commission or the presiding officer may grant requests to amend an application designated for hearing only if a written petition demonstrating good cause is submitted and properly served upon the parties of record.

(c) *Major amendments, minor amendments.* The Commission will classify all amendments as minor except in the cases listed below. An amendment shall be deemed to be a major amendment subject to § 24.427 under any of the following circumstances:

(1) Change in technical proposal. If the amendment results in a substantial change in the engineering proposal such as (but not necessarily limited to) a change in, or an addition of, a radio frequency; or

(2) Amendment to proposed service area. If the amendment extends the reliable service area of the proposed facilities outside its MTA, BTA, or other applicable market area as defined in § 24.102; or

(3) A substantial change in ownership or control.

(d) If a petition to deny (or other formal objection) has been filed, any amendment, requests for waiver, (or other written communications) shall be served on the petitioner, unless waiver of this requirement is granted pursuant to paragraph (e) of this section. See also 47 CFR 1.2108.

(e) The Commission may waive the service requirements of paragraph (d) of this section and prescribe such alternative procedures as may be appropriate under the circumstances to protect petitioners' interests and to avoid undue delay in a proceeding, if an applicant submits a request for waiver which demonstrates that the service requirement is unreasonably burdensome.

(f) Any amendment to an application shall be signed and shall be submitted in the same manner, and with the same number of copies, as was the original application. Amendments may be made in letter form if they comply in all other respects with the requirements of this chapter.

(g) An application will be considered to be a newly filed application if it is amended by a major amendment (as defined in this section), except in the following circumstances:

(1)–(2) [Reserved]

(3) The amendment reflects only a change in ownership or control found by the Commission to be in the public interest;

(4) [Reserved]

(5) The amendment corrects typographical transcription, or similar clerical errors which are clearly demonstrated to be mistakes by reference to other parts of the application, and whose discovery does not create new or increased frequency conflicts;

(6) The amendment does not create new or increased frequency conflicts, and is demonstrably necessitated by events which the applicant could not have reasonably foreseen at the time of filing, such as, for example:

(i) The loss of a transmitter or receiver site by condemnation, natural causes, or loss of lease or option; or

(ii) Obstruction of a proposed transmission path caused by the erection of a new building or other structure.

§ 24.424 [Reserved].

§ 24.425 Application for temporary authorizations.

(a) In circumstances requiring immediate or temporary use of facilities, request may be made for special temporary authority to install and/or operate new or modified equipment. Any such request may be submitted as an informal application in the manner set forth in § 24.5 and must contain full particulars as to the proposed operation including all facts sufficient to justify the temporary authority sought and the public interest therein. No such request will be considered unless the request is received by the Commission at least 10 days prior to the date of proposed construction or operation or, where an extension is sought, expiration date of the existing temporary authorization. A request received within less than 10 days may be accepted upon due showing of sufficient reasons for the delay in submitting such request.

(b) Special temporary authorizations may be granted without regard to the 30-day public notice requirements of § 24.27(b) when:

(1) The authorization is for a period not to exceed 30 days and no application for regular application is contemplated to be filed;

(2) The authorization is for a period not to exceed 60 days pending the filing of an application for such regular operation;

(3) The authorization is to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as previously authorized; or

(4) The authorization is made upon a finding that there are extraordinary circumstances requiring operation in the public interest and that delay in the institution of such service would seriously prejudice the public interest.

(c) Temporary authorizations of operation not to exceed 180 days may be granted under the standards of section 309(f) of the Communications Act where extraordinary circumstances so require. Extensions of the temporary authorization for a period of 180 days each may also be granted, but the renewal applicant bears a heavy burden to show that extraordinary circumstances warrant such an extension.

(d) In cases of emergency found by the Commission, involving danger to life or property or due to damage of equipment, or during a national emergency proclaimed by the President or declared by the Congress or during the continuance of any war in which the United States is engaged and when such action is necessary for the national defense or safety or otherwise in furtherance of the war effort, or in cases of emergency where the Commission finds that it would not be feasible to secure renewal applications from existing licensees or otherwise to follow normal licensing procedure, the Commission will grant radio station authorizations and station licenses, or modifications or renewals thereof, during the emergency found by the Commission or during the continuance of any such national emergency or war, as special temporary licenses, only for the period of emergency or war requiring such action, without the filing of formal applications.

§ 24.426 Receipt of application; applications in the narrowband Personal Communications Services filed on FCC Form 175 and other applications in the narrowband PCS Service.

(a) All applications for the initial provision of narrowband PCS service must be submitted on FCC Forms 175 and 175–S. Mutually exclusive initial applications in the narrowband Personal Communications Services are subject to competitive bidding. FCC Form 401 ("Application for New or Modified Common Carrier Radio Station Under Part 22") must be submitted by each winning bidder for each narrowband PCS license applied for on FCC Form 175. In the event that mutual exclusivity does not exist between applicants filing FCC Form 175, the applicant will also file FCC Form 401. The aforementioned Forms 175, 175–S, and 401 are subject to the provisions of 47 CFR part 1, subpart Q ("Competitive Bidding Proceedings") and subpart F of this part. Blanket licenses are granted for each market frequency block. Applications for individual sites are not needed and will not be accepted. See § 24.11.

(b) Applications received for filing are given a file number. The assignment of a file number to an application is merely for administrative convenience and does not indicate the acceptance of the application for filing and processing. Such assignment of a file number will not preclude the subsequent return or dismissal of the application if it is found to be not in accordance with the Commission's rules.

(c) Acceptance of an application for filing merely means that it has been the subject of a preliminary review as to completeness. Such acceptance will not preclude the subsequent return or dismissal of the application if it is found to be defective or not in accordance with the Commission's rules. (See § 24.413 for additional information concerning filing of applications.)

§ 24.427 Public notice period.

(a) At regular intervals, the Commission will issue a public notice listing:

(1) The acceptance for filing of all applications and major amendments thereto;

(2) Significant Commission actions concerning applications listed as acceptable for filing;

(3) Information which the Commission in its discretion believes of public significance. Such notices are solely for the purpose of informing the public and do not create any rights in an applicant or any other person;

(4) Special environmental considerations as required by part 1 of this chapter.

(b)(1) The Commission will not grant any application until expiration of a period of thirty (30) days following the issuance date of a public notice listing the application, or any major amendments thereto, as acceptable for filing. Provided, that the Commission will not grant an application filed on Form 401 filed either by a winning bidder or by an applicant whose Form 175 application is not mutually exclusive with other applicants, until the expiration of a period of forty (40) days following the issuance of a public notice listing the application, or any major amendments thereto, as acceptable for filing. See also 47 CFR 1.2108.

(c) As an exception to paragraphs (a)(1), (a)(2) and (b) of this section, the public notice provisions are not applicable to applications:

(1) For authorization of a minor technical change in the facilities of an authorized station where such a change would not be classified as a major amendment (as defined by Sec. 24.423) were such a change to be submitted as an amendment to a pending application;

(2) For issuance of a license subsequent to a radio station authorization or, pending application for a grant of such license, any special or temporary authorization to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as would be authorized by such license;

(3) For extension of time to complete construction of authorized facilities, see § 24.103;

(4) For temporary authorization pursuant to § 24.425(b);

(5) [Reserved]

(6) For an authorization under any of the proviso clauses of section 308(a) of the Communications Act of 1934 (47 U.S.C. 308(a));

(7) For consent to an involuntary assignment or transfer of control of a radio authorization; or

(8) For consent to a voluntary assignment or transfer of control of a radio authorization, where the assignment or transfer does not involve a substantial change in ownership or control.

§ 24.428 Dismissal and return of applications.

(a) Except as provided under § 24.429, any application may be dismissed without prejudice as a matter of right if the applicant requests its dismissal prior to designation for hearing or, in the case of applications filed on Forms 175 and 175–S, prior to auction. An applicant's request for the return of his application after it has been accepted for filing will be considered to be a request for dismissal without prejudice. Applicants requesting dismissal of their applications are also subject to 47 CFR 1.2104. Requests for dismissal shall comply with the provisions of § 24.429 as appropriate.

(b) A request to dismiss an application without prejudice will be considered after designation for hearing only if:

(1) A written petition is submitted to the Commission and is properly served upon all parties of record, and

(2) The petition complies with the provisions of § 24.429 (whenever applicable) and demonstrates good cause.

(c) The Commission will dismiss an application for failure to prosecute or for failure to respond substantially within a specified time period to official correspondence or requests for additional information. Dismissal shall be without prejudice if made prior to designation for hearing or prior to auction, but dismissal may be made with prejudice for unsatisfactory compliance with § 24.429 or after designation for hearing or after the applicant is notified that it is the winning bidder under the auction process.

§ 24.429 Ownership changes and agreements to amend or to dismiss applications or pleadings.

(a) Applicability. Subject to the provisions of 47 CFR 1.2105 (Bidding

Application and Certification Procedures; Prohibition of Collusion), this section applies to applicants and all other parties interested in pending applications who wish to resolve contested matters among themselves with a formal or an informal agreement or understanding. This section applies only when the agreement or understanding will result in:

(1) A major change in the ownership of an applicant to which §§ 24.423 and 24.423(g) apply or which would cause the applicant to lose its status as a designated entity under § 24.309, or

(2) The individual or mutual withdrawal, amendment or dismissal of any pending application, amendment, petitioner or other pleading.

(b) Policy. Parties to contested proceedings are encouraged to settle their disputes among themselves. Parties which, under a settlement agreement, apply to the Commission for ownership changes or for the amendment or dismissal of either pleadings or applications, shall at the time of filing notify the Commission that such filing is the result of an agreement or understanding.

(c) If the amendment would, if granted, cause the applicant to lose its status as a designated entity under § 24.309, the applicant must comply with the obligations imposed by § 24.309 (Designated Entities) and § 1.2111 (Assignment of transfer of control; unjust enrichment) before the amendment will be granted.

(d) The provisions of 47 CFR 22.927 will apply in the event of the individual or mutual withdrawal, amendment or dismissal of any pending application, amendment, petitioner or other pleading.

§ 24.430 Opposition to applications.

(a) Petitions to deny (including petitions for other forms of relief) and responsive pleadings for Commission consideration must comply with Section 1.2108 and must:

(1) Identify the application or applications (including applicant's name, station location, Commission file numbers and radio service involved) with which it is concerned;

(2) Be filed in accordance with the pleading limitations, filing periods, and other applicable provisions of 47 CFR 1.41 through 1.52 except where otherwise provided in 47 CFR 1.2108;

(3) Contain specific allegations of fact which, except for facts of which official notice may be taken, shall be supported by affidavit of a person or persons with personal knowledge thereof, and which shall be sufficient to demonstrate that the petitioner (or respondent) is a party in interest and that a grant of, or other Commission action regarding, the application would be prima facie inconsistent with the public interest;

(4) Be filed within thirty (30) days after the date of public notice announcing the acceptance for filing of any such application or major amendment thereto (unless the Commission otherwise extends the filing deadline); and

(5) Contain a certificate of service showing that it has been mailed to the applicant no later than the date of filing thereof with the Commission.

(b) A petition to deny a major amendment to a previously filed application may only raise matters directly related to the amendment which could not have been raised in connection with the underlying, previously filed application. This does not apply to petitioners who gain standing because of the major amendment.

§ 24.431 Mutually exclusive applications.

(a) The Commission will consider applications to be mutually exclusive if their conflicts are such that the grant of one application would effectively preclude by reason of harmful electrical interference, or other practical reason, the grant of one or more of the other applications. The Commission will presume "harmful electrical interference" to mean interference which would result in a material impairment to service rendered to the public despite full cooperation in good faith by all applicants or parties to achieve reasonable technical adjustments which would avoid electrical conflict.

(b) Mutually exclusive applications filed on Form 175 for the initial provision of narrowband PCS service are subject to competitive bidding in accordance with the procedures in subpart F of this part and in 47 CFR part 1, subpart Q.

(c) An application will be entitled to comparative consideration with one or more conflicting applications only if the Commission determines that such comparative consideration will serve the public interest.

§ 24.432 Consideration of applications.

(a) Applications for an instrument of authorization will be granted if, upon examination of the application and upon consideration of such other matters as it may officially notice, the Commission finds that the grant will serve the public interest, convenience, and necessity. See also § 1.2108.

(b) The grant shall be without a formal hearing if, upon consideration of the application, any pleadings or objections filed, or other matters which may be officially noticed, the Commission finds that:

(1) The application is acceptable for filing, and is in accordance with the Commission's rules, regulations, and other requirements;

(2) The application is not subject to a post-auction hearing or to comparative consideration pursuant to § 24.431 with another application(s);

(3) A grant of the application would not cause harmful electrical interference to an authorized station;

(4) There are no substantial and material questions of fact presented; and

(5) The applicant is qualified under current FCC regulations and policies.

(c) If the Commission should grant without a formal hearing an application for an instrument of authorization which is subject to a petition to deny filed in accordance with § 24.430, the Commission will deny the petition by the issuance of a Memorandum Opinion and Order which will concisely report the reasons for the denial and dispose of all substantial issues raised by the petition.

(d) Whenever the Commission, without a formal hearing, grants any application in part, or subject to any terms or conditions other than those normally applied to applications of the same type, it shall inform the applicant of the reasons therefor, and the grant shall be considered final unless the Commission should revise its action (either by granting the application as originally requested, or by designating the application for a formal evidentiary hearing) in response to a petition for reconsideration which:

(1) Is filed by the applicant within thirty (30) days from the date of the letter or order giving the reasons for the partial or conditioned grant;

(2) Rejects the grant as made and explains the reasons why the application should be granted as originally requested; and,

(3) Returns the instrument of authorization.

(e) The Commission will designate an application for a formal hearing, specifying with particularity the matters and things in issue, if, upon consideration of the application, any pleadings or objections filed, or other matters which may be officially noticed, the Commission determines that:

(1) A substantial and material question of fact is presented (see also § 1.2108);

(2) The Commission is unable for any reason to make the findings specified in paragraph (a) of this section and the application is acceptable for filing,

complete, and in accordance with the Commission's rules, regulations, and other requirements; or

(3) The application is entitled to comparative consideration (under § 24.431) with another application (or applications).

(f) The Commission may grant, deny or take other action with respect to an application designated for a formal hearing pursuant to paragraph (e) of this section or part 1 of this chapter.

(g) [Reserved]

(h) Reconsideration or review of any final action taken by the Commission will be in accordance with Subpart A of part 1 of this chapter.

§ 24.433–24.438 [Reserved].

§ 24.439 Transfer of control or assignment of station authorization.

(a) Approval required. Authorizations shall be transferred or assigned to another party, voluntarily (for example, by contract) or involuntarily (for example, by death, bankruptcy, or legal disability), directly or indirectly or by transfer of control of any corporation holding such authorization, only upon application and approval by the Commission. A transfer of control or assignment of station authorization in the narrowband Personal Communications Service is also subject to § 24.309 (Designated Entities) and § 1.2111 (Assignment or transfer of control: unjust enrichment).

(1) A change from less than 50% ownership to 50% or more ownership shall always be considered a transfer of control.

(2) In other situations a controlling interest shall be determined on a case-by-case basis considering the distribution of ownership, and the relationships of the owners, including family relationships.

(b) Form required—(1) Assignment.

(i) FCC Form 490 shall be filed to assign a license or permit.

(ii) In the case of involuntary assignment, FCC Form 490 shall be filed within 30 days of the event causing the assignment.

(2) *Transfer of control.* (i) FCC Form 490 shall be submitted in order to transfer control of a corporation holding a license or permit.

(ii) In the case of involuntary transfer of control, FCC Form 490 shall be filed within 30 days of the event causing the transfer.

(3) *Form 430.* Whenever an application must be filed under paragraph (a) (1) or (2) of this section, the assignee or transferee shall file FCC Form 430 ("Common Carrier Radio License Qualification Report") unless an accurate report is on file with the Commission.

(4) *Notification of completion.* The Commission shall be notified by letter of the date of completion of the assignment or transfer of control.

(5) If the transfer of control of a license is approved, the new licensee is held to the original build-out requirement of § 24.103.

(c) In acting upon applications for transfer of control or assignment, the Commission will not consider whether the public interest, convenience, and necessity might be served by the transfer or assignment of the authorization to a person other than the proposed transferee or assignee.

(d) [Reserved]

§ 24.440–24.442 [Reserved].

§ 24.443 Extension of time to complete construction.

(a) If construction is not completed within the time period set forth in § 24.103, the authorization will automatically expire. Before the period for construction expires an application for an extension of time to complete construction (FCC Form 489) may be filed. See paragraph (b) of this section. Within 30 days after the authorization expires an application for reinstatement may be filed on FCC Form 489.

(b) An application for extension of time to complete construction may be made on FCC Form 489. Extension of time requests must be filed prior to the expiration of the construction period. Extensions will be granted only if the licensee shows that the failure to complete construction is due to causes beyond his control. An application for modification of an authorization (under construction) does not extend the initial construction period. If additional time to construct is required, an FCC Form 489 must be submitted.

§ 24.444 Termination of authorization.

(a) (1) All authorizations shall terminate on the date specified on the authorization or on the date specified by these rules, unless a timely application for renewal has been filed.

(2) If no application for renewal has been made before the authorization's expiration date, a late application for renewal will only be considered if it is filed within 30 days of the expiration date and shows that the failure to file a timely application was due to causes beyond the applicant's control. During this 30 day period reinstatement applications must be filed on FCC Form 489. Service to subscribers need not be suspended while a late filed renewal application is pending, but such service shall be without prejudice to Commission action on the renewal application and any related sanctions. See also § 24.16 (Criteria for Comparative Renewal Proceedings).

(b) Special Temporary Authority. A special temporary authorization shall automatically terminate upon failure to comply with the conditions in the authorization.

[FR Doc. 94–12165 Filed 5–23–94; 8:45 am]

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47 CFR Part 64

[CC Docket No. 92–256, FCC 94–58]

Common Carriers; Open Network Architecture Requirements an Nondiscrimination Safeguards

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopted an order applying to GTE Corporation the same regulatory framework of Open Network Architecture (ONA) requirements and nondiscrimination safeguards that apply to the Bell Operating Companies (BOCs) for GTE's participation in the enhanced services market. Under this order, GTE will be required to file an ONA plan within nine months of the release of this order, file federal and state ONA tariffs three months later, and implement ONA requirements and nondiscrimination safeguards fifteen months from the release of this order. The Commission stated that the public interest benefits of applying these measures to GTE amply justify its taking the next logical step toward an overall environment that will foster a fully competitive market for the provision of enhanced services to the American public.

EFFECTIVE DATE: June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Peggy Reitzel, Policy and Program Planning Division, Common Carrier Bureau (202) 632–1300.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The requirements have been analyzed with respect to the Paperwork Reduction Act of 1980, as amended, 44 U.S.C. § § 3501–20. The information collection contained herein is not subject to the clearance provisions of 44 U.S.C. 3507 because it is imposed on less than nine respondents.

Regulatory Flexibility Act

In the NPRM the Commission certified that the Regulatory Flexibility Act of 1980 did not apply to this