

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Reporting and recordkeeping, Nitrogen Oxides, Ozone, Volatile organic compounds.

Dated: September 19, 1997.

John P. DeVillars,

Regional Administrator, EPA Region I.

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FEDERAL COMMUNICATIONS COMMISSION**47 CFR Parts 1 and 24**

[WT Docket No. 97-82; FCC 97-342]

Installment Payment Financing for Personal Communications Services (PCS) Licensees

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this *Further Notice of Proposed Rule Making* the Commission proposes auction rules and procedures for the reauction of licenses surrendered to the Commission pursuant to the Commission's decision in the *Second Report and Order* in Docket 97-82, FCC 97-342 (released October 16, 1997). These proposed rules are necessary to ensure that any licenses surrendered to the Commission can be awarded to parties who are capable of providing service to the public as rapidly as possible. The intended effect of this action is to seek comment on proposed rules and procedures for the reauction of all surrendered C block licenses.

DATES: Comments are due on or before November 13, 1997. Reply comments are due on or before November 24, 1997.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark Bollinger, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418-0660.

SUPPLEMENTARY INFORMATION: This *Further Notice of Proposed Rule Making* in WT Docket No. 97-82, adopted on September 25, 1997, and released on October 16, 1997, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W.,

Washington, D.C. 20036, (202) 857-3800. The complete *Further Notice of Proposed Rule Making* also is available on the Commission's Internet home page (<http://www.fcc.gov>).

SUMMARY OF ACTION:*I. Background*

1. On September 25, 1997, the Federal Communications Commission (Commission) adopted a *Further Notice of Proposed Rule Making* seeking comment on proposed changes to its C block rules to govern the reauction of any licenses or spectrum surrendered pursuant to the provisions adopted in the *Second Report and Order*. See Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, *Second Report and Order*, WT Docket No. 97-82, FCC 97-342 (released October 16, 1997) ("*Second Report and Order*").

II. Further Notice of Proposed Rule Making

2. In the *Further Notice of Proposed Rule Making*, the Commission proposes to reauction all licenses and spectrum surrendered to the Commission under the *Second Report and Order*. The Commission believes that a reauction of licenses surrendered to the Commission will assure rapid provision of service to the public. A reauction also will ensure that these licenses are available to all applicants in a rapid and fair fashion. A simultaneous reauction of all the licenses turned in to the Commission will benefit all bidders because they will be able to bid for a number of licenses in a single reauction, instead of a series of piecemeal auctions after defaults and revocations, in which opportunities for aggregation might be less favorable.

A. Licenses to be Reauctioned

3. The Commission proposes that the reauction include the following licenses: (1) All licenses representing the disaggregated spectrum surrendered to the Commission under the disaggregation option; (2) all licenses surrendered to the Commission on or before January 15, 1998, by incumbent licensees who choose to take advantage of the Commission's prepayment or amnesty options; and (3) all PCS C block licenses currently held by the Commission as a result of previous defaults. By including all available licenses in the reauction, the Commission can efficiently and fairly speed service to the public. In addition, offering all available licenses will allow for the most efficient aggregation of

licenses. The Commission seeks comment on this proposal.

B. Eligibility for Participation

4. As the Commission stated in the *Second Report and Order*, all entrepreneurs, all entities that applied for the original C block auction, and all current C block licensees with exceptions, are eligible to bid in the reauction. The Commission seeks comment on whether it should restrict participation in the reauction to entities that have not defaulted on any FCC payments. See 47 U.S.C. 309(j)(5). Should the Commission presume that an entity's prior default on payments for an FCC license or authorization makes that entity not financially or otherwise fit to acquire a reauctioned C block license? Alternatively, the Commission could review financial qualifications through several other means. For instance, the Commission could allow such entity to participate in an auction, but if the applicant is a winning bidder, set for expedited hearing the financial qualifications of the bidder, and allow the applicant to rebut a presumption that it is not financially qualified. See 47 CFR 24.832(e), 1.2108(d)(3). Another alternative would be to request that the entity submit more detailed financial information at the application stage, or require that the entity submit a higher upfront payment amount (e.g., a 50% upfront payment requirement) to participate in the reauction. With regard to C block licensees who elect the disaggregation, amnesty, or prepayment options adopted in the *Second Report and Order*, the Commission observes that by making such election and related payments they are not in default on their C block licenses and, thus, would not be restricted from participation in the reauction (except as otherwise set forth in the *Second Report and Order*).

C. Reauction Procedures

5. The Commission proposes below auction design and application procedures for the reauction of C block licenses.

1. Competitive Bidding Design

6. The Commission proposes that all licenses and spectrum surrendered be awarded by means of a simultaneous multiple-round electronic auction. The Commission bases this proposal on its desire to quickly auction available licenses and thereby to promote the most efficient assignment of the spectrum. Consistent with the Commission's normal practice, the specific procedural requirements of the auction would be set out by public notice prior to the auction. In general,

the Commission has indicated that the auction procedures chosen for each service should be those that will best promote the policy objectives identified by Congress. The Commission further concluded in Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Second Report and Order*, 59 FR 22980 (May 4, 1994) (“*Competitive Bidding Second Report and Order*”) that in most cases the goals set forth in Section 309(j) will be best achieved by designing auctions that award authorizations to the parties that value them most highly. As the Commission explained, such parties are most likely to deploy new technologies and services rapidly, and to promote the development of competition for the provision of those and other services.

7. Also, multiple-round bidding during the auction will provide more information to bidders about the value of licenses than single round bidding. With better information, bidders have less incentive to shade their bids downward in order to avoid the “winner’s curse,” that is, the tendency for the winner to be the bidder who most overestimates the value of the item being auctioned. Finally, multiple-round bidding is likely to be fairer than single-round bidding. Every bidder has the opportunity to win if it is willing to pay the most for it. Thus, the Commission tentatively concludes that multiple-round bidding would be the best method of auctioning all available licenses and the Commission seeks comment on this tentative conclusion.

8. The Commission also tentatively concludes that all surrendered C block licenses should be awarded in a single simultaneous multiple-round auction. A single simultaneous auction will facilitate any aggregation strategies that bidders may have, and it would provide the most information to bidders about license values at a time that they can best put that information to use. The Commission seeks comment on this tentative conclusion.

9. Finally, if the Commission adopts simultaneous multiple-round bidding as its method of auctioning all available licenses, the Commission tentatively concludes that bidding should be allowed only by electronic means, rather than by telephone. Given the Commission’s desire to conduct the reaction quickly, as well as recent improvements in the Commission’s electronic bidding software, the Commission tentatively concludes that telephonic bidding should be permitted only in exceptional circumstances, to be determined by the Wireless Telecommunications Bureau (“Bureau”) in each instance.

2. Bidding Procedures

10. Subject to the exceptions discussed below, which are designed to speed the reaction process, the Commission tentatively concludes that the reaction should be conducted in conformity with the general competitive bidding rules set forth in part 1, subpart Q of the Commission’s rules, 47 CFR part 1, subpart Q, as revised (the Commission initiated a proceeding last February to revise its part 1 rules; See Amendment of Part 1 of the Commission’s Rules—Competitive Bidding Proceeding, *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, WT Docket No. 97–82, 62 FR 13540 (March 21, 1997) (“*Part 1 Proceeding*”), and substantially consistent with the auctions that have been employed in other wireless services. The Commission also proposes to use its part 24 rules, 47 CFR part 24, applicable to the C block to the extent that such rules do not conflict with the Commission’s part 1 rules or rules specifically adopted in the *Second Report and Order* for the reaction of C block licenses. Specifically, except as set forth herein, the Commission proposes to apply the part 1 rules regarding competitive bidding mechanisms (47 CFR § 1.2104); bidding application and certification procedures and prohibition of collusion (47 CFR § 1.2105); submission of upfront payment, down payment and filing of long-form applications (47 CFR §§ 1.2106, 1.2107); procedures for filing long form applications (47 CFR § 1.2108); and procedures regarding license grant, denial and default (47 CFR § 1.2109). The Commission seeks comment on this proposal.

11. *Activity Rules.* The Commission tentatively concludes that, as it has done in other simultaneous multiple-round auctions, it will conduct the reaction in three stages. Three stages, with bidders required to be more active in each stage, serves to provide bidders with the flexibility to pursue backup strategies as the auction progresses. However, because the Commission believes that efficiently assigning these licenses for rapid service to the public and increased competition in the CMRS marketplace requires a swift reaction of the licenses, the Commission proposes to use high activity requirements in the reaction. In recent auctions, for example, the Commission has required bidders to be active on 80% of their eligible licenses in Stage I, 90% in Stage II, and 98% in Stage III. The Commission proposes to use similar activity levels in the C block reaction

and, to further expedite the auction, to require the Bureau to use its delegated authority to aggressively schedule bidding rounds, quickly transition into the next stage of the auction when bidding activity falls, and use higher minimum bid increments for very active licenses. The Commission seeks comment on these proposals and tentative conclusions.

12. *Reserve Price, Minimum Opening Bid, and Minimum Bid Increments.* Section 1.2104 of the Commission’s rules provides that the Commission may establish reserve prices or suggested minimum opening bids. See 47 CFR § 1.2104. The Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251 (1997) (to be codified at 47 U.S.C. § 309(j)(4)(F)) (“Balanced Budget Act”) directed the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid will be established, unless the Commission determines that a reserve price or a minimum opening bid is not in the public interest. This legislative directive establishes a presumption in favor of reserve prices or minimum opening bids in the reaction. A minimum opening bid is the minimum bid price set at the beginning of the auction below which no bids are accepted. Customarily, an auctioneer has the discretion to lower a minimum opening bid in the course of the auction. A minimum opening bid in the C block reaction, more than a reserve price, will help make certain that the public is fairly compensated for spectrum surrendered to the Commission, expedite the auction and give the Commission the flexibility to make adjustments based on the competitiveness of the auction. The Commission seeks comment on this proposal. The Commission also seeks comment on the methodology to be used to establish minimum opening bids and what factors the Commission should consider in doing so. The Commission proposes minimum opening bids for each market equal to 10% of the corresponding high bid for the market in the original C block auction. Such an approach will scale the minimum opening bids in a way that reflects the relative value of the licenses. The Commission also asks that commenters address whether the amount of the minimum opening bid should be capped to ensure that bidding is not deterred on high valuation markets, in particular. Finally, if commenters believe that a minimum opening bid equal to 10% of the high bid in the original C block auction will result in substantial unsold licenses, or is not a

reasonable amount, they should explain why this is so, and comment on the desirability of a higher or lower minimum opening bid.

3. Procedural and Payment Issues

13. Pre-Auction Application Procedures. Auction applicants are required to file a short-form application, FCC Form 175, prior to the start of each auction. Although the Commission previously has allowed both electronic and manual filing of such applications, the Commission tentatively concludes that it should require electronic filing of all short-form applications for the reaction. The Commission believes that electronic filing of applications would serve the best interests of auction participants as well as the members of the public monitoring the reaction. The Commission also believes that an electronic filing requirement will help ensure that the reaction will be completed within the time frame contemplated by this *Further Notice of Proposed Rule Making*. The Commission has developed user-friendly electronic filing software and Internet World Wide Web forms to give applicants the ability to easily and inexpensively file and review applications. This software helps applicants ensure the accuracy of their applications as they are filling them out, and assists them in avoiding errors and omissions. In addition, by shortening the time required for the Commission to process applications before the auction, electronic filing will increase the lead time available to applicants to pursue business plans and arrange necessary financing before the short-form deadline. The Commission's experiences from recent auctions show that bidders are confident that the electronic filing system is reliable. For example, in the broadband PCS D, E, and F block auction, 94% of the qualified bidders filed their short-form applications electronically. In the recently completed Wireless Communications Services ("WCS") auction, all winning bidders filed their long-form applications electronically. In addition, the Commission notes that in the *Part 1 Proceeding*, the Commission tentatively concluded that §§ 1.2105(a) and 1.2107(c) of its rules should be amended to require electronic filing of all short-form and long-form applications. See 47 CFR §§ 1.2105(a) and 1.2107(c). The Commission seeks comment on this tentative conclusion.

14. Upfront Payment. The Commission's part 1 rules, 47 CFR Part 1, require the submission of an upfront payment as a prerequisite to participation in spectrum auctions. The Commission proposes to set the amount

of the upfront payment for the reaction at \$.06 per MHz per pop. The Commission adopted the same upfront payment amount for its most recent broadband PCS auction, the D, E, and F block auction, in which all applicants for all blocks made a \$.06 per MHz per pop upfront payment. In the *Competitive Bidding Second Report and Order*, the Commission indicated that the upfront payment should be set using a formula based upon the amount of spectrum and population (or "pops") covered by the license or licenses for which parties intend to bid. The Commission reasoned that this method of determining the required upfront payment would enable prospective bidders to tailor their upfront payment to their bidding strategies. At the same time, however, the Commission noted that determining an appropriate upfront payment involved balancing the goal of encouraging bidders to submit serious, qualified bids with the desire to simplify the bidding process and minimize implementation costs imposed on bidders. The Commission concluded that the best approach would be to maintain the flexibility to determine the amount of the upfront payment on an auction-by-auction basis because this balancing may yield different results depending upon the particular licenses being auctioned. In light of its desire that only serious, qualified applicants participate in the reaction, the Commission's proposal of a \$.06 per MHz per pop is appropriate. The Commission seeks comment on this proposal. The Commission also seeks comment on alternative methods of establishing an upfront payment, and in particular, on how the Commission may estimate the present market value of the spectrum to be auctioned.

15. Down Payment and Full Payment. Consistent with the procedures used in prior auctions, the Commission tentatively concludes that every winning bidder in an auction should be required to tender a down payment sufficient to bring its total amount on deposit with the Commission up to 20% of its winning bid within 10 business days after the issuance of a public notice announcing the winning bidder for the license. See 47 CFR § 1.2107(b). The Commission seeks comment on this tentative conclusion.

16. If a winning bidder makes its down payment in a timely manner, the Commission proposes that it file an FCC Form 600 long-form application and follow the long-form application procedures in § 1.2107 of the Commission's rules. See 47 CFR § 1.2107. See also, 47 CFR § 24.707. After reviewing the winning bidder's

long-form application, and after verifying receipt of the winning bidder's 20% down payment, the Commission would announce the application's acceptance for filing, thus triggering the filing window for petitions to deny. The Commission notes that the Balanced Budget Act of 1997 authorizes the Commission to establish a shortened period for the filing of petitions to deny. In light of this authority, as well as the Commission's desire to conclude the reaction process as quickly as possible, the Commission proposes that parties then have 15 days following public notice that an application was accepted for filing to file a petition to deny. If, pursuant to Section 309(d) of the Communications Act, as amended, 47 U.S.C. § 309(j), the Commission dismisses or denies any and all petitions to deny, the Commission would announce by public notice that it is prepared to award the license, and the winning bidder would then have 10 business days to submit the balance of its winning bid. If the bidder does so, the license would be granted. If the bidder fails to submit the required down payment or the balance of the winning bid or the license is otherwise denied, the Commission would assess a default payment as discussed below. The Commission seeks comment on these proposals.

17. Amendments and Modifications of Applications. To encourage maximum bidder participation, the Commission proposes to allow applicants to amend or modify their short-form applications as provided in § 1.2105. See 47 CFR § 1.2105. In the broadband PCS context, the Commission modified its rules to permit ownership changes that result when consortium investors drop out of bidding consortia, even if control of the consortium changes due to this restructuring. See Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93-253, *Fourth Memorandum Opinion and Order*, 59 FR 24947 (October 24, 1994). The Commission proposes to adopt the same exception to our rule prohibiting major amendments in the reaction. The Commission seeks comment on these proposals.

18. Bid Withdrawal, Default and Disqualification. The Commission tentatively concludes that the withdrawal, default, and disqualification rules for the reaction should be based upon the procedures established in the Commission's general competitive bidding rules. With regard to bids that are submitted in error, the Commission proposes to apply the guidelines that the Commission has fashioned to provide for relief from the

bid withdrawal payment requirements under certain circumstances. The Commission seeks comment on this approach.

4. Anti-Collusion Rules

19. In the *Competitive Bidding Second Report and Order*, the Commission adopted rules to prevent collusion in connection with competitive bidding, explaining that these rules, which are codified at 47 CFR § 1.2105, would enhance the competitiveness of both the auction process and the post-auction market structure. The Commission proposes to apply these same rules to the reauction of licenses surrendered to the Commission. The Commission seeks comment on this proposal.

5. Designated Entity Provisions

20. The Commission proposes to provide small business bidders in the C block reauction with a two tiered bidding credit, which will provide a greater discount to very small businesses. In the C block auction, a winning bidder that qualified as a small business or a consortium of small businesses was able to use a bidding credit equal to 25% of its winning bid. For the reauction, however, the Commission tentatively concludes that it should offer tiered bidding credits, as the Commission did for F block and, more recently, Local Multipoint Distribution Service (LMDS) small business bidders. The Commission proposes to define a second tier of small business, which the Commission will refer to as "very small businesses," as entities that, together with their affiliates and persons or entities that hold interest in such entities and their affiliates, have average gross revenues of not more than \$15 million for the preceding three years. Creation of this subcategory of small business enables the Commission to tailor a bidding credit to meet the needs of entities that may be interested in bidding on spectrum surrendered by C block licensees. Thus, the Commission proposes a 35% bidding credit for very small businesses and a 25% bidding credit for small businesses. The Commission seeks comment on these proposals and tentative conclusions.

21. The Commission also tentatively concludes that an installment payment program will not be offered in the reauction. The Commission has conducted several auctions without installment payments. The Commission must balance competing objectives in 47 U.S.C. § 309(j) that require, *inter alia*, that it promote the development and rapid deployment of new spectrum-based services and ensure that

designated entities are given the opportunity to participate in the provision of such services. In assessing the public interest, the Commission must try to ensure that all the objectives of Section 309(j) are considered. The Commission has found, for example, that obligating licensees to pay for their licenses as a condition of receipt ensures greater financial accountability from applicants. Thus, the Commission tentatively concludes that it should not extend installment payments to winners in the reauction, given the incentives to entrepreneurs established through the various proposals discussed above. The Commission seeks comment on these tentative conclusions.

III. Procedural Matters

A. Regulatory Flexibility Analysis

22. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the rules proposed in the *Further Notice of Proposed Rule Making*. Written public comments are requested on the IRFA. Comments on the IRFA must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines for comments on the *Further Notice of Proposed Rule Making*. The Commission will send a copy of the *Further Notice of Proposed Rule Making*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the *Further Notice of Proposed Rule Making* and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for, and Objectives of, the Proposed Rules

23. This *Further Notice of Proposed Rule Making* is being initiated to secure comment on proposed changes to auction rules to govern the reauction of returned broadband PCS spectrum in the C block. Among other goals, Section 309(j) of the Communications Act of 1934, as amended, directs the Commission to disseminate licenses among a wide variety of applicants, including small businesses and other designated entities. 47 U.S.C. § 309(j)(3)(B). Section 309(j) also requires that the Commission ensure the development and rapid deployment of new technologies, products, and services for the benefit of the public, and recover for the public a portion of the value of the public spectrum resource made available for commercial use. 47 U.S.C. §§ 309(j)(3)(A), (C). The Commission is seeking comment on

proposed changes to auction rules to govern the reauction of returned broadband PCS spectrum in the C block.

2. Legal Basis

24. This action is taken pursuant to Sections 4(i), 5(b), 5(c)(1), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 155(b), 155(c)(1), 303(r), and 309(j).

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

25. The Commission is required to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by its rules. See 5 U.S.C. §§ 603(b)(3), 604(a)(3). The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the Commission's rules. 5 U.S.C. §§ 603(b)(3), 604(a)(3). The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. § 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act. See 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Under the Small Business Act, a "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. § 632.

26. The rule changes proposed in the *Further Notice of Proposed Rule Making* will affect all small businesses which avail themselves of these rule changes, including small businesses currently holding C block and F block broadband PCS licenses who choose to participate and other small businesses who may acquire licenses through reauction. The Commission, with respect to broadband PCS, defines small entities to mean those having gross revenues of not more than \$40 million in each of the preceding three calendar years. See 47 CFR § 24.720(b)(1). This definition has been approved by the SBA. On May 6, 1996, the Commission concluded the broadband PCS C block auction. The broadband PCS D, E, and F block auction closed on January 14, 1997. Ninety bidders (including the C block reauction winners, prior to any defaults by winning bidders) won 493 C block

licenses and 88 bidders won 491 F block licenses. Small businesses placing high bids in the C and F block auctions were eligible for bidding credits and installment payment plans. For purposes of our evaluations and conclusion in this IRFA, the Commission assumes that all of the 90 C block broadband PCS licensees and 88 F block broadband PCS licensees, a total of 178 licensees potentially affected by this order, are small entities. In addition to the 178 current small business licensees who may participate at the reauction of C block licenses, a number of additional small business entities may seek to acquire licenses through reauction, and thus be affected by these rules.

27. In addition, the Commission proposes to provide small business bidders in the C block reauction with bidding credits, and to that end proposes a two tiered bidding credit which will provide a greater discount to "very small businesses." In the C block auction, a winning bidder that qualified as a small business or a consortium of small businesses was able to use a bidding credit equal to 25 percent of its winning bid. For the reauction, the Commission proposes tiered bidding credits, as were offered for F block and, more recently, Local Multipoint Distribution Service (LMDS) small business bidders. The Commission proposes to define the second tier of very small business as entities that, together with their affiliates and persons or entities that hold interest in such entities and their affiliates, have average gross revenues of not more than \$15 million for the preceding three years. Creation of this subcategory of small business will enable the Commission to tailor a bidding credit to meet the needs of entities that may be interested in bidding on spectrum returned by C block licensees. Thus, the Commission proposes a 35 percent bidding credit for very small businesses and a 25 percent bidding credit for small businesses.

28. To assist the Commission analyzing the total number of affected small entities, commenters are requested to provide information regarding how many total broadband PCS small business entities would be affected by the rules proposed in this *Further Notice of Proposed Rule Making*. In particular, the Commission seeks estimates of how many broadband PCS entities, existing and potential, will be considered small businesses or very small businesses.

4. Description of Reporting, Recordkeeping, and Other Compliance Requirements

29. There are no additional reporting, recordkeeping, or other compliance requirements as a result of the *Further Notice of Proposed Rule Making*.

5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

30. The Commission proposes to apply the same rules that were used in the C block auction to the reauction of C block licenses, with some modifications designed to encourage participation by small businesses while at the same time helping to ensure the best use of the spectrum through the competitive bidding process. The Commission proposes to conduct the C block reauction in three stages. Having three stages, with bidders required to be more active in each stage, serves to provide bidders with the flexibility to pursue backup strategies as the auction progresses. The Commission proposes to use high activity requirements in the reauction. In addition, the Commission proposes to use similar activity levels in the C block reauction and, to further expedite the auction, require the Wireless Telecommunications Bureau to use its delegated authority to aggressively schedule bidding rounds, quickly transition into the next stage of the auction when bidding activity falls, and use higher minimum bid increments for very active licenses.

31. The Commission proposes to establish a minimum opening bid for the reauction. A minimum opening bid is the minimum bid price set at the beginning of the auction below which no bids are accepted. A minimum opening bid in the C block reauction will help ensure that the public is fairly compensated for licenses returned to the Commission, expedite the auction and give the Commission the flexibility to make adjustments based on the competitiveness of the auction. The Commission proposes minimum opening bids for each market equal to ten percent of the corresponding high bid for the market in the original C block auction. Such an approach will scale the minimum opening bids in a way that reflects the relative value of the licenses.

32. The Commission proposes to require electronic filing of all short-form applications for the reauction. Electronic filing of applications would serve the best interests of auction participants as well as the members of the public monitoring the reauction. The Commission believes that an

electronic filing requirement will help ensure that the reauction will be completed within the time frame contemplated by this *Further Notice of Proposed Rule Making*.

33. The Commission proposes to set the amount of the upfront payment for the reauction at \$.06 per megahertz per population ("MHz per pop").

34. The Commission proposes that parties have fifteen (15) days to file a petition to deny following public notice that an application was accepted for filing. If, pursuant to Section 309(d) of the Communications Act, the petitions to deny are dismissed or denied, the Commission would announce by public notice that it is prepared to award the license, and the winning bidder would then have ten (10) business days to submit the balance of its winning bid. If the bidder does so, the license would be granted. If the bidder fails to submit the required down payment or the balance of the winning bid or the license is otherwise denied, a default payment would be assessed.

35. Section 309(j) of the Communications Act of 1934, as amended, directs the Commission to disseminate licenses among a wide variety of applicants, including small businesses and other designated entities. See 47 U.S.C. § 309(j)(3)(B). Section 309(j) also requires that the Commission ensure the development and rapid deployment of new technologies, products, and services for the benefit of the public, and recover for the public a portion of the value of the public spectrum resource made available for commercial use. 47 U.S.C. §§ 309(j)(3)(A), (C). The Commission believes these provisions in the *Further Notice of Proposed Rule Making* help meet those goals and promote efficient competition while maintaining fairness and efficiencies of process in the Commission's rules.

6. Federal Rules Which Overlap, Duplicate, or Conflict With These Rules
None.

B. Paperwork Reduction Act Analysis

36. This *Further Notice of Proposed Rule Making* contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget ("OMB") to take this opportunity to comment on the information collections contained in this *Further Notice of Proposed Rule Making*, as required by the Paperwork Reduction Act of 1995, Public Law No. 104-13. Public and agency comments are due at the same time as other

comments on this *Further Notice of Proposed Rule Making*; OMB comments are due 60 days from date of publication of this *Further Notice of Proposed Rule Making* in the **Federal Register**.

Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Dates

Written comments by the public on the proposed or modified information collections in this *Further Notice of Proposed Rule Making* are due on or before December 1, 1997. Written comments must be submitted by OMB on the modified information collections on or before December 1, 1997.

Address

In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

Further Information

For additional information concerning the information collections contained in this *Further Notice of Proposed Rule Making* contact Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov.

Supplementary Information

Title: Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees.

Type of Review: Proposed or Modified Collection.

Respondents: The Commission estimates that no more than 255 respondents (i.e., previous C block bidders) will participate in this information collection. The Commission estimates that this information collection, that eligibility is based on

previous participation in a C block auction and the bidder identification number from the previous auction, will take 0.5 hours to complete. In addition, the Commission proposes that C block reauction applicants submit more detailed financial information, if necessary. The Commission estimates that this information collection will take 1.0 hours to complete. The Commission estimates that the total burden will be 1.5 hours per respondent or 377.5 total hours.

Estimate of total cost burden to respondents: The Commission estimates that there will be no additional cost burden to respondents.

The cost to the Federal Government is estimated to be:

GS 7 Legal Instrument Examiners at \$14.06 per hour to review the documentation for approximately 0.5 hours per submission, times 255 submissions = \$1,581.75
 GS 12 Attorneys to review the financial documentation at \$24.95 per hour, for approximately 2.0 hours per submission, times 255 submissions = \$11,227.50
Total = \$12,809.25

C. Ex Parte Presentations

The *Further Notice of Proposed Rule Making* is a permit but disclose notice and comment rule making proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in Commission rules. See generally 47 CFR §§ 1.1202, 1.1203, and 1.1206(a).

D. Comments

38. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before November 13, 1997, and reply comments on or before November 24, 1997. In addition, a courtesy copy should be delivered to Mark Bollinger, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 2025 M Street, Room 5202, Washington, DC 20554. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus ten copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for

public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, DC 20554.

List of Subjects

47 CFR Part 1

Communications common carriers, Reporting and recordkeeping requirements.

47 CFR Part 24

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97-28222 Filed 10-23-97; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 10

[Docket No. OST-96-1472; Notice 97-10]

RIN 2105-AC60

Privacy Act; Implementation

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: DOT proposes to amend its rules implementing the Privacy Act of 1974 to exempt from certain provisions of the Act the Coast Guard's Vessel Information System. Public comment is invited.

DATES: Comments are due November 24, 1997.

ADDRESSES: Comments should be addressed to Documentary Services Division, Attention: Docket Section, Room PL401, Docket OST-96-1472, Department of Transportation, C-55, Washington, DC 20590. Any person wishing acknowledgment that his/her comments have been received should include a self-addressed stamped postcard. Comments received will be available for public inspection and copying in the Documentary Services Division, Room PL401, Department of Transportation Building, 400 Seventh Street, SW, Washington, DC, from 9 AM to 5 PM ET Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, C-10, Department of Transportation, Washington, DC 20590, telephone (202) 366-9156, FAX (202) 366-9170.