licenses. Under this approach, the minimum activity level increases during the course of the auction. Absent waivers, a bidder's eligibility in the current round is determined by the bidder's activity level and eligibility in the previous round; in the first round, however, eligibility is determined by the bidder's upfront payment and is equal to the upfront payment divided by \$.02 per MHz-pop. Bidders are required to declare their maximum eligibility in terms of MHz-pops, and made an upfront payment equal to \$0.02 per MHz-pop. In each round, bidders are limited to bidding on licenses encompassing no more than the number of MHz-pops covered by their upfront payment, and licenses on which a bidder is the high bidder from the previous round count toward this bidding limit. Bidders have flexibility to shift their bids among any license for which they have applied so long as, within each round, the total MHz-pops encompassed by those licenses does not exceed the total number of MHz-pops on which they are eligible to bid. This approach would best achieve the Commission's goals of affording bidders flexibility to pursue backup strategies, while at the same time ensuring that simultaneous auctions are concluded within a reasonable period of time. The Commission seeks comment on these

13. During Stage I, the Commission tentatively concludes that a bidder must be active on licenses encompassing onehalf of the MHz-pops for which it is eligible. In Stage II and Stage III, the Commission tentatively concludes that the bidder must be active on 75 and 95 percent, respectively, of the MHz-pops for which it is eligible. The penalty for falling below the minimum activity level at any stage would be a reduction in maximum eligibility to bid in future rounds. The transition from one stage of the auction to the next would be determined by the aggregate level of bidding activity, subject to the Commission's discretion. Once an auction proceeds from one stage to the next, it could not revert to any previous stage. Moreover, the Commission proposes to reserve the discretion to increase or decrease these activity levels as well as to vary the timing of stages and activity levels for each stage through public notices issued after applications are filed and before the auction begins, as circumstances warrant. The Commission seeks comment on these proposals.

14. In the *Fourth Memorandum Opinion & Order*, PP Docket No. 93–253, 59 FR 53364 (October 24, 1994), the Commission clarified that it retained the

discretion to modify the method and timing of submitting waivers and to allow for both "proactive" and "automatic" waivers. Proactive waivers are submitted by the bidder, while automatic waivers would be submitted automatically for a bidder whenever its eligibility would be reduced because of insufficient bidding activity and a waiver is available unless the bidder specifically chooses not to have the automatic waiver apply. The Commission proposes to use these waiver procedures with respect to the 900 SMR auctions.

15. Specifically, the Commission proposes to implement a waiver procedure permitting each bidder to request and automatically receive a certain number of waivers of the activity rule during the auction. The Commission would announce by Public Notice how many waivers bidders will receive. A waiver would permit a bidder to maintain its eligibility at the same level as in the round for which the waiver is submitted; it could not, however, be used to correct an error in the amount bid. Under this proposal, a bidder may request a waiver either in the round in which its bidding falls below the minimum required level or prior to submitting a bid in the next round. If an activity rule waiver is proactively requested in a round in which no other bidding activity occurs, the auction would remain open. The Commission seeks comment on these proposals. Finally, the Commission retains discretion to use an alternative activity rule for 900 MHz SMR if it determines that the Milgrom-Wilson rule is too complicated or costly to administer. Any such change would be announced by public notice before commencement of the auction.

16. Rules Prohibiting Collusion. Section 1.2105(c) of the Commission's Rules, 47 CFR 1.2105(c) prohibits collusive conduct in the context of competitive bidding. This rule prohibits bidders from communicating with one another after short-form applications have been filed regarding the substance of their bids or bidding strategies, and also prohibits bidders from entering into consortium arrangements or joint bidding agreements after the deadline for short-form applications has passed. 47 C.F.R. 1.2105(c)(1)–(2). The Commission proposes to apply Section 1.2105(c) to 900 MHz SMR auctions. Bidders who have not filed form 175 applications for any of the same MTA licenses would be permitted enter into such discussions, consortia, or arrangements, or add equity partners, during the course of an auction. Also, communications among bidders

concerning matters unrelated to the auctions would be permitted. The Commission seeks comment on this proposal.

17. Under the collusion rules, bidders would also identify on their Form 175 applications parties with whom they have entered into any agreements relating to the competitive bidding process, and certify that they will not enter into any such agreements with any parties other than those identified. 47 CFR 1.2105(a)(2). Furthermore, winning bidders in the 900 MHz SMR auctions would attach as an exhibit to the Form 600 long-form application a detailed explanation of the terms and conditions and parties involved in any such agreement entered into prior to the close of bidding. All such arrangements would have been entered into prior to filing of short-form applications to comply with the Commission's rules. 47 CFR 1.2107. Allegations of specific instances of collusion in violation of these rules would be investigated by the Commission or referred to the Department of Justice. The Commission also proposes that bidders found to have violated the Commission's rules or the antitrust laws may be subject to forfeiture of their down payment or their full bid amount, revocation of their licenses, and prohibition from participation in future auctions. The Commission seeks comment on these proposals.

## C. Procedural, Payment and Penalty Issues

18. Pre-Auction Application *Procedures.* The Commission proposes to follow generally the processing and procedural rules established in 47 CFR Part 1, Subpart Q with certain modifications designed to address the particular characteristics of the 900 MHz SMR service. Unlike incumbent 900 MHz SMR licensees that are essentially confined to the smaller DFA region, MTA licensees will gain use of a large geographic area and the freedom to locate base stations anywhere within that larger geographic region. Thus, the Commission proposes to treat MTA applicants as initial applicants for public notice, application processing, and auction purposes, regardless of whether they are already incumbent

19. The 1993 Budget Act expressly provides the Commission authority to require that bidders' applications contain all information and documentation sufficient to demonstrate that the application is not in violation of Commission rules, and to dismiss applications not meeting those requirements prior to the competitive