

their applications prior to the auction. However, applicants will not be permitted to make any major modifications to their applications; for MDS, we classify all amendments to short-forms as major, except those to correct minor errors or defects, such as typographical errors, or those to reflect ownership changes or formation of bidding consortia specifically permitted under the anti-collusion rules set forth below. See *infra* ¶ 130. We note in particular that a change in control of an applicant or a change in the BTAs upon which an applicant wishes to bid will be regarded as a major amendment to the short-form application. In addition, applications that are not signed in any manner or form, including by electronic means, or that fail to make the requisite certifications will be dismissed and may not be resubmitted. See Second Report and Order at 2377; 47 CFR 1.2105(b).

101. After reviewing the short-form applications, the Commission will issue another public notice listing all applications containing minor defects, and applicants will be given an opportunity to cure and resubmit defective applications. On the date set for submission of corrected applications, applicants who on their own discover minor errors in their applications, such as typographical errors, also will be permitted to file corrected applications. Following a review of the corrected applications, the Commission will release another public notice announcing the names of all applicants whose applications have been accepted for filing. Applicants identified in this public notice will then be required to submit the full amount of their upfront payment. See Second Report and Order at 2377.

102. Upfront Payments. In the generic auction rules, we described five types of payments: upfront payments, down payments, final payments, bid withdrawal payments, and default and disqualification payments. Given the history of speculators filing MDS applications, we believe a substantial upfront payment is needed for MDS auctions to discourage speculative bidding and increase the likelihood of applicants who intend to provide service to the public obtaining the remaining available MDS channels. Requiring a substantial upfront payment provides some degree of assurance that only serious, qualified bidders will participate and serves as a deterrent to the filing of speculative applications, which may delay the provision of service to the public. The upfront payments will also provide the Commission with a source of funds to satisfy any bid withdrawal or default

and disqualification payments assessed. See Second Report and Order at 2378–2379. Therefore, we will require an upfront payment for the MDS auction.

103. We believe the upfront payment should bear a relation to the value of the BTA authorizations that a bidder hopes to be awarded. We accordingly delegate to the Mass Media Bureau and the Wireless Telecommunications Bureau the authority to determine an appropriate upfront payment for each BTA service area being auctioned, taking into account, at the Bureaus' discretion, such factors as the population and the approximate amount of usable spectrum in each BTA. Bearing in mind the uncertainties associated with valuing the BTA authorizations, we expect that the Bureaus will follow the guidelines laid out in the Second Report and Order and establish upfront payments equal to around five percent of the expected amounts of winning bids for the various BTA service areas. See *id.* at 2378–2379. In no event will the upfront payment for any BTA service area be less than \$2500, the minimum suggested in the Second Report and Order, and we retain the flexibility for the Bureaus to modify this minimum if we find that a higher amount would better deter speculative filings. *Id.* at 2379.

104. Prior to the MDS auction, the Mass Media Bureau, in conjunction with the Wireless Telecommunications Bureau, will public a public notice listing the upfront payment amounts corresponding to each BTA service area to be auctioned. The number of activity units associated with a BTA service area (see ¶ 82) equals the amount of the upfront payment for the BTA. A prospective bidder must submit an upfront payment equal to the largest combination of activity units on which the bidder anticipates being active in any single round. The combination of activity units on which a bidder is active in a round equals the sum of the activity units associated with the BTAs on which the bidder has submitted a bid, or on which the bidder is the standing high bidder. Although a bidder may file applications for every BTA service area being auctioned, the total upfront payment submitted by each applicant will determine the combinations of BTA service areas on which the applicant will actually be permitted to be active in any single round of bidding.<sup>50</sup>

<sup>50</sup> Consider, for example, an applicant that submits a \$100,000 total upfront payment. As explained above at ¶ 82, the maximum number of activity units for that applicant is 100,000. In any single round, the applicant could be active on two BTA service areas with 50,000 activity units each,

105. A prospective bidder in the MDS auction that claims status as a small business, as defined in ¶ 153, will be eligible for a twenty-five percent reduction in its upfront payment requirements. See *infra* ¶¶ 148–149 for a discussion of the reduced upfront payments measure. A small business eligible for this reduction in its upfront payment will not have the number of its activity units decreased as a result of submitting a reduced upfront payment.<sup>51</sup>

106. Applicants identified by public notice as those whose applications have been accepted for filing will be required to submit their upfront payments to the Commission's lock-box bank by the date specified in the public notice, which generally will be no later than fourteen days before the scheduled auction. Upfront payments may be made by wire transfer or by cashier's check drawn in U.S. dollars from a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation and must be made payable to the Federal Communications Commission. All payments, including upfront, down and final payments, should be accompanied by FCC Form 159 (remittance advice form). After the Commission receives from its lock-box bank the names of all applicants who have submitted timely upfront payments, the Commission will issue a public notice announcing the names of all applicants that have been determined to be qualified to bid in the MDS auction. Any applicant who fails to submit a sufficient upfront payment to qualify it to bid on any BTA service area being auctioned will not be identified on this public notice as a qualified bidder, will be prohibited from

on five BTAs with 20,000 activity units each, on ten BTAs with 10,000 activity units each, or on any combination of BTA service areas for which the sum of associated activity units totals 100,000 or less. As set forth above, a bidder is "active" on a BTA service area if it is either the high bidder on that BTA from the previous round (at the end of the bid withdrawal period), or if it submits a bid on that BTA in the current round which exceeds the previous round's high bid by at least the minimum bid increment. See *supra* ¶ 83. Thus, a bidder who begins the auction eligible to bid (based on the magnitude of its upfront payment) on BTA service areas associated with 100,000 activity units and who, in the first round, is the high bidder on a BTA service area associated with 50,000 activity units, may only, in the second round, submit new bids on a combination of BTAs associated with 50,000 or fewer activity units.

<sup>51</sup> For example, if a small business applicant is interested in bidding on a BTA with an upfront payment of \$100,000, it would be required, under the reduced upfront payment measure, to submit only \$75,000 to qualify to bid on that BTA. This applicant would still, however, receive 100,000 activity units—the number of activity units equivalent to the full upfront payment amount associated with that BTA.