than those foreign ownership restrictions that apply to CMRS and common carrier fixed system licensees, and the restriction on foreign governments or their representatives related to the holding of private mobile radio service licenses. Although rural telephone companies would be eligible, the Commission did not propose to treat them differently than other applicants. The Commission now adopts these proposed broad eligibility standards for GWCS applications.

## **Competitive Bidding Issues**

24. In the Second NPRM, the Commission proposed to use auctions to issue licenses for GWCS services in the 4660–4685 MHz band that meet the statutory auction criteria and sought comment on a wide range of issues related to competitive bidding. For example, regarding competitive bidding methodology for licenses in the 4660-4685 MHz band, the Second NPRM proposed to use simultaneous multiple round bidding for licensing of the proposed 5 MHz-wide MTA spectrum blocks. The Commission also tentatively proposed to auction all licenses simultaneously, because of the relatively high value and significant interdependence of the licenses. Commenters were asked to address these tentative conclusions and whether any other competitive bidding designs might be more appropriate for the licensing of this spectrum. The Commission adopts the tentative conclusion in the Second NPRM and will auction this spectrum by simultaneous multiple round bidding. However, the Commission reserves the discretion to hold one or more auctions.

25. The Second NPRM also sought comment on whether to allow combinatorial bidding for GWCS services, because it may be necessary or at least highly desirable that spectrum used for some services (e.g., air-ground service) be licensed to the same entity nationwide. Combinatorial bidding is an auction method which allows applicants to bid for multiple licenses as all or nothing packages, e.g., all licenses nationwide on a particular spectrum block, with the licenses awarded as a package if the combinatorial bid is greater than the sum of the high bids on the individual licenses in the package. The Commission declines to adopt combinatorial bidding in this decision, but will establish reduced bid withdrawal penalties for entities seeking nationwide licenses that should achieve results similar to combinatorial bidding, with far less uncertainty and complexity.

26. The Second NPRM invited comment on bidding procedures to be used in the 4660-4685 MHz auctions, including bid increments, duration of bidding rounds, stopping rules, and activity rules. Assuming that the Commission would use simultaneous multiple round auctions, the Second NPRM generally proposed to use the same or similar bidding procedures to those used in simultaneous multiple round bidding for MTA-based PCS licenses. The Commission sought comment on whether any variations on these procedures should be adopted for licenses in the 4660-4685 MHz band. Based upon our successful experience in auctioning PCS spectrum and the absence of any dispute concerning the efficacy of the bidding procedures used there, the Commission adopts essentially the same procedures for GWCS licenses. Additional, more detailed information on bidding procedures and other auction information will be made public prior to the auction.

27. This Second Report and Order next considers procedural, payment, and penalty issues. As discussed below, the Commission will generally follow the procedural, payment, and penalty rules established in Subpart Q of Part 1 of the Commission's Rules.8 First, regarding upfront payments, as in the case of other auctionable services, the Commission will require participants in the 4660-4685 MHz auction to tender to the Commission, in advance of the auction, a substantial upfront payment as a condition of bidding in order to ensure that only serious, qualified bidders participate in auctions and to ensure payment of the penalty in the event of bid withdrawal or default. For GWCS, the Commission adopts the 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.

28. Second, the Commission adopts a requirement for 4660-4685 MHz GWCS licensees that successful bidders tender a 20 percent down payment on their bids to discourage default between the auction and licensing and to ensure payment of the penalty if such default occurs. Third, the Commission adopts the bid withdrawal, default, and disqualification rules for 4660-4685 MHz licensing based on the procedures established in our general competitive bidding rules. Under these procedures, any bidder who withdraws a high bid during an auction before the Commission declares bidding closed, 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 offered by the Commission, if the subsequent winning bid is lower. One exception is that the Commission will limit the bid withdrawal penalties for nationwide bidders to 5 percent of the withdrawn bids. A defaulting 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, up to 5 percent of the withdrawn bids. In the event that an auction winner defaults or is otherwise disqualified, the Commission will re-auction the license either to existing or new applicants. The Commission will retain discretion, however, to offer the license to the next highest bidder at its final bid level if the default occurs within five business days of the close of bidding.

29. The Commission next considers regulatory safeguards. First, the Commission establishes unjust enrichment regulations as directed by the Reconciliation Act. Specifically, the Commission adopts the transfer disclosure requirements contained in Section 1.2111(a) of our rules for all 4660-4685 MHz licenses obtained through the competitive bidding process. In addition, the Commission adopts the specific rules governing unjust enrichment by designated entities as proposed in the Second NPRM. 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, option agreements, management agreements, and all other documents disclosing the total consideration received in return for the transfer of its license.

30. Second, the Commission contemplates performance standards, as instructed by the Reconciliation Act and finds that no additional performance requirements are needed beyond the specific performance standards already provided for in the 4660–4685 MHz service rules.

31. Third, the Commission considers rules prohibiting collusion and adopts rules for the 4660–4685 service which are identical to those found at 47 CFR § 1.2105(c). Under these procedures, bidders will be required to identify on their applications all parties with whom they have entered into any consortium arrangements, joint ventures, partnerships, or other agreements or

<sup>847</sup> C.F.R. Part 1, Subpart Q.