



PUBLIC NOTICE

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DA 00-2038
September 6, 2000

C AND F BLOCK BROADBAND PCS SPECTRUM AUCTION SCHEDULED FOR NOVEMBER 29, 2000, RESCHEDULED FOR DECEMBER 12, 2000

REVISED LIST OF AVAILABLE LICENSES

COMMENT SOUGHT ON RESERVE PRICES OR MINIMUM OPENING BIDS AND OTHER PROCEDURAL ISSUES

Report No. AUC-00-35-C (Auction No. 35)

I. General Information

A. Introduction

By this Public Notice, the Wireless Telecommunications Bureau (“Bureau”) reschedules the next auction (Auction No. 35) of C and F block broadband Personal Communications Service (“PCS”) licenses for December 12, 2000, provides a revised list of licenses available in Auction No. 35, and seeks comment on upfront payments, reserve prices or minimum opening bids, and other auction procedural issues for Auction No. 35. The revised list of licenses available for auction is included in Attachment A.

The Communications Act of 1934 as amended by the Balanced Budget Act of 1997 requires the Commission to “ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed . . . before issuance of bidding rules, to permit notice and comment on proposed auction procedures”¹ Consistent with the provisions of the Balanced Budget Act, and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority,² to seek comment on a variety of auction-specific procedures prior to the start of each auction.³

¹ Section 3002(a)(1)(B)(iv), Balanced Budget Act of 1997, Pub. L. 105-33, 111 Stat. 251 (1997) (“Balanced Budget Act”); 47 U.S.C. § 309(j)(3)(E).

² See Amendment of Part 1 of the Commission's Rules — Competitive Bidding Proceeding, WT Docket No. 97-82, *Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making*, 12 FCC Rcd 5686, 5697, ¶ 16 (1997) (“*Part 1 Order*”) (“We also clarify that pursuant to Section 0.131 of our rules, the Chief, Wireless Telecommunications Bureau, has delegated authority to implement all of the Commission's rules pertaining to

B. Background of Proceeding

In January 2000, the Bureau announced that the next C and F block auction was scheduled to begin on July 26, 2000, and provided a preliminary list of licenses for auction, including 30 MHz and 15 MHz C block licenses, as well as F block licenses (all 10 MHz each), for operation on frequencies for which previous licenses had automatically cancelled or had been returned to the Commission.⁴ On March 3, 2000, the Bureau released a public notice seeking comment on reserve prices, minimum opening bids, and other auction procedural issues for the next C and F block auction, Auction No. 35.⁵

After release of the *January 2000 PN*, a number of parties filed petitions asking that the Commission waive, modify, or eliminate the eligibility requirements for participation in the auction and make other changes to the C and F block rules.⁶ In past auctions, the Commission's rules limited eligibility for all C and F block licenses to "entrepreneurs."⁷ The Commission sought comment on the issues raised by these petitions in a Further Notice of Proposed Rulemaking ("*Further Notice*"), released on June 7, 2000.⁸ Also on June 7, 2000, the Bureau announced that Auction No. 35 would begin on November 29, 2000, in order to allow resolution of the issues in the *Further Notice* and implementation of any rule changes prior to the auction.⁹

auctions procedures").

³ See Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz, WT Docket No. 97-82, ET Docket No. 94-32, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 448, ¶ 124 (1998) ("*Part 1 Third Report and Order*"). The Commission directed the Bureau to seek comment on specific mechanisms related to day-to-day auction conduct including, for example, the structure of bidding rounds and stages, establishment of minimum opening bids or reserve prices, minimum accepted bids, initial maximum eligibility for each bidder, activity requirements for each stage of the auction, activity rule waivers, criteria for determining reductions in eligibility, information regarding bid withdrawal and bid removal, stopping rules, and information relating to auction delay, suspension or cancellation. *Id.* at ¶ 125.

⁴ "C and F Block Broadband PCS Spectrum Auction Scheduled for July 26, 2000," *Public Notice*, 15 FCC Rcd 4702 (2000) ("*January 2000 PN*").

⁵ See "C and F Block Broadband PCS Spectrum Auction Scheduled for July 26, 2000; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedural Issues," *Public Notice*, 15 FCC Rcd 4702 (2000) ("*Auction No. 35 Public Notice*").

⁶ See e.g., "Wireless Telecommunications Bureau Seeks Comment on Nextel Communications, Inc.'s Petition Regarding PCS C and F Block Spectrum, Extension of Filing Deadline for Comments to SBC Communications Inc.'s Request for Waiver," *Public Notice*, 15 FCC Rcd 2104 (2000); "Wireless Telecommunications Bureau Seeks Comment on SBC Communications Inc.'s Request for Waiver of the Eligibility Requirements for Participation in the Upcoming PCS C and F Block Auction," *Public Notice*, 15 FCC Rcd 1953 (2000); "Wireless Telecommunications Bureau Sets Comment Schedule for Petitions for Reconsideration of the Order on Reconsideration of the Fourth Report and Order in WT Docket No. 97-82," *Public Notice*, 15 FCC Rcd 6079 (2000).

⁷ For C and F block auction eligibility purposes, "entrepreneurs" are applicants that, including attributable investors and affiliates, have had gross revenues of less than \$125 million in each of the last two years and have total assets of less than \$500 million at the time of the applicant's short-form auction application (FCC Form 175). 47 C.F.R. § 24.709(a). But note that, pursuant to 47 C.F.R. § 24.709(b)(9)(i), any entity that was eligible for and participated in either of the first two C block auctions (Auction No. 5 or Auction No.10), will be eligible to bid in C block spectrum auctions that begin within two years of the start of Auction No. 22, March 23, 1999.

⁸ See Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, WT Docket No. 97-82, *Further Notice of Proposed Rulemaking*, 15 FCC Rcd 9773 (2000) ("*Further Notice*").

⁹ "Auction of Licenses for C and F Block Broadband PCS Spectrum Postponed Until November 29, 2000," *Public Notice*, 15 FCC Rcd 9771 (2000).

On August 14, 2000, the Commission released the *Part 1 Fifth Report and Order*,¹⁰ in which the Commission, *inter alia*, adopted a “controlling interest” standard for attributing to auction applicants the total assets and/or gross revenues of their investors and affiliates in determining entrepreneur and small business eligibility for future C and F block auctions.¹¹ The Commission also observed that the rule modifications adopted in the various Part 1 orders would result in discrepancies and/or redundancies between certain of the new Part 1 rules and existing service-specific rules, and the Commission delegated to the Bureau the authority to make conforming edits to the Code of Federal Regulations consistent with the rules adopted in the Part 1 proceeding.¹² The Part 1 rules that superseded inconsistent service-specific rules will control in Auction No. 35.¹³ Accordingly, the “controlling interest” standard will be in effect for Auction No. 35, even if conforming edits are not made prior to the auction.

On August 29, 2000, the Commission released the *C/F Block Sixth Report and Order*, in which it resolved the issues raised in the *Further Notice*. The Commission decided that it would reconfigure each 30 MHz C block license available in Auction No. 35 and other future broadband PCS auctions into three 10 MHz C block licenses.¹⁴ The Commission also divided Basic Trading Areas (“BTAs”) into two tiers according to the population size, with Tier 1 comprising markets with population at or above 2.5 million, based on 1990 census figures, and Tier 2 comprising the remaining markets. The Commission decided that some licenses would be open to all bidders in “open” bidding, while other licenses would be available only to entrepreneurs in “closed” bidding. The Commission established open bidding for the following licenses: two of the three reconfigured 10 MHz C block licenses in Tier 1; one of the three reconfigured 10 MHz C block licenses in Tier 2; all 15 MHz C block licenses in Tier 1; all F block licenses; and all C and F block licenses available but unsold in Auction No. 22 or any subsequent auction. The Commission established small and very small business bidding credits of 15 percent and 25 percent, respectively, for licenses won in open bidding and eliminated bidding credits for licenses won in closed bidding. Additionally, the Commission removed from its rules the Section 24.710 license cap, which had prohibited an applicant from winning more than 98 of the licenses available in the C and F blocks. Finally, the Commission decided that the Commercial Mobile Radio Services spectrum cap would continue to apply to C and F block licenses, including those won in Auction No. 35.

¹⁰ Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Procedures, WT Docket No. 97-82, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, FCC 00-274 (rel. August 14, 2000) (“*Part 1 Fifth Report and Order*”).

¹¹ The eligibility as an entrepreneur of all applicants for future C and F block auctions — except for those applicants that are “grandfathered” under Section 24.709(b)(9)(i) of the Commission rules — as well as the eligibility for small business preferences, will be determined based on the attribution rules in effect at the time of filing their short-form applications. *Id.* at ¶ 67. See *Part 1 Fifth Report and Order*, 65 Fed. Reg. 52,323 (August 29, 2000) (summary).

¹² *Part 1 Fifth Report and Order*, ¶ 78. In addition to the attribution rule change, compare, *e.g.*, 47 C.F.R. § 24.720(e) (definition of “Rural Telephone Company” in the broadband PCS rules) with 47 C.F.R. § 1.2110(b)(3) (definition of “Rural Telephone Company” in the Part 1 rules). The Bureau notes that time may not permit conforming edits to the Part 24 C and F block rules to be made in advance of Auction No. 35.

¹³ See *Part 1 Third Report and Order* at 382, ¶ 5; *Part 1 Fifth Report and Order*, ¶ 67.

¹⁴ See Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, WT Docket No. 97-82, *Sixth Report and Order and Order on Reconsideration*, FCC Rcd 00-313 (rel. August 29, 2000) (“*C/F Block Sixth Report and Order*”).

The following table contains the Block/Eligibility Status/Frequency Cross Reference List for Auction No. 35:

C and F Block Allocations

Channel Block	Eligibility Status		Bandwidth (MHz)	Frequencies
	Tier 1	Tier 2		
C1	[Open]	Closed	15	1902.5-1910, 1982.5-1990
C2	[Open]	Closed*	15	1985-1902.5, 1975-1982.5
C3	Closed*	Closed*	10	1895-1900, 1975-1980
C4	Open	Closed*	10	1900-1905, 1980-1985
C5	Open	Open	10	1905-1910, 1985-1990
F	Open	Open	10	1890-1895, 1970-1975

Notes: Brackets indicate no available licenses of the particular tier/channel block combination in Auction No. 35.

* The entrepreneur eligibility restriction does not apply to licenses that were available but unsold in Auction No. 22. Tier 2 C2 licenses are classified as closed, but all of the C2 licenses available in Auction No. 35 were available but unsold in Auction No. 22 and are therefore open to all bidders. Certain C3, C4, and C5 licenses were also available but unsold in Auction No. 22 (as 30 MHz licenses) and are therefore open to all bidders.

A complete list of licenses available for Auction No. 35 is included as Attachment A. The attachment specifies the eligibility status of each license.

In addition to the license reconfiguration, the revised license inventory reflects additional licenses, not included in the *Auction No. 35 Public Notice*, for operation on frequencies as to which previous licenses have cancelled or otherwise have been returned to the Commission, as well as licenses for operation on frequencies that had not previously been licensed.

C. Change of Auction Date

In order to provide additional time between the effective date of the new rules and the auction application deadline, Auction No. 35 has been rescheduled for December 12, 2000. Because the *C/F Block Sixth Report and Order* reconfigured the licenses available for auction and changed the eligibility rules for applicants, we seek comment on minimum opening bids, reserve prices, and other procedural issues for Auction No. 35.

The critical dates and deadlines for Auction No. 35 are as follows:

Seminar Date	October 20, 2000
Short-Form Application (FCC Form 175) Filing Deadline	November 6, 2000
Upfront Payments Deadline	November 27, 2000
Mock Auction	December 8, 2000
Auction Start Date	December 12, 2000

D. Due Diligence Information

Bidder Alerts: The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants and interested parties should perform their own due diligence before proceeding, as they would with any new business venture.

As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 35 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a “cold call” from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of investment is less than \$25,000.
- The sales representative makes verbal representations that: (a) the Internal Revenue Service (“IRS”), Federal Trade Commission (“FTC”), Securities and Exchange Commission (“SEC”), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326-2222 and from the SEC at (202) 942-7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876-7060. Consumers who have concerns about specific proposals regarding Auction No. 35 may also call the FCC National Call Center at (888) CALL-FCC or (888) 225-5322.

Bidder Responsibility for Due Diligence: Potential bidders are reminded that private and common carrier fixed microwave services (“FMS”) operating in the 1850-1990 MHz band (and other bands) are being relocated to available frequencies in higher bands or to other media. Bidders should become familiar with the status of FMS operation and relocation, and applicable Commission rules and orders, in order to make reasoned, appropriate decisions about their participation in Auction No. 35 and their bidding strategy.¹⁵

Potential bidders and interested parties should be aware that various proceedings that may relate to the licenses available in Auction No. 35 may be pending or subject to further administrative review before the

¹⁵ See, e.g., 47 C.F.R. §§ 15.307, 24.5, 24.237–24.253, 101.3, 101.69–101.81, and 101.147; Amendment to the Commission’s Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, WT Docket No. 95-157, *Memorandum Opinion and Order on Reconsideration*, FCC 00-123 (rel. July 19,2000); Amendment to the Commission’s Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, *Second Report and Order*, 12 FCC Rcd 2705 (1997); Amendment to the Commission’s Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, *First Report and Order and Further Notice of Proposed Rule Making*, 11 FCC Rcd 8825 (1996).

Commission, including, for example, waiver requests, petitions for reconsideration, and applications for review. In addition, certain judicial proceedings that may relate to the licenses available in Auction No. 35 are pending or may be subject to further review. Resolution of these matters could have an effect on the availability of spectrum included in Auction No. 35 and the auction is subject to such matters. Some of these matters (whether before the Commission or the courts) may not be resolved by the time of the auction. The Commission will continue to act on matters before it, but it makes no representations as to the resolution of judicial proceedings. **Potential bidders are solely responsible for identifying associated risks, and investigating and evaluating the degree to which such matters may affect their ability to bid on or otherwise acquire licenses in Auction No. 35.**

Additionally, potential bidders may obtain some information about licenses available in Auction No. 35 through the Bureau's licensing databases on the World Wide Web at <<http://www.fcc.gov/wtb/uls>>. Potential bidders should direct questions regarding the search capabilities to the FCC Technical Support hotline at (202) 414-1250 (voice) or (202) 414-1255 (TTY), or via e-mail at ulscomm@fcc.gov. The hotline is available to assist potential bidders with questions Monday through Friday, from 8:00 AM to 6:00 PM Eastern Time. In order to provide better service to the public, *all calls to the hotline are recorded*. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases, nor any third party databases, including, for example, court docketing systems.

Further, potential bidders are strongly encouraged to physically inspect any sites located in, or near, the geographic area for which they plan to bid.

Finally, potential bidders are strongly encouraged to make periodic, and continuing, inquiries to the Office of the Secretary and other available sources regarding any proceedings that are, or may be, pending with respect to the licenses available in Auction No. 35.

E. Clarification of Payment Issue Relating to Licenses Subject to Pending Proceedings

As noted above, potential bidders should be aware that certain of the licenses included in Auction No. 35 are or may become the subject of Commission or judicial proceedings initiated by parties claiming to have continuing interests in the licenses, despite their failure to meet payment obligations. This Public Notice clarifies that the Commission will return the payments made by winning bidders of licenses in Auction No. 35 in the event that such bidders are subsequently required to surrender licenses won to prior applicants or license holders as a result of final determinations reached in pending proceedings.¹⁶ The Commission, however, will not pay interest on the returned payments as it lacks legal authority to do so.

Including contested licenses in the auction helps to fulfill the Commission's statutory mandate to hasten the development and deployment of new technologies and services and to promote competition for the benefit of the public.¹⁷ Returning payments to winning bidders if licenses won are later determined to be unavailable due to subsequent resolution of other proceedings furthers these vital public interest goals by reducing uncertainty in the licensing process and encouraging auction participants to bid on licenses

¹⁶ See Implementation of Section 309(j) of the Communications Act — Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, Reexamination of the Policy Statement on Comparative Broadcast Hearings, GC Docket No. 92-52, Proposals to Reform Comparative Hearing Process to Expedite the Resolution of Cases, GEN Docket No. 90-264, *Order*, FCC 99-157, n.15 (rel. July 2, 1999) (Commission order denying petitions for stay of Auction No. 25 pending judicial review and noting that the Commission will return payments made by winning bidders if licenses bid for are later determined to be unavailable due to a subsequent court action). See also "Auction of C, D, E, and F Block Broadband PCS Licenses; Status of Applications to Participate in the Auction; Clarification of Payment Issue Relating to Licenses Subject to Pending Proceedings," *Public Notice*, 14 FCC Rcd 5467, 5470-71 (1999).

¹⁷ 47 U.S.C. § 309(j)(3).

regardless of whether they are subject to pending proceedings. Retaining payments under the circumstances could have a chilling effect on participation in Auction No. 35 and would therefore undermine our efforts to encourage more efficient use of the spectrum. We note that winning bidders of licenses subject to pending proceedings are still required to meet the normal payment and construction schedules established by the Commission.¹⁸

II. Auction Structure

A. Simultaneous Multiple Round Auction Design

The Commission proposes to conduct the competitive bidding for these licenses by using a single, simultaneous multiple-round auction. As described further below, this methodology offers every license for bid at the same time, with successive bidding rounds in which bidders may place bids. We seek comment on this proposal.

B. Upfront Payments and Initial Maximum Eligibility

The Bureau has delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned, taking into account such factors as the population in each geographic license area, and the value of similar spectrum.¹⁹ As described further below, the upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on licenses. The proposed upfront payment formulae take into account information gained from previous auctions of broadband PCS C and F block licenses. Also, as required by the *Part 1 Fifth Report and Order*, the upfront payment amount for “former defaulters,” *i.e.*, applicants that have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency, will be fifty percent more than the normal amount required to be paid.²⁰

We proposed and sought comment on upfront payments in the *Auction No. 35 Public Notice*. In light of the comments we received in response and the rules adopted in the *C/F Block Sixth Report and Order*, we now propose the following formulae for upfront payments:²¹

Tier 1

- (1) 15 MHz licenses — 2.5 % of most recent net high bid for C block licenses in same BTA
- (2) 10 MHz licenses — 1.6 % of most recent net high bid for C block licenses in same BTA

Tier 2

- (1) 15 MHz licenses — 1.25 % of most recent net high bid for C block licenses in same BTA

¹⁸ See “Auction of C, D, E, and F Block Broadband PCS Licenses; Notice and Filing Requirements for Auction of C, D, E, and F Block Broadband Personal Communications Services Licenses Scheduled for March 23, 1999; Minimum Opening Bids and Other Procedural Issues,” Public Notice, 13 FCC Rcd 24,540, 24,545 (1998).

¹⁹ See *Part 1 Order*, 12 FCC Rcd at 5697-98, ¶ 16 (1997); see also *Part 1 Third Report and Order*, 13 FCC Rcd at 425, ¶ 86.

²⁰ *Part 1 Fifth Report and Order*, ¶¶40-42; 47 C.F.R. § 1.2106(a); see also *C Block Fourth Report and Order* at 15761-62, ¶ 34; see 47 C.F.R. §§1.2105(a)(2)(xi) and 24.709(a)(5).

²¹ Results below \$10,000 are rounded to the nearest hundred; results above \$10,000 are rounded to the nearest thousand.

(2) 10 MHz licenses — 1.0 % of most recent net high bid for C block licenses in same BTA

A complete list of all licenses, including the related population and upfront payments, is attached hereto as Attachment A. We seek comment on this proposal.

For Auction No. 35, we further propose that the amount of the upfront payment submitted by a bidder will determine the initial maximum eligibility (as measured in bidding units) for each bidder. Upfront payments will not be attributed to specific licenses, but instead will be translated into bidding units to define a bidder's initial maximum eligibility, which cannot be increased during the auction. Thus, in calculating the upfront payment amount, an applicant must determine the *maximum* number of bidding units it may wish to bid on (or hold high bids on) in any single round, and submit an upfront payment covering that number of bidding units. We seek comment on this proposal.

C. Activity Rules

In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively on a percentage of their maximum bidding eligibility during each round of the auction rather than waiting until the end to participate. A bidder that does not satisfy the activity rule will either lose bidding eligibility in the next round or use an activity rule waiver, if any remain.

We propose to divide the auction into three stages: Stage One, Stage Two, and Stage Three — each characterized by an increased activity requirement. The auction will start in Stage One. We propose that the auction will generally advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is approximately ten percent or below for three consecutive rounds of bidding in each stage. However, we further propose that the Bureau retain the discretion to change stages unilaterally by announcement during the auction. In exercising this discretion, the Bureau will consider a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentage of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. We seek comment on these proposals.

For Auction No. 35, we propose the following activity requirements:

Stage One: In each round of Stage One, a bidder desiring to maintain its current eligibility is required to be active on licenses encompassing at least 80 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the current round activity by five-fourths ($5/4$).

Stage Two: In each round of the second stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on at least 90 percent of its current bidding eligibility. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the current round activity by ten-ninths ($10/9$).

Stage Three: In each round of Stage Three, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. In this final stage, reduced eligibility for the next round will be calculated by multiplying the current round activity by fifty-fortyninths ($50/49$).

We seek comment on these proposals. If commenters believe that these activity rules should be changed, they should explain their reasoning and comment on the desirability of an alternative approach. Commenters are advised to support their claims with analyses and suggested alternative activity rules.

D. Activity Rule Waivers and Reducing Eligibility

Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Activity rule waivers are principally a mechanism for auction participants to avoid the loss of auction eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

The FCC auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any bidding period where a bidder's activity level is below the minimum required unless: (1) there are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding period by using the reduce eligibility function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described above. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

A bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a bidding period in which no bids or withdrawals are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open.

We propose that each bidder in Auction No. 35 be provided with five activity rule waivers that may be used at the bidder's discretion during the course of the auction as set forth above. We seek comment on this proposal.

E. Information Relating to Auction Delay, Suspension or Cancellation

For Auction No. 35, we propose that, by public notice or by announcement during the auction, the Bureau may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding.²² In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. We seek comment on this proposal.

III. Bidding Procedures

A. Round Structure

The Commission will use its Automated Auction System to conduct the electronic simultaneous multiple round auction format for Auction No. 35. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction, and will be included in the registration

²² See 47 C.F.R. § 1.2104(i).

mailings. The auction format will consist of sequential bidding rounds, each followed by the release of round results. Details regarding the location and format of round results will be included in the same public notice.

The Bureau has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors. We seek comment on this proposal.

B. Reserve Price or Minimum Opening Bid

The Balanced Budget Act calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (*i.e.*, because the Commission has accepted mutually exclusive applications for those licenses), unless the Commission determines that a reserve price or minimum bid is not in the public interest.²³ Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.²⁴

Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which *no bids* are accepted. It is generally used to accelerate the competitive bidding process. Also, in a minimum opening bid scenario, the auctioneer generally has the discretion to lower the amount later in the auction. It is also possible for the minimum opening bid and the reserve price to be the same amount.

In light of the Balanced Budget Act, the Bureau proposes to establish minimum opening bids for Auction No. 35. The Bureau believes a minimum opening bid, which has been utilized in other auctions, is an effective bidding tool.²⁵ A minimum opening bid, rather than a reserve price, will help to regulate the pace of the auction and provides flexibility.

Because both the C and F spectrum blocks are being auctioned at the same time, under the same general conditions, the Commission believes that it is appropriate to use a common baseline to establish the minimum opening bid formulae for all of the licenses in the auction. The net high bids from prior C block auctions provide the most comprehensive broadband PCS baseline. We, therefore, propose to base the minimum opening bids for each license available in Auction No. 35, including F block licenses, on the most recent net high bid for the C block license in the same BTA.

We proposed and sought comment on minimum opening bids in the *Auction No. 35 Public Notice*. In light of the comments received in response and the rules adopted in the *C/F Block Sixth Report and Order*, we now propose the following formulae for minimum opening bids:²⁶

²³ See Balanced Budget Act, Section 3002(a). The Commission's authority to establish a reserve price or minimum opening bid is set forth in 47 C.F.R. § 1.2104(c) and (d).

²⁴ See *Part 1 Third Report and Order*, 13 FCC Rcd at 454-455, ¶ 141 (1998).

²⁵ See, *e.g.*, Auction of 800 MHz SMR Upper 10 MHz Band, Minimum Opening Bids or Reserve Prices, *Order*, 12 FCC Rcd 16354 (1997); Auction of the Phase II 220 MHz Service Licenses, Auction Notice and Filing Requirements for 908 Licenses Consisting of Economic Area (EA), Economic Area Grouping (EAG), and Nationwide Licenses, Scheduled for September 15, 1998, Minimum Opening Bids and Other Procedural Issues, *Public Notice*, 13 FCC Rcd 16445 (1998).

²⁶ Results below \$10,000 are rounded to the nearest hundred; results above \$10,000 are rounded to the nearest thousand.

Tier 1

- (1) 15 MHz licenses — 5 % of most recent net high bid for C block licenses in same BTA
- (2) 10 MHz licenses — 3.2 % of most recent net high bid for C block licenses in same BTA

Tier 2

- (1) 15 MHz licenses — 2.5 % of most recent net high bid for C block licenses in same BTA
- (2) 10 MHz licenses — 1.6 % of most recent net high bid for C block licenses in same BTA

The specific minimum opening bid for each license available in Auction No. 35 is set forth in Attachment A hereto. We believe these minimum opening bids best meet the objectives of our auction authority in establishing reasonable minimum opening bids. The Commission believes these minimum opening bids will speed the course of the auction and ensure that valuable assets are not sold for nominal prices without unduly interfering with the efficient assignment of licenses. Minimum opening bids are reducible at the discretion of the Bureau. This discretion will allow the Bureau flexibility to adjust the minimum opening bids if circumstances warrant. We emphasize, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureau will not entertain any bidder requests to reduce the minimum opening bid on specific licenses. We seek comment on these proposals.

If commenters believe that these minimum opening bids will result in substantial numbers of unsold licenses, or is not a reasonable amount, or should instead operate as a reserve price, they should explain why this is so and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. In establishing the minimum opening bids, we particularly seek comment on such factors as, among other things, the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of C and F block licenses. Alternatively, comment is sought on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

C. Minimum Accepted Bids and Bid Increments

Once there is a standing high bid on a license, a bid increment will be applied to that license to establish a minimum acceptable bid for the following round. For Auction No. 35, we propose to use a smoothing methodology to calculate bid increments, as we have done in several other auctions. The Bureau retains the discretion to change the minimum bid increment if it determines that circumstances so dictate. The Bureau will do so by announcement in the Automated Auction System. We seek comment on these proposals.

The exponential smoothing formula calculates the bid increment for each license based on a weighted average of the activity received on each license in all previous rounds. This methodology will tailor the bid increment for each license based on activity, rather than setting a global increment for all licenses. For every license that receives a bid, the bid increment for the next round for that license will be established using the exponential smoothing formula.

The calculation of the percentage bid increment for each license in a given round is made at the end of the previous round. The computation is based on an activity index, which is calculated as the weighted average of the activity in that round and the activity index from the prior round. The activity index at the start of the auction (round 0) will be set at 0. The current activity index is equal to a weighting factor times the

number of new bids received on the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The activity index is then used to calculate a percentage increment by multiplying a minimum percentage increment by one plus the activity index with that result being subject to a maximum percentage increment. The Commission will initially set the weighting factor at 0.5, the minimum percentage increment at 0.1 (10%), and the maximum percentage increment at 0.2 (20%).

Equations

$$A_i = (C * B_i) + (1-C) * A_{i-1}$$

$$I_{i+1} = \text{smaller of } ((1 + A_i) * N) \text{ and } M$$

where,

A_i = activity index for the current round (round i)

C = activity weight factor

B_i = number of bids in the current round (round i)

A_{i-1} = activity index from previous round (round i-1), A_0 is 0

I_{i+1} = percentage bid increment for the next round (round i+1)

N = minimum percentage increment or bid increment floor

M = maximum percentage increment or bid increment ceiling

Under the exponential smoothing methodology, once a bid has been received on a license, the minimum acceptable bid for that license in the following round will be the new high bid plus the dollar amount associated with the percentage increment (variable I_{i+1} from above times the high bid). This result will be rounded to the nearest thousand if it is over ten thousand or to the nearest hundred if it is under ten thousand.²⁷

Examples

License 1

C=0.5, N = 0.1, M = 0.2

Round 1 (2 new bids, high bid = \$1,000,000)

1. Calculation of percentage increment for round 2 using exponential smoothing:

$$A_1 = (0.5 * 2) + (0.5 * 0) = 1$$

$$I_2 = \text{The smaller of } ((1 + 1) * 0.1) = 0.2 \text{ or } 0.2 \text{ (the maximum percentage increment)}$$

2. Minimum bid increment for round 2 using the percentage increment (I_2 from above)

$$0.2 * \$1,000,000 = \$200,000$$

3. Minimum acceptable bid for round 2 = \$1,200,000

Round 2 (3 new bids, high bid = \$2,000,000)

1. Calculation of percentage increment for round 3 using exponential smoothing:

$$A_2 = (0.5 * 3) + (0.5 * 1) = 2$$

$$I_3 = \text{The smaller of } ((1 + 2) * 0.1) = 0.3 \text{ or } 0.2 \text{ (the maximum percentage increment)}$$

²⁷ Multiple increment bids are not rounded according to the previously stated rounding rule; they are received, displayed, and stored by the Automated Auction System as non-rounded dollar amounts resulting from the following formula: Amount Bid = High Bid + (Bid Multiplier * Bid Increment).

2. Minimum bid increment for round 3 using the percentage increment (I_3 from above)
 $0.2 * \$2,000,000 = \$400,000$

3. Minimum acceptable bid for round 3 = \$2,400,000

Round 3 (1 new bid, high bid = \$2,400,000)

1. Calculation of percentage increment for round 4 using exponential smoothing:
 $A_3 = (0.5 * 1) + (0.5 * 2) = 1.5$
 $I_4 = \text{The smaller of } ((1 + 1.5) * 0.1) = 0.25 \text{ or } 0.2 \text{ (the maximum percentage increment)}$
2. Minimum bid increment for round 4 using the percentage increment (I_4 from above)
 $0.2 * \$2,400,000 = \$480,000$
3. Minimum acceptable bid for round 4 = \$2,880,000

D. Information Regarding Bid Withdrawal and Bid Removal

For Auction No. 35, we propose the following bid removal and bid withdrawal procedures. Before the close of a bidding period, a bidder has the option of removing any bids placed in that round. By using the remove bid function in the software, a bidder may effectively “unsubmit” any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments, but will affect a bidder’s activity for the round in which it is removed.

Once a round closes, a bidder may no longer remove a bid. However, in the next round, a bidder may withdraw standing high bids from previous rounds using the withdraw bid function. A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payment provisions.²⁸ We seek comment on these bid removal and bid withdrawal procedures.

In the *Part 1 Third Report and Order*, the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of efficient backup strategies as information becomes available during the course of an auction. The Commission noted, however, that, in some instances, bidders may seek to withdraw bids for improper reasons. The Bureau, therefore, has discretion, in managing the auction, to limit the number of withdrawals to prevent any bidding abuses. The Commission stated that the Bureau should assertively exercise its discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if the Bureau finds that a bidder is abusing the Commission’s bid withdrawal procedures.²⁹

Applying this reasoning, we propose to limit each bidder in Auction No. 35 to withdraw standing high bids in no more than two rounds during the course of the auction. To permit a bidder to withdraw bids in more than two rounds would likely encourage insincere bidding or the use of withdrawals for anti-competitive strategic purposes. The two rounds in which withdrawals are utilized will be at the bidder’s discretion; withdrawals otherwise must be in accordance with the Commission’s rules. There is no limit on the number of standing high bids that may be withdrawn in either of the rounds in which withdrawals are utilized. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission’s rules. We seek comment on this proposal.

²⁸ See 47 C.F.R. §§ 1.2104(g); 1.2109.

²⁹ *Part 1 Third Report and Order*, 13 FCC Rcd at 460, ¶ 150.

E. Stopping Rule

For Auction No. 35, the Bureau proposes to employ a simultaneous stopping rule approach. The Bureau has discretion “to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time.”³⁰ A simultaneous stopping rule means that all licenses remain open until the first round in which no new acceptable bids, proactive waivers or withdrawals are received. After the first such round, bidding closes simultaneously on all licenses. Thus, unless circumstances dictate otherwise, bidding would remain open on all licenses until bidding stops on every license.

The Bureau seeks comment on a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this modified stopping rule.

The Bureau proposes to retain the discretion to keep an auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. The activity rule, therefore, will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver.

Finally, we propose that the Bureau reserve the right to declare that the auction will end after a specified number of additional rounds (“special stopping rule”). If the Bureau invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. The Bureau proposes to exercise this option only in certain circumstances, such as, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage (where bidders would be required to maintain a higher level of bidding activity), increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity. We seek comment on these proposals.

VI. Conclusion

Comments are due on or before September 18, 2000, and reply comments are due on or before September 25, 2000. An original and four copies of all pleadings must be filed with the Commission’s Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW, TW-A325, Washington, DC 20054, in accordance with Section 1.51(c) of the Commission’s rules. See 47 C.F.R. § 1.51(c). In addition, one copy of each pleading must be delivered to each of the following locations: (1) the Commission’s duplicating contractor, International Transcription Service, Inc. (ITS), 1231 20th Street, NW, Washington, DC 20036; (2) Office of Media Relations, Public Reference Center, 445 Twelfth Street, SW, Suite CY-A257, Washington, DC 20554; (3) Rana Shuler, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 445 Twelfth Street, SW, Suite 4-A628, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY-A257, 445 12th Street, SW, Washington, DC 20554.

³⁰ 47 C.F.R. § 1.2104(e).

For further information concerning this proceeding, contact the Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Craig Bomberger, Auctions Analyst, or Audrey Bashkin, Attorney, at (202) 418-0660; or Lisa Stover, Project Manager, at (717) 338-2888.

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