



# PUBLIC NOTICE

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October 13, 2000

## AUCTION OF LICENSES FOR THE 700 MHz GUARD BANDS SCHEDULED FOR FEBRUARY 13, 2001

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

#### Report No. AUC-00-38-A (Auction No. 38)

By this Public Notice, the Wireless Telecommunications Bureau (“Bureau”) announces the auction of 8 Guard Band Manager licenses (“Auction No. 38”) in the 700 MHz Guard Bands to commence on February 13, 2001.<sup>1</sup> This auction will include the licenses that remained unsold in Auction No. 33, which closed on September 21, 2000.<sup>2</sup> Auction No. 38 will include the following licenses:

| <u>Market No.</u> | <u>Market Name</u>                    | <u>Block</u> | <u>Bandwidth</u> |
|-------------------|---------------------------------------|--------------|------------------|
| MEA012            | Pittsburgh, PA                        | A            | 2 MHz            |
| MEA014            | Columbus, OH                          | B            | 4 MHz            |
| MEA028            | Little Rock, AR                       | B            | 4 MHz            |
| MEA034            | Omaha, NE                             | B            | 4 MHz            |
| MEA037            | Oklahoma City, OK                     | B            | 4 MHz            |
| MEA048            | Hawaii                                | B            | 4 MHz            |
| MEA049            | Guam and the Northern Mariana Islands | B            | 4 MHz            |
| MEA051            | American Samoa.                       | B            | 4 MHz            |

<sup>1</sup> See Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, WT Docket No. 99-168, *Second Report and Order*, FCC 00-90 (rel. March 9, 2000) (“700 MHz *Second Report and Order*”). See also Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, WT Docket No. 99-168, *First Report and Order*, FCC 00-5 (rel. January 7, 2000) (“700 MHz *First Report and Order*”), 65 Fed. Reg. 3139 (January 20, 2000).

<sup>2</sup> The Bureau has before it a “Request for Waiver” filed by Harbor Wireless, LLC (Harbor) on September 26, 2000 and a “Supplement to Request for Waiver” filed by Harbor on September 28, 2000. These filings seek to have the Commission offer Harbor three of the licenses listed herein on which Harbor formerly held the high bid in Auction No. 33. The Bureau will respond to Harbor’s request in a separate Order.

The frequency allocation for the “A” Block license is 746-747/776-777 MHz. The frequency allocation for the “B” Block licenses is 762-764/792-794 MHz.

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 . . . .”<sup>3</sup> 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,<sup>4</sup> to seek comment on a variety of auction-specific procedures prior to the start of each auction.<sup>5</sup> We therefore seek comment on the following issues relating to Auction No. 38.

## I. Auction Structure

### A. Simultaneous Multiple Round Auction Design

We propose to award the licenses in a single stage, simultaneous multiple-round auction.<sup>6</sup> As described further below, this methodology offers every license for bid at the same time in successive bidding rounds. 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.<sup>7</sup> As described further below, the upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on

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<sup>3</sup> See Section 3002(a)(E)(i), Balanced Budget Act of 1997, Pub. L. 105-33, 111 Stat. 251 (1997) (“Balanced Budget Act”), amending Section 309(j) of the Communications Act, 47 U.S.C. § 309(j).

<sup>4</sup> 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 auctions procedures.”)

<sup>5</sup> 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.

<sup>6</sup> See *700 MHz Second Report and Order* at ¶¶ 61-62, 71. Note that for the first auction of Guard Band Manager licenses, no applicant may be deemed the winning bidder or affiliate of any winning bidder for both the A and B block license in any single geographic service area. 47 C.F.R. § 27.604. See also *700 MHz First Report and Order* at ¶¶ 31, 39.

<sup>7</sup> See *Part 1 Order*, 12 FCC Rcd at 5697-98, ¶ 16 (1997).

licenses. Upfront payments related to the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction.<sup>8</sup> For Auction No. 38, we propose to use the same upfront payments used for Auction No. 33. Those calculations were based on information available in the form of a congressional estimate of the value of the spectrum. Accordingly, we list all licenses, including the related license area population and the proposed upfront payment for each, in Attachment A. We seek comment on this proposal.

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. The maximum eligibility will determine the licenses on which a bidder may bid in each round of the auction. Thus, in calculating its 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 either place a valid bid and/or be the standing high bidder 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 use an activity rule waiver, if any remain, or lose bidding eligibility in the auction.

We propose a single stage auction with the following activity requirement. In each round of the auction, a bidder desiring to maintain its eligibility to participate in the auction is required to be active on one hundred (100) percent of its bidding eligibility. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's bidding eligibility, thus eliminating the bidder from the auction. We seek comment on this proposal.

### **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 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

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<sup>8</sup> See Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348, 2378-79, ¶¶ 171-176 (1994).

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 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 will not keep the auction open.

We propose that each bidder in Auction No. 38 be provided with two 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. 38, 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.<sup>9</sup> 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.

## **II. 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. 38. 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 mailings. The simultaneous multiple round 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.

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<sup>9</sup> See 47 C.F.R. § 1.2104(i).

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.<sup>10</sup> 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.<sup>11</sup>

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. 38. The Bureau believes a minimum opening bid, which has been utilized in other auctions, is an effective bidding tool.<sup>12</sup> A minimum opening bid, rather than a reserve price, will help to regulate the pace of the auction and provides flexibility. For Auction No. 38, we propose to use the same upfront payments used for Auction No. 33. Those calculations were based on information available in the form of a Congressional estimate of the value of the spectrum. Accordingly, we list all licenses, including the related license area population and the proposed minimum opening bid for each, in Attachment A. We seek comment on this proposal.

If commenters believe that these minimum opening bids will result in substantial numbers of unsold licenses, or are not reasonable amounts, or should instead operate as reserve prices, 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

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<sup>10</sup> 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).

<sup>11</sup> See *Part 1 Third Report and Order*, 13 FCC Rcd at 454-455, ¶ 141 (1998).

<sup>12</sup> See, *e.g.*, Auction of 800 MHz SMR Upper 10 MHz Band, Minimum Opening Bids or Reserve Prices, DA 97-2147, *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).

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 the 700 MHz Guard Bands. 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. 38, we propose to set a minimum 10 percent increment. This means that a new bid placed by a bidder must be at least 10 percent greater than the previous bid received on the license. The Bureau retains the discretion to change the methodology for determining the minimum bid increment if they determine the circumstances so dictate. Advanced notice of the Bureau's decision to do so will be announced via the Automated Auction System.

Bidders will enter their bid as multiples of the bid increment (*i.e.*, with a 10 percent bid increment, a bid of 1 increment will place a bid 10 percent above the previous high bid, a bid of 2 increments will place a bid 20 percent above the previous high bid). We seek comment on this proposal.

### **D. Information Regarding Bid Withdrawal and Bid Removal**

For Auction No. 38, 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 bid 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 a withdrawal payment. Once a round closes, a bidder may no longer remove a bid. We seek comment on this bid removal procedure.

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. In Auction No. 38, however, aggregation of licenses will not be possible because only eight licenses will be auctioned. Accordingly, for this auction, we propose that bidders not be permitted to withdraw bids in any round. We seek comment on this proposal.

### **E. Stopping Rule**

For Auction No. 38, 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."<sup>13</sup> A simultaneous stopping rule means that all licenses remain open until the first round in which no new acceptable bids or proactive waivers 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.

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<sup>13</sup> See 47 C.F.R. § 1.2104(e).

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 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 further seeks comment on whether this modified stopping rule should be used unilaterally or only in stage three of the auction.

The Bureau proposes to retain the discretion to keep an auction open even if no new acceptable bids or proactive waivers are submitted. 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.

### **III. Conclusion**

Comments are due on or before October 20, 2000, and reply comments are due on or before October 27, 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 20554, 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, N.W., 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.

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