



# PUBLIC NOTICE

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## AUCTION NO. 43 MULTI-RADIO SERVICE AUCTION SCHEDULED FOR JANUARY 10, 2002

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

#### Report No. AUC-01-43-A (Auction No. 43)

By this *Public Notice*, the Wireless Telecommunications Bureau (“Bureau”) announces the auction of licenses in multiple radio services to commence on January 10, 2002 (“Auction No. 43”). Auction No. 43 will include 4 licenses in the Phase II 220 MHz Service,<sup>1</sup> 23 licenses for the 800 MHz Specialized Mobile Radio (“SMR”) Service General Category Frequencies,<sup>2</sup> and 42 multilateration licenses in the Location and

<sup>1</sup> For the rules associated with the Phase II 220 MHz service auction, *see* In the Matter of Amendment of Part 90 of the Commission’s Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PR Docket No. 89-552, RM 8506, GN Docket No. 93-252, PP Docket No. 93-253, *Third Report and Order and Fifth Notice of Proposed Rulemaking*, 12 FCC Rcd 10943, 11046, ¶ 221 (1997) (“220 MHz Third Report and Order”); In the Matter of Amendment of Part 90 of the Commission’s Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PR Docket No. 89-552, GN Docket No. 93-252, PP Docket No. 93-253, *Memorandum Opinion and Order on Reconsideration*, 13 FCC Rcd 11745 (1998) (“220 MHz Reconsideration Order”).

<sup>2</sup> The Commission adopted rules to facilitate implementing a new framework for the licensing of 800 MHz SMR systems. *See* Amendment of Part 90 of the Commission’s Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, Implementation of Sections 3 (n) and 322 of the Communications Act – Regulatory Treatment of Mobile Services, Implementation of Section 309(j) of the Communication’s Act – Competitive Bidding, PR Docket No. 93-144, *First Report and Order, Eighth Report and Order and Second Further Notice of Proposed Rulemaking*, 11 FCC Rcd 1463 (1995) (“First Report and Order”). Auction and service rules were adopted for the lower 230 channels as well as the procedures for the mandatory relocation of incumbents from the upper 200 channels. *See* Amendment of Part 90 of the Commission’s Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, *Second Report and Order*, 12 FCC Rcd 19079 (1997) (“Second Report and Order”). The Commission clarified certain rules regarding the relocation of incumbents from the upper 200 channels and the auction licensing of the lower 230 channels, in addition to amending the channel blocks to be auctioned. *See* Amendment of Part 90 of the Commission’s Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, *Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 17556 (1999) (“Reconsideration Order”).

Monitoring Service (“LMS”).<sup>3</sup> The licenses included in Auction No. 43 either remain unsold from a previous auction or were defaulted on by a winning bidder in a previous auction. A complete list of licenses available for Auction No. 43 and their descriptions is included as Attachment A.

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>4</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>5</sup> to seek comment on a variety of auction-specific procedures prior to the start of each auction.<sup>6</sup> We therefore seek comment on the following issues relating to Auction No. 43.

## **I. Auction Structure**

### **A. Simultaneous Multiple Round Auction Design**

We propose to award the licenses in 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 been 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 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>

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<sup>3</sup> The Commission adopted service and competitive bidding rules for the Location and Monitoring Service. See Amendment of the Commission’s Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Second Report and Order*, 13 FCC Rcd 15182 (1998) (“*LMS Second Report and Order*”).

<sup>4</sup> See 47 U.S.C. § 309(j) (as amended by Section 3002(a)(E)(i), Balanced Budget Act of 1997, Pub. L. 105-33, 111 Stat. 251 (1997) (“Balanced Budget Act”).

<sup>5</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>6</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>7</sup> 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.

<sup>8</sup> See Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP

With these guidelines in mind for Auction No. 43, we propose to calculate upfront payments on a license-by-license basis using the following formulas:<sup>9</sup>

- **220 MHz**

EAG Licenses                                     $\$0.01 * 0.15 \text{ MHz} * \text{License Area Population}$

EA Licenses                                          $\$500 \text{ per license}$

- **800 MHz**

$\$0.005 * \text{License Area Population}$  with a minimum of \$2,500 per license.

- **LMS**

Block A:     $\$0.0004 * \text{MHz} * \text{License Area Population}$  with a minimum of \$500 per license.

Block B:     $\$0.0005 * \text{MHz} * \text{License Area Population}$  with a minimum of \$500 per license.

Block C:     $\$0.0005 * \text{MHz} * \text{License Area Population}$  with a minimum of \$500 per license.

Accordingly, we list all licenses, including the related license area population and 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 number of bidding units on which a bidder may place bids. This limit is a bidder’s “maximum initial eligibility.” Each license is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A, on a bidding unit per dollar basis. This number does not change as prices rise during the auction. A bidder’s upfront payment is not attributed to specific licenses. Rather, a bidder may place bids on any combination of licenses as long as the total number of bidding units associated with those licenses does not exceed its maximum initial eligibility. Eligibility cannot be increased during 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 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 must use an activity rule waiver (if any remain).

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Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348, 2378-79, ¶¶ 171-176 (1994).

<sup>9</sup> All population figures are from the 4/1/90 U.S. Census, U.S. Department of Commerce, Bureau of the Census. Results below \$10,000 are rounded to the nearest hundred; results above \$10,000 are rounded to the nearest thousand.

We propose to divide the auction into two stages, each characterized by an increased activity requirement. The auction will start in Stage One. We propose that the auction generally will advance to the next stage (i.e., from Stage One to Stage Two) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is approximately twenty percent or below for three consecutive rounds of bidding. 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. 43, we propose the following activity requirements:

**Stage One:** In each round of the first stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on licenses representing 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, 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/forty-ninths (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 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 bidding system. 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 system) 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. 43 be provided with three 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. 43, 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>10</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. 43. Auction No. 43 will be conducted over the Internet. However, as in prior auctions, the Bureau's wide area network will be available at the standard charge, and telephonic bidding will also be available. Prospective bidders concerned about their access to the Internet may want to establish a connection to the Bureau's wide area network as a backup. Full information regarding how to establish such a connection, and related charges, will be provided in the public notice announcing details of auction procedures.

In past auctions, we have used the timing of bids to select a high bidder when multiple bidders submit identical high bids on a license in a given round. Given that bidders will access the Internet at differing speeds, we will not use this procedure in Auction No. 43. For Auction No. 43, we propose to use a random number generator to select a high bidder from among such bidders.<sup>11</sup> As with prior auctions, remaining bidders will be able to submit higher bids in subsequent rounds. 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.

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.

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<sup>10</sup> See 47 C.F.R. § 1.2104(i).

<sup>11</sup> To ensure randomness, we will use a National Institute of Standards and Technology ("NIST") tested pseudorandom algorithm.

## B. Reserve Price or Minimum Opening Bid

The Balanced Budget Act calls upon the Commission to prescribe methods for establishing a reasonable reserve price or a minimum opening bid when FCC licenses are subject to auction unless the Commission determines that a reserve price or minimum bid is not in the public interest.<sup>12</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>13</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, the auctioneer often has the discretion to lower the minimum opening bid 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's requirements, the Bureau proposes to establish minimum opening bids for Auction No. 43. The Bureau believes a minimum opening bid, which has been utilized in other auctions, is an effective bidding tool.<sup>14</sup>

Specifically, for Auction No. 43, the Commission proposes the following license-by-license formula<sup>15</sup> for calculating minimum opening bids:

- **220 MHz**

EAG Licenses                                      \$0.0125 \* 0.15 MHz \* License Area Population

EA Licenses                                         \$500 per license

- **800 MHz**

\$0.005 \* License Area Population with a minimum of \$2,500 per license.

- **LMS**

Block A:     \$0.0004 \* MHz \* License Area Population with a minimum of \$500 per license.

Block B:     \$0.0005 \* MHz \* License Area Population with a minimum of \$500 per license.

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<sup>12</sup> See 47 U.S.C. § 309(j) (as amended by 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>13</sup> See *Part I Third Report and Order*, 13 FCC Rcd at 454-455, ¶ 141.

<sup>14</sup> 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).

<sup>15</sup> All population figures are from the 4/1/90 U.S. Census, U.S. Department of Commerce, Bureau of the Census. Results below \$10,000 are rounded to the nearest hundred; results above \$10,000 are rounded to the nearest thousand.

Block C:  $\$0.0005 * \text{MHz} * \text{License Area Population}$  with a minimum of \$500 per license.

The specific minimum opening bid for each license available in Auction No. 43 is set forth in Attachment A herein. Comment is sought 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 particularly seek comment on such factors as 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 220 MHz, 800 MHz and LMS spectrum. 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 Acceptable Bids and Bid Increments**

In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts.<sup>16</sup> The Automated Auction System interface will list the nine acceptable bid amounts for each license. Once there is a standing high bid on a license, the Automated Auction System will calculate a minimum acceptable bid for that license for the following round, as described below. The difference between the minimum acceptable bid and the standing high bid for each license will define the *bid increment*. The nine acceptable bid amounts for each license consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (i.e., the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. The additional bid amounts for licenses that have not yet received a bid will be calculated differently, as explained below.

For Auction No. 43, we propose to calculate minimum acceptable bids by using a smoothing methodology, as we have done in several other auctions. The smoothing formula calculates minimum acceptable bids by first calculating a *percentage increment*, not to be confused with the *bid increment*, for each license based on a weighted average of the activity received on each license in all previous rounds. This methodology tailors the percentage increment for each license based on activity, rather than setting a global increment for all licenses.

In a given round, the calculation of the percentage increment for each license 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

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<sup>16</sup> Bidders must have sufficient eligibility to place a bid on the particular license. See Section I(B) (“Upfront Payments and Initial Maximum Eligibility”), *supra*.

weighting factor at 0.5, the minimum percentage increment at 0.1 (10%), and the maximum percentage increment at 0.2 (20%).

### Equations

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

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

$$X_{i+1} = I_{i+1} * Y_i$$

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 increment for the next round (round i+1)

N = minimum percentage increment or percentage increment floor

M = maximum percentage increment or percentage increment ceiling

$X_{i+1}$  = dollar amount associated with the percentage increment

$Y_i$  = high bid from the current round

Under the 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 high bid from the current round plus the dollar amount associated with the percentage increment, with the result rounded to the nearest thousand if it is over \$10,000, to the nearest hundred if it is under \$10,000 but over \$1,000, or to the nearest ten if it is below \$1,000.

### 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 the smoothing formula:

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

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

2. Calculation of dollar amount associated with the percentage increment for round 2 (using  $I_2$  from above):

$$X_2 = 0.2 * \$1,000,000 = \$200,000$$

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 the smoothing formula:

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

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

2. Calculation of dollar amount associated with the percentage increment for round 3 (using  $I_3$  from above):

$$X_3 = 0.2 * \$2,000,000 = \$400,000$$

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 the smoothing formula:

$$A_3 = (0.5 * 1) + (0.5 * 2) = 1.5$$

$$I_4 = \text{The smaller of } ((1 + 1.5) * 0.1) = 0.25 \text{ or } 0.2 \text{ (the maximum percentage increment)}$$

2. Calculation of dollar amount associated with the percentage increment for round 4 (using  $I_4$  from above):

$$X_4 = 0.2 * \$2,400,000 = \$480,000$$

3. Minimum acceptable bid for round 4 = \$2,880,000

As stated above, until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. The additional bid amounts are calculated using the difference between the minimum opening bid times one plus the minimum percentage increment, rounded as described above, and the minimum opening bid. That is,  $I = (\text{minimum opening bid})(1 + N)\{\text{rounded}\} - (\text{minimum opening bid})$ . Therefore, when  $N$  equals 0.1, the first additional bid amount will be approximately ten percent higher than the minimum opening bid; the second, twenty percent; the third, thirty percent; etc.

In the case of a license for which the standing high bid has been withdrawn,<sup>17</sup> the minimum acceptable bid will equal the second highest bid received for the license. The additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid.

The Bureau retains the discretion to change the minimum acceptable bids and bid increments 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.

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

For Auction No. 43, 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 Selected Bids function in the bidding system, 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. However, in any subsequent round, a high bidder may withdraw its standing high bids from previous rounds using the Withdraw function in the bidding system. A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payment provisions of the Commission rules.<sup>18</sup> 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

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<sup>17</sup> See Section II(D) “Information Regarding Bid Withdrawal and Bid Removal,” *infra*.

<sup>18</sup> See 47 C.F.R. §§ 1.2104(g), 1.2109.

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.<sup>19</sup>

Applying this reasoning, we propose to limit each bidder in Auction No. 43 to withdrawing 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 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.

## **E. Stopping Rule**

For Auction No. 43, 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>20</sup> 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.

However, the Bureau proposes to retain the discretion to exercise any of the following options during Auction No. 43:

1. Utilize 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, 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 further seeks comment on whether this modified stopping rule should be used at any time or only in stage two of the auction.
2. Keep the 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.
3. 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 specified 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 these options 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 these options, the Bureau is likely to attempt to increase the pace of the auction by, for example, 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.

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<sup>19</sup> *Part 1 Third Report and Order*, 13 FCC Rcd at 460, ¶ 150.

<sup>20</sup> *See* 47 C.F.R. § 1.2104(e).

### III. Conclusion

Comments are due on or before September 21, 2001, and reply comments are due on or before September 28, 2001. 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, Room TW-A325, 445 Twelfth Street, SW, Washington, DC 20554, in accordance with Section 1.51(c) of the Commission's rules.<sup>21</sup> In addition, one copy of each pleading must be delivered to each of the following locations: (1) the Commission's duplicating contractor, Qualex International, Portals II, 445 Twelfth Street, SW, Room CY-B402, Washington, DC 20554; (2) Office of Media Relations, Public Reference Center, Room CY-A257, 445 Twelfth Street, SW, Washington, DC 20554; (3) Rana Shuler, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Room 4-A628, 445 Twelfth Street, SW, 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.

This proceeding has been designated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>22</sup> Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required.<sup>23</sup> Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in Section 1.1206(b) of the Commission's rules.<sup>24</sup>

For further information concerning this proceeding, contact the Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, as listed below:

For legal questions: Howard Davenport (202) 418-0660 or e-mail [hdavenpo@fcc.gov](mailto:hdavenpo@fcc.gov)

For general auction questions: Lyle Ishida (202) 418-0660 or e-mail [lishida@fcc.gov](mailto:lishida@fcc.gov)  
Barbara Sibert (717) 338-2888 or e-mail [bsibert@fcc.gov](mailto:bsibert@fcc.gov)

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<sup>21</sup> See 47 C.F.R. § 1.51(c). Comments should not be filed using the Commission's Electronic Comment Filing System.

<sup>22</sup> See 47 C.F.R. §§ 1.1200(a), 1.1206.

<sup>23</sup> See 47 C.F.R. § 1.1206(b).

<sup>24</sup> See 47 C.F.R. § 1.1206(b).