



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
445 12th STREET SW
WASHINGTON DC 20554

News Media Information: (202) 418-0500
Fax-On-Demand: (202) 418-2830
Internet: <http://www.fcc.gov>
<ftp.fcc.gov>

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AUCTION OF LICENSES FOR THE LOWER AND UPPER PAGING BANDS SCHEDULED FOR JUNE 26, 2001

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

Report No. AUC-01-40-A (Auction No. 40)

By this Public Notice, the Wireless Telecommunications Bureau (“Bureau”) announces the auction of 14,000 licenses in the lower paging bands (35-36 MHz, 43-44 MHz, 152-159 MHz, and 454-460 MHz) (“Auction No. 40”) to commence on June 26, 2001.¹ In addition, Auction No. 40 will include 1,514 licenses in the upper paging bands (929-931 MHz), that remained unsold in the first paging auction (“Auction No. 26”), which closed on March 2, 2000.

In the *Paging Reconsideration Order*, the Commission concluded that the lower bands licenses should be awarded in each of the 175 geographic areas known as Economic Areas (EAs), and the upper band licenses awarded in each of the 51 geographic areas known as Major Economic Areas (MEAs).² These EAs and MEAs both encompass the United States, Guam and Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, and American Samoa.

¹ See Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems, Implementation of Section 309(j) of the Communications Act – Competitive Bidding, WT Docket No. 96-18, PR Docket No. 93-253, *Memorandum Opinion and Order on Reconsideration and Third Report and Order*, 14 FCC Rcd 10030 (1999) (“*Paging Reconsideration Order*”).

² See *Paging Reconsideration Order*, 14 FCC Rcd at 10043-46, ¶¶ 14-21.

The following tables contain the Block/Frequency Cross-Reference List for the paging bands:

35 MHz Lower Bands Unpaired Paging Channels

Block (License Suffix)	Frequency	Block (License Suffix)	Frequency	Block (License Suffix)	Frequency	Block (License Suffix)	Frequency
CA	35.19 - 35.21	CE	35.29 - 35.31	CI	35.45 - 35.47	CM	35.57 - 35.59
CB	35.21 - 35.23	CF	35.33 - 35.35	CJ	35.49 - 35.51	CN	35.59 - 35.61
CC	35.23 - 35.25	CG	35.37 - 35.39	CK	35.53 - 35.55	CO	35.61 - 35.63
CD	35.25 - 35.27	CH	35.41 - 35.43	CL	35.55 - 35.57	CP	35.65 - 35.67

43 MHz Lower Bands Unpaired Paging Channels

Block (License Suffix)	Frequency	Block (License Suffix)	Frequency	Block (License Suffix)	Frequency	Block (License Suffix)	Frequency
DA	43.19 - 43.21	DE	43.29 - 43.31	DI	43.45 - 43.47	DM	43.57 - 43.59
DB	43.21 - 43.23	DF	43.33 - 43.35	DJ	43.49 - 43.51	DN	43.59 - 43.61
DC	43.23 - 43.25	DG	43.37 - 43.39	DK	43.53 - 43.55	DO	43.61 - 43.63
DD	43.25 - 43.27	DH	43.41 - 43.43	DL	43.55 - 43.57	DP	43.65 - 43.67

152 MHz Lower Bands Unpaired Paging Channels

Block (License Suffix)	Frequency	Block (License Suffix)	Frequency
EA	152.230 - 152.250	EC	158.090 - 158.110
EB	152.830 - 152.850	ED	158.690 - 158.710

152 MHz Lower Bands Paired Paging Channels

Block (License Suffix)	Frequency	Block (License Suffix)	Frequency
FA	152.015-152.045 / 158.475-158.505	FJ	152.555-152.585 / 157.815-157.845
FB	152.045-152.075 / 158.505-158.535	FK	152.585-152.615 / 157.845-157.875
FC	152.075-152.105 / 158.535-158.565	FL	152.615-152.645 / 157.875-157.905
FD	152.105-152.135 / 158.565-158.595	FM	152.645-152.685 / 157.905-157.935
FE	152.135-152.165 / 158.595-158.625	FN	152.685-152.705 / 157.935-157.965
FF	152.165-152.195 / 158.625-158.655	FO	152.705-152.735 / 157.965-157.995
FG	152.195-152.225 / 158.655-158.685	FP	152.735-152.765 / 157.995-158.025
FH	152.495-152.525 / 157.755-157.785	FQ	152.765-152.795 / 158.025-158.055
FI	152.525-152.555 / 157.785-157.815	FR	152.795-152.825 / 158.055-158.085

454 MHz Lower Bands Paired Paging Channels

Block (License Suffix)	Frequency	Block (License Suffix)	Frequency
GA	454.0125-454.0375 / 459.0125-459.0375	GN	454.3375-454.3625 / 459.3375-459.3625
GB	454.0375-454.0625 / 459.0375-459.0625	GO	454.3625-454.3875 / 459.3625-459.3875
GC	454.0625-454.0875 / 459.0625-459.0875	GP	454.3875-454.4125 / 459.3875-459.4125
GD	454.0875-454.1125 / 459.0875-459.1125	GQ	454.4125-454.4375 / 459.4125-459.4375
GE	454.1125-454.1375 / 459.1125-459.1375	GR	454.4375-454.4625 / 459.4375-459.4625
GF	454.1375-454.1625 / 459.1375-459.1625	GS	454.4625-454.4875 / 459.4625-459.4875
GG	454.1625-454.1875 / 459.1625-459.1875	GT	454.4875-454.5125 / 459.4875-459.5125
GH	454.1875-454.2125 / 459.1875-459.2125	GU	454.5125-454.5375 / 459.5125-459.5375
GI	454.2125-454.2375 / 459.2125-459.2375	GV	454.5375-454.5625 / 459.5375-459.5625
GJ	454.2375-454.2625 / 459.2375-459.2625	GW	454.5625-454.5875 / 459.5625-459.5875
GK	454.2625-454.2875 / 459.2625-459.2875	GX	454.5875-454.6125 / 459.5875-459.6125
GL	454.2875-454.3125 / 459.2875-459.3125	GY	454.6125-454.6375 / 459.6125-459.6375
GM	454.3125-454.3375 / 459.3125-454.3375	GZ	454.6375-454.6625 / 459.6375-459.6625

929-931 MHz Upper Bands Paging Channels

Block (License Suffix)	Frequency	Block (License Suffix)	Frequency	Block (License Suffix)	Frequency	Block (License Suffix)	Frequency
A	929.0125	AA	931.0125	AN	931.3375	BA	931.6625
B	929.1125	AB	931.0375	AO	931.3625	BB	931.6875
C	929.2375	AC	931.0625	AP	931.3875	BC	931.7125
D	929.3125	AD	931.0875	AQ	931.4125	BD	931.7375
E	929.3875	AE	931.1125	AR	931.4375	BE	931.7625
F	929.4375	AF	931.1375	AS	931.4625	BF	931.7875
G	929.4625	AG	931.1625	AT	931.4875	BG	931.8125
H	929.6375	AH	931.1875	AU	931.5125	BH	931.8375
I	929.6875	AI	931.2125	AV	931.5375	BI	931.8625
J	929.7875	AJ	931.2375	AW	931.5625	BJ	931.9625
K	929.9125	AK	931.2625	AX	931.5875	BK	931.9875
L	929.9625	AL	931.2875	AY	931.6125		
		AM	931.3125	AZ	931.6375		

(Note: For Auction No. 40, licenses are not available in every block listed in the above 929-931 MHz Upper Bands Paging Channels table in every market as the Commission sold 985 upper bands licenses in Auction No. 26. See Attachment A to determine what licenses will be offered for sale in Auction No. 40.)

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”³ 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,⁴ to seek comment on a variety of auction-specific procedures prior to the start of each auction.⁵ We therefore seek comment on the following issues relating to Auction No. 40.

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.⁶ 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.⁷ For Auction No. 40, we propose to make the upfront payments equal to the minimum opening bids, which are established based on similar facts

³ See 47 USC § 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”).

⁴ 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, 5697-98, ¶ 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.”).

⁵ 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.

⁶ See *Part 1 Order*, 12 FCC Rcd at 5697-98, ¶ 16.

⁷ 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) (“*Competitive Bidding Second Report and Order*”).

as described in section II.B, below. The specific upfront payments for each license are set forth 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).

We propose to divide the auction into three stages, 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 Stages One and Two. 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 percentages 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.

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 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 the third 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.

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 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. 40 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. 40, 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.⁸ 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.

F. Information Available to Bidders During the Course of the Auction

In the *Paging Second Report and Order*, the Commission concluded that, due to the large number of licenses to be auctioned, limiting the disclosure of information to bidders during the course of paging auctions (*e.g.*, revealing only high bids and total number of bids on each license and withholding bidder identities) might help to speed the pace of the auctions.⁹ In the *Paging Reconsideration Order*, the Commission directed the Bureau to seek further comment on this issue. Based on its experience in Auction No. 26, in which the information was disclosed, the Bureau tentatively concludes that it is unnecessary to withhold bidder identities in Auction No. 40. We seek comment on this tentative conclusion. In addition, as in Auction No. 26, we propose to disclose all information relating to the bids during Auction No. 40 after each round of bidding closes, including all bids and withdrawals placed in each round, the identity of the bidder placing each bid or withdrawal, and the net and gross amounts of each bid or withdrawal. 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. 40. In contrast to prior auctions, Auction No. 40 will be conducted over the Internet. However, the Bureau's wide area network will be available at the standard charge, as in prior auctions. 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. 40. For Auction No. 40, we propose to use a random number generator to select a high bidder from among such bidders.¹⁰ 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

⁸ See 47 C.F.R. § 1.2104(i).

⁹ Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, *Second Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 2732, 2786, ¶ 106 (1997) ("*Paging Second Report and Order*").

¹⁰ To ensure randomness, we will use a National Institute of Standards and Technology ("NIST") tested pseudorandom generator.

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 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.¹¹ 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.¹²

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. 40. The Bureau believes a minimum opening bid, which has been utilized in other auctions, is an effective auction tool.¹³

Because multiple licenses in the same geographic area 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 formula for all the licenses in the auction. The gross high bids from the prior 929-931 MHz Paging Auction (No. 26) provide the most comprehensive paging baseline. Therefore, we propose to base the minimum opening bid for each license available in Auction No. 40 on the average of the corresponding gross high bids received in Auction No. 26, as follows:

¹¹ See 47 U.S.C. § 309(j) (as amended by 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).

¹² See *Part 1 Third Report and Order*, 13 FCC Rcd at 454-455, ¶ 141.

¹³ 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, DA 98-1010, *Public Notice*, 13 FCC Rcd 16445 (1998).

- For a license being auctioned by MEA, the minimum opening bid will be 20% of the average gross high bid received in Auction No. 26 in the same MEA.
- For a license being auctioned by EA, the minimum opening bid will be the EA population multiplied by 20% of the gross average dollars per population received in Auction No. 26 for the corresponding MEA.

The Commission will set a “floor” for minimum opening bids at \$1000 for licenses in the upper paging bands (929-931 MHz) and \$500 for the licenses in the lower paging bands (35-36 MHz, 43-44 MHz, 152-159 MHz, and 454-460 MHz).

This formula is intended to apply to all geographic paging licenses in Auction No. 40, and takes into account considerations discussed above. The specific proposed minimum opening bid for each license is set forth 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 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 paging 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 Acceptable Bids and Bid Increments

In each round, eligible bidders will be able to place acceptable bids on a given license in any of ten different amounts.¹⁴ The Automated Auction System interface will list as acceptable bids for each license a minimum acceptable bid and nine higher bids equal to the minimum acceptable bid plus one to nine times a defined increment. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. In the rounds after an acceptable bid is placed on a license, the minimum acceptable bid for that license will be equal to the standing high bid plus the defined increment.

For Auction No. 40, we propose to set the defined increment for each license based on a percentage of the standing high bid on the license or, if no bid has been placed on the license, a percentage of the minimum opening bid for the license. The defined increment will be calculated as follows. Presuming, for example, that the percentage being used is 20 percent, we will multiply the standing high bid (or, if no standing high bid exists for the particular license, the minimum opening bid) by 1.2. (If the percentage being used is 30 percent, we would multiply by 1.3, etc.) We will round the result to the nearest \$100 for results below \$10,000 and to the nearest \$1,000 for amounts above \$10,000. The defined increment then will be determined by subtracting the

¹⁴ Bidders must have sufficient eligibility to place a bid on the particular license. *See* Section I(B) (“Upfront Payments and Initial Maximum Eligibility”), *supra*.

standing high bid (or, if applicable, the minimum opening bid) from the rounded result. At the start of the auction, we propose to use 20 percent to calculate the defined increment. We also propose to retain discretion to change the percentage used to calculate the defined increment if we determine that circumstances so dictate. Further, we propose to retain discretion to set a floor for the increment used to calculate the minimum acceptable bid at an absolute dollar amount.¹⁵

In addition, we propose that in Stage Three the Bureau have discretion to use a smaller defined increment to calculate acceptable bids higher than the minimum acceptable bid. The smaller defined increment would be calculated using a smaller percentage than the percentage used to calculate the defined increment that sets the minimum acceptable bid. For example, 20 percent might be used to calculate the defined increment for the minimum acceptable bid and 10 percent might be used to calculate the smaller defined increment used to calculate higher acceptable bids. In all other respects, the smaller defined increment would be calculated in exactly the manner described above for the initial defined increment, including rounding.

For example, the Bureau could calculate Stage Three bids using 20 percent to calculate the defined increment for the minimum acceptable bid and 10 percent to calculate the smaller defined increment. Assuming that the standing high bid on a given license is \$50,000, in the next round of Stage Three,

$$\begin{aligned}
 \text{Defined Increment} &= \text{Rounded}(\text{Standing High Bid} * 1.2) - \text{Standing High Bid} \\
 &= \text{Rounded}(\$50,000 * 1.2) - \$50,000 \\
 &= \text{Rounded}(\$60,000) - \$50,000 \\
 &= \$60,000 - \$50,000 \\
 &= \$10,000
 \end{aligned}$$

$$\begin{aligned}
 \text{Minimum Acceptable Bid} &= \text{Standing High Bid} + \text{Defined Increment} \\
 &= \$50,000 + \$10,000 \\
 &= \$60,000
 \end{aligned}$$

$$\begin{aligned}
 \text{Smaller Defined Increment} &= \text{Rounded}(\text{Standing High Bid} * 1.1) - \text{Standing High Bid} \\
 &= \text{Rounded}(\$50,000 * 1.1) - \$50,000 \\
 &= \text{Rounded}(\$55,000) - \$50,000 \\
 &= \$55,000 - \$50,000 \\
 &= \$5,000
 \end{aligned}$$

¹⁵ Bids higher than the minimum acceptable bid would be calculated using the current percentage, even if the resulting increment is less than the absolute dollar amount imposed on the initial increment.

One Increment Higher Than Minimum Acceptable Bid

$$\begin{aligned} &= \text{Minimum Acceptable Bid} + (\text{Smaller Defined Increment} * 1) \\ &= \$60,000 + (\$5,000 * 1) \\ &= \$60,000 + \$5,000 \\ &= \$65,000 \end{aligned}$$

Two Increments Higher Than Minimum Acceptable Bid

$$\begin{aligned} &= \text{Minimum Acceptable Bid} + (\text{Smaller Defined Increment} * 2) \\ &= \$60,000 + (\$5,000 * 2) \\ &= \$60,000 + \$10,000 \\ &= \$70,000 \end{aligned}$$

This procedure would enable bidders unwilling to raise the standing high bid by twice the defined increment to place bids higher than the minimum acceptable bid. Thus, in the above example, a bidder wanting to bid above the minimum acceptable bid but unwilling to raise the standing high bid of \$50,000 by twice the defined increment of \$10,000 (\$20,000 or 40 percent) would have the flexibility to bid \$65,000, raising the standing high bid by \$15,000. Bidders may want the flexibility to place such bids as licenses approach their final price. However, such precision earlier in the auction only would create unnecessary delay, and we therefore propose to limit this procedure to Stage Three of the auction.

In summary, we propose the Bureau have discretion at any time during the auction to change the initial 20 percent used to calculate the defined increment and/or to set an absolute dollar amount floor for the increment used to calculate the minimum acceptable bid. We also propose that the Bureau have additional discretion in Stage Three to calculate the minimum acceptable bid using one percentage and to calculate higher acceptable bids using another percentage, as described above. Advanced notice of the Bureau's decision to exercise its discretion with regard to acceptable bids in any manner would be announced via the Automated Auction System. We seek comment on these proposals.

D. Information Regarding Bid Withdrawal and Bid Removal

For Auction No. 40, 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 bidding 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. However, in any subsequent round, a high bidder may withdraw its standing high bids from previous rounds using the withdraw bid function in the bidding software. 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.¹⁶ 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.¹⁷

Applying this reasoning, we propose to limit each bidder in Auction No. 40 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.

A. Stopping Rule

For Auction No. 40, 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."¹⁸ 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.

However, the Bureau proposes to retain the discretion to exercise any of the following options during Auction No. 40:

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 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 three of the auction.

¹⁶ See 47 C.F.R. §§ 1.2104(g), 1.2109.

¹⁷ *Part 1 Third Report and Order*, 13 FCC Rcd at 460, ¶ 150.

¹⁸ See 47 C.F.R. § 1.2104(e).

2. Keep the 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.

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.

III. Conclusion

Comments are due on or before March 19, 2001, and reply comments are due on or before March 26, 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.¹⁹ 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, 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.²⁰ 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.²¹ 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.²²

¹⁹ 47 C.F.R. § 1.51(c).

²⁰ 47 C.F.R. §§ 1.1200(a), 1.1206.

²¹ See 47 C.F.R. § 1.1206(b).

²² 47 C.F.R. § 1.1206(b).

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

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