



# PUBLIC NOTICE

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## **AUTOMATED MARITIME TELECOMMUNICATIONS SYSTEM SPECTRUM AUCTION SCHEDULED FOR SEPTEMBER 15, 2004**

### **COMMENT SOUGHT ON RESERVE PRICES OR MINIMUM OPENING BIDS AND OTHER AUCTION PROCEDURES**

#### **Report No. AUC-04-57-A (Auction No. 57)**

By this Public Notice, the Wireless Telecommunications Bureau (“Bureau”) announces the auction of 20 Automated Maritime Telecommunications System (“AMTS”) licenses. This auction is scheduled to commence on September 15, 2004 (Auction No. 57).<sup>1</sup> AMTS is a specialized system of coast stations which provide integrated and interconnected marine voice and data communications, somewhat like a cellular phone system, for tugs, barges, and other vessels on waterways. Service to units on land is permitted, so long as marine-originating communications receive priority. In Auction No. 57, two 500-kilohertz blocks of paired spectrum in the 217/219 MHz band will be offered in each of 10 AMTS Areas (“AMTSAs”).<sup>2</sup>

A complete list of licenses available for Auction No. 57 is included as Attachment A of this Public Notice.

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<sup>1</sup> See Amendment of the Commission’s Rules Concerning Maritime Communications, *Second Memorandum Opinion and Order and Fifth Report and Order*, PR Docket No. 92-257, 17 FCC Rcd 6685, 6686-87 ¶ 2 (2002) (“*Second MO&O and Fifth Report and Order*”); Amendment of the Commission’s Rules Concerning Maritime Communications, *Third Report and Order*, PR Docket No. 92-257, FCC 03-270 (rel. Nov. 18, 2003).

<sup>2</sup> See 47 C.F.R. § 80.385; *Second MO&O and Fifth Report and Order*, 17 FCC Rcd at 6738, Appendix D. AMTSAs are based on, and composed of one or more of, the U.S Department of Commerce’s 172 Economic Areas (EAs). In addition, the Commission treats Puerto Rico, the United States Virgin Islands, and the Gulf of Mexico as EA-like areas. Maps of the EAs and AMTSAs are available for public inspection and copying at the Federal Communications Commission, Public Safety and Critical Infrastructure Division, 445 12th Street, S.W., Room 4-C330, Washington, D.C. Each AMTSA also includes the adjacent waters under the jurisdiction of the United States. *Id.*

The following table describes the licenses that will be auctioned in each of the AMTSAs:

Block	Frequency Bands (MHz)	Total Bandwidth	Pairing	Geographic Area Type	No. of Licenses
A	217.5 – 218.0 / 219.5 – 220.0	1 MHz	2 x 500 kHz	AMTSA	10
B	217.0 – 217.5 / 219.0 – 219.5	1 MHz	2 x 500 kHz	AMTSA	10

Note: The above table displays the band edges of spectrum blocks A and B using the twenty 25 kHz channels that comprise each block as listed in 47 C.F.R. § 80.385(a)(2). It should be noted that pursuant to 47 C.F.R. § 80.481, licensees are not required to use 25 kHz channelization and may choose any channelization scheme; however, regardless of the channelization scheme used, emissions at these band edges must be attenuated within the limitation that would be required under 47 C.F.R. § 80.211 if the licensee were using 25 kHz channels.

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. 57.

## I. Auction Structure

### A. Simultaneous Multiple-Round Auction Design

We propose to award all licenses included in Auction No. 57 in a 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 Bidding 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>6</sup> As described further below, the upfront payment is a refundable deposit

<sup>3</sup> 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>4</sup> Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Proceeding, *Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making*, 12 FCC Rcd 5686, 5697-5698 ¶ 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, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 448 ¶ 124-125 (1997) (“*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 acceptable bids, initial 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 448 ¶ 125.

<sup>6</sup> *Part 1 Order*, 12 FCC Rcd at 5697-98 ¶ 16. See also *Part 1 Third Report and Order*, 13 FCC Rcd at 425 ¶

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>7</sup> With these guidelines in mind for Auction No. 57, we propose to calculate upfront payments on a license-by-license basis using the following formula:

$$\$0.0075 * \text{MHz} * \text{License Area Population}^8 \text{ with a minimum of } \$1,000 \text{ per license.}^9$$

Accordingly, in Attachment A we list all licenses included in Auction No. 57 and the proposed upfront payment for each license. We seek comment on this proposal.

We further propose that the amount of the upfront payment submitted by a bidder will determine the maximum number of bidding units on which a bidder may place bids. This limit is a bidder's 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 current 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 throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. 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 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,<sup>10</sup> the number of new bids, and the percentage increase in revenue. We seek comment on these proposals.

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86; Implementation of Section 309(j) of the Communications Act-Competitive Bidding, *Second Report and Order*, 9 FCC Rcd 2348, 2378-79 ¶¶ 171-175 (1994) (“*Competitive Bidding Second Report and Order*”).

<sup>7</sup> *Competitive Bidding Second Report and Order*, 9 FCC Rcd 2348, 2378-79 ¶¶ 171-176.

<sup>8</sup> All population figures are from the 2000 U.S. Census, U.S. Department of Commerce, Bureau of the Census. See Census 2000 Summary File 1 (SF1) and July 3, 2001, News Releases covering the U.S. Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.

<sup>9</sup> Results are rounded using our standard rounding procedure: results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10.

<sup>10</sup> For example, when monitoring activity for determining when to change stages, we may consider the percentage of bidding units of the licenses receiving new high bids, excluding any FCC-held licenses.

For Auction No. 57, 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 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 95 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 twenty-nineteenths ( $20/19$ ).

We seek comment on these proposals. Commenters that believe these activity rules should be modified 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 can be either proactive or automatic and 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 Automated 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) the bidder has no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirement. **Note: If a bidder has no waivers remaining and does not satisfy the required activity level, its current eligibility will be permanently reduced, possibly eliminating the bidder from the auction.**

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 bids or withdrawals will not keep the auction open. **Note: Once a proactive waiver is submitted during a round, that waiver cannot be unsubmitted.**

We propose that each bidder in Auction No. 57 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. 57, 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 efficient conduct of competitive bidding.<sup>11</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 conduct Auction No. 57 over the Internet. Telephonic bidding will also be available. As a contingency plan, the FCC Wide Area Network will be available as well. The telephone number through which the backup FCC Wide Area Network may be accessed will be announced in a later public notice. Full information regarding how to establish such a connection will be provided in the public notice announcing details of auction procedures.

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.

### **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 opening 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

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<sup>11</sup> 47 C.F.R. § 1.2104(i).

<sup>12</sup> 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).

<sup>13</sup> *Part 1 Third Report and Order*, 13 FCC Rcd at 454-55 ¶ 141.

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. 57. The Bureau believes a minimum opening bid, which has been used in other auctions, is an effective bidding tool.<sup>14</sup>

Specifically, for Auction No. 57, the Commission proposes the following license-by-license formula for calculating minimum opening bids:

$$\$0.0075 * \text{MHz} * \text{License Area Population}^{15} \text{ with a minimum of } \$1,000 \text{ per license.}^{16}$$

The specific minimum opening bid for each license available in Auction No. 57 is set forth in Attachment A of this Public Notice. 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 AMTS spectrum. We also seek comment 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>17</sup> The FCC Automated Auction System interface will list the nine acceptable bid amounts for each license. 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 a 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.

Once there is a standing high bid on a license, the FCC 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

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<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); Auction of Licenses in the Multichannel Video Distribution and Data Service rescheduled for January 14, 2004, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures, *Public Notice*, 18 FCC Rcd 17553 (2003) (“*MVDDS Procedures Public Notice*”).

<sup>15</sup> See note 8, *supra*.

<sup>16</sup> Results are rounded using our standard rounding procedure: results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10.

<sup>17</sup> Bidders must have sufficient eligibility to place a bid on the particular license. See Section I.B. (“Upfront Payments and Bidding Eligibility”), *supra*.

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. 57, we propose to calculate minimum acceptable bids by using a smoothing methodology, as we have done in several other auctions.<sup>18</sup> The smoothing formula calculates minimum acceptable bids by first calculating a **percentage increment**, not to be confused with the **bid increment**. The percentage increment for each license is based on bidding activity on that license in all prior rounds; therefore, a license that has received many bids throughout the auction will have a higher percentage increment than a license that has received few bids.

The calculation of the percentage increment used to determine the minimum acceptable bids for each license for the next round is made at the end of each round. The computation is based on an activity index, which is a weighted average of the number of bids in that round and the activity index from the prior round.<sup>19</sup> The current activity index is equal to a weighting factor times the number of new bids received on the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The activity index is then used to calculate a percentage increment by multiplying a minimum percentage increment by one plus the activity index with that result being subject to a maximum percentage increment. The Commission will initially set the weighting factor at 0.5, the minimum percentage increment at 0.1 (10%), and the maximum percentage increment at 0.2 (20%). Hence, at these initial settings, the percentage increment will fluctuate between 10% and 20% depending upon the number of bids for the license.

## 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

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<sup>18</sup> See *e.g.*, *MVDDS Procedures Public Notice*, 18 FCC Rcd 17553; Auction of 900 MHz Specialized Mobile Radio Service Licenses Scheduled for February 11, 2004, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures, *Public Notice*, 18 FCC Rcd 21176 (2003).

<sup>19</sup> For Round 1 calculations, because there is no prior round (*i.e.*, no round 0), the activity index from the prior round is set at 0.

associated with the percentage increment, with the result rounded to the nearest thousand if it is over ten thousand or to the nearest hundred if it is under ten thousand.

### 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>20</sup> the minimum acceptable bid will equal the second highest bid received for the license. The additional bid amounts are calculated using

<sup>20</sup> See Section II.E. "Information Regarding Bid Withdrawal and Bid Removal," *infra*.

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 FCC Automated Auction System. We seek comment on these proposals.

#### **D. High Bids**

At the end of a bidding round, a high bid for each license will be determined based on the highest gross bid amount received for the license. In the event of identical high bids on a license in a given round (*i.e.*, tied bids), we propose to use a random number generator to select a single high bid from among the tied bids. If the auction were to end with no higher bids being placed for that license, the winning bidder would be the one that placed the selected high bid. However, the remaining bidders, as well as the high bidder, can submit higher bids in subsequent rounds. If any bids are received on the license in a subsequent round, the high bid again will be determined by the highest gross bid amount received for the license.

A high bid will remain the high bid until there is a higher bid on the same license at the close of a subsequent round. A high bid from a previous round is sometimes referred to as a “standing high bid.” Bidders are reminded that standing high bids confer activity.<sup>21</sup>

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

For Auction No. 57, 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 removing selected bids 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.

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>22</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 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>23</sup>

Applying this reasoning, we propose to limit each bidder in Auction No. 57 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 may be utilized will be at the bidder’s

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<sup>21</sup> See Section I.C. “Activity Rules,” *supra*.

<sup>22</sup> 47 C.F.R. §§ 1.2104(g), 1.2109.

<sup>23</sup> *Part 1 Third Report and Order*, 13 FCC Rcd at 460 ¶ 150.

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.

## **F. Stopping Rule**

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>24</sup> For Auction No. 57, the Bureau proposes to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all licenses remain available for bidding until bidding closes simultaneously on all licenses.

Bidding will close simultaneously on all licenses after the first round in which no new bids, proactive waivers, or withdrawals are received. Thus, unless circumstances dictate otherwise, bidding will 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. 57:

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 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 a specified preceding number of rounds.

The Bureau proposes to exercise these options only in certain circumstances, 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 April 23, 2004, and reply comments are due on or before April 30, 2004. Because of the disruption of regular mail and other deliveries in Washington, DC, the Bureau requires that all comments and reply comments be filed electronically. Comments and reply comments must be sent by electronic mail to the following address: [auktion57@fcc.gov](mailto:auktion57@fcc.gov).<sup>25</sup> The electronic mail containing the

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<sup>24</sup> 47 C.F.R. § 1.2104(e).

<sup>25</sup> Comments and reply comments in response to this Public Notice may not be filed using the Commission's Electronic Comment Filing System, which is used for the Commission's docketed rule making proceedings.

comments or reply comments must include a subject or caption referring to Auction No. 57 Comments and the name of the commenting party. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Copies of 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.

**In addition, the Bureau requests that commenters fax a courtesy copy of their comments and reply comments to the attention of Kathryn Garland at (717) 338-2850.**

This proceeding has been designated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>26</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>27</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>28</sup>

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

For legal questions: Christopher Shields, (202) 418-0660

For general auction questions: Lyle Ishida (202) 418-0660  
Lisa Stover (717) 338-2888

For service rule questions, contact the Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, as follows: Roberto Mussenden or Ghassan Khalek, (202) 418-0680

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<sup>26</sup> 47 C.F.R. §§ 1.1200(a), 1.1206.

<sup>27</sup> 47 C.F.R. § 1.1206(b).

<sup>28</sup> *Id.*