



PUBLIC NOTICE

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AUCTION OF PHASE II 220 MHz SPECTRUM SCHEDULED FOR JUNE 20, 2007
COMMENT SOUGHT ON COMPETITIVE BIDDING PROCEDURES
FOR AUCTION NO. 72

AU Docket No. 06-214

Comments Due: December 29, 2006

Reply Comments Due: January 8, 2007

Report No. AUC-06-72-A (Auction No. 72)

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I. LICENSES TO BE OFFERED IN AUCTION NO. 72

1. By this Public Notice, the Wireless Telecommunications Bureau (“Bureau”) announces an auction of 94 Phase II 220 MHz Service licenses.¹ This auction, which is designated Auction No. 72, is scheduled to commence on June 20, 2007.

2. The spectrum to be auctioned has been offered previously in other auctions but was returned to the Commission as a result of license cancellation or termination. A complete list of licenses available for Auction No. 72 is included as Attachment A of this Public Notice.²

3. Auction No. 72 includes a total of 94 licenses offered in 52 markets, including 93 Economic Area (EA) licenses and one Economic Area Grouping (EAG) license in the Phase II 220 MHz Service. The following table describes the licenses that will be offered in Auction No. 72.

Block	Frequencies	Bandwidth	Pairing	Geographic Area Type	No. of Licenses
A	220-222 MHz	100 kHz	2 x 50 kHz	EA	13
B	220-222 MHz	100 kHz	2 x 50 kHz	EA	18
C	220-222 MHz	100 kHz	2 x 50 kHz	EA	23
D	220-222 MHz	100 kHz	2 x 50 kHz	EA	17
E	220-222 MHz	100 kHz	2 x 50 kHz	EA	22
I	220-222 MHz	150 kHz	2 x 75 kHz	EAG	1

4. Because of the history of licenses for Phase II 220 MHz spectrum, certain licenses available in Auction No. 72 are available for only part of a market. In addition, one license available for only part of a market also covers less bandwidth than noted in the table above. The licenses available in this auction are listed in Attachment A of this Public Notice.

5. **Incumbency Issues.** A number of incumbent Phase I 220 MHz licensees were licensed and operating on frequencies between 220 and 222 MHz prior to Auction No. 43.³ Such Phase I

¹ For some of the orders and related 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(1997), *modified on recon.*, 13 FCC Rcd 14569 (1998); 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, PR Docket No. 89-552, *Fourth Report and Order*, 12 FCC Rcd 13453 (1997); 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-Geographic Partitioning and Spectrum Disaggregation for the 220-222 MHz Service, PR Docket No. 89-552, GN Docket No. 93-252, *Fifth Report and Order*, 13 FCC Rcd 24615 (1998) and *Memorandum Opinion and Order*, 15 FCC Rcd 5919 (2000), *vacated and superseded by Memorandum Opinion and Order*, 15 Rcd 13924 (2000).

² See Auction No. 18, “Phase II 220 MHz Service Auction Closes, Winning Bidders in the Auction of 908 Phase II 220 MHz Service Licenses,” *Public Notice*, 14 FCC Rcd 605 (1998) (“*Auction No. 18 Winning Bidders’ Public Notice*”); Auction 24, “Phase II 220 MHz Service Spectrum Auction Closes, Winning Bidders in the Auction of 225 Licenses in the Phase II 220 MHz Service,” *Public Notice*, 14 FCC Rcd 11218 (1999) (“*Auction No. 24 Winning Bidders’ Public Notice*”); Auction No. 43 “Multi-Radio Service Auction Closes, Winning Bidders Announced,” *Public Notice*, 17 FCC Rcd 1446 (2002) (“*Auction No. 43 Winning Bidders’ Public Notice*”).

³ See *Auction No. 18 Winning Bidders’ Public Notice*, above; *Auction No. 24 Winning Bidders’ Public Notice*, above.

incumbents must be protected from harmful interference by Phase II 220 MHz licensees in accordance with the Commission's rules. These limitations may restrict the ability of Phase II geographic area licensees to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license areas.

II. BUREAU SEEKS COMMENT ON AUCTION PROCEDURES

6. Section 309(j)(3) of the Communications Act of 1934, as amended, 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”⁴ Consistent with the provisions of Section 309(j)(3) 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, to seek comment on a variety of auction-specific procedures prior to the start of each auction.⁵ The Bureau therefore seeks comment on the following issues relating to Auction No. 72.

A. Auction Structure

1. Simultaneous Multiple-Round Auction Design

7. The Bureau proposes to auction all licenses included in Auction No. 72 using the Commission's standard simultaneous multiple-round (“SMR”) auction format. As described further below, this type of auction offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses. Typically, bidding remains open on all licenses until bidding stops on every license. The Bureau seeks comment on this proposal.

8. **Auction Format.** The Bureau has considered the possibility of using a simultaneous multiple-round auction format with package bidding (“SMR-PB”), but does not believe that an SMR-PB format is likely to offer significant advantages to bidders in Auction No. 72, given that the auction inventory consists of licenses for returned spectrum in various blocks and geographic areas. Under the Commission's SMR-PB rules, bidders can place bids on any groups of licenses they wish to win together, with the result that they win either all the licenses in a group or none of them. The Bureau's standard SMR auction format offers all licenses for bid at the same time, and allows bidders to bid on and win multiple licenses on a license-by-license basis, thereby facilitating aggregations. The Bureau believes use of the SMR format for Auction No. 72 will be the simplest and most efficient means of auctioning the licenses in this inventory, and therefore, the Bureau proposes to conduct the auction using the Bureau's standard SMR auction format. However, if commenters believe that the SMR-PB design would offer significant benefits, the Bureau invites their comments and request that they describe what specific factors lead them to that conclusion.

⁴ 47 U.S.C. § 309(j)(3)(E)(i).

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, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 448 ¶¶ 124-25 (1997) (“*Part 1 Third Report and Order*”) (directing 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 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). See also 47 C.F.R. § 0.131; 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, 5697-98 ¶ 16 (1997) (“*Part 1 Order*”).

9. **Information Available to Bidders Before and During an Auction.** The Bureau also seeks comment on whether to implement procedures that would limit the disclosure of information on bidder interests and identities prior to the close of bidding.⁶ Commenters should indicate what factors support the position they take on this issue and specifically, how these factors apply to this auction. Commenters should address whether technological considerations, equipment availability, or competitive concerns weigh in favor of or against limiting the disclosure of information on bidder interests and identities relative to most past Commission spectrum auctions, and whether the Commission should condition the implementation of such limits on a measure of the anticipated competitiveness of the auction, such as the eligibility ratio or a modified version of the eligibility ratio.

2. Round Structure

10. The Commission will conduct Auction No. 72 over the Internet. During the auction, telephonic bidding will also be available via the Auction Bidder Line. The toll-free telephone number for telephonic bidding will be provided to qualified bidders.

11. The auction will consist of sequential bidding 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.

12. The Bureau proposes to retain the 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. Under this proposal, the Bureau may increase or decrease the amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors. The Bureau seeks comment on this proposal.

3. Stopping Rule

13. The Bureau has discretion "to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time."⁷ For Auction No. 72, 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. More specifically, bidding will close simultaneously on all licenses after the first round in which no bidder submits any new bids, applies a proactive waiver, or withdraws any provisionally winning bids.⁸ Thus, unless the Bureau announces alternative procedures, bidding will remain open on all licenses until bidding stops on every license.

14. Further, the Bureau proposes to retain the discretion to exercise any of the following options during Auction No. 72:

- a) Use 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 applies a waiver, withdraws a provisionally winning bid, or places any new bids on any license for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule.

⁶ See Auction of 1.4 GHz Band Licenses, Scheduled for February 7, 2007, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 69, *Public Notice*, DA 06-2014, at 4 ¶¶ 4-6 (rel. Nov. 2, 2006).

⁷ 47 C.F.R. § 1.2104(e).

⁸ Proactive waivers are described in Section II.B.3. "Activity Rule Waivers and Reducing Eligibility," provisionally winning bids are defined in Section II.B.6. "Provisionally Winning Bids," and bid withdrawals are described in Section II.B.7. "Bid Removal and Bid Withdrawal," below.

b) Keep the auction open even if no bidder places any new bids, applies a waiver, or withdraws bids. In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule, therefore, will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

c) 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) after which the auction will close.

15. 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 changing minimum acceptable bids. The Bureau proposes to retain the discretion to exercise any of these options with or without prior announcement during the auction. The Bureau seeks comment on these proposals.

4. Information Relating to Auction Delay, Suspension, or Cancellation

16. For Auction No. 72, the Bureau proposes 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, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding.⁹ 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. The Bureau emphasizes 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. The Bureau seeks comment on this proposal.

B. Auction Procedures

1. Upfront Payments and Bidding Eligibility

17. The Bureau has delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned.¹⁰ 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 licenses for 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.¹¹ With these factors in mind, the Bureau proposes to calculate upfront payments on a license-by-license basis using the following formulas:¹²

⁹ 47 C.F.R. § 1.2104(i).

¹⁰ See *Part 1 Order*, 12 FCC Rcd at 5697-98 ¶ 16. See also *Part 1 Third Report and Order*, 13 FCC Rcd at 425 ¶ 86; Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Second Report and Order*, 9 FCC Rcd 2348, 2378-79 ¶¶ 171-75 (1994) (“*Competitive Bidding Second Report and Order*”).

¹¹ See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2378-79 ¶¶ 171-76.

¹² 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. Two of the licenses available cover partial markets. The (continued....)

EA Licenses	\$500 per license
EAG License	\$0.01 * 0.15 MHz * License Area Population

18. The Bureau further proposes that the amount of the upfront payment submitted by a bidder will determine the bidder's initial bidding eligibility in bidding units. The Bureau proposes that each license be assigned a specific number of bidding units equal to the upfront payment listed in Attachment A, on a bidding unit per dollar basis. The number of bidding units for a given license is fixed and does not change during the auction as prices rise. A bidder's upfront payment is not attributed to specific licenses. Rather, a bidder may place bids on any of the licenses it selected on its FCC Form 175 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; it can only remain the same or decrease. Thus, in calculating its upfront payment amount and hence its initial bidding eligibility, an applicant must determine the **maximum** number of bidding units it may wish to bid on (or hold provisionally winning bids on)¹³ in any single round, and submit an upfront payment amount covering that total number of bidding units.

19. The proposed number of bidding units for each license and associated upfront payment amounts are listed in Attachment A.¹⁴ The Bureau seeks comment on these proposals.

2. Activity Rule

20. 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. A bidder's activity in a round will be the sum of the bidding units associated with any licenses upon which it places bids during the current round and the bidding units associated with any licenses for which it holds provisionally winning bids. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place bids in the auction.¹⁵

21. The Bureau proposes to divide the auction into two stages, each characterized by a different activity requirement. The auction will start in Stage One. The Bureau proposes that the auction generally will advance from Stage One to Stage Two when the auction activity level, as measured by the percentage of bidding units receiving new provisionally winning bids, is approximately twenty percent or below for three consecutive rounds of bidding. However, the Bureau further proposes that the Bureau retains 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,¹⁶ the number of new bids, and the percentage of increase in revenue. The Bureau seeks comment on these proposals.

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population listed for these licenses is based on the 2000 decennial census and reflects the area covered. See Attachment A for more information.

¹³ See Section II.B.6. "Provisionally Winning Bids," below.

¹⁴ Results are rounded using the Bureau's 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.

¹⁵ See Section II.B.3. "Activity Rule Waivers and Reducing Eligibility," below.

¹⁶ For example, when monitoring activity for determining when to change stages, the Bureau may consider the (continued....)

22. For Auction No. 72, the Bureau proposes the following activity requirements:

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

Stage Two: In each round of the second stage, a bidder desiring to maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the required activity level will result in the use of an activity rule waiver or a reduction in the bidder's bidding eligibility in the next round of bidding. During Stage Two, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by twenty-nineteenths (20/19).

23. The Bureau seeks comment on this proposal. Commenters that believe this activity rule 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.

3. Activity Rule Waivers and Reducing Eligibility

24. Use of an activity rule waiver preserves the bidder's 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, not to particular licenses. Activity rule waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from bidding in a particular round.

25. The FCC Auction System assumes that a bidder that does not meet the activity requirement would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required unless: (1) the bidder has no activity rule waivers remaining; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the activity requirement. If a bidder has no waivers remaining and does not satisfy the required activity level, its eligibility will be permanently reduced, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

26. 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 round by using the "reduce eligibility" function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rule as described above. Reducing eligibility is an irreversible action. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility, even if the round has not yet closed.

27. A bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity rule waiver (using the "apply waiver" function in the FCC Auction System) during a bidding round in which no bids are placed or withdrawn, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC Auction System in a round in which there are no new bids, withdrawals, or proactive waivers will not keep the auction open. A bidder cannot apply a proactive waiver after bidding

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percentage of bidding units of the licenses receiving new provisionally winning bids, excluding any FCC-held licenses.

in a round, and applying a proactive waiver will preclude a bidder from placing any bids in that round. Applying a waiver is irreversible; once a proactive waiver is submitted, that waiver cannot be unsubmitted, even if the round has not yet closed.

28. The Bureau proposes that each bidder in Auction No. 72 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. The Bureau seeks comment on this proposal.

4. Reserve Price or Minimum Opening Bids

29. Section 309(j) calls upon the Commission to prescribe methods for establishing a reasonable reserve price or a minimum opening bid amount when FCC licenses are subject to auction, unless the Commission determines that a reserve price or minimum opening bid amount is not in the public interest.¹⁷ Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of a minimum opening bid amount and/or reserve price prior to the start of each auction.¹⁸

30. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given amount. 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.

31. In light of Section 309(j)'s requirements, the Bureau proposes to establish minimum opening bid amounts for Auction No. 72. The Bureau believes a minimum opening bid amount, which has been used in other auctions, is an effective bidding tool for accelerating the competitive bidding process.¹⁹ The Bureau does not propose to establish a separate reserve price for the licenses to be offered in Auction No. 72.

32. Specifically, for Auction No. 72, the Bureau proposes to calculate minimum opening bid amounts on a license-by-license basis as follows:²⁰

EA Licenses	\$500 per license
EAG License	$\$0.01 * 0.15 \text{ MHz} * \text{License Area Population}$

This proposed minimum opening bid amount for each license available in Auction No. 72 is set forth in Attachment A of this Public Notice.²¹ The Bureau seeks comment on this proposal.

33. If commenters believe that these minimum opening bid amounts will result in unsold licenses, 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

¹⁷ 47 U.S.C. 309(j)(4)F). *See also* 47 C.F.R. 1.2104(c) and (d).

¹⁸ *Part 1 Third Report and Order*, 13 FCC Rcd at 454-55 ¶ 141. *See* 47 C.F.R. § 1.2104(c).

¹⁹ *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).

²⁰ *See* note 12 (concerning census figures), above.

²¹ *See* note 14 (concerning rounding), above.

their claims with valuation analyses and suggested amounts or formulas for reserve prices or minimum opening bids. In establishing minimum opening bid amounts, the Bureau particularly seeks 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 service areas, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the licenses being auctioned. The Bureau also seeks comment on whether, consistent with Section 309(j), the public interest would be served by having no minimum opening bid amounts or reserve prices.

5. Bid Amounts

34. The Bureau proposes that, in each round, eligible bidders be able to place a bid on a given license in any of nine different amounts.²² Under this proposal, the FCC Auction System interface will list the nine acceptable bid amounts for each license.²³

35. The first of the nine acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a license will be equal to its minimum opening bid amount until there is a provisionally winning bid for the license. After there is a provisionally winning bid for a license, the minimum acceptable bid amount for that license will be equal to the amount of the provisionally winning bid plus a percentage of that bid amount calculated using the formula described below. In general, the percentage will be higher for a license receiving many bids than for a license receiving few bids. In the case of a license for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the license.²⁴

36. The percentage of the provisionally winning bid used to establish the minimum acceptable bid amount (the “additional percentage”) is calculated at the end of each round, 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. Specifically, the activity index is equal to a weighting factor times the number of bids on the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round.²⁵ The additional percentage is determined as one plus the activity index times a minimum percentage amount, with the result not to exceed a given maximum. The additional percentage is then multiplied by the provisionally winning bid amount to obtain the minimum acceptable bid for the next round. The Bureau will initially set the weighting factor at 0.5, the minimum percentage at 0.1 (10%), and the maximum percentage at 0.2 (20%). Hence, at these initial settings, the minimum acceptable bid for a license will be between ten percent and twenty percent higher than the provisionally winning bid, depending upon the bidding activity for the license. Equations and examples are shown in Attachment B.

37. The eight additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded. If, for example, the bid increment percentage is ten percent, the calculation is (minimum acceptable bid amount) * (1 + 0.1), rounded, or (minimum acceptable bid amount) * 1.1, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment

²² Bidders must have sufficient eligibility to place a bid on the particular license. See Section II.B.1. “Upfront Payments and Bidding Eligibility,” above.

²³ In the event of duplicate bid amounts due to rounding, the FCC Auction System will omit the duplicates and will list fewer than nine acceptable bid amounts for the license.

²⁴ See Section II.B.7. “Bid Removal and Bid Withdrawal,” below.

²⁵ 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.

percentage, rounded, or (minimum acceptable bid amount) * 1.2, rounded; the third additional acceptable bid amount equals the minimum acceptable bid amount times one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.3, rounded; etc. The Bureau will round the results of these calculations, as well as the calculations to determine the minimum acceptable bid amounts, using the Bureau's standard rounding procedures.²⁶ For Auction No. 72, the Bureau proposes to use a bid increment percentage of ten percent to calculate the eight additional acceptable bid amounts.

38. The Bureau retains the discretion to change the minimum acceptable bid amounts, the parameters of the activity-based formula, and the bid increment percentage if it determines that circumstances so dictate. The Bureau will do so by announcement in the FCC Auction System during the auction. The Bureau seeks comment on these proposals.

6. Provisionally Winning Bids

39. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round. At the end of a bidding round, a provisionally winning bid for each license will be determined based on the highest bid amount received for the license. In the event of identical high bid amounts being submitted on a license in a given round (*i.e.*, tied bids), the Bureau will use a random number generator to select a single provisionally winning bid from among the tied bids. (Each bid is assigned a random number, and the tied bid with the highest random number wins the tiebreaker.) The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid.²⁷ If any bids are received on the license in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the license.

40. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the license at the close of a subsequent round, unless the provisionally winning bid is withdrawn. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.²⁸

7. Bid Removal and Bid Withdrawal

41. For Auction No. 72, the Bureau proposes the following bid removal procedures. Before the close of a bidding round, a bidder has the option of removing any bid placed in that round. By removing selected bids in the FCC Auction System, a bidder may effectively "unsubmit" any bid placed within that round. In contrast to the bid withdrawal provisions described below, 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.

42. A bidder may withdraw its provisionally winning bids using the "withdraw bids" function in the FCC Auction System. A bidder that withdraws its provisionally winning bid(s) is subject to the bid

²⁶ Results are rounded using the Bureau's 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.

²⁷ The FCC Auction System will assign new random numbers to all bids after any round in which any bidder bids on any license. Thus, the winner of the tiebreaker could change even if no new bids are submitted on the license that received identical high bid amounts.

²⁸ See Section II.B.2. "Activity Rule," above.

withdrawal payment provisions of the Commission rules.²⁹ The Bureau seeks comment on these bid removal and bid withdrawal procedures.

43. In the *Part 1 Third Report and Order*, the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of backup strategies as information becomes available during the course of an auction.³⁰ 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 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.³¹

44. Applying this reasoning, the Bureau proposes to limit each bidder to withdrawing provisionally winning 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 may encourage insincere bidding or the use of withdrawals for anti-competitive purposes. The two rounds in which withdrawals may be used will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's rules.³² There is no limit on the number of provisionally winning bids that may be withdrawn in either of the rounds in which withdrawals are used. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules.

C. Post-Auction Payments

1. Interim Withdrawal Payment Percentage

45. The Bureau seeks comment on the appropriate percentage of a withdrawn bid that should be assessed as an interim withdrawal payment, in the event that a final withdrawal payment cannot be determined at the close of the auction. In general, the Commission's rules provide that a bidder that withdraws a bid during an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or a subsequent auction.³³ However, if a license for which a bid has been withdrawn does not receive a subsequent higher bid or winning bid in the same auction, the final withdrawal payment cannot be calculated until a corresponding license receives a higher bid or winning bid in a subsequent auction. When that final payment cannot yet be calculated, the bidder responsible for the withdrawn bid is assessed an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed.³⁴ The Commission recently amended its rules to provide that in advance of the auction, the Commission

²⁹ 47 C.F.R. §§ 1.2104(g) and 1.2109.

³⁰ *Part 1 Third Report and Order*, 13 FCC Rcd at 459-60 ¶ 150.

³¹ *Id.*

³² *See* 47 C.F.R. § 1.2104(g).

³³ 47 C.F.R. § 1.2104(g)(1). The withdrawal payment amount is deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission. No withdrawal payment is assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids equals or exceeds that withdrawn bid. *Id.*

³⁴ *Id.*

shall establish a percentage between three percent and twenty percent of the withdrawn bid to be assessed as an interim bid withdrawal payment.³⁵

46. When it adopted the new rule, the Commission indicated that the level of the interim withdrawal payment in a particular auction will be based on the nature of the service and the inventory of the licenses being offered.³⁶ The Commission noted that it may impose a higher interim withdrawal payment percentage to deter the anti-competitive use of withdrawals when, for example, bidders likely will not need to aggregate licenses offered, such as when few licenses are offered, the licenses offered are not on adjacent frequencies or in adjacent areas, or there are few synergies to be captured by combining licenses.³⁷

47. With respect to the licenses being offered in Auction No. 72, the service rules permit a variety of fixed, mobile, and paging services, though the opportunities for combining licenses on adjacent frequencies or in adjacent areas are more limited than has been the case in previous auctions of licenses in the Phase II 220 MHz service. Balancing the potential need for bidders to use withdrawals to avoid winning incomplete combinations of licenses with the Bureau's interest in deterring abuses of our bidding, the Bureau proposes a percentage below the maximum twenty percent permitted under the current rules but above the three percent previously provided by the Commission's rules. Specifically, the Bureau proposes to establish an interim bid withdrawal payment of ten percent of the withdrawn bid for this auction. The Bureau seeks comment on this proposal.

2. Additional Default Payment Percentage

48. Any winning bidder that defaults or is disqualified after the close of an auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) is liable for a default payment under 47 C.F.R. § 1.2104(g)(2). This payment consists of a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less. Until recently this additional payment for non-combinatorial auctions has been set at three percent of the defaulter's bid or of the subsequent winning bid, whichever is less.

49. The *CSEA/Part 1 Report and Order* modified Section 1.2104(g)(2) by increasing the three percent limit on the additional default payment for non-combinatorial auctions to twenty percent.³⁸ Under the modified rule, the Commission will, in advance of each non-combinatorial auction, establish an additional default payment for that auction of three percent up to a maximum of twenty percent.³⁹ As the Commission has indicated, the level of this payment in each case will be based on the nature of the service and the inventory of the licenses being offered.⁴⁰

³⁵ See 47 C.F.R. § 1.2104(g)(2), as amended by Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, WT Docket No. 05-211, *Report and Order*, 21 FCC Rcd 891, 903 ¶ 30 (2006) ("*CSEA/Part 1 Report and Order*").

³⁶ See 47 C.F.R. § 1.2104(g)(2).

³⁷ See 47 C.F.R. § 1.2104(g)(2).

³⁸ See *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 903 ¶ 30.

³⁹ See 47 C.F.R. § 1.2104(g)(2).

⁴⁰ See *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 903 ¶ 30.

50. For Auction No. 72, the Bureau proposes to establish an additional default payment of ten percent. As noted in the *CSEA/Part I Report and Order*, defaults weaken the integrity of the auction process and impede the deployment of service to the public, and an additional default payment of more than three percent will be more effective in deterring defaults. At the same time, the Bureau does not believe the detrimental effects of any defaults in Auction No. 72 are likely to be unusually great. The Bureau seeks comment on this proposal.

III. DEADLINES AND FILING PROCEDURES

51. Comments are due on or before December 29, 2006, and reply comments are due on or before January 8, 2007. All filings related to the auction of Phase II 220 MHz spectrum licenses should refer to AU Docket No. 06-214. Comments may be submitted using the Commission's Electronic Comment Filing System ("ECFS") or by filing paper copies.⁴¹ The Bureau strongly encourages interested parties to file comments electronically, and requests submission of a copy via the Auction No. 72 e-mail box (auction72@fcc.gov).

52. *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS at <http://www.fcc.gov/cgb/ecfs/>. Filers should follow the instructions provided on the website for submitting comments. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

53. *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Bureau continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary Attn: WTB/ASAD, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. Eastern Time (ET). All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington DC 20554.

54. *Auction No. 72 E-mail Box:* The Bureau also requests that a copy of all comments and reply comments be submitted electronically to the following address: auction72@fcc.gov.

55. Copies of comments and reply comments will be available for public inspection between 8:00 a.m. and 4:30 p.m. ET Monday through Thursday or 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, Room CY-A257, 445 12th Street, SW, Washington, DC 20554, and will also be accessible through the search function on the ECFS web page at <http://www.fcc.gov/cgb/ecfs/>.

⁴¹ See Electronic Filing of Documents in Rulemaking Proceedings, *Report and Order*, 13 FCC Rcd 11322 (1998).

56. This proceeding has been designated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁴² 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. 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.

IV. CONTACTS

57. For further information concerning this proceeding, contact the Wireless Telecommunications Bureau, as listed below:

Mobility Division, Wireless Telecommunications Bureau

For service rules questions: Allen Barna (legal) at (202) 418-0620 or Gary Devlin (technical), at (717) 338-2618

Auctions and Spectrum Access Division, Wireless Telecommunications Bureau

For general auction questions: Debbie Smith or Barbara Sibert at (717) 338-2868
For auctions legal questions: Howard Davenport at (202) 418-0660

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⁴² 47 C.F.R. §§ 1.1200(a), 1.1206.