



# PUBLIC NOTICE

**Federal Communications Commission**  
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**Washington, DC 20554**

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**DA 06-376**  
**February 21, 2006**

## **AUCTION OF 800 MHz AIR-GROUND RADIOTELEPHONE SERVICE LICENSES SCHEDULED FOR MAY 10, 2006**

### **Comment Sought on Additional Payment Component of Default Payments for Auction No. 65**

**Comments Due: March 7, 2006**

**Reply Comments Due: March 14, 2006**

Report No. AUC-06-65-C (Auction No. 65)

On January 10, 2006, in the *Auction No. 65 Comment Public Notice*, the Wireless Telecommunications Bureau (“Bureau”) announced the auction of new nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band<sup>1</sup> and sought comment on procedures for the auction of these licenses (Auction No. 65).<sup>2</sup> Auction No. 65 is scheduled to commence on May 10, 2006.

After the release of the *Auction No. 65 Comment Public Notice*, the Commission released the *CSEA/Part 1 Report and Order*, in which it modified Section 1.2104(g)(2) of its rules.<sup>3</sup> This provision, which is part of the Commission’s general competitive bidding rules, governs default payments that must be paid by winning bidders that default on a down payment or final payment obligation or are disqualified after the close of an auction. Under the modified rule, the Commission will, as part of its determination of competitive bidding procedures in advance of a particular auction, establish the amount of the additional payment component of such default payments for that auction.<sup>4</sup> Because Section 1.2104(g)(2) was modified after the release of the *Auction No. 65 Comment Public Notice*, the Bureau does not seek

<sup>1</sup> The spectrum consists of an uplink band at 849-851 MHz and a downlink band at 894-896 MHz. 47 C.F.R. § 22.857.

<sup>2</sup> “Auction of 800 MHz Air-Ground Radiotelephone Service Licenses Scheduled for May 10, 2006; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Procedures for Auction No. 65,” *Public Notice*, DA 06-3 (rel. January 10, 2006) (70 Fed. Reg. 3513) (January 23, 2006) (“*Auction No. 65 Comment Public Notice*”).

<sup>3</sup> 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*, FCC 06-4 (rel. January 24, 2006), ¶¶ 30-32 (71 Fed. Reg. 6214) (February 7, 2006) (“*CSEA/Part 1 Report and Order*”); 47 C.F.R. § 1.2104(g)(2).

<sup>4</sup> Other changes to the Commission’s general competitive bidding rules adopted in the *CSEA/Part 1 Report and Order* do not affect procedures in Auction No. 65, e.g., changes regarding interim withdrawal payments, or do not require additional public comment prior to application, e.g., changes regarding license applications filed by winning consortia. See generally *CSEA/Part 1 Report and Order* at ¶ 2 (summarizing changes).

comment therein on the appropriate level of this payment for Auction No. 65, nor does it establish the amount of this payment in the *Auction No. 65 Procedures Public Notice* released on February 21, 2006.<sup>5</sup> Therefore, as explained below, we seek comment in this Public Notice on the appropriate level of this payment for Auction No. 65.

Section 1.2104(g)(2) provides that if, after the close of an auction, a winning bidder defaults on a down payment or final payment obligation or is disqualified (e.g., fails to submit a timely long-form application), the bidder is liable for a default payment.<sup>6</sup> 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 3 percent of the defaulter's bid or of the subsequent winning bid, whichever is less.

Pursuant to the modification of Section 1.2104(g)(2) adopted in the *CSEA/Part 1 Report and Order*, the 3 percent limit on the additional default payment for non-combinatorial auctions has been increased to 20 percent.<sup>7</sup> Thus, the Commission will, for each non-combinatorial auction, establish an additional default payment from 3 percent up to a maximum of 20 percent.<sup>8</sup> 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.<sup>9</sup>

For Auction No. 65, the Bureau proposes to establish an additional default payment of 20 percent. In this auction, licenses in three band plans will be available, but the only licenses that will be awarded will be those that comprise the band plan that receives the highest aggregate bid.<sup>10</sup> Consequently, a bid on a single license may determine not only the winner of that license but also the winning band plan, and thus affect the ability of other bidders to win other licenses in the auction. By contrast, a bid on a license in an auction using the Commission's standard simultaneous multiple round auction format ("SMR") may determine only the winner of that license. Because of the particular interdependence among bids in Auction No. 65 and the potential effects of one winning bidder's default on bidders for other licenses, we believe that the detrimental effects of a default may be significantly greater than in a standard SMR auction. Accordingly, we propose a higher additional default payment in order to deter such defaults.<sup>11</sup> We seek comment on this proposal.

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<sup>5</sup> "Auction of 800 MHz Air-Ground Radiotelephone Service Licenses Scheduled for May 10, 2006; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 65," *Public Notice*, DA 06-299 (rel. February 21, 2006) ("*Auction No. 65 Procedures Public Notice*").

<sup>6</sup> 47 C.F.R. § 1.2104(g)(2). *See also* 47 C.F.R. § 1.2109.

<sup>7</sup> *CSEA/Part 1 Report and Order* at ¶ 30. The default payment rule for combinatorial auctions, which is now also included in 47 C.F.R. § 1.2104(g)(2), is not relevant to Auction No. 65.

<sup>8</sup> *CSEA/Part 1 Report and Order* at ¶ 31.

<sup>9</sup> *Id.*

<sup>10</sup> *See* Amendment of Part 22 of the Commission's Rules to Benefit the Consumers of Air-Ground Telecommunications Services, Biennial Regulatory Review — Amendment of Parts 1, 22, and 90 of the Commission's Rules, Amendment of Parts 1 and 22 of the Commission's Rules to Adopt Competitive Bidding Rules for Commercial and General Aviation Air-Ground Radiotelephone Service, WT Docket Nos. 03-103 and 05-42, *Report and Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 4403, 4405-06 ¶ 1, 4418-22 ¶¶ 24-32 (2005).

<sup>11</sup> We note that the Commission used similar reasoning when establishing an additional default payment percentage of 25 percent for bid defaults following a combinatorial auction: ". . . in an auction with combinatorial bidding, a default may reasonably be expected to affect multiple licenses (and perhaps every license in the auction) . . . the 25% payment component . . . [is] necessary to adequately discourage insincere bidding and strategic defaults." (continued...)

Comments are due on or before March 7, 2006, and reply comments are due on or before March 14, 2006. All filings must be addressed to the Commission's Secretary Attn: WTB/ASAD, Office of the Secretary, Federal Communications Commission. Parties who file comments by paper must file an original and four copies of each filing. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12<sup>th</sup> Street, SW, Washington, DC 20554. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail.<sup>12</sup> The Bureau also requires that all comments and reply comments be filed electronically to the following address: [auction65@fcc.gov](mailto:auction65@fcc.gov).<sup>13</sup> The electronic mail containing the comments or reply comments must include a subject or caption referring to "Auction No. 65 Comments" and the name of the commenting party. The Bureau requests that parties format any attachments to electronic mail as Adobe<sup>®</sup> Acrobat<sup>®</sup> (pdf) or Microsoft<sup>®</sup> Word documents. Copies of comments and reply comments will be available for public inspection between 8:00 a.m. and 4:30 p.m. Eastern Time (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 posted on the web page for Auction No. 65 at <http://wireless.fcc.gov/auctions/65/>.

This proceeding has been designated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>14</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>15</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>16</sup>

For further information regarding this proceeding, contact:

**Auctions and Spectrum Access Division:**

For legal questions: Brian Carter at (202) 418-0660

For general auction questions: Jeff Crooks at (202) 418-0660 or Barbara Sibert at (717) 338-2888

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Amendment of the Part 1 of the Commission's Rules -- Competitive Bidding Procedures, WT Docket No. 97-82, *Second Order on Reconsideration of the Third Report and Order and Order on Reconsideration of the Fifth Report and Order*, 18 FCC Rcd 10180, 10200-201 ¶ 28 (2003).

<sup>12</sup> 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. All hand deliveries must be held together with rubber bands or fasteners. 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.

<sup>13</sup> The Commission recently began using the Commission's Electronic Comment Filing System ("ECFS") in conjunction with comments on auction procedures. However, it began doing so only after the release of the *Auction No. 65 Comment Public Notice*. Consequently, comments and reply comments in response to this Public Notice may not be filed using ECFS.

<sup>14</sup> 47 C.F.R. §§ 1.1200(a), 1.1206.

<sup>15</sup> 47 C.F.R. § 1.1206(b).

<sup>16</sup> *Id.*