



PUBLIC NOTICE

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DA 06-388
March 3, 2006

CLOSED AUCTION OF 400 MHz AIR-GROUND RADIOTELEPHONE SERVICE LICENSES SCHEDULED FOR AUGUST 23, 2006

400 MHz AIR-GROUND APPLICANTS MUST PROVIDE SUPPLEMENTAL INFORMATION BY APRIL 5, 2006

COMMENT SOUGHT ON RESERVE PRICES OR MINIMUM OPENING BIDS AND OTHER PROCEDURES FOR AUCTION NO. 67

AU Docket No. 06-38

Comments Due: March 20, 2006

Reply Comments Due: March 27, 2006

Report No. AUC-06-67-A (Auction No. 67)

By this Public Notice, the Wireless Telecommunications Bureau (“Bureau”) announces the auction of nine site-based licenses in the 400 MHz general aviation Air-Ground Radiotelephone Service to operate in the 454.675-454.975 and 459.675-459.975 MHz bands (Auction No. 67).¹ This auction is scheduled to commence on August 23, 2006.

I. LICENSES TO BE OFFERED AND LIMITATIONS ON PARTICIPATION

In Auction No. 67, the licenses to be auctioned are the subject of pending mutually exclusive applications for the referenced Air-Ground service that were filed on FCC Form 601. **Participation in Auction No. 67 is limited to the parties that filed these pending mutually exclusive applications.² These applicants, and the filing groups of which they are part,³ are identified in Attachment A of this public notice.** The applicants identified in Attachment A that wish to participate in the auction are

¹ 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, *Order on Reconsideration and Report and Order*, FCC 05-202 (rel. December 9, 2005).

² *See id.* at n. 17.

³ These filing groups were established pursuant to the procedures for thirty-day notice and cut-off filing groups in the Public Mobile Services. *See* 47 C.F.R. § 22.131.

required to file a short-form application (FCC Form 175) by the short-form deadline, which will be announced in a subsequent public notice. **Applicants may seek eligibility to bid only on those licenses for which they have previously submitted an application on FCC Form 601 as set forth in Attachment A.**

II. SUPPLEMENTAL INFORMATION REQUIRED

Each entity identified in Attachment A that wishes to be eligible for competitive bidding in Auction No. 67 must provide its FCC Registration Number (FRN)⁴ to the Commission for association with its pending application prior to 6:00 PM Eastern Time (ET) on April 5, 2006. Submission of an FRN for association with a pending FCC Form 601 application is required so that the FCC Auction System will display the appropriate license selection list for each short-form application. If no FRN is submitted in the prescribed manner by the specified deadline, the applicant will not be able to select its appropriate license(s) in its electronic short-form application (FCC Form 175) and will be ineligible to bid in Auction No. 67. **If an applicant fails to provide this information in the prescribed manner and before the deadline specified, its pending FCC Form 601 application will be dismissed and it will not be eligible for competitive bidding for any of the licenses identified in Attachment A for which it has previously applied.**

To submit an FRN, each listed applicant in Attachment A must provide, by 6:00 PM ET on April 5, 2006, its precise applicant name and FRN in an e-mail to auktion67@fcc.gov or by facsimile to Kathryn Garland at (717) 338-2850. Any applicant that does not have an FRN must obtain one by registering using the FCC's Commission Registration system ("CORES"). To access CORES, click on the CORES link under Related Sites on the FCC Auctions page at <http://wireless.fcc.gov/auctions/>. Next, follow the directions provided to register and receive your FRN. Be sure to retain this number and password and keep such information strictly confidential.

III. ADDITIONAL PRE-AUCTION MATTERS

As noted above, each applicant identified in Attachment A that wishes to participate in the auction is required to file a short-form application (FCC Form 175) by the short-form deadline. That date will be announced in a subsequent public notice. Each such applicant is also required to submit an upfront payment by the upfront payment deadline, which date will also be announced in a subsequent public notice.⁵

The Bureau will dismiss the previously filed FCC Form 601 of any applicant that fails to timely file a short-form application to participate in the auction and otherwise comply with the terms and procedures governing Auction No. 67. If only one short-form application is accepted for filing for a particular license, that license will be removed from the auction, and the FCC Form 601 of the party filing the short-form application will be processed for that license under applicable Commission procedures. In the event that more than one short-form application for a license is accepted for filing, mutual exclusivity for auction purposes will have been established, even if only one applicant submits an upfront payment. Under these circumstances, the applicant that submits an upfront payment must participate in the auction, i.e., bid the minimum opening bid, in order to win the license.⁶

⁴ An FRN is a 10-digit number that is assigned to a business or individual that has registered with the FCC. It is used to uniquely identify an individual or business in all transactions with the FCC.

⁵ See *infra* Section IV.A.2. "Upfront Payments and Bidding Eligibility."

⁶ See *infra* Section IV.B.2. "Reserve Price or Minimum Opening Bid."

IV. BUREAU SEEKS COMMENT ON AUCTION PROCEDURES

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”⁷ 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.⁸ We therefore seek comment on the following issues relating to Auction No. 67.

A. AUCTION STRUCTURE

1. Simultaneous Multiple-Round Auction Design

We propose to auction all licenses included in Auction No. 67 in a simultaneous multiple-round auction. 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. We seek comment on this proposal.

2. Round Structure

The Commission will conduct Auction No. 67 over the Internet. Alternatively, 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 closer to the auction event.

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.

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 and review periods, or the number of rounds per day, depending upon bidding activity levels and other factors. We seek comment on this proposal.

⁷ 47 U.S.C. § 309(j)(3)(E)(i).

⁸ 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*”).

3. 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.”⁹ For Auction No. 67, 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 or applies a proactive waiver. Thus, unless circumstances dictate otherwise, bidding will remain open on all licenses until bidding stops on every license.

Further, the Bureau proposes to retain the discretion to exercise any of the following options during Auction No. 67:

1. 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 or submits 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.
2. Keep the auction open even if no bidder submits any new bids or applies a waiver. 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 remaining 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) after which the auction will close.

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 the minimum acceptable bid percentage. We seek comment on these proposals.

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

For Auction No. 67, 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.¹⁰ 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.

⁹ 47 C.F.R. § 1.2104(e).

¹⁰ 47 C.F.R. § 1.2104(i).

B. AUCTION PROCEDURES

1. Upfront Payments and Bidding Eligibility

The Bureau has delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned.¹¹ 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.¹² With these factors in mind, we propose to set the upfront payments for Auction No. 67 at \$500 per license.

We further propose that the amount of the upfront payment submitted by a bidder will determine the bidder's initial bidding eligibility in bidding units. We propose 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. Under this proposal, each license in Auction No. 67 will be associated with 500 bidding units. 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 combination of 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) in any single round, and submit an upfront payment amount covering that total number of bidding units. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round.¹³

We list all licenses, and the proposed upfront payment for each, in Attachment A. We seek comment on these proposals.

2. Activity Rule

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.¹⁴

We propose a single stage auction with the following activity requirement: In each round of the auction, a bidder desiring to maintain its eligibility to participate in the auction is required to be active on one hundred (100) percent of its bidding eligibility. Failure to maintain the requisite activity level will result

¹¹ *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*”).

¹² *Competitive Bidding Second Report and Order*, 9 FCC Rcd 2348, 2378-79 ¶¶ 171-76.

¹³ See *infra* Section IV.B. 4. “Provisionally Winning Bids.”

¹⁴ See *infra* Section IV.A. 4. “Activity Rule Waivers and Reducing Eligibility.”

in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used).

We seek 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

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. 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 placing a bid in a particular round.

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) a bidder eligible to bid on more than one license overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirement. If a bidder that is eligible to bid on only one license has no waivers remaining and does not satisfy the required activity level, the bidder's eligibility will be reduced, eliminating it from the auction. If a bidder that is eligible to bid on more than one license 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.

A bidder that is eligible to bid on more than one license and has 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.

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 submitted, 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 will not keep the auction open. A bidder cannot submit a proactive waiver after submitting a bid in a round, and submitting 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.

We propose that each bidder in Auction No. 67 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.

4. Reserve Price or Minimum Opening Bid

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.¹⁵ 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.¹⁶

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 amount, 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. The auctioneer, however, has the discretion to lower the minimum opening bid amount during the course of the auction. It is also possible for the minimum opening bid amount and the reserve price to be the same amount.

In light of Section 309(j)'s requirements, the Bureau proposes to establish minimum opening bid amounts for Auction No. 67. 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.¹⁷

Specifically, for Auction No. 67, we propose to set the minimum opening bids at \$500 per license. This proposed minimum opening bid amount for each license available in Auction No. 67 is set forth in Attachment A of this public notice. We seek comment on this proposal.

If commenters believe that this minimum opening bid amount will result in unsold licenses, or is not a reasonable amount, or should instead operate as a reserve price, 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 amount levels or formulas. In establishing minimum opening bid amounts, we particularly seek comment on such factors as the amount of spectrum being auctioned, 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 400 MHz Air-Ground Radiotelephone Service licenses being auctioned. We also seek comment on whether, consistent with Section 309(j), the public interest would be served by having no minimum opening bid amount or reserve price.

5. Bid Amounts

We propose that, in each round, eligible bidders be able to place a bid on a given license in any of nine different amounts.¹⁸ Under this proposal, the FCC Auction System interface will list the nine acceptable bid amounts for each license.¹⁹

¹⁵ 47 U.S.C. § 309(j)(4)(F). The Commission's rules regarding reserve prices and minimum opening bids are set forth at 47 C.F.R. § 1.2104(c) and (d).

¹⁶ *Part I Third Report and Order*, 13 FCC Rcd at 454-55 ¶ 141.

¹⁷ *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).

¹⁸ Bidders must have sufficient eligibility to place a bid on the particular license. *See supra* Section IV.A.2. "Upfront Payments and Bidding Eligibility."

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 will be calculated by multiplying the provisionally winning bid amount times one plus the minimum acceptable bid percentage. If, for example, the minimum acceptable bid percentage is 5 percent, the minimum acceptable bid amount will equal (provisionally winning bid amount) * (1.05), rounded.²⁰

The eight additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage, which need not be the same as the percentage used to calculate the minimum acceptable bid amount. 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 5 percent, the calculation is (minimum acceptable bid amount) * (1 + 0.05), rounded, or (minimum acceptable bid amount) * 1.05, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.10, 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) * 1.15, rounded; etc. We will round the result using our standard rounding procedures.²¹

For Auction No. 67, the Bureau proposes to use a minimum acceptable bid percentage of 10 percent. This means that the minimum acceptable bid amount for a license will be approximately 10 percent greater than the provisionally winning bid amount for the license. The Bureau also proposes to use a bid increment percentage of 10 percent to calculate the eight additional acceptable bid amounts.

The Bureau retains the discretion to change the minimum acceptable bid amounts, the parameters of the formula to determine the percentage increment, 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. We seek comment on these proposals.

6. Provisionally Winning Bids

At the end of a bidding round, a provisionally winning bid amount 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), we 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. 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.

Footnote Continued _____

¹⁹ 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.

²⁰ Results are rounded as follows under our standard rounding procedures: 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.

²¹ *Id.*

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. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.²²

7. Bid Removal and Bid Withdrawal

For Auction No. 67, we propose 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. A bidder removing a bid placed in the same round is not subject to any penalties. Once a round closes, a bidder may no longer remove a bid.

For Auction No. 67, we propose to prohibit bidders from withdrawing any bids after the round in which the bids were placed has closed. In the *Part 1 Third Report and Order*, the Commission explained that allowing bid withdrawals may facilitate efficient aggregation of licenses and the pursuit of efficient backup strategies as information becomes available during the course of an auction.²³ In Auction No. 67, because bidders may bid only on licenses for which they previously submitted an application on FCC Form 601, it is unlikely that bidders will need to use withdrawals as anticipated by the *Part 1 Third Report and Order*. Accordingly, for this auction, we propose that bidders not be permitted to withdraw bids placed in any round after it has closed. We seek comment on these proposals.

C. POST-AUCTION PROCEDURES

1. Default and Disqualification

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 3 percent of the defaulter’s bid or of the subsequent winning bid, whichever is less.

On January 24, 2006, the Commission released the *CSEA/Part 1 Report and Order*, in which it modified Section 1.2104(g)(2) by, *inter alia*, increasing the 3 percent limit on the additional default payment for non-combinatorial auctions to 20 percent.²⁴ Under the modified rule, the Commission will, in advance of each non-combinatorial auction, establish an additional default payment for that auction of 3 percent up to a maximum of 20 percent.²⁵ 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.²⁶

²² See *supra* Section IV.A. 3. “Activity Rule.”

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

²⁴ 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 (“*CSEA/Part 1 Report and Order*”). 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. 67.

²⁵ *Id.* at ¶ 31.

²⁶ *Id.*

For Auction No. 67, the Bureau proposes to establish an additional default payment of 10 percent. As noted in the *CSEA/Part 1 Report and Order*, defaults weaken the integrity of the auctions process and impede the deployment of service to the public, and an additional default payment of more than the previous 3 percent will be more effective in deterring defaults.²⁷ Because there are limited opportunities to provide general aviation air-ground service, defaults in this auction could potentially deprive the public of service in a particular locale, or at a minimum significantly delay such service. In light of this circumstance, we propose an additional default payment of 10 percent of the relevant bid. We seek comment on this proposal.

V. CONCLUSION

Comments are due on or before **March 20, 2006**, and reply comments are due on or before **March 27, 2006**. **All filings related to the auction of 400 MHz Air-Ground Radiotelephone Service licenses should refer to AU Docket No. 06-38.** Comments may be submitted using the Commission's Electronic Comment Filing System ("ECFS") or by filing paper copies.²⁸ The Bureau strongly encourages interested parties to file comments electronically, and requests submission of a copy via the Auction No. 67 email box (auction67@fcc.gov).

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.

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 we continue 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. 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.

Auction No. 67 Email box: The Bureau also requests that a copy of all comments and reply comments be submitted electronically to the following address: auction67@fcc.gov.

²⁷ *Id.* at ¶ 29.

²⁸ See Electronic Filing of Documents in Rulemaking Proceedings, GC Docket No. 97-113, *Report and Order*, 13 FCC Rcd 11322 (1998).

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 accessible through the search function on the ECFS web page at <http://www.fcc.gov/cgb/ecfs/>.

This proceeding has been designated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.²⁹ 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.

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

Mobility Division, Wireless Telecommunications Bureau

For service rules questions: Erin McGrath or Richard Arsenault (legal) or Dwain Livingston (technical), at (202) 418-0620

Auctions and Spectrum Access Division, Wireless Telecommunications Bureau

For general auction questions: Jeff Crooks at (202) 418-0660, or Linda Sanderson at (717) 338-2888
For auctions legal questions: Howard Davenport at (202) 418-0660

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²⁹ 47 C.F.R. §§ 1.1200(a), 1.1206.