



PUBLIC NOTICE

Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

News Media Information: 202-418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

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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

Comments Due: January 31, 2006

Reply Comments Due: February 7, 2006

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

By this public notice, the Wireless Telecommunications Bureau (“Bureau”) announces the auction of new nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band¹ (Auction No. 65).² This auction is scheduled to commence on May 10, 2006.

I. LICENSES TO BE OFFERED IN AUCTION NO. 65

Alternative Band Configurations. The Commission will auction licenses in three alternative band configurations: (1) Band Plan 1, comprised of two overlapping, shared, cross-polarized 3 MHz licenses (Licenses A and B, respectively),³ (2) Band Plan 2, comprised of an exclusive 3 MHz license and an

¹ 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.

² 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) (“Air-Ground Reconsideration Order”); 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 (2005) (“Air-Ground Order”).

³ Licenses A and B would authorize transmission of radio waves that are vertically and horizontally polarized, respectively, and would initially share 3.0 MHz: 1.5 MHz at 849.0-850.5 MHz paired with 1.5 MHz at 894.0-895.5 MHz. Once Verizon Airfone Inc.’s (“Verizon Airfone” or “Airfone”) incumbent system ceases operations in the upper 0.5 MHz of each band, the License B licensee would shift its operations to 1.5 MHz at 849.5-851.0 MHz paired with 1.5 MHz at 894.5-896.0 MHz, and the licensees for Licenses A and B would share 2.0 MHz. See “Incumbent Licensee,” below. However, licensees in Band Plan 1 would have the option of agreeing to a different implementation scheme, subject to the service rules. See “Spectrum Sharing Plan,” below.

exclusive 1 MHz license (Licenses C and D, respectively),⁴ and (3) Band Plan 3, comprised of an exclusive 1 MHz license and an exclusive 3 MHz license (Licenses E and F, respectively), with the blocks at opposite ends of the band from Band Plan 2.⁵ Licenses in only one of these mutually incompatible band configurations will be awarded. The band plan that receives the highest aggregate bids in the auction will be implemented,⁶ and licenses composing that configuration will be awarded to winning bidders subject to review of the long-form license applications. Because the three band configurations are mutually incompatible, applications for licenses in different band plans will be mutually exclusive.

License Descriptions. The following table describes the licenses that will be offered in Auction No. 65:

Band Plan	License	Frequency Band (MHz)	Total Bandwidth	Pairing	Geographic Area Type
1	A	849.0-850.5 / 894.0-895.5	3 MHz (2 MHz Shared)	Paired	Nationwide
	B	Initial: 849.0-850.5 / 894.0-895.5 After Clearing: 849.5-851.0 / 894.5-896.0	3 MHz (2 MHz Shared)	Paired	Nationwide
2	C	849.0-850.5 / 894.0-895.5	3 MHz	Paired	Nationwide
	D	850.5-851.0 / 895.5-896.0	1 MHz	Paired	Nationwide
3	E	849.0-849.5 / 894.0-894.5	1 MHz	Paired	Nationwide
	F	849.5-851.0 / 894.5-896.0	3 MHz	Paired	Nationwide

The licenses available in Auction No. 65 are also listed in Attachment A of this public notice.

Permissible Services. A new licensee may provide any type of air-ground service (*i.e.*, voice telephony, broadband Internet, data, etc.) to aircraft of any type, and serve any or all aviation markets (commercial, government, and general). A licensee must provide service to aircraft.⁷ A new licensee may not provide ancillary land mobile or fixed services in the 800 MHz air-ground spectrum.⁸

Eligibility Restriction. In order to promote competition in the 800 MHz air-ground band, the Commission has prohibited any party from obtaining a controlling interest, either at auction or by a post-auction transaction, in new licenses for more than three megahertz of spectrum (either shared or exclusive) in the band. No single party, therefore, may hold more than one license in any of the available band configurations.⁹

⁴ License C would be located in the lower 1.5 MHz portion of each 2 MHz band (1.5 MHz at 849.0-850.5 MHz paired with 1.5 MHz at 894.0-895.5 MHz). License D would be located in the upper 0.5 MHz portion of each 2 MHz band (0.5 MHz at 850.5-851.0 MHz paired with 0.5 MHz at 895.5-896.0 MHz).

⁵ License E would be located in the lower 0.5 MHz portion of each 2 MHz band (0.5 MHz at 849.0-849.5 MHz paired with 0.5 MHz at 894.0-894.5 MHz). License F would be located in the upper 1.5 MHz portion of each 2 MHz band (1.5 MHz at 849.5-851.0 MHz paired with 1.5 MHz at 894.5-896.0 MHz).

⁶ Gross bids for the licenses, rather than net bids adjusted for bidding credits, will be used to determine the band plan with the highest aggregate bids.

⁷ See *Air-Ground Order*, 20 FCC Rcd at 4431 ¶ 52.

⁸ See *id.* at 4431 ¶ 53; *Air-Ground Reconsideration Order* at ¶¶ 5-7.

⁹ See *Air-Ground Order*, 20 FCC Rcd at 4426-4427 ¶¶ 43-44.

International Coordination. To promote interoperable communications and to manage interference, some of the ground station locations in North America and channel block assignments of the 800 MHz air-ground band have been predetermined consistent with bilateral agreements with Mexico and with Canada.¹⁰ These agreements, which provide for coordinated use of the 800 MHz air-ground frequencies over North American airspace, are based on a narrow bandwidth channel scheme, and therefore may need to be renegotiated to provide for more flexible use of this spectrum based on the band plan configuration that is implemented as a result of the auction.

Spectrum Sharing Plan. If Band Plan 1, which is comprised of two overlapping 3 MHz licenses, is implemented, the new licensees will be required to jointly file a spectrum sharing and site selection plan with the Bureau within six months of the initial grant of their spectrum licenses, and they will be required to notify the Bureau of any changes to the plan.¹¹ The Bureau will issue a public notice prior to the commencement of Auction No. 65 in which it will specify the filing requirements for such a plan. This approach will provide parties with overlapping spectrum licenses flexibility to configure their systems without having to adhere to minimum spacing requirements or site locations predetermined by the Commission.

Incumbent Licensee. In the *Air-Ground Order*, the Commission granted Verizon Airfone — the only incumbent service provider in the 800 MHz air-ground band — a nonrenewable license to operate in the band for five years. This license will expire in May 2010.¹² Verizon Airfone must transition its incumbent narrowband operations from four to one megahertz of spectrum in the band within two years of the initial grant date of a new license in the band.¹³ The Commission has directed the Bureau to adopt reporting requirements so that Airfone's transition of its base stations and its subscribers' aircraft to operations in one megahertz of the 800 MHz air-ground band may be monitored.¹⁴ The Bureau will issue a public notice enumerating such requirements by February 6, 2006.¹⁵ Airfone must file its initial transition status report with the Commission six months from the date of the grant of any new license in the band and at each of the three six-month intervals thereafter.¹⁶

¹⁰ See “Arrangement Between the Department of Communications of Canada and the Federal Communications Commission of the United States of America Concerning the Use of the Bands 849-851 and 894-896 MHz,” signed August 18, 1992 (U.S.A.) and August 28, 1992 (Canada), Section 4. See also “Protocol Concerning the Use of the 849-851 and 894-896 MHz Bands for Public Air-To-Ground Radio Service,” signed June 16, 1994 by the Government of the United States and the Government of Mexico, Article IV.

¹¹ See *Air-Ground Order*, 20 FCC Rcd at 4422-4423 ¶ 34.

¹² See *id.* at 4440-4441 ¶¶ 80-81.

¹³ See *id.* at 4438-4439 ¶ 75. If Band Plan 1 or 2 is the winning configuration at auction, Verizon Airfone's incumbent system must cease operations in the lower 1.5 MHz portion of each 2 MHz air-ground band within two years of the initial date of grant of a new license or licenses. Verizon Airfone may relocate its incumbent operations to the upper 0.5 MHz portion of each 2 MHz band (0.5 MHz at 850.5-851.0 MHz paired with 0.5 MHz at 895.5-896.0 MHz) and may continue to operate under the renewal authorization until the end of the five-year license term. If Band Plan 3 is the winning configuration at auction, Verizon Airfone's incumbent system must cease operations in the upper 1.5 MHz portion of each 2 MHz air-ground band within two years of the initial date of grant of a new license; Airfone may relocate to the lower 0.5 MHz portion of each 2 MHz band (0.5 MHz at 849.0-849.5 MHz paired with 0.5 MHz at 894.0-894.5 MHz) and may continue to operate under the renewal authorization until the end of the five-year license term.

¹⁴ *Air-Ground Reconsideration Order* at ¶ 21.

¹⁵ The Commission stated that, at a minimum, each report should provide the number and percentage of each type of aircraft (commercial, general aviation, and government) and base stations that have been transitioned to operate in the one megahertz portion of the band. *Id.*

¹⁶ Airfone is not required to submit any classified information regarding government aircraft in its reports, and may seek confidential treatment of information contained in the transition reports in accordance with the Commission's

In addition, if Airfone, or an affiliate of Airfone, wins an exclusive 3 MHz license at auction, the Bureau will issue a public notice within 60 days of the grant of such a license, which requires the company to include in each status report information regarding the transition of its existing subscribers from its narrowband system to a broadband system and to file additional status reports at six-month intervals from the conclusion of the two-year transition period until the expiration of its five-year nonrenewable license.¹⁷

II. 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....”¹⁸ 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.¹⁹ We therefore seek comment on the following issues relating to Auction No. 65.

A. Auction Structure

1. Simultaneous Multiple-Round Auction Design

We propose to conduct Auction No. 65 as a simultaneous multiple-round auction. As indicated above, licenses will be offered in three mutually incompatible band configurations, and the band plan that receives the highest aggregate bids in the auction will be implemented. We believe the simultaneous multiple-round auction design is an appropriate auction design given these circumstances. 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. Bidding remains open on all licenses until bidding stops on every license. We seek comment on this proposal.

rules and policies. 47 C.F.R. § 0.459.

¹⁷ *Air-Ground Reconsideration Order* at ¶ 22. The Commission stated that, at a minimum, Airfone must specify the number and percentage of each type of aircraft (commercial, general aviation, and government) and base stations that have been configured to operate in the three megahertz portion of the band. The report must also delineate which aircraft have been transitioned from Airfone’s 4 MHz narrowband system directly to a 3 MHz broadband system, and which aircraft have been transitioned from the 4 MHz narrowband system to a 1 MHz narrowband system and then to a 3 MHz broadband system. *Id.*

¹⁸ 47 U.S.C. § 309(j)(3)(E)(i).

¹⁹ See Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 448 ¶ 124-125 (1997) (“Part I 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, 5697-5698 ¶ 16 (1997) (“Part I Order”).

2. Round Structure

The Commission will conduct Auction No. 65 over the Internet. Alternatively, telephonic bidding will also be available. The toll-free telephone number for telephonic bidding will be provided to qualified bidders.

The simultaneous multiple-round format will consist of sequential bidding rounds, each followed by the release of round results. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction. Details on viewing round results, including the location and format of downloadable round results files, will be included in the same public notice.

The Bureau retains 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. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

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.”²⁰ For Auction No. 65, the Bureau proposes to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all licenses remain available for bidding until bidding closes simultaneously on all licenses.

Bidding will close simultaneously on all licenses after the first round in which no bidder submits any new bids or applies a proactive waiver.²¹ Thus, unless circumstances dictate otherwise, bidding will remain open on all licenses until bidding stops on every license.

However, the Bureau proposes to retain the discretion to exercise any of the following options during Auction No. 65:

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 activity rule waiver.
3. Declare that the auction will end after a specified number of additional rounds (“special stopping rule”). If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) 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

²⁰ 47 C.F.R. § 1.2104(e).

²¹ Proactive waivers are described in Section II.B.3. “Activity Rule Waivers,” below.

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. 65, 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.²² 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.

B. Bidding 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.²³ A bidder's upfront payment is a refundable deposit to establish eligibility to bid on licenses. Upfront payments related to licenses for the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction.²⁴ With these factors in mind for Auction No. 65, we propose upfront payments of \$100,000 per license.

Consistent with the Bureau's usual practice, we further propose that the amount of the upfront payment submitted by a bidder will determine the bidder's bidding eligibility in bidding units. For Auction No. 65, we propose to assign 100,000 bidding units per license. The number of bidding units for a given license is fixed and does not change during the auction as prices change.

However, because the mutually incompatible band configurations and the three megahertz eligibility restriction limit a bidder to winning only a single license, we propose to permit a bidder with 100,000 bidding units of eligibility to bid or be active simultaneously on any or all of the licenses it selected on its FCC Form 175, rather than being limited to activity on a single license with 100,000 bidding units as our usual activity and eligibility rules would require. That is, under our proposal, an upfront payment of \$100,000 would give a bidder 100,000 bidding units of eligibility, which in turn would permit the bidder to be active on any or all of the licenses it selected on its FCC Form 175, making it unnecessary to acquire more than 100,000 bidding units of bidding eligibility in order to bid or be active simultaneously on more than one license.²⁵

²² See 47 C.F.R. § 1.2104(i).

²³ *Part I Order*, 12 FCC Rcd at 5697-98 ¶ 16. See also *Part I 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 ¶¶ 171-175 (1994) ("Competitive Bidding Second Report and Order").

²⁴ *Competitive Bidding Second Report and Order*, 9 FCC Rcd 2348, 2378-79 ¶¶ 171-176.

²⁵ Former defaulters — applicants that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies — are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts. See 47 C.F.R. § 1.2106(a).

The proposed upfront payment and number of bidding units for each license available in Auction No. 65 is also set forth in Attachment A. We seek comment on this proposal.

2. Activity Rule

In order to ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active during each round of the auction. If a bidder fails to maintain the required activity level in a round, it must use one of the limited number of activity rule waivers allotted to it in order to maintain its current level of eligibility. In a typical FCC auction, if the bidder has no activity rule waivers remaining, its eligibility will be reduced.

For Auction No. 65, we propose 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 (place a bid or hold the provisionally winning bid) on at least one license.²⁶ As explained above, under our proposal for upfront payments and bidding eligibility, a bidder must have 100,000 bidding units of eligibility to participate in the auction — *i.e.*, to bid on at least one license — and may hold a maximum of 100,000 bidding units of eligibility.²⁷ Therefore, under our proposal for this auction, any reduction in a bidder’s eligibility will effectively preclude the bidder from further bidding in the auction. In other words, failure to maintain the required activity level will have the effect of eliminating the bidder from further bidding in the auction unless an activity rule waiver is used.

We seek comment on these proposals. 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

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 and not to a particular license. 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, which in this auction would have the effect of precluding the bidder from further bidding in the auction. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder fails to be active (place a bid or hold the provisionally winning bid) on at least one license unless the bidder has no activity rule waivers available. **If a bidder has no waivers remaining and does not satisfy the required activity requirement, it will no longer be permitted to place bids in the auction.**

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

²⁶ The activity rules in most FCC auctions require that bidders be active on a certain percentage of their eligibility, and the required percentage increases one or more times during the auction in a series of stages. The requirement proposed here corresponds to a single stage auction with a 100 percent activity requirement.

²⁷ As also explained above, 100,000 bidding units of eligibility will permit bidders to be active on more than one license in a given round, although no bidder will be permitted to win more than a single license. See Section II.B.1, “Upfront Payments and Bidding Eligibility,” above.

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. 65 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.²⁸ 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.²⁹

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, often 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 the distinctive features of the Air-Ground Radiotelephone Service and Section 309(j)'s requirements for competitive bidding, the Bureau proposes to set minimum opening bids for each license and to establish a published aggregate reserve price for the entire band. The Bureau believes a minimum opening bid amount, which has been used in other auctions, is an effective tool for accelerating the competitive bidding process.³⁰ At the same time, given uncertainty regarding the relative values of the 800 MHz Air-Ground Radiotelephone Service licenses, the Bureau believes that it can best comply with the Commission's statutory mandate to recover for the public a portion of the value of the public spectrum resource by establishing a published reserve price for the entire band.³¹ **Under this proposal, if the sum of the provisionally winning bids at the close of bidding does not meet or exceed the aggregate reserve price, the Commission will cancel the auction and no licenses will be awarded on the basis of the bidding.**³²

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

²⁹ Part I Third Report and Order, 13 FCC Rcd at 454-55 ¶ 141.

³⁰ See, e.g., Auction of 800 MHz SMR Upper 10 MHz Band, Minimum Opening Bids or Reserve Prices, *Order*, 12 FCC Rcd 16354 (1997); Auction of the Phase II 220 MHz Service Licenses, Auction Notice and Filing Requirements for 908 Licenses Consisting of Economic Area (EA), Economic Area Grouping (EAG), and Nationwide Licenses, Scheduled for September 15, 1998, Minimum Opening Bids and Other Procedural Issues, *Public Notice*, 13 FCC Rcd 16445 (1998); Auction of Licenses in the Multichannel Video Distribution and Data Service Rescheduled for January 14, 2004; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures, *Public Notice*, 18 FCC Rcd 17553 (2003).

³¹ See 47 U.S.C. § 309(j)(3)(C).

³² Gross bids for the licenses, rather than net bids adjusted for bidding credits, will be used to determine whether the reserve has been met.

More specifically, for Auction No. 65, we propose to set minimum opening bids on a license-by-license basis as follows:

Licenses	Bandwidth	Minimum Opening Bid
A and B	3 MHz (2 MHz shared)	\$1,500,000
C and F	3 MHz	\$2,800,000
D and E	1 MHz	\$200,000

We also propose to establish a published reserve price of \$5,000,000 for the entire band. Attachment A to this public notice also sets forth the proposed minimum opening bids and reserve price. We seek comment on this proposal.

If commenters believe that these minimum opening bid amounts will result in unsold licenses, or are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid amount levels or formulas. In establishing the minimum opening bid amounts and the reserve price, we particularly seek comment on such factors as the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the 800 MHz Air-Ground Radiotelephone Service licenses. Commenters proposing to reduce or eliminate the reserve price should address the extent to which minimum opening bids should be changed as a result. We also seek comment on whether, consistent with Section 309(j), the public interest would be served by having no minimum opening bid amounts or reserve price.

5. Bid Amounts

In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts. The FCC Auction System interface will list the nine acceptable bid amounts for each license.

The minimum acceptable bid amount for a license will be equal to its minimum opening bid amount until the bids placed enable the FCC Auction System to calculate a higher “price” for the license. If such a “price” can be calculated, the minimum acceptable bid amount for the license will be determined in a two-step process:

1. The FCC Auction System designates a “price” for each license. For licenses with provisionally winning bids, this price will be equal to the amount of the provisionally winning bid. For all other licenses, the price will be equal to the amount of the highest bid placed on the license by any non-provisionally winning bidder.
2. The price is increased by the minimum acceptable bid percentage.

The minimum acceptable bid amount will be calculated by multiplying the license price times the sum of one plus the minimum acceptable bid percentage — *e.g.*, if the minimum acceptable bid percentage is five percent, the minimum acceptable bid amount will equal (license price) * (1.05), rounded. We will round the result using our standard rounding procedures.³³

³³ Results are rounded using our standard rounding procedure: results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10.

The nine acceptable bid amounts for each license consist of the minimum acceptable bid amount and additional amounts calculated using the minimum acceptable bid amount and the bid increment percentage. We will round the results using our standard rounding procedures.³⁴ The first additional acceptable bid amount equals the minimum acceptable bid amount times the sum of one plus the bid increment percentage, rounded — *e.g.*, if the bid increment percentage is five 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 the sum of 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 the sum of one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.15, rounded; etc. Note that the bid increment percentage need not be the same as the minimum acceptable bid percentage.

For Auction No. 65, the Bureau proposes to use a minimum acceptable bid percentage of five percent. This means that the minimum acceptable bid amount for a license will be approximately five percent greater than the provisionally winning bid amount for the license. The Bureau proposes to use a bid increment percentage of five percent.

The Bureau retains the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the bid increment percentage, and the number of acceptable bid amounts 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 each bidding round, the FCC Auction System will determine the provisionally winning bids by considering all of the bids that have been placed in the auction and determining which band plan option has the highest aggregate bid while not allowing a bidder to have more than one provisionally winning bid. The only licenses that can have provisionally winning bids are those of the band plan option with the highest aggregate bid; the licenses of the other band plan options will not have provisionally winning bids.

If a provisionally winning bid must be selected from among identical bid amounts submitted on a license (*i.e.*, tied bids), we will use a random number generator to select a single 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 selected provisionally winning bid.

Similarly, in the event of identical aggregate high bid amounts on more than one band plan (*i.e.*, tied band plans), the tie between band plans will be broken based on the random numbers of the corresponding bids. The tied band plan with the highest sum of the random numbers will become the band plan for which there are provisionally winning bids.

A consequence of the mutually incompatible band configurations and the three megahertz eligibility restriction is that a bid that does not become a provisionally winning bid at the conclusion of the round in which it was placed may become a provisionally winning bid at the conclusion of a subsequent round. For example, assume that Bidder 1 places a bid on License A in round 1, and that the provisionally winning bids at the conclusion of round 1 are for Licenses C and D. If another bidder places a bid on License B in a later round that, together with Bidder 1's round 1 bid on License A, produces the highest aggregate bid amount on a band plan, then Bidder 1's round 1 bid on License A and the other bidder's later bid on

³⁴ *Id.*

License B would become the provisionally winning bids. This could happen after many intervening rounds even if Bidder 1 is no longer eligible to bid.³⁵ Moreover, this could happen even if there are bids on License A that are higher than Bidder 1’s because no bidder may win more than one license.

Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.³⁶

7. Bid Removal and Bid Withdrawal

For Auction No. 65, we propose the following bid removal and bid withdrawal 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 a withdrawal payment. Once a round closes, a bidder may no longer remove a bid.

The Bureau proposes for Auction No. 65 that bidders not be permitted, in any round, to withdraw bids made in previous rounds. The Commission has recognized that bid withdrawals may be an important tool to help bidders avoid incomplete aggregations of licenses and pursue efficient backup strategies as information becomes available during the course of an auction.³⁷ In Auction No. 65, however, bidders may win only one license and therefore will not face risks of being unable to secure desired aggregations of licenses. In addition, we believe that given the small number of licenses in the auction and the nature of the licenses being offered, bidders will not need to use bid withdrawals to pursue backup strategies in the same way bidders may need to do so in some auctions. Moreover, in previous auctions, we have observed instances in which bid withdrawals arguably may have been used for strategic, anticompetitive purposes. While we continue to recognize that bid withdrawals may play an important role in an auction, we note that bid withdrawals have not been available in several previous auctions.³⁸ We seek comment on these proposed bid removal and bid withdrawal procedures.

III. CONCLUSION

Comments are due on or before January 31, 2006, and reply comments are due on or before February 7, 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 12th 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.³⁹ The Bureau also requires that all comments and reply comments be filed electronically to the following address:

³⁵ A bidder will not have its bidding eligibility restored if it has lost eligibility but in a later round has a bid (placed previously) become a provisionally winning bid. In other words, while holding a provisionally winning bid allows a bidder to maintain bidding eligibility, holding a provisionally winning bid does not restore bidding eligibility that has been lost. Nevertheless, a bidder that has lost eligibility may win a license based on a bid placed prior to losing eligibility.

³⁶ See Section II.B.2. “Activity Rule,” above.

³⁷ *Third Report and Order*, 13 FCC Rcd at 459-60 ¶ 150.

³⁸ Bidders were not permitted to withdraw bids after the close of a bidding round in Auction No. 32 (Broadcast), Auction No. 38 (700 MHz Guard Band), Auction No. 46 (1670-1675 MHz Band), and Auction No. 54 (Broadcast).

³⁹ 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.

auction65@fcc.gov.⁴⁰ 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® Acrobat® (pdf) or Microsoft® 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.⁴¹ 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.⁴² 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.⁴³

For further information concerning this proceeding, contact:

Mobility Division, Wireless Telecommunications Bureau

For service rules questions: Erin McGrath or Richard Arsenault (legal); or Jay Jackson or Moslem Sawez (technical) at (202) 418-0620

Auctions and Spectrum Access Division, Wireless Telecommunications Bureau

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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⁴⁰ Comments and reply comments in response to this public notice may not be filed using the Commission’s Electronic Comment Filing System, which is used for the Commission’s docketed rule making proceedings.

⁴¹ 47 C.F.R. §§ 1.1200(a), 1.1206.

⁴² 47 C.F.R. § 1.1206(b).

⁴³ *Id.*

Auction No. 65
DA 06-3
Attachment A

1	A	Nationwide	NWA255	CJ-NWA255-A	849.0-850.5 / 894.0-895.5	3 MHz (2 MHz Shared) ¹	100,000	\$100,000	\$1,500,000	
	B	Nationwide	NWA255	CJ-NWA255-B	Initial 849.0-850.5 / 894.0-895.5 After Clearing 849.5-851.0 / 894.5-896.0	3 MHz (2 MHz Shared) ¹	100,000	\$100,000	\$1,500,000	
2	C	Nationwide	NWA255	CJ-NWA255-C	849.0-850.5 / 894.0-895.5	3 MHz	100,000	\$100,000	\$2,800,000	
	D	Nationwide	NWA255	CJ-NWA255-D	850.5-851.0 / 895.5-896.0	1 MHz	100,000	\$100,000	\$200,000	
3	E	Nationwide	NWA255	CJ-NWA255-E	849.0-849.5 / 894.0-894.5	1 MHz	100,000	\$100,000	\$200,000	
	F	Nationwide	NWA255	CJ-NWA255-F	849.5-851.0 / 894.5-896.0	3 MHz	100,000	\$100,000	\$2,800,000	

Aggregate Reserve Price.....\$5,000,000

¹ Licenses A and B would authorize transmission of radio waves that are vertically and horizontally polarized, respectively, and would initially share 3.0 MHz: 1.5 MHz at 849.0-850.5 MHz paired with 1.5 MHz at 894.0-895.5 MHz. Once Verizon Airfone Inc.'s incumbent system ceases operations in the upper 0.5 MHz of each band, the License B licensee would shift its operations to 1.5 MHz at 849.5-851.0 MHz paired with 1.5 MHz at 894.5-896.0 MHz, and the licensees for Licenses A and B would share 2.0 MHz.

² As described in Section II.B.1. "Upfront Payments and Bidding Eligibility," under the proposed bidding procedures, bidders would not need more than 100,000 bidding units of eligibility.