



# PUBLIC NOTICE

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## AUCTION OF 700 MHz BAND LICENSES

### **Revised Procedure for Auctions 73 and 76: Additional Default Payment for D Block Set at Ten Percent of Winning Bid Amount; Disputed Issues in the Negotiation of Network Sharing Agreement**

**AU Docket No. 07-157; WT Docket No. 06-150; PS Docket No. 06-229**

**Report No. AUC-07-73-D (Auctions 73 and 76)**

1. By this Public Notice, the Wireless Telecommunications Bureau (“Bureau”) announces a revised procedure for the upcoming auction(s) of licenses for services in the 698-806 MHz band (herein, the “700 MHz Band”) scheduled to begin on January 24, 2008 (Auctions 73 and 76).<sup>1</sup> Specifically, the Bureau sets the additional default payment percentage at ten percent for the D Block license.<sup>2</sup> The additional default payment percentage amount for licenses in the A, B, and E Blocks remains at fifteen percent, as previously announced. Also by this Public Notice, the Chiefs of the Public Safety and Homeland Security Bureau and the Wireless Telecommunications Bureau (“Bureaus”) provide further guidance as to how the Bureaus intend to exercise their delegated authority in the event that disputes arise with respect to the negotiation of the terms of the NSA.

#### **A. Default Payment for D Block**

2. Any winning bidder that defaults or is disqualified after the close of an auction is liable for a default payment under Section 1.2104(g)(2) of the Commission’s rules.<sup>3</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.

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<sup>1</sup> “Auction of 700 MHz Band Licenses Scheduled for January 24, 2008; Notice and Filing Requirements, Minimum Opening Bids, Reserve Prices, Upfront Payments, and Other Procedures for Auctions 73 and 76,” *Public Notice*, DA 07-4171 (rel. October 5, 2007) (“700 MHz Auction Procedures Public Notice”).

<sup>2</sup> *Id.* at ¶ 305.

<sup>3</sup> 47 C.F.R. § 1.2104(g)(2).

In the *700 MHz Auction Procedures Public Notice*, the Bureau set the additional default payment percentage at fifteen percent of the defaulted bid for all licenses in blocks that are not subject to package bidding, including the D Block.<sup>4</sup>

3. In establishing the percentage used to calculate the additional default payment, we seek to deter defaults and thereby promote the public interest in rapid deployment of new wireless services. As discussed in the *700 MHz Auction Procedures Public Notice*, the public interest costs of a default on the D Block are likely to be high given the role of the D Block in the establishment of a public/private partnership for the provision of public safety broadband services. At the same time, we recognize that factors that may contribute to a default by a winning bidder for the D Block may be different in nature from those affecting winning bidders in other blocks. For example, the D Block winning bidder must negotiate and enter into a Commission-approved Network Sharing Agreement with the new national Public Safety Broadband Licensee consistent with terms and procedures set forth in the *700 MHz Second Report and Order*.<sup>5</sup>

4. In the *700 MHz Comment Procedures Public Notice*, the Bureau proposed adopting a fifteen percent additional default payment for the A, B, D and E Blocks.<sup>6</sup> The Bureau made this proposal with respect to the A, B, and E Blocks because the possibility that no licenses in those blocks will be assigned if the reserve price is not met may give bidders an additional incentive to bid on a license and later default (after determination that the reserve price has been met), in order to help ensure that the reserve price is met and other initial licenses in the block are assigned.<sup>7</sup> In contrast, the Bureau made its proposal with respect to the D Block, for which there is a single nationwide license which will not be assigned unless the D Block reserve price is met, because a default by the winning bidder will delay the especially time-sensitive process of establishing a public/private partnership for the provision of public safety broadband services. As noted in the *700 MHz Auction Procedures Public Notice*, none of the parties responding to the *700 MHz Auction Comment Public Notice* addressed the specific percentage for the additional default payment for licenses in any of the blocks.

5. On further review, we conclude that a slightly lower percentage should be used for the additional default payment in the case of the D Block license. The Commission must balance the public interest in avoiding defaults on winning bids against the risk of deterring otherwise qualified bidders from participating in the auction. A winning bidder of the D Block license may be presented with unique

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<sup>4</sup> The C Block licenses will be subject to package bidding. Therefore, pursuant to existing Commission rules, the additional default payment percentage will be twenty-five percent. 47 C.F.R. § 1.2104(g)(2)(ii); *700 MHz Auction Procedures Public Notice* ¶ 303.

<sup>5</sup> Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03-264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules, WT Docket No. 06-169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, Declaratory Ruling on Reporting Requirement under Commission's Part 1 Anti-Collusion Rule, WT Docket No. 07-166, Second Report and Order, FCC 07-132, ¶¶ 274-284 (2007) ("*700 MHz Second Report and Order*"), recon. pending.

<sup>6</sup> "Auction of 700 MHz Band Licenses Scheduled for January 16, 2008; Comment Sought on Competitive Bidding Procedures for Auction 73," *Public Notice*, DA 07-3415 (rel. August 17, 2007) ("*700 MHz Auction Comment Public Notice*"), ¶ 92.

<sup>7</sup> *Id.*

issues that may result in the bidder defaulting on its bid. The potential impact of those issues is difficult to quantify, and may vary from bidder to bidder. On further review, we conclude that the additional default percentage on the D Block should be lower than it is with respect to the A, B, and E Blocks, where the structure of the auction actually may provide an incentive for bidders to default. Accordingly, for the D Block license the Bureau sets the additional default payment percentage at ten percent of the defaulted bid or of the subsequent winning bid, whichever is less. While we remain mindful that a default could harm the public interest by delaying the deployment of service to the public safety community as well as to consumers, we conclude that the ten percent additional payment used in several recent auctions serves as a sufficient deterrent to defaults for the D Block.<sup>8</sup>

## **B. Disputed Issues in the Negotiation of Network Sharing Agreement**

6. In the *700 MHz Second Report and Order*, the Commission delegated to the Chiefs of the Public Safety and Homeland Security Bureau and the Wireless Telecommunications Bureau (“Bureaus”) the authority to take “certain actions jointly in the public interest” in the event of a dispute between the winning bidder for the D Block license and the Public Safety Broadband Licensee at the end of the six-month negotiation period for the Network Sharing Agreement (NSA), or on their own motion at any time.<sup>9</sup> In particular, the Commission indicated that “these actions may include but are not limited to one or more of the following: (1) granting additional time for negotiation; (2) issuing a decision on the disputed issues and requiring the submission of a draft agreement consistent with [that] decision; (3) directing the parties to further brief the remaining issues in full for immediate Commission decision; and/or (4) immediate denial of the long-form application filed by the winning bidder for the D Block license.”<sup>10</sup>

7. The Bureaus believe that it is in the public interest to provide potential bidders for the D Block license as well as the public safety community with further guidance as to how we intend to exercise our delegated authority in the event that disputes arise with respect to the negotiation of the terms of the NSA. As a result, we announce today that we will not exercise our authority for immediate denial of the long-form application filed by the winning bidder for the D Block license, as a result of any dispute over the negotiation of the terms of the NSA, until we take one of two steps: (1) issuing a decision on the disputed issues and requiring the submission of a draft agreement consistent with our decision; or (2) referring the issues to the Commission for an immediate decision and the Commission issues such a decision.<sup>11</sup>

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<sup>8</sup> See *Auction 66 Procedures Public Notice*, 21 FCC Rcd at 4627-28 ¶ 258; see also *Auction 69 Procedures Public Notice*, 21 FCC Rcd at 12440 ¶ 193; *Auction 71 Procedures Public Notice*, 22 FCC Rcd at 477 ¶ 183; *Auction 72 Procedures Public Notice*, 22 FCC Rcd at 3447 ¶ 186.

<sup>9</sup> *700 MHz Second Report and Order* at ¶ 508 .

<sup>10</sup> *Id.*

<sup>11</sup> We remind parties that failure to comply with a decision by the Commission or the Bureaus on the disputed issues, as well as certain other failures, will be deemed a default and the D Block winning bidder will be subject to all payments and obligations under Section 1.2109 of the Commission’s rules. *700 MHz Second Report and Order* at ¶ 511; 47 C.F.R. § 1.2109.