



PUBLIC NOTICE

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AUCTION OF AWS-1 AND BROADBAND PCS LICENSES SCHEDULED FOR JULY 29, 2008

COMMENT SOUGHT ON COMPETITIVE BIDDING PROCEDURES FOR AUCTION 78

AU Docket No. 08-46

Comments Due: April 18, 2008

Reply Comments Due: April 25, 2008

Report No. AUC-08-78-A (Auction 78)

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I. INTRODUCTION

1. By this Public Notice, the Wireless Telecommunications Bureau (“Bureau”) announces an auction of licenses in multiple radio services to commence on July 29, 2008. This auction, which is designated Auction 78, will include 55 licenses: 35 licenses in the Advanced Wireless Services (“AWS”) 1710-1755 MHz and 2110-2155 MHz bands (“AWS-1”)¹ and 20 licenses in the broadband Personal Communications Service (“PCS”).²

II. LICENSES TO BE OFFERED IN AUCTION 78

2. The spectrum to be auctioned has been offered previously in other auctions but was unsold or returned to the Commission as a result of license cancellation or termination. A complete list of licenses available for Auction 78 is included as Attachment A of this Public Notice.

A. License Descriptions

3. The following tables display information regarding blocks, frequencies of licenses in these blocks, total bandwidth per block, geographic area type, and the number of each license type available.

1. AWS-1 Licenses

4. Auction 78 will offer 35 AWS-1 licenses for which there were no winning bids in Auction 66. These licenses consist of six Regional Economic Area Grouping (REAG) licenses, seven Economic Area (EA) licenses, and 22 Cellular Market Area (CMA) licenses, as shown in Table 1.

¹ Additional information concerning AWS-1 licenses may be found in Part 27 of the Commission’s rules. 47 C.F.R. Part 27. See also “Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 66,” AU Docket No. 06-30, *Public Notice*, FCC 06-47, 21 FCC Rcd 4562 (2006) (“*Auction 66 Procedures Public Notice*”); “Auction of Advanced Wireless Services Licenses Rescheduled for August 9, 2006; Revised Schedule, Filing Requirements and Supplemental Procedures for Auction No. 66,” AU Docket No. 06-30, *Public Notice*, FCC 06-71, 21 FCC Rcd 5598 (2006).

² Additional information concerning broadband PCS licenses may be found in Part 24 of the Commission’s rules. 47 C.F.R. Part 24. For additional background on previous broadband PCS auctions, including Auctions 4, 5, 10, 11, 22, 35, 58, and 71, see <http://wireless.fcc.gov/auctions>. See also “Auction of Broadband PCS Spectrum Scheduled for May 16, 2007; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 71,” AU Docket No. 06-206, *Public Notice*, DA 07-30, 22 FCC Rcd 433 (2007) (“*Auction 71 Procedures Public Notice*”).

Table 1: AWS-1 Band Licenses Available in Auction 78

Block	Frequency Bands (MHz)	Total Bandwidth	Geographic Area Type	No. of Licenses
A	1710-1720 / 2110-2120	20 MHz	CMA ³	22
B	1720-1730 / 2120-2130	20 MHz	EA	4
C	1730-1735 / 2130-2135	10 MHz	EA	3
D	1735-1740 / 2135-2140	10 MHz	REAG	2
E	1740-1745 / 2140-2145	10 MHz	REAG	1
F	1745-1755 / 2145-2155	20 MHz	REAG	3

2. Broadband PCS Licenses

5. Auction 78 includes 20 Basic Trading Area (“BTA”) broadband PCS licenses.⁴ In broadband PCS, certain C and F block licenses have been subject to an eligibility restriction making them available only to “entrepreneurs” in “closed” bidding.⁵ In order to qualify as an entrepreneur, a bidder, along with its attributable investors and affiliates, must have had gross revenues of less than \$125 million in each of the last two years and must have less than \$500 million in total assets.⁶ In addition, C and F block licenses are divided into two tiers according to the population size, with Tier 1 comprising markets with population at or above 2.5 million, based on 2000 decennial census figures, and Tier 2 comprising the remaining markets.⁷ Only Tier 2 licenses will be offered in Auction 78.

6. Table 2 cross-references the general rules regarding block/eligibility status/frequencies of broadband PCS licenses in the C, D, E, and F blocks. Gray boxes indicate that no license of the particular tier/frequency block combination will be available in Auction 78.

³ The CMA licenses consist of both Metropolitan Statistical Area (MSA) and Rural Service Area (RSA) licenses. MSAs and RSAs were originally used to license cellular service. 47 C.F.R. § 22.909. The Commission’s rules for the 1710-1755 and 2110-2155 MHz bands use a slightly refined definition of MSAs and RSAs. 47 C.F.R. § 27.6(h)(1); *see also* Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, *Report and Order*, FCC 03-251, 18 FCC Rcd 25,162, 25,176 n.83 (2003), *modified by Order on Reconsideration*, FCC 05-149, 20 FCC Rcd 14,058 (2005) (codified at 47 C.F.R. Part 27, Subpart L). CMAs cannot be combined to form EAs because several CMAs cross EA borders.

⁴ BTAs are material copyright © 1992 Rand McNally & Company. Rights granted pursuant to a license from Rand McNally & Company (“Rand McNally”) through an agreement with the Federal Communications Commission. Rand McNally’s BTA specification contains 487 geographic areas covering the 50 states and the District of Columbia. For its spectrum auctions, the Commission added additional BTA-like areas for: American Samoa; Guam; Northern Mariana Islands; San Juan, Puerto Rico; Mayagüez/Agua de Ponce, Puerto Rico; and the U.S. Virgin Islands. *See* Rand McNally, *1992 Commercial Atlas and Marketing Guide*, 123rd Edition, at 38-39 (1992). *See also* 47 C.F.R. § 24.202.

⁵ *See* 47 C.F.R. § 24.709.

⁶ *See* 47 C.F.R. § 24.709(a)(1).

⁷ *See* 47 C.F.R. § 24.709(a)(3).

Table 2: General Broadband PCS License Eligibility Rules

Frequency Block	Eligibility Status		Bandwidth	Frequency
	Tier 1	Tier 2		
C1	Open	Closed*	15 MHz	1902.5-1910, 1982.5-1990 MHz
C2	Open	Closed*	15 MHz	1895-1902.5, 1975-1982.5 MHz
C3	Closed	Closed*	10 MHz	1895-1900, 1975-1980 MHz
C4	Open	Closed*	10 MHz	1900-1905, 1980-1985 MHz
C5	Open	Open	10 MHz	1905-1910, 1985-1990 MHz
D	n/a	n/a	10 MHz	1865-1870, 1945-1950 MHz
E	n/a	n/a	10 MHz	1885-1890, 1965-1970 MHz
F ⁸	Open	Open	10 MHz	1890-1895, 1970-1975 MHz

7. As indicated in the table, C1, C2, C3, and C4 block licenses in Tier 2 (marked with “*”) are generally available only to entrepreneurs at auction in closed bidding.⁹ The Commission decided, however, no longer to apply this eligibility restriction to any of these licenses that have been previously made available on a closed basis, but not won, in any auction beginning on or after March 23, 1999.¹⁰ Such licenses are instead to be offered in open bidding. C5 block licenses and all D, E, and F block licenses are also available in open bidding. Bidding credits for applicants that qualify as small or very small businesses will be available for C and F block licenses subject to open bidding.¹¹ These size-based bidding credits are not, however, available for C block licenses subject to closed bidding or for broadband PCS licenses in the D or E blocks.¹²

8. The specific broadband PCS licenses to be offered in Auction 78 are described below in Table 3.

⁸ Although F block licenses were originally offered only to entrepreneurs, the Commission later adopted open bidding for all F block licenses. Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97-82, *Sixth Report and Order and Order on Reconsideration*, FCC 00-313, 15 FCC Rcd 16,266, 16,279-80 ¶ 24 (2000) (“*C/F Block Sixth Report and Order*”).

⁹ See 47 C.F.R. § 24.709(a)(4)(i)(B).

¹⁰ See 47 C.F.R. § 24.709(a)(4)(ii). See also *C/F Block Sixth Report and Order*, 15 FCC Rcd at 16,281-82 ¶¶ 27-29.

¹¹ See 47 C.F.R. §§ 24.712, 24.717.

¹² See 47 C.F.R. §§ 24.712, 24.717.

Table 3: Broadband PCS Licenses Available in Auction 78

Block	Eligibility Status	Frequency Bands (MHz)	Total Bandwidth	Geographic Area Type	No. of Licenses
C1	Open ¹³	1902.5-1910 / 1982.5-1990	15 MHz	BTA	1
C1	Closed ¹⁴	1902.5-1910 / 1982.5-1990	15 MHz	BTA	4
C3	Closed ¹⁵	1895-1900 / 1975-1980	10 MHz	BTA	2
C4	Closed ¹⁶	1900-1905 / 1980-1985	10 MHz	BTA	3
C5	Open	1905-1910 / 1985-1990	10 MHz	BTA	2
D	n/a	1865-1870 / 1945-1950	10 MHz	BTA	1
E	n/a	1885-1890 / 1965-1970	10 MHz (or less) ¹⁷	BTA	4
F	Open	1890-1895 / 1970-1975	10 MHz	BTA	3

9. Because of the history of licenses for broadband PCS spectrum, certain of the licenses available in Auction 78 cover less bandwidth and fewer frequencies than noted in the “Broadband PCS Licenses” table above. In addition, in some cases, licenses are available for only part of a market. Attachment A to this Public Notice provides more details about the licenses that will be offered.

B. Incumbency Issues

1. AWS-1

10. The AWS-1 bands are now being used for a variety of government and non-government

¹³ The C1 Block license for market BTA127 is offered in open bidding because it was offered in Auctions 58 and 71, both of which occurred after March 23, 1999, but remained unsold.

¹⁴ Four C1 Block licenses to be offered in Auction 78 (for markets BTA208, BTA333, BTA388, and BTA453) were available only to entrepreneurs and won in Auction 35, but automatically terminated for failure to meet the build-out requirements. Therefore, pursuant to the Commission’s determination in the *C/F Block Sixth Report and Order* and Section 24.709(a)(4)(ii), they remain subject to the entrepreneur eligibility restriction when they are offered in Auction 78. 47 C.F.R. § 24.709(a)(4)(ii); *C/F Block Sixth Report and Order*, 15 FCC Rcd at 16,281-82 ¶¶ 27-29.

¹⁵ When the Commission reconfigured 30 megahertz C Block licenses available for auction into three 10 megahertz licenses – designated the C3, C4, and C5 Blocks – it specified that, for Tier 2 markets, two license blocks (C3 and C4) would be subject to closed bidding, while the third license block (C5) would be made available in open bidding. See *C/F Block Sixth Report and Order*, 15 FCC Rcd at 16,273-77 ¶¶ 12-20. See also 47 C.F.R. § 24.709(a)(4)(i)(B). The two C3 block licenses in Auction 78 – in markets BTA205 and BTA406 – are available only to entrepreneurs because they are C3 block licenses that have not been previously made available on a closed basis in any auction beginning on or after March 23, 1999. See paragraph 7 and note 10, above.

¹⁶ Two of the C4 Block licenses – in markets BTA405 and BTA406 – are also available only to entrepreneurs because they are C4 block licenses that have not been previously made available on a closed basis in any auction beginning on or after March 23, 1999. Auction 78 also includes a C4 Block license in market BTA062, which had been disaggregated from a 30 MHz C Block license won in Auction 5, but which was subsequently cancelled pursuant to an order from federal bankruptcy court. The C4 license in market BTA062 in its entirety is also available only to entrepreneurs because it has not been previously made available on a closed basis in any auction beginning on or after March 23, 1999. See note 14, above.

¹⁷ The two partial E Block licenses in BTA385 and BTA460, which are available in Auction 78, had been cancelled/terminated after being partitioned and/or disaggregated.

services. The 1710-1755 MHz band is currently a government band.¹⁸ The 2110-2150 MHz band is used by private services (including state and local governmental public safety services) and common carrier fixed microwave services.¹⁹ The 2150-2155 MHz band contains incumbents in the Broadband Radio Service (“BRS”).²⁰ The Commission previously provided information on incumbency issues for the AWS-1 bands in the *Auction 66 Procedures Public Notice*.²¹ While much of that information remains current, several updates follow.

11. *Spectrum Relocation Fund*. The Commission established a reserve amount in Auction 66 in order to comply with a statutory requirement aimed at funding the relocation of federal government entities that currently operate in the 1710-1755 MHz band.²² In order for Auction 66 to close in compliance with the statute, the total winning bids in this auction, net of bidding credits applicable at the close of bidding, were required to equal or exceed a reserve amount of approximately \$2.059 billion.²³ At the close of Auction 66, the net total winning bids far exceeded the reserve amount.²⁴ For the reasons

¹⁸ See, e.g., US Notes 311 and 378 of the Table of Allocations, 47 C.F.R. § 2.106. In the Omnibus Budget Reconciliation Act of 1993 (“OBRA-93”), Congress directed the Secretary of Commerce to identify at least 200 megahertz of spectrum below 5 GHz for transfer to non-Federal services. 47 U.S.C. § 923. NTIA identified the band 1710-1755 MHz for transfer, with certain Federal operations to remain protected indefinitely. See Spectrum Reallocation Final Report, Response to Title VI Omnibus Budget Reconciliation Act of 1993, NTIA Special Publication 95-32, at App. E and page F-4 (Feb. 1995). Subsequently, NTIA concluded that most of the protected Federal operations could relocate or modify their operations to allow reallocation of the band for AWS. See NTIA Report, “An Assessment of the Viability of Accommodating Advanced Mobile Wireless (3G) Systems in the 1710-1770 MHz and 2110-2170 MHz Bands,” at 1-2 (July 22, 2002) (“*NTIA AWS Assessment*”) (available at http://www.ntia.doc.gov/reportsarchive2000_2003.html). The Commission sought comment on the *NTIA AWS Assessment*. “FCC Seeks Comment on the National Telecommunications and Information Administration’s Report, An Assessment of the Viability of Accommodating Advanced Mobile Wireless (3G) Systems in the 1710-1770 MHz and 2110-2170 MHz Bands,” ET Docket No. 00-258, *Public Notice*, DA 02-1780, 17 FCC Rcd 14,390 (2002). The *NTIA AWS Assessment* was incorporated into Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, ET Docket No. 00-258, *Fourth Notice of Proposed Rulemaking*, FCC 03-134, 18 FCC Rcd 13,235 (2003).

¹⁹ See Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, ET Docket No. 00-258, *Notice of Proposed Rule Making*, FCC 00-455, 16 FCC Rcd 596, 617-18 (2001).

²⁰ See Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, ET Docket No. 00-258, *Second Report and Order*, FCC 02-304, 17 FCC Rcd 23,193, 23,208-13 ¶¶ 34-41 (2002). The Commission has decided to clear BRS from the 2150-2155 MHz band as part of a fundamental restructuring of the service. See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, WT Docket No. 03-66, *Report and Order and Further Notice of Proposed Rule Making*, FCC 04-135, 19 FCC Rcd 14,165, 14,177-78 ¶¶ 23-24 (2004).

²¹ *Auction 66 Procedures Public Notice*, 21 FCC Rcd at 4573-77 ¶¶ 24-34. See also “Auction of Advanced Wireless Services Licenses, 168 Bidders Qualified to Participate in Auction No. 66; Information Disclosure Procedures Announced,” *Public Notice*, DA 06-1525, 21 FCC Rcd 8585 (2006).

²² See *Auction 66 Procedures Public Notice*, 21 FCC Rcd at 4612-15 ¶¶ 188-200 (Commission adoption of reserve amount for Auction 66 pursuant to the Commercial Spectrum Enhancement Act, Pub. L. No. 108-494, 118 Stat. 3986, Title II (2004) (codified in various sections of Title 47 of the United States Code), § 202 (codified at 47 U.S.C. § 923(g)(2))).

²³ *Auction 66 Procedures Public Notice*, 21 FCC Rcd at 4615 ¶ 198.

²⁴ “Auction of Advanced Wireless Services Licenses Closes; Winning Bidders Announced for Auction No. 66,” *Public Notice*, DA 06-1882, 21 FCC Rcd 10,521 (2006) (“*Auction 66 Closing Public Notice*”).

discussed below, the Bureau proposes to not establish reserve prices for the 35 AWS-1 licenses being offered in Auction 78.²⁵

12. *Relocation of Government Incumbents*. The Commission also issued guidance, along with the National Telecommunications and Information Administration, to assist AWS-1 licensees to begin implementing service during the transition of federal operations from the band while providing interference protection to incumbent federal government operations until they have been relocated to other frequency bands or technologies.²⁶

13. *Relocation of Non-Government Incumbents*. On the same day it released the *Auction 66 Procedures Public Notice*, the Commission, among other things, adopted relocation procedures that AWS-1 licensees will follow when relocating incumbent BRS licensees from the 2150-2160/62 MHz portion of the band.²⁷

2. Broadband PCS

14. While most of the private and common carrier fixed microwave services (“FMS”) formerly operating in the 1850-1990 MHz band (and other bands) have been relocated to available frequencies in higher bands or to other media, some FMS licensees may still be operating in the band. Any remaining FMS entities operating in the 1850-1990 MHz band, however, are secondary to PCS operations. FMS licensees, absent an agreement with the applicable PCS entities or an extension pursuant to Section 101.79(b) of the Commission’s rules, must turn in their authorizations six months following written notice from a PCS entity that such entity intends to turn on a system within the interference range of the incumbent FMS licensee.²⁸ Further, broadband PCS licensees are no longer responsible for costs associated with relocating an incumbent FMS operation.²⁹

III. BUREAU SEEKS COMMENT ON AUCTION PROCEDURES

15. 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

²⁵ See Section III.C.4.a. “Reserve Prices,” below.

²⁶ See “The Federal Communications Commission and the National Telecommunications and Information Administration – Coordination Procedures in the 1710 – 1755 MHz Band, *Public Notice*, WT Docket No. 02-353, FCC 06-50, 21 FCC Rcd 4730 (2006).

²⁷ See Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, ET Docket No. 00-258, Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02-353, *Ninth Report and Order and Order*, FCC 06-45, 21 FCC Rcd 4473 (2006).

²⁸ See 47 C.F.R. § 101.79(a). See also 47 C.F.R. §§ 15.307, 24.5; Amendment to the Commission’s Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, WT Docket No. 95-157, *Memorandum Opinion and Order on Reconsideration*, FCC 00-123, 15 FCC Rcd 13,999 (2000); Amendment to the Commission’s Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, WT Docket No. 95-157, *Second Report and Order*, FCC 97-48, 12 FCC Rcd 2705 (1997); Amendment to the Commission’s Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, WT Docket No. 95-157, *First Report and Order and Further Notice of Proposed Rule Making*, FCC 96-196, 11 FCC Rcd 8825 (1996).

²⁹ Broadband PCS entities were previously required to pay costs of relocating FMS licensees to other bands or alternative facilities, or in certain circumstances, to share the costs of relocating FMS licensees. The relocation reimbursement requirement sunset on April 4, 2005. See 47 C.F.R. §§ 24.239-24.253, 101.69-101.81; “Broadband PCS Entities and Fixed Microwave Services Licensees Reminded of April 4, 2005 Sunset of Relocation Cost Compensation and Microwave Cost Sharing Rules,” *Public Notice*, DA 05-612, 20 FCC Rcd 5141 (2005).

procedures³⁰ 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.³¹ We therefore seek comment on the following issues relating to Auction 78.

A. Auction Design

1. Anonymous Bidding

16. Consistent with recent auctions, the Bureau proposes to withhold, until after the close of bidding, public release of (1) bidders' license selections on their short-form applications (FCC Form 175), (2) the amounts of bidders' upfront payments and bidding eligibility, and (3) information that may reveal the identities of bidders placing bids and taking other bidding-related actions. We propose to withhold this information irrespective of any pre-auction measurement of likely auction competition.³²

17. Under these proposed limited information procedures, the amount of every bid placed and whether a bid was withdrawn would be disclosed after the close of every round, but the identities of bidders placing specific bids or withdrawals and the net bid amounts would not be disclosed until after the close of the auction.

18. Bidders will have access to additional information about their own bids. For example, bidders will be able to view their own level of eligibility, before and during the auction, through the Commission's Integrated Spectrum Auction System ("ISAS" or "FCC Auction System").

19. Moreover, for the purpose of complying with the Commission's anti-collusion rule, bidders will be made aware of other bidders with which they will not be permitted to cooperate, collaborate, or communicate, including discussing bids or bidding strategies.³³ Specifically, the Bureau will notify separately each applicant with short-form applications for participation in a pending auction, including but not limited to Auction 78, whether applicants in Auction 78 have applied for licenses in any of the same or overlapping geographic area as that applicant.

20. After the close of bidding, bidders' license selections, upfront payment amounts, bidding eligibility, bids, and other bidding-related actions will be made publicly available.

³⁰ 47 U.S.C. § 309(j)(3)(E)(i).

³¹ 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, WT Docket No. 97-82, ET Docket No. 94-32, *Third Report and Order and Second Further Notice of Proposed Rule Making*, FCC 97-413, 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, WT Docket No. 97-82, *Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making*, FCC 97-60, 12 FCC Rcd 5686, 5697-98 ¶ 16 (1997) ("*Part 1 Order*").

³² In Auction 66, the decision to implement limited information procedures depended upon an estimate of competition through a modified eligibility ratio. See *Auction 66 Procedures Public Notice*, 21 FCC Rcd at 4600-06 ¶¶ 140-159. The Commission's decision, however, was limited to AWS-1 licenses offered in Auction 66. See *id.* at 4602 ¶ 144.

³³ See 47 C.F.R. § 1.2105(c).

21. We seek comment on the details regarding our proposal for implementation of anonymous bidding in Auction 78, and on alternative proposals for the specific procedures to implement anonymous bidding.

2. Auction Format

22. We propose to auction all licenses included in Auction 78 using the Commission's standard simultaneous multiple-round ("SMR") auction format. As described further below, this type of auction offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses. Typically, bidding remains open on all licenses until bidding stops on every license. We seek comment on this proposal.

23. Although package bidding was considered in Auction 66 and implemented for certain licenses made available in Auction 73,³⁴ we believe that a package bidding format is unlikely to offer significant advantages to bidders in Auction 78. This auction's inventory is composed of licenses in different services and frequency bands, and the geographic markets are generally not contiguous. As a result, it would not be possible to establish a significant regional or national footprint by acquiring several of these licenses as a package. Therefore, we believe that the use of the SMR format for Auction 78 would be the most appropriate means of auctioning the licenses in this inventory. Accordingly, we propose to conduct the auction using our SMR auction format. However, if commenters believe that a package bidding design would offer significant benefits, we invite their comments and request that they describe what specific factors lead them to that conclusion. If commenters believe that certain pre-defined packages should be offered in package bidding, they should describe those packages.

B. Auction Structure

1. Round Structure

24. Auction 78 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.

25. The Commission will conduct Auction 78 over the Internet, and telephonic bidding will be available as well. The toll-free telephone number for the Auction Bidder Line will be provided to qualified bidders.

26. 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 change the amount of time for bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors. The Bureau seeks comment on this proposal. Commenters may wish to address the role of the bidding schedule in managing the pace of the auction and the tradeoffs in managing auction pace by bidding schedule changes, by changing the activity requirements or bid amount parameters, or by using other means.

2. Stopping Rule

27. The Bureau has discretion "to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time."³⁵ For Auction 78, the Bureau proposes to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all

³⁴ See "Auction of 700 MHz Band Licenses Scheduled for January 24, 2008; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction 73 and 76," AU Docket No. 07-157, *Public Notice*, DA 07-4171, 22 FCC Rcd 18,141, 18,179-81 ¶¶ 138-144 (2007) ("*Auction 73 Procedures Public Notice*").

³⁵ 47 C.F.R. § 1.2104(e).

licenses remain available for bidding until bidding closes simultaneously on all licenses. More specifically, bidding will close simultaneously on all licenses after the first round in which no bidder submits any new bids, applies a proactive waiver, or withdraws any provisionally winning bids.³⁶ Thus, unless the Bureau announces alternative stopping procedures, bidding will remain open on all licenses until bidding stops on every license. Consequently, it is not possible to determine in advance how long the auction will last.

28. Further, the Bureau proposes to retain the discretion to exercise any of the following options during Auction 78:

- a) Use a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid, or places any new bids on any license for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule.
- b) 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.
- c) Keep the auction open even if no bidder submits any new bids, applies a waiver, or withdraws any provisionally winning bids. In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule, therefore, will apply as usual and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

29. The Bureau proposes to exercise these options only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising certain of these options, the Bureau is likely to attempt to change the pace of the auction by, for example, changing the number of bidding rounds per day and/or changing minimum acceptable bids. The Bureau proposes to retain the discretion to exercise any of these options with or without prior announcement during the auction. We seek comment on these proposals.

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

30. For Auction 78, the Bureau proposes that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding.³⁷ In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureau seeks comment on this proposal.

³⁶ Proactive waivers are described in Section III.C.3. “Activity Rule Waivers and Reducing Eligibility,” provisionally winning bids are defined in Section III.C.6. “Provisionally Winning Bids,” and bid withdrawals are described in Section III.C.8. “Bid Withdrawal,” below.

³⁷ 47 C.F.R. § 1.2104(i).

C. Auction Procedures

1. Upfront Payments and Bidding Eligibility

31. The Bureau has delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned.³⁸ A bidder's upfront payment is a refundable deposit 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.³⁹

32. The Bureau proposes 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, on a bidding unit per dollar basis. The number of bidding units for a given license is fixed and does not change during the auction as prices rise. A bidder's upfront payment is not attributed to specific licenses. Rather, a bidder may place bids on any combination of licenses it selected on its short-form application (FCC Form 175) as long as the total number of bidding units associated with those licenses does not exceed its current eligibility.

33. 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.⁴⁰

34. As in the most recent auctions, the Bureau proposes to calculate upfront payments in Auction 78 on a license-by-license basis, calculated by bandwidth and license area population, with a minimum of \$500 per license.⁴¹ The Bureau proposes to use upfront payment formulas similar to those used in the most recent auctions for AWS-1 licenses (Auction 66)⁴² and broadband PCS licenses (Auction 71).⁴³

a. AWS-1

35. For AWS-1 licenses offered in Auction 78, the Bureau proposes upfront payments as follows:

- For licenses covering CMAs or EAs in the 50 states, upfront payment amounts will be calculated as \$0.03 per MHz per population (MHz-pop);
- For the one available license that covers the Gulf of Mexico, the upfront payment amount

³⁸ See *Part 1 Order*, 12 FCC Rcd at 5697-98 ¶ 16. See also *Part 1 Third Report and Order*, 13 FCC Rcd at 425 ¶ 86; Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, FCC 94-61, 9 FCC Rcd 2348, 2378-79 ¶¶ 171-75 (1994) (“*Competitive Bidding Second Report and Order*”).

³⁹ See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2378-79 ¶¶ 171-76.

⁴⁰ See Section III.C. 6. “Provisionally Winning Bids,” below.

⁴¹ The Bureau proposes to round results using our standard rounding procedure. This procedure provides that 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 exception to the bandwidth and population formulas is the AWS-1 license covering the Gulf of Mexico. See paragraph 35, below. All population figures are from the 2000 U.S. Census, U.S. Department of Commerce, Bureau of the Census. See Census 2000 Summary File 1 (SF1) and July 3, 2001, News Releases covering the U.S. Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.

⁴² See *Auction 66 Procedures Public Notice*, 21 FCC Rcd at 4594-97 ¶¶ 109-121.

⁴³ See *Auction 71 Procedures Public Notice*, 22 FCC Rcd at 460 ¶ 93.

will be \$20,000; and

- For all remaining licenses, upfront payment amounts will be calculated as \$0.01/MHz-pop.

36. The proposed upfront payment amount and associated bidding units for each AWS-1 license available in Auction 78, calculated pursuant to the procedures described above, are set forth in Attachment A.

b. Broadband PCS

37. For broadband PCS licenses offered in Auction 78, the Bureau proposes upfront payments as follows:

- For licenses covering BTAs in the 50 states, upfront payment amounts will be calculated as \$0.03/MHz-pop; and
- For all remaining licenses, upfront payment amounts will be calculated as \$0.01/MHz-pop.

38. The proposed upfront payment amount and associated bidding units for each broadband PCS license available in Auction 78 are listed in Attachment A.

39. We seek comment on the above proposals concerning upfront payment amounts and bidding units.

2. Activity Rule

40. 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 additional bids in the auction.⁴⁴

41. The Bureau proposes to divide the auction into at least two stages, each characterized by a different activity requirement.⁴⁵ The auction will start in Stage One. The Bureau proposes to advance the auction to the next stage by announcement during the auction. In exercising this discretion, the Bureau will consider a variety of measures of auction activity, including but not limited to the percentage of licenses (as measured in bidding units) on which there are new bids,⁴⁶ the number of new bids, and the increase in revenue. The Bureau seeks comment on these proposals.

42. The Bureau proposes the following activity requirements, while noting again that the Bureau retains the discretion to change stages unilaterally by announcement during the auction:

Stage One: In each round of the first stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on licenses representing at least 80 percent of its current bidding eligibility. Failure to maintain the required activity level will result in the use of an activity rule waiver or a reduction in the bidder's bidding eligibility for the next round of

⁴⁴ See Section III C.3. "Activity Rule Waivers and Reducing Eligibility," below.

⁴⁵ See 47 C.F.R. § 1.2104(g).

⁴⁶ For example, when monitoring activity for determining when to change stages, the Bureau may consider the percentage of bidding units of the licenses receiving new provisionally winning bids, excluding any FCC-held licenses. In past auctions, the Bureau has generally changed stages when this measure was approximately twenty percent or below for three consecutive rounds of bidding.

bidding. During Stage One, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by five-fourths (5/4).

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

43. Under this proposal, the Bureau will retain the discretion to change the activity requirements during the auction. For example, the Bureau could decide to add an additional stage with a higher activity requirement, not to transition to Stage Two if it believes the auction is progressing satisfactorily under the Stage One activity requirement, or to transition to Stage Two with an activity requirement that is higher or lower than the 95 percent proposed herein.⁴⁷ If the Bureau exercises this discretion, it will alert bidders by announcement in the FCC Auction System.

3. Activity Rule Waivers and Reducing Eligibility

44. Use of an activity rule waiver preserves the bidder's eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding, not to particular licenses. Activity rule waivers can be either proactive or automatic and are principally a mechanism for bidders to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from bidding in a particular round.

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

46. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the "reduce eligibility" function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rule as described above. Reducing eligibility is an irreversible action. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility, even if the round has not yet closed.

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

⁴⁷ If the Bureau implements stages with activity requirements other than the ones listed above, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by the reciprocal of the activity requirement. For example, with a 98 percent activity requirement, the bidder's current round activity would be multiplied by 50/49; with a 100 percent activity requirement, the bidder's current round activity would become its bidding eligibility (current round activity would be multiplied by 1/1).

proactive waiver after bidding in a round, and applying a proactive waiver will preclude a bidder from placing any bids in that round.⁴⁸ Applying a waiver is irreversible; once a proactive waiver is submitted, that waiver cannot be unsubmitted, even if the round has not yet closed.

48. Consistent with recent auctions of wireless spectrum, the Bureau proposes that each bidder in Auction 78 be provided with three activity rule waivers that may be used as set forth above at the bidder's discretion during the course of the auction. The Bureau seeks comment on this proposal.

4. Reserve Prices and Minimum Opening Bids

49. 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.⁴⁹ 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.⁵⁰

50. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given amount. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. Also, the auctioneer often has the discretion to lower the minimum opening bid amount later in the auction. It is also possible for the minimum opening bid and the reserve price to be the same amount.

a. Reserve Prices

51. The Commission adopted a reserve price for the auction of AWS-1 licenses in Auction 66, but not for the auction of broadband PCS licenses in Auction 71.⁵¹ The reserve price in Auction 66 was adopted pursuant to Section 1.2104(c) and the Commercial Spectrum Enhancement Act ("CSEA"), which required the Commission to prescribe methods by which the total cash proceeds from any auction of licenses authorizing the use of eligible frequencies, such as 1710 to 1755 MHz, would equal at least 110 percent of the total estimated relocation costs of eligible federal entities.⁵² Given that one-half of the frequencies authorized for use by each license were CSEA eligible frequencies, one-half of each winning bid, net of any applicable bidding credit discounts at the end of bidding, was counted toward meeting the reserve price.⁵³ At the conclusion of Auction 66, the net total winning bids exceeded the reserve amount established by the Commission.⁵⁴

52. Given that net winning bids exceeded the reserve price in Auction 66 and that there was no separate reserve price in Auction 71, we believe the public interest does not warrant establishing reserve prices for the licenses being offered in Auction 78. Therefore, the Bureau does not propose a reserve

⁴⁸ In general, once a bidder places a proactive waiver during a round, the FCC Auction System does not allow the bidder to take any other bidding-related action, including placing or withdrawing bids later in that round.

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

⁵⁰ *Part 1 Third Report and Order*, 13 FCC Rcd at 454-56 ¶ 141. *See also* 47 C.F.R. § 1.2104(c).

⁵¹ *See Auction 66 Procedures Public Notice*, 21 FCC Rcd at 4613-15 ¶¶ 190-200; *Auction 71 Procedures Public Notice*, 22 FCC Rcd at 469-71 ¶¶ 141-147. However, the Commission did note that the minimum opening bids established for the Auction 71 licenses effectively operated as reserve prices. *Id.* at 471 ¶ 146.

⁵² 47 C.F.R. § 1.2104(c); Commercial Spectrum Enhancement Act, Pub. L. No. 108-494, 118 Stat. 3986, Title II (2004) (codified in various sections of Title 47 of the United States Code) ("CSEA"), § 202 (codified at 47 U.S.C. § 923(g)(2)). *See also Auction 66 Procedures Public Notice*, 21 FCC Rcd at 4613-15 ¶¶ 190-200.

⁵³ *See Auction 66 Procedures Public Notice*, 21 FCC Rcd at 4615 ¶ 198.

⁵⁴ *See Auction 66 Closing Public Notice*, 21 FCC Rcd at 10,521.

price for any licenses to be offered in Auction 78. However, if commenters believe that a reserve price would be in the public interest, we invite their comments and request that they describe what specific factors lead them to that conclusion.

b. Minimum Opening Bids

53. In light of Section 309(j)'s requirements, the Bureau proposes to establish minimum opening bid amounts for Auction 78. 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.⁵⁵

54. As in the most recent auctions, the Bureau proposes to calculate minimum opening bids in Auction 78 on a license-by-license basis, calculated by bandwidth and license area population,⁵⁶ with a minimum of \$500 per license.⁵⁷ The Bureau proposes minimum opening bid formulas similar to those used in the most recent auctions for AWS-1 licenses (Auction 66)⁵⁸ and broadband PCS licenses (Auction 71).⁵⁹

(i) AWS-1

55. For AWS-1 licenses offered in Auction 78, the Bureau proposes minimum opening bids as follows:

- For licenses covering CMAs or EAs in the 50 states, minimum opening bid amounts will be calculated as \$0.03/MHz-pop;
- For the one available license that covers the Gulf of Mexico, the minimum opening bid amount will be \$20,000; and
- For all remaining licenses, minimum opening bid amounts will be calculated as \$0.01/MHz-pop.

56. The proposed minimum opening bid amount for each AWS-1 license available in Auction 78, calculated pursuant to the procedures described above, is set forth in Attachment A.

⁵⁵ See, e.g., Auction of 800 MHz SMR Upper 10 MHz Band, Minimum Opening Bids or Reserve Prices, *Order*, DA 97-2147, 12 FCC Rcd 16,354 (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*, DA 98-1010, 13 FCC Rcd 16,445 (1998).

⁵⁶ All population figures are from the 2000 U.S. Census, U.S. Department of Commerce, Bureau of the Census. See Census 2000 Summary File 1 (SF1) and July 3, 2001, News Releases covering the U.S. Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.

⁵⁷ We believe that the proposed minimum opening bid of \$500 will not impede any party willing and able to offer wireless service to the public. Under the Commission's current rules, the filing fee for a new cellular license or to make major modifications to an existing cellular license is \$365. This fee is waived for applicants that obtain licenses through the auction process. Thus, even absent an auction, service providers would have to meet costs comparable to the proposed absolute minimum opening bids in order to obtain a license. For both license service types, the Bureau proposes to round results using our standard rounding procedure. This procedure provides that 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.

⁵⁸ See *Auction 66 Procedures Public Notice*, 21 FCC Rcd at 4615-17 ¶¶ 201-209.

⁵⁹ See *Auction 71 Procedures Public Notice*, 22 FCC Rcd at 469-71 ¶¶ 141-147.

(ii) Broadband PCS

57. For broadband PCS licenses offered in Auction 78, the Bureau proposes minimum opening bids as follows:

- For licenses covering BTAs in the 50 states, minimum opening bid amounts will be calculated as \$0.03/MHz-pop; and
- For all remaining licenses, minimum opening bid amounts will be calculated as \$0.01/MHz-pop.

58. The proposed minimum opening bid amount for each broadband PCS license available in Auction 78 is set forth in Attachment A.

59. The Bureau seeks comment on all of the above proposals concerning minimum opening bids. If commenters believe that these minimum opening bid amounts will result in unsold licenses, or are not reasonable amounts, 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.

60. In establishing minimum opening bid amounts, we particularly seek comment on such factors as the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the service areas, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the licenses being auctioned. The Bureau also seeks comment on whether, consistent with Section 309(j), the public interest would be served by having no minimum opening bid amount.

61. Commenters may also wish to address the general role of minimum opening bids in managing the pace of the auction. For example, commenters could compare using minimum opening bids – e.g., by setting higher minimum opening bids to reduce the number of rounds it takes licenses to reach their final prices – to other means of controlling auction pace, such as changes to bidding schedules or activity requirements.

5. Bid Amounts

62. The Bureau proposes that, in each round, eligible bidders be able to place a bid on a given license using one or more pre-defined bid amounts.⁶⁰ Under this proposal, the FCC Auction System interface will list the acceptable bid amounts for each license.

a. Minimum Acceptable Bids

63. The first of the 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 on the license. After there is a provisionally winning bid for a license, the minimum acceptable bid amount for that license will be equal to the amount of the provisionally winning bid plus a percentage of that bid amount calculated using the formula described below. In general, the percentage will be higher for a license receiving many bids than for a license receiving few bids. In the case of a license for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the license.⁶¹

64. The percentage of the provisionally winning bid used to establish the minimum acceptable bid amount (“the additional percentage”) is calculated at the end of each round, based on an activity

⁶⁰ Bidders must have sufficient eligibility to place a bid on the particular license. See Section III.C.1. “Upfront Payments and Bidding Eligibility,” above.

⁶¹ See Section III.C.8. “Bid Withdrawal,” below.

index. The activity index is a weighted average of (a) the number of distinct bidders placing a bid on the license, and (b) the activity index from the prior round. Specifically, the activity index is equal to a weighting factor times the number of bidders placing a bid on the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round.⁶² The additional percentage is determined by adding one to the activity index, and multiplying that sum by a minimum percentage, with the result not to exceed a maximum percentage. The additional percentage is then multiplied by the provisionally winning bid amount to obtain the minimum acceptable bid for the next round. The Bureau proposes initially to set the weighting factor at 0.5, the minimum percentage at 0.1 (10%), and the maximum percentage at 0.2 (20%). Hence, at these initial settings, the minimum acceptable bid for a license will be between ten percent and twenty percent higher than the provisionally winning bid, depending upon the bidding activity for the license. Equations and examples are shown in Attachment C.

b. Additional Bid Amounts

65. Any additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage – more specifically, by multiplying the minimum acceptable bid by one plus successively higher multiples of the bid increment percentage. If, for example, the bid increment percentage is five percent, the calculation of the first additional acceptable bid amount is (minimum acceptable bid amount) * (1 + 0.05), or (minimum acceptable bid amount) * 1.05; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, or (minimum acceptable bid amount) * 1.1, etc. The Bureau will round the results of these calculations and the minimum acceptable bid calculations using the Bureau's standard rounding procedures. The Bureau proposes to set the bid increment percentage at 0.05.

66. For Auction 73, the Bureau determined that it would generally not provide, in that auction, for additional bid amounts for licenses not subject to package bidding, in light of the limited flexibility provided by additional bid amounts and the possibility that additional bid amounts could be used for signaling.⁶³ The Bureau seeks comment on whether to start with no additional bid amounts or with eight additional bid amounts (for a total of nine bid amounts) for Auction 78. In particular, commenters should address the issue of additional bid amounts in light of particular circumstances of Auction 78, including the nature of the license inventory. The Bureau retains the discretion to change the minimum acceptable bid amounts, the additional bid amounts, the number of acceptable bid amounts, and the parameters of the formulas used to calculate minimum acceptable bid amounts and additional bid amounts if it determines that circumstances so dictate.⁶⁴ Further, the Bureau retains the discretion to do so on a license-by-license basis.

67. The Bureau also retains the discretion to limit (a) the amount by which a minimum acceptable bid for a license may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, the Bureau could set a \$1 million limit on increases in minimum acceptable bid amounts over provisionally winning bids. Thus, if the activity-based formula calculates a

⁶² For Round 1 calculations, because there is no prior round (i.e., no round 0), the activity index from the prior round is set at 0.

⁶³ See *Auction 73 Procedures Public Notice*, 22 FCC Rcd at 18,203-04 ¶¶ 228-233. The Bureau, however, retained discretion to change the number of acceptable amounts during the auction.

⁶⁴ Given that rounding may affect the relationship between the minimum acceptable bid and the provisionally winning bid, the Bureau also retains the discretion to alter its standard rounding procedure to avoid the possibility that the minimum acceptable bid duplicates the provisionally winning bid. In the event of duplicate bid amounts due to rounding, the FCC Auction System will omit the duplicates and will list fewer acceptable bid amounts for the license.

minimum acceptable bid amount that is \$2 million higher than the provisionally winning bid on a license, the minimum acceptable bid amount would instead be capped at \$1 million above the provisionally winning bid. We seek comment on the circumstances under which the Bureau should employ such a limit, factors we should consider when determining the dollar amount of the limit, and the tradeoffs in setting such a limit or changing parameters of the activity-based formula, such as changing the minimum percentage. If the Bureau exercises this discretion, it will alert bidders by announcement in the FCC Auction System.

68. The Bureau seeks comment on the above proposals. If commenters disagree with the Bureau's proposal to begin the auction with one acceptable bid amount per license, they should suggest an alternative number of acceptable bid amounts to use at the beginning of the auction, an alternative number to use later in the auction, and whether the same number of bid amounts should be used for each of the blocks, licenses, and services. Commenters may wish to address the role of the minimum acceptable bids and the number of acceptable bid amounts in managing the pace of the auction and the tradeoffs in managing auction pace by bidding schedule changes, by changing the activity requirements or bid amount parameters, or by using other means.

6. Provisionally Winning Bids

69. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round. At the end of a bidding round, a provisionally winning bid for each license will be determined based on the highest bid amount received for the license. In the event of identical high bid amounts being submitted on a license in a given round (i.e., tied bids), 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.

70. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the license at the close of a subsequent round, unless the provisionally winning bid is withdrawn. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.⁶⁵

7. Bid Removal

71. For Auction 78, the Bureau proposes and seeks comment on 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 "undo" any of its bids placed within that round. In contrast to the bid withdrawal provisions described below, a bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid.

8. Bid Withdrawal

72. A bidder may withdraw its provisionally winning bids using the "withdraw bids" function in the FCC Auction System. A bidder that withdraws its provisionally winning bid(s) is subject to the bid withdrawal payment provisions of the Commission rules.⁶⁶

73. In the *Part 1 Third Report and Order*, the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of backup strategies as

⁶⁵ See Section III.C.2. "Activity Rule," above.

⁶⁶ 47 C.F.R. §§ 1.2104(g) and 1.2109.

information becomes available during the course of an auction.⁶⁷ The Commission noted, however, that in some instances bidders may seek to withdraw bids for improper reasons. The Bureau, therefore, has discretion in managing the auction to limit the number of withdrawals to prevent any bidding abuses. The Commission stated that the Bureau should assertively exercise its discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if the Bureau finds that a bidder is abusing the Commission's bid withdrawal procedures.⁶⁸

74. For Auction 78, we propose to allow each bidder to withdraw provisionally winning bids in only one round during the course of the auction. To permit a bidder to withdraw bids in more than one round may encourage insincere bidding or the use of withdrawals for anti-competitive purposes. The round in which withdrawals may be used will be at the bidder's discretion, and there is no limit on the number of provisionally winning bids that may be withdrawn during that round. Otherwise, withdrawals must be in accordance with the Commission's rules, including the bid withdrawal payment provisions specified in Section 1.2104(g).⁶⁹ The Bureau seeks comment on these bid withdrawal procedures. If commenters believe that each bidder should be allowed to withdraw provisionally winning bids in more than one round during the course of the auction, they should state how many bid withdrawal rounds they seek and explain what specific factors lead them to that conclusion.

D. Post-Auction Procedures

1. Interim Withdrawal Payment Percentage

75. We seek comment on the appropriate percentage of a withdrawn bid that should be assessed as an interim withdrawal payment, in the event that a final withdrawal payment cannot be determined at the close of the auction. Balancing the potential need for bidders to use withdrawals to avoid winning incomplete combinations of licenses with our interest in deterring abuses of our bidding procedures, we propose an interim bid withdrawal payment level of fifteen percent for Auction 78.

76. In general, the Commission's rules provide that a bidder that withdraws a bid during an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or subsequent auction(s).⁷⁰ If a bid is withdrawn and no subsequent higher bid is placed and/or the license is not won in the same auction, the final withdrawal payment cannot be calculated until after the close of a subsequent auction in which a higher bid for the license (or the equivalent to the license) is placed or the license is won.⁷¹ When that final payment cannot yet be calculated, the bidder responsible for the withdrawn bid is assessed an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed.⁷² Section 1.2104(g)(1) of the Commission rules requires that the percentage of the withdrawn bid to be

⁶⁷ *Part 1 Third Report and Order*, 13 FCC Rcd at 459-60 ¶ 150.

⁶⁸ *Id.*

⁶⁹ See 47 C.F.R. § 1.2104(g).

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

⁷¹ *Id.*

⁷² *Id.*

assessed as an interim bid withdrawal payment be between three percent and twenty percent and that it be set in advance of the auction.⁷³

77. The Commission has determined that the level of the interim withdrawal payment in a particular auction will be based on the nature of the service and the inventory of the licenses being offered.⁷⁴ The Commission has noted that it may impose a higher interim withdrawal payment percentage to deter the anti-competitive use of withdrawals when, for example, bidders likely will not need to aggregate the licenses being offered in the auction, such as when few licenses are offered that are on adjacent frequencies or in adjacent areas, or when there are few synergies to be captured by combining licenses.⁷⁵ Under this rationale, we chose an interim bid withdrawal payment level of fifteen percent for Auction 71, while we adopted a level of ten percent in Auction 66.⁷⁶

78. For Auction 78, the opportunities for combining licenses on adjacent frequencies or in adjacent areas are more limited than was the case in Auction 66, and thus, there is likely to be little need to use withdrawals to protect against incomplete aggregations. Therefore, we propose to establish the percentage of the withdrawn bid to be assessed as an interim bid withdrawal payment at fifteen percent for this auction for licenses in both services. The Bureau seeks comment on this proposal.

2. Additional Default Payment Percentage

79. Any winning bidder that, after the close of an auction, defaults – by, for example, failing to remit the required down payment within the prescribed period of time, to submit a timely long-form application, or to make full payment – or is otherwise disqualified is liable for a default payment under Section 1.2104(g)(2) of the Commission’s rules.⁷⁷ 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.

80. Under Section 1.2104(g)(2), the Commission will, in advance of each non-combinatorial auction, establish an additional default payment for that auction of three percent up to a maximum of twenty percent.⁷⁸ 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.⁷⁹

81. In the recent auctions of AWS-1 and broadband PCS licenses (Auctions 66 and 71), the additional default payment was ten percent.⁸⁰

82. 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 three percent will be more effective in deterring defaults. At the same time, we do not believe the detrimental effects of any defaults

⁷³ See *id.*, as amended by Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Bidding Rules and Procedures, WT Docket No. 05-211, *Report and Order*, FCC 06-4, 21 FCC Rcd 891, 903 ¶ 30 (2006) (“*CSEA/Part 1 Report and Order*”).

⁷⁴ See *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 903-04 ¶ 31.

⁷⁵ See *id.* at 904 n.57.

⁷⁶ See *Auction 66 Procedures Public Notice*, 21 FCC Rcd at 4623 ¶ 239; *Auction 71 Procedures Public Notice*, 22 FCC Rcd at 475 ¶ 169.

⁷⁷ 47 C.F.R. § 1.2104(g)(2).

⁷⁸ *Id.*

⁷⁹ See *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 903-04 ¶¶ 30-31.

⁸⁰ See *Auction 66 Procedures Public Notice*, 21 FCC Rcd at 4628 ¶ 258; *Auction 71 Procedures Public Notice*, 22 FCC Rcd at 477 ¶ 183.

in Auction 78 are likely to be unusually great. Balancing these considerations, we propose an additional default payment of ten percent of the relevant bid for Auction 78. The Bureau seeks comment on this proposal.

IV. DEADLINES AND FILING PROCEDURES

83. Comments are due on or before April 18, 2008, and reply comments are due on or before April 25, 2008. All filings related to the auction of these licenses should refer to AU Docket No. 08-46. Comments may be submitted using the Commission's Electronic Comment Filing System ("ECFS") or by filing paper copies.⁸¹ The Bureau strongly encourages interested parties to file comments electronically, and requests submission of a copy via the Auction 78 e-mail box (auction78@fcc.gov).

84. **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 AU Docket No. 08-46. 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.

85. **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, and should reference AU Docket No. 08-46.

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

86. **Auction 78 E-mail Box.** The Bureau also requests that a copy of all comments and reply comments be submitted electronically to the following address: auction78@fcc.gov.

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

88. This proceeding has been designated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁸² 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

⁸¹ See Electronic Filing of Documents in Rulemaking Proceedings, GC Docket No. 97-113, *Report and Order*, FCC 98-56, 13 FCC Rcd 11,322 (1998).

⁸² See 47 C.F.R. §§ 1.1200(a), 1.1206.

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.⁸³

V. CONTACTS

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

Mobility Division, Wireless Telecommunications Bureau

For broadband PCS service rule questions:

Erin McGrath or Michael Connelly
(legal) or Keith Harper (technical), at
(202) 418-0620

Broadband Division, Wireless Telecommunications Bureau

For AWS-1 service rule questions:

John Spencer at (202) 418-2487

Auctions and Spectrum Access Division, Wireless Telecommunications Bureau

For general auction questions:

Lisa Stover at (717) 338-2868

For auctions legal questions:

Scott Mackoul or Stephen Johnson
at (202) 418-0660

90. To request materials in accessible formats (Braille, large print, electronic files, audio format) for people with disabilities, send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

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⁸³ 47 C.F.R. § 1.1206(b).