



PUBLIC NOTICE

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AUCTION OF 700 MHz BAND LICENSES SCHEDULED FOR JULY 19, 2011

COMMENT SOUGHT ON COMPETITIVE BIDDING PROCEDURES FOR AUCTION 92

AU Docket No. 10-248

Comments Due: January 12, 2011

Reply Comments Due: January 27, 2011

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I. INTRODUCTION

1. By this Public Notice, the Wireless Telecommunications Bureau (“Bureau”) announces an auction of 16 licenses in the 698-806 MHz band (herein, the “700 MHz Band”) and seeks comment on the procedures to be used for this auction. This auction, which is designated Auction 92, is scheduled to commence on July 19, 2011.

II. LICENSES IN AUCTION 92

2. Auction 92 will offer a total of 16 licenses. These licenses were offered in Auction 73 and remained unsold or were licenses on which a winning bidder defaulted.

3. The following table describes the 700 MHz Band licenses that will be offered in Auction 92. A complete list of licenses offered in Auction 92 is available in Attachment A to this Public Notice.

Block	Frequencies (MHz)	Bandwidth	Pairing	Area Type	Licenses
A	698-704, 728-734	12 MHz	2 x 6 MHz	EA	2
B	704-710, 734-740	12 MHz	2 x 6 MHz	CMA	14

III. DUE DILIGENCE

4. Each potential bidder is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of 700 MHz Band licenses that the potential bidder is seeking in this auction. **The FCC makes no representations or warranties about the use of this spectrum for particular services. Each applicant should be aware that this FCC auction represents an opportunity to become an FCC licensee in the 700 MHz Band, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC license constitute a guarantee of business success.**

5. An applicant should perform its due diligence research and analysis before proceeding, as the applicant would with any new business venture. Each potential bidder should perform technical analyses and/or refresh any previous analyses to assure the applicant that, should the applicant be a winning bidder for any Auction 92 license, the applicant will be able to build and operate facilities that will fully comply with all current technical and legal requirements. Each applicant is strongly encouraged to inspect any prospective sites located in, or near, the geographic area for which the applicant plans to bid, and also to familiarize itself with the Commission’s rules regarding the National Environmental Policy Act.¹

6. Each applicant is strongly encouraged to conduct its own research prior to Auction 92 in order to determine the existence of pending administrative, rulemaking, or judicial proceedings that might affect the applicant’s decisions regarding participation in the auction.

7. Participants in Auction 92 are strongly encouraged to continue such research throughout the auction. The due diligence considerations mentioned in this Public Notice do not comprise an exhaustive list of steps that should be undertaken prior to participating in this auction. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon the specific facts and circumstances related to its interests.

IV. BUREAU SEEKS COMMENT ON AUCTION PROCEDURES

8. Section 309(j)(3)(E)(i) 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

¹ 47 C.F.R. Chapter 1, Part 1, Subpart I.

proposed auction procedures”² 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 delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction.³ The Bureau therefore seeks comment on the following issues relating to Auction 92.

A. Auction Structure

1. Simultaneous Multiple-Round Auction Design

9. The Bureau proposes to auction all licenses included in Auction 92 using the Commission’s standard simultaneous multiple-round auction format.⁴ 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. The Bureau seeks comment on this proposal.

2. Anonymous Bidding

10. In a number of recent auctions the Commission has adopted procedures to limit the disclosure of certain bidder-specific information until after the auction.⁵ Consistent with that practice, the Bureau proposes to conduct Auction 92 using certain procedures for limited information disclosure, or “anonymous bidding.” Specifically, 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.

11. 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.

² 47 U.S.C. § 309(j)(3)(E)(i).

³ See Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, FCC 97-413, 13 FCC Rcd 374, 447-49 ¶¶ 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 Procedures, 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*”).

⁴ See 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, 2360-75 ¶¶ 68-159 (1994) (“*Second Report and Order*”) for a general discussion of competitive bidding design.

⁵ See, e.g., “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, 22 FCC Rcd 18,141, 18,181-85 ¶¶ 145-156 (WTB 2007) (“*Auction 73 Procedures Public Notice*”); “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,” *Public Notice*, FCC 06-47, 21 FCC Rcd 4562, 4600-05 ¶¶ 140-157 (2006) (“*Auction 66 Procedures Public Notice*”).

12. Bidders would have access to additional information about their own bids. For example, bidders would 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").

13. Moreover, for the purpose of complying with section 1.2105(c), the Commission's rule prohibiting certain communications between applicants (formerly referred to as the "anti-collusion rule"), applicants would be made aware of other applicants with which they will not be permitted to cooperate, collaborate, or communicate — including discussing bids, bidding strategies, or post-auction market structure.⁶ Specifically, the Bureau would notify separately each applicant in Auction 92 whether applicants with short-form applications to participate in pending auctions, including but not limited to Auction 92, have applied for licenses in any of the same or overlapping geographic areas as that applicant.

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

15. The Bureau seeks comment on its proposal to implement anonymous bidding in Auction 92. The Bureau also seeks comment on alternatives to the use of anonymous bidding procedures for Auction 92. When the Commission proposed limited information disclosure procedures in 2006, it did so in response to analysis suggesting that under certain circumstances the competitiveness and economic efficiency of a simultaneous multiple-round auction may be enhanced if such information is withheld until after the close of the auction.⁷ The Bureau encourages parties to provide information about the benefits and costs of complying with limited information procedures as compared with the benefits and costs of alternative procedures that would provide for the disclosure of more information on bidder identities and interests in the auction. If commenters believe that the Bureau should not adopt procedures to limit the disclosure of certain bidder-specific information until after the auction, they should explain their reasoning.

3. Bidding Rounds

16. Auction 92 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.

17. The Commission will conduct Auction 92 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.

18. 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, specifically discussing the tradeoffs in managing auction pace by bidding schedule changes, by changing the activity requirements or bid amount parameters, or by using other means.

4. Stopping Rule

19. The Bureau has discretion to establish stopping rules before or during a multiple round auction in order to end the auction within a reasonable time.⁸ For Auction 92, the Bureau proposes to

⁶ See 47 C.F.R. § 1.2105(c).

⁷ "Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Procedures," *Public Notice*, DA 06-238, 21 FCC Rcd 794, 799 (2006) (*Auction 66 Comment Public Notice*).

⁸ 47 C.F.R. § 1.2104(e).

employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all licenses remain available for bidding until bidding closes simultaneously on all licenses. More specifically, bidding will close simultaneously on all licenses after the first round in which no bidder submits any new bids, applies a proactive waiver, or withdraws any provisionally winning bids.⁹ 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.

20. Further, the Bureau proposes to retain the discretion to exercise any of the following options during Auction 92:

- a) Use a modified version of the simultaneous stopping rule that 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) Use a modified version of the simultaneous stopping rule that 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 that is not FCC held. Thus, absent any other bidding activity, a bidder placing a new bid on an “FCC-held” license (a license that does not already have a provisionally winning bid) would not keep the auction open under this modified stopping rule.
- c) Use a modified version of the simultaneous stopping rule that combines (a) and (b) above.
- d) 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.
- e) 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 use a waiver or lose bidding eligibility.

21. 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. The Bureau seeks comment on these proposals.

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

22. For Auction 92, 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

⁹ A provisionally winning bid is a bid that would become a final winning bid if the auction were to close in that given round. Proactive waivers are described in Section IV.B.3. “Activity Rule Waivers and Reducing Eligibility,” provisionally winning bids are described further in Section IV.B.6. “Provisionally Winning Bids,” and bid withdrawals are described in Section IV.B.8. “Bid Withdrawal,” below.

bidding.¹⁰ In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. 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.

B. Auction Procedures

1. Upfront Payments and Bidding Eligibility

23. The Bureau has delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned, taking into account such factors as the efficiency of the auction process and the potential value of similar licenses.¹¹ As described further below, the upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on licenses. Upfront payments that are related to the specific licenses being auctioned protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction.¹² With these considerations in mind, the Bureau proposes the upfront payments set forth in Attachment A to this Public Notice. The Bureau seeks comment on this proposal.

24. The Bureau further proposes that the amount of the upfront payment submitted by a bidder will determine the bidder’s initial bidding eligibility in bidding units. The Bureau proposes that each license be assigned a specific number of bidding units equal to one bidding unit per dollar of the upfront payment listed in Attachment A. The number of bidding units for a given license is fixed and does not change during the auction as prices change. A bidder may place bids on multiple licenses, provided that the total number of bidding units associated with those licenses does not exceed the bidder’s current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount and hence its initial bidding eligibility, an applicant must determine the maximum number of bidding units it may wish to bid on (or hold provisionally winning bids) in any single round, and submit an upfront payment amount covering that total number of bidding units. The Bureau seeks comment on these proposals.

Example: Upfront Payments, Bidding Eligibility, and Bidding Flexibility			
License	Market Name	Bidding Units	Upfront Payment
WY-CMA204-B	Aguadilla, PR	23,000	\$23,000
WY-CMA663-B	Texas 12 – Hudspeth	24,000	\$24,000

If a bidder wishes to bid on both licenses in a round, it must have selected both on its FCC Form 175 and purchased at least 47,000 bidding units (23,000 + 24,000) of bidding eligibility. If a bidder only wishes to bid on one, but not both, purchasing 24,000 bidding units would meet the eligibility requirement for either license. The bidder would be able to bid on either license, but not both at the same time. If the bidder purchased only 23,000 bidding units, it would have enough eligibility for the Aguadilla, PR license but not the Texas 12 – Hudspeth license.

¹⁰ 47 C.F.R. § 1.2104(i).

¹¹ 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; *Second Report and Order*, 9 FCC Rcd at 2377-79 ¶¶ 169-75.

¹² See *Second Report and Order*, 9 FCC Rcd at 2377-79 ¶¶ 169-76.

2. Activity Rule

25. 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 placed in previous rounds. 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.¹³

26. The Bureau proposes to divide the auction into at least two stages, each characterized by a different activity requirement.¹⁴ 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,¹⁵ the number of new bids, and the increase in revenue. The Bureau seeks comment on these proposals.

27. The Bureau proposes the following activity requirements, while noting 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 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).

28. The Bureau requests comment on these activity requirements. 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.¹⁶ If the Bureau exercises this discretion, it will alert bidders by announcement in the FCC Auction System.

¹³ See Section IV.B.3. "Activity Rule Waivers and Reducing Eligibility," below.

¹⁴ See 47 C.F.R. § 1.2104 (f).

¹⁵ 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 — but not always — changed stages when this measure was approximately twenty percent or below for three consecutive rounds of bidding.

¹⁶ 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

3. Activity Rule Waivers and Reducing Eligibility

29. 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 a particular license. Activity rule waivers can be either proactive or automatic and are principally a mechanism for an auction participant to avoid the loss of bidding eligibility in the event that exigent circumstances prevent the participant from bidding in a particular round.

30. The FCC Auction System assumes that a bidder that does not meet the activity requirement would prefer to use 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 current eligibility will be permanently reduced, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

31. 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.

32. 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 proactive waiver after bidding in a round, and applying a proactive waiver will preclude a bidder from placing any bids in that round.¹⁷ Applying a waiver is irreversible; once a proactive waiver is submitted, that waiver cannot be unsubmitted, even if the round has not yet closed.

33. Consistent with recent auctions of wireless spectrum, the Bureau proposes that each bidder in Auction 92 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 Price or Minimum Opening Bids

34. 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.¹⁸ 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.¹⁹

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).

¹⁷ Once a bidder places a proactive waiver during a round, the FCC Auction System does not allow the bidder to take other bidding-related action in that round, including placing bids or withdrawing bids.

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

¹⁹ *Part 1 Third Report and Order*, 13 FCC Rcd at 454-56 ¶¶ 139-41. *See* 47 C.F.R. § 1.2104(c), (d).

35. 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, 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. It is possible for the minimum opening bid and the reserve price to be the same amount.

36. In light of Section 309(j)'s requirements, the Bureau proposes to establish minimum opening bid amounts for Auction 92. 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.²⁰ The Bureau does not propose to establish a separate reserve price for the licenses to be offered in Auction 92.

37. For Auction 92, the Bureau proposes to calculate minimum opening bid amounts on a license-by-license basis using a method that takes into consideration the amounts bid for the same licenses in Auction 73.²¹ Specifically, for each license the Bureau proposes to calculate the minimum opening bid amount as the greater of (1) the minimum opening bid amount for the same license in Auction 73, or (2) 10% of the highest bid amount received for the license in Auction 73. This approach makes it possible to establish somewhat higher minimum opening bids for licenses that may likely sell for relatively higher prices, thereby potentially reducing the number of bidding rounds necessary for licenses to reach their final auction prices. The proposed minimum opening bid amount for each license available in Auction 92 is set forth in Attachment A of this Public Notice. The Bureau seeks comment on this proposal.

38. If commenters believe that these minimum opening bid amounts will result in unsold licenses, 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. If requesting a lower minimum opening bid amount for a specific license offered in this auction, a commenter should justify the requested amount in detail. Commenters are advised to support their claims with valuation analyses and suggested amounts or formulas for reserve prices or minimum opening bids. In establishing minimum opening bid amounts, the Bureau particularly seeks comment on factors that could reasonably have an impact on valuation of the spectrum being auctioned, including levels of incumbency within these spectrum bands, the availability of technology to provide service, the size of the geographic service areas, issues of interference with other spectrum bands, and any other relevant factors. The Bureau seeks comment on this approach, and on whether, consistent with Section 309(j), the public interest would be served by having no minimum opening bid amount or reserve price.

5. Bid Amounts

39. 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.²² Under this proposal, the FCC Auction System interface will list the acceptable bid amounts for each license. The Bureau proposes to calculate bid amounts as described below.

²⁰ See, e.g., Auction of 800 MHz SMR Upper 10 MHz Band, Minimum Opening Bids or Reserve Prices, *Order*, 12 FCC Rcd 16354, DA 97-2147 (WTB 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, DA 98-1010 (WTB 1998).

²¹ All of the licenses offered in Auction 92 received multiple bids in Auction 73.

²² Bidders must have sufficient eligibility to place a bid on the particular license. See Section IV.B.1. "Upfront Payments and Bidding Eligibility," above.

a. Minimum Acceptable Bids

40. The first of the 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.²³

41. 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 index. The activity index is a weighted average of (a) the number of 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 covering the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round.²⁴ The additional percentage is determined as one plus the activity index times a minimum percentage amount, with the result not to exceed a given maximum percentage. The additional percentage is then multiplied by the provisionally winning bid amount to obtain the minimum acceptable bid for the next round.²⁵ The Bureau proposes initially to set the weighting factor at 0.5, the minimum percentage at 0.1 (10%), and the maximum percentage at 0.3 (30%). Hence, at these initial settings, the minimum acceptable bid for a license will be between ten percent and thirty percent higher than the provisionally winning bid, depending upon the bidding activity for the license. Equations and examples of calculations are shown in Attachment B.

b. Additional Bid Amounts

42. 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.²⁶ The Bureau proposes to use a bid increment percentage of 5 percent.

43. The Bureau proposes to start with eight additional bid amounts (for a total of nine bid amounts), and seeks comment on whether to use fewer or no additional bid amounts. In particular, commenters should address the issue of additional bid amounts in light of particular circumstances of Auction 92, including the nature of the licenses offered.

c. Bid Amount Changes

44. 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

²³ See Section IV.B.8. “Bid Withdrawal,” below.

²⁴ 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.

²⁵ Results are rounded using the Commission's standard rounding procedure for auctions: 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.

²⁶ See note 25 (concerning rounding), above.

calculate minimum acceptable bid amounts and additional bid amounts if the Bureau determines that circumstances so dictate. Further, the Bureau retains the discretion to make such changes on a license-by-license basis.

45. 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 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. The Bureau seeks comment on the circumstances under which the Bureau should employ such a limit, factors it 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.

46. The Bureau seeks comment on the above proposals. 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 changing the bidding schedule, activity requirements, or bid amounts, or by using other means.

6. Provisionally Winning Bids

47. 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.

48. 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.²⁷

7. Bid Removal

49. For Auction 92, 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

50. The Bureau also seeks comment on the following bid withdrawal procedures. When permitted in an auction, bid withdrawals provide a bidder with the option of withdrawing bids placed in

²⁷ See Section IV.B.2. “Activity Rule,” above.

prior rounds that have become provisionally winning bids. 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.²⁸

51. 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 information becomes available during the course of an auction.²⁹ 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 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.³⁰

52. For Auction 92, the Bureau proposes to limit each bidder to withdrawing 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. Withdrawals must be in accordance with the Commission’s rules, including the bid withdrawal payment provisions specified in section 1.2104(g).³¹ 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. If commenters believe that bidders in this auction should not be permitted to withdraw any bids, they should discuss their reasoning for this suggestion.³²

C. Post-Auction Payments

1. Interim Withdrawal Payment Percentage

53. The Bureau seeks 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. 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).³³ 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

²⁸ 47 C.F.R. §§ 1.2104(g), 1.2109.

²⁹ *Part 1 Third Report and Order*, 13 FCC Rcd at 459-60 ¶ 150.

³⁰ *Id.*

³¹ *See* 47 C.F.R. § 1.2104(g). *See also* 47 C.F.R. § 1.2109

³² *See* Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Bidding Rules and Procedures, WT Docket No. 05-211, FCC 06-4, *Report and Order*, 21 FCC Rcd 891, 902-903 ¶ 29, 904 n.57 (2006) (“*CSEA/Part 1 Report and Order*”) (discussing considerations, such as nature and availability of licenses offered at auction and bidders’ need to aggregate licenses, that may factor into decision to permit bid withdrawals).

³³ *See* 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.*

which a higher bid for the license (or the equivalent to the license) is placed or the license is won.³⁴ 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.³⁵ Section 1.2104(g)(1) of the Commission rules requires that the percentage of the withdrawn bid to be assessed as an interim bid withdrawal payment be between three percent and twenty percent and that it be set in advance of the auction.³⁶

54. 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.³⁷ 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.³⁸

55. With respect to the licenses being offered in Auction 92, the opportunities for combining in this auction licenses on adjacent frequencies or in adjacent areas may be limited, so there is likely to be little need to use withdrawals to protect against incomplete aggregations. Therefore, the Bureau proposes to establish the percentage of the withdrawn bid to be assessed as an interim bid withdrawal payment at fifteen percent for this auction. The Bureau seeks comment on this proposal.

2. Additional Default Payment Percentage

56. Any winning bidder that defaults or is disqualified after the close of an auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) is liable for a default payment under 47 C.F.R. § 1.2104(g)(2). This payment consists of a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

57. The Commission's rules provide that, in advance of each auction, a percentage shall be established for the additional default payment. This percentage must be between three percent and twenty percent of the applicable bid.³⁹ As the Commission has indicated, the level of this additional payment in each auction will be based on the nature of the service and the inventory of the licenses being offered.⁴⁰

58. For Auction 92, the Bureau proposes to establish an additional default payment of fifteen percent. As noted in the *CSEA/Part 1 Report and Order*, defaults weaken the integrity of the auction process and may 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.⁴¹ Given the nature of the service and the inventory of the licenses being offered in Auction 92, we believe that an additional default payment of fifteen percent of the relevant bid will provide a sufficient deterrent to defaults. The Bureau seeks comment on this proposal.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *See id.*, as amended by *CSEA/Part 1 Report and Order*, 21 FCC Rcd 891, 902-903 ¶ 29, 904 n.57.

³⁷ *See CSEA/Part 1 Report and Order*, 21 FCC Rcd at 903-04 ¶¶ 30-31.

³⁸ *See id.* at 904 n.57.

³⁹ *See* 47 C.F.R. § 1.2104(g)(2).

⁴⁰ *See CSEA/Part 1 Report and Order*, 21 FCC Rcd at 903-04 ¶¶ 30-31.

⁴¹ *Id.* at 902-03 ¶ 29.

V. DEADLINES AND FILING PROCEDURES

59. Comments are due on or before January 12, 2011, and reply comments are due on or before January 27, 2011. All filings related to procedures for Auction 92 must refer to AU Docket No. 10-248. Comments may be submitted using the Commission's Electronic Comment Filing System ("ECFS") or by filing paper copies.⁴² The Bureau strongly encourages interested parties to file comments electronically.

60. *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS at <http://www.fcc.gov/cgb/ecfs>. Filers should follow the instructions provided on the website for submitting comments. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number, AU Docket No. 10-248. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the words "get form" in the body of the message. A sample form and directions will be sent in response.

61. *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. All filings must be addressed to the Commission's Secretary Attn: WTB/ASAD, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at the FCC Headquarters building located at 445 12th Street, SW, Room TW-A325, Washington DC 20554. 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.

62. *Auction 92 E-mail Box:* The Bureau also requests that a copy of all comments and reply comments be submitted electronically to auction92@fcc.gov.

63. 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 and 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/>.

64. This proceeding has been designated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁴³ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other provisions 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.

65. 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).

⁴² See Electronic Filing of Documents in Rulemaking Proceedings, GC Docket No. 97-113, *Report and Order*, FCC 98-56, 13 FCC Rcd 11322 (1998).

⁴³ 47 C.F.R. §§ 1.1200(a), 1.1206.

VI. CONTACTS

66. For further information concerning this proceeding, contact the offices listed below:

Mobility Division, Wireless Telecommunications Bureau

For 700 MHz service rule questions: Michael Connelly (legal) or Keith Harper (technical), at
(202) 418-0620

Auctions and Spectrum Access Division, Wireless Telecommunications Bureau

For general auction questions: Debbie Smith or Lisa Stover at (717) 338-2868
For auctions legal questions: Lynne Milne at (202) 418-0660

Office of Communications Business Opportunities

For questions concerning small business inquiries: (202) 418-0990

- FCC -

**DA 10-2298
ATTACHMENT A**

Licenses to Be Offered in Auction 92

This page was intentionally inserted as a placeholder for Attachment A, which is available as a separate file.

DA 10-2298
ATTACHMENT B

Minimum Acceptable Bid Formula

The following formula used to calculate minimum acceptable bids is based on activity. 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 below. In general, the percentage will be higher for a license receiving many bids than for a license receiving few bids.

$$A_i = (C * B_i) + ((1-C) * A_{i-1})$$

$$I_{i+1} = \text{smaller of } ((1 + A_i) * N) \text{ and } M$$

$$X_{i+1} = I_{i+1} * Y_i$$

where

A_i = activity index for the current round (round i)

C = activity weight factor

B_i = number of bidders submitting bids on the license in the current round (round i)

A_{i-1} = activity index from previous round (round i-1), A_0 is 0

I_{i+1} = additional percentage for the next round (round i+1)

N = minimum additional percentage or floor

M = maximum additional percentage or ceiling

X_{i+1} = dollar amount corresponding to the additional percentage

Y_i = provisionally winning bid amount from the current round

Examples

$$C = 0.5, N = 0.1, M = 0.2$$

Please note that these values are for illustrative purposes only and might not be the same as those used in the auction.

Round 1 (2 bidders submitting bids, provisionally winning bid = \$1,000,000)

1. Calculation of additional percentage for round 2:

$$A_1 = (0.5 * 2) + (0.5 * 0) = 1$$

$$I_2 = \text{The smaller of } [(1 + 1) * 0.1] = 0.2 \text{ and } 0.2 \text{ (the maximum additional percentage)}$$
$$= 0.2$$

2. Calculation of dollar amount associated with the additional percentage for round 2 (using I_2 from above):

$$X_2 = 0.2 * \$1,000,000 = \$200,000$$

3. Minimum acceptable bid amount for round 2 = \$1,200,000

Round 2 (3 bidders submitting bids, provisionally winning bid = \$2,000,000)

1. Calculation of additional percentage for round 3:

$$A_2 = (0.5 * 3) + (0.5 * 1) = 2$$

$$I_3 = \text{The smaller of } [(1 + 2) * 0.1 = 0.3] \text{ and } 0.2 \text{ (the maximum additional percentage)}$$
$$= 0.2$$

2. Calculation of dollar amount associated with the additional percentage for round 3 (using I_3 from above):

$$X_3 = 0.2 * \$2,000,000 = \$400,000$$

3. Minimum acceptable bid amount for round 3 = \$2,400,000

Round 3 (1 bidder submitting bids, provisionally winning bid = \$2,400,000)

1. Calculation of additional percentage for round 4:

$$A_3 = (0.5 * 1) + (0.5 * 2) = 1.5$$

$$I_4 = \text{The smaller of } [(1 + 1.5) * 0.1 = 0.25] \text{ and } 0.2 \text{ (the maximum additional percentage)}$$
$$= 0.2$$

2. Calculation of dollar amount associated with the additional percentage for round 4 (using I_4 from above):

$$X_4 = 0.2 * \$2,400,000 = \$480,000$$

3. Minimum acceptable bid amount for round 4 = \$2,880,000