



PUBLIC NOTICE

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AUCTION OF ADVANCED WIRELESS SERVICES LICENSES SCHEDULED FOR NOVEMBER 13, 2014 COMMENT SOUGHT ON COMPETITIVE BIDDING PROCEDURES FOR AUCTION 97

AU Docket No. 14-78

Comments Due: June 9, 2014

Reply Comments Due: June 23, 2014

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I. INTRODUCTION

1. By this Public Notice, the Wireless Telecommunications Bureau (“Bureau”) announces an auction of 1,614 licenses in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz bands (collectively, the “AWS-3” bands),¹ and seeks comment on the procedures to be used for this auction. This auction, which is designated as Auction 97, is scheduled to commence on November 13, 2014.

2. The Commission is offering the licenses in Auction 97 pursuant to the Middle Class Tax Relief and Job Creation Act of 2012 (“Spectrum Act”).² The Spectrum Act requires, among other things, that the Commission allocate for commercial use and license spectrum in certain specified frequency bands using a system of competitive bidding no later than February 2015.³ In February 2013, the National Telecommunications and Information Administration (“NTIA”) identified the 1695-1710 MHz band for reallocation from Federal use to non-Federal use in satisfaction of its Spectrum Act obligation.⁴ In the *AWS-3 Report and Order*, the Commission identified the 1755-1780 MHz band in satisfaction of the Spectrum Act’s requirement that it identify fifteen megahertz of contiguous spectrum in addition to the bands specifically identified in the Spectrum Act.⁵

¹Amendment of the Commission’s Rules with Regard to Commercial Operations in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz Bands, GN Docket No. 13-185, *Report and Order*, FCC 14-31 (rel. Mar. 31, 2014) (“*AWS-3 Report and Order*”). All references to the Part 2 and 27 rules adopted by the Commission in the *AWS-3 Report and Order* and cited herein will become effective on the dates announced in the Federal Register Notice regarding the *AWS-3 Report and Order*.

² See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 (2012) (“Spectrum Act”), codified at 47 U.S.C. § 1401 *et seq.*

³ See 47 U.S.C. § 1451(b)(1), (2); *see also* 47 U.S.C. § 309(j). The specified frequency bands are: 1915-1920 MHz, 1995-2000 MHz, 2155-2180 MHz, the fifteen megahertz of spectrum between 1675 and 1710 MHz to be identified by the National Telecommunications and Information Administration (“NTIA”) pursuant to 47 U.S.C. § 1451(a)(3), and the fifteen megahertz of contiguous spectrum to be identified by the Commission pursuant to 47 U.S.C. § 1451(b)(2)(E). The Commission completed its auction of the spectrum in the 1915-1920 MHz and 1995-2000 MHz bands on February 27, 2014. *See* Auction of H Block Licenses in the 1915-1920 MHz and 1995-2000 MHz Bands Closes; Winning Bidder Announced for Auction 96, AU Docket No. 13-178, *Public Notice*, DA 14-279 (WTB/AU Feb. 28, 2014).

⁴ *See Identification of 15 Megahertz of Spectrum Between 1675 and 1710 MHz for Reallocation from Federal Use to Non-Federal Use Pursuant to the Middle Class Tax Relief and Job Creation Act of 2012*, Report to the President, U.S. Department of Commerce (February 2013).

⁵ *See AWS-3 Report and Order* at ¶¶ 33, 37.

II. LICENSES TO BE OFFERED IN AUCTION 97

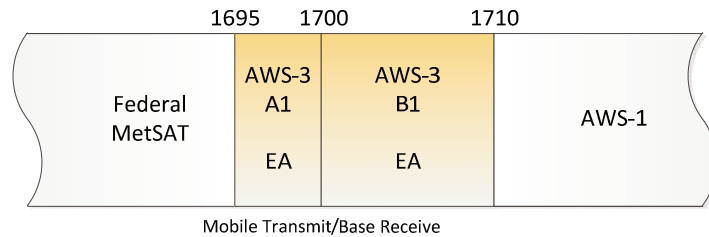
A. Description of Licenses

3. The 65 megahertz of AWS-3 spectrum available in Auction 97 will be licensed on a geographic area basis. Of the 1,614 licenses offered in Auction 97, 880 will be Economic Area (“EA”) licenses and 734 will be Cellular Market Area (“CMA”) licenses.⁶ The AWS-3 frequencies will be licensed in five and ten megahertz blocks, with each license having a total bandwidth of five, ten, or twenty megahertz.⁷

4. The 1695-1710 MHz band will be licensed in an unpaired configuration for low-power mobile transmit (i.e., uplink) operations.⁸ The 1755-1780 MHz band will be licensed paired with the 2155-2180 MHz band, with the 1755-1780 MHz band authorized for low-power mobile transmit (i.e., uplink) operations and the 2155-2180 MHz band authorized for base station and fixed (i.e., downlink) operations.⁹

5. Figure 1 shows the band plan for the 1695-1710 MHz band. Figure 2 shows the band plans for the 1755-1780 MHz and 2155-2180 MHz bands. Table 1 contains summary information regarding the AWS-3 licenses available in Auction 97.

Figure 1: 1695-1710 MHz Band Plan



⁶ In the *AWS-3 Report and Order*, the Commission concluded that all licenses in the 1695-1710 MHz band, and most licenses in the 1755-1780 MHz and 2155-2180 MHz bands, should be awarded on an EA basis in all areas, including the Gulf of Mexico, and that all licenses in the 1755-1760 MHz and 2155-2160 MHz bands should be awarded on a CMA basis in all areas. See *AWS-3 Report and Order* at ¶¶ 2, 20, 48, 51. There are a total of 176 EAs and 734 CMAs.

⁷ See *AWS-3 Report and Order* at ¶¶ 51-52.

⁸ See *id.* at ¶¶ 2, 19, 29.

⁹ See *AWS-3 Report and Order* at ¶¶ 2, 41, 43-45. Higher-power fixed and base station operations are also prohibited in the 1755-1780 MHz band. See *id.* at ¶ 43.

Figure 2: 1755-1780 and 2155-2180 MHz Band Plans

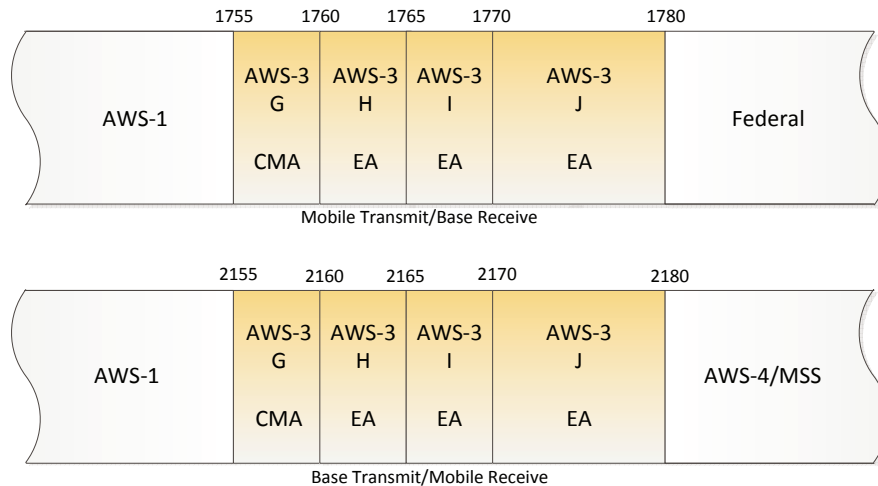


Table 1: AWS - 3 License Summary

| Block | Frequencies (MHz) | Total Bandwidth | Pairing | Geographic Area Type | Number of Licenses |
|-------|-------------------------|-----------------|------------|----------------------|--------------------|
| A1 | 1695-1700 MHz | 5 MHz | unpaired | EA | 176 |
| B1 | 1700-1710 MHz | 10 MHz | unpaired | EA | 176 |
| G | 1755-1760/2155-2160 MHz | 10 MHz | 2 x 5 MHz | CMA | 734 |
| H | 1760-1765/2160-2165 MHz | 10 MHz | 2 x 5 MHz | EA | 176 |
| I | 1765-1770/2165-2170 MHz | 10 MHz | 2 x 5 MHz | EA | 176 |
| J | 1770-1780/2170-2180 MHz | 20 MHz | 2 x 10 MHz | EA | 176 |

6. A complete list of the licenses offered in Auction 97 is available in Attachment A to this Public Notice.

B. Incumbency Issues

7. In the *AWS-3 Report and Order*, the Commission allocated the 1695-1710 MHz and 1755-1780 MHz bands for commercial use.¹⁰ Licenses in 1695-1710 MHz band are being made available on a shared basis with incumbent Federal meteorological-satellite (MetSat) data users.¹¹ Licenses in

¹⁰ See *AWS-3 Report and Order* at ¶¶ 2, 16, 33, 37, 198-200, 207. The Commission allocated the 1695-1710 MHz band for non-Federal fixed and mobile (except aeronautical mobile) use and the 1755-1780 MHz band for non-Federal fixed and mobile use. See *id.*, App. A; 47 C.F.R. § 2.106.

¹¹ See *id.* at ¶ 2. Operations in the 1695-1710 MHz band up to 20 dBm equivalent isotropically radiated power (EIRP) will be subject to successful coordination with Federal incumbents in the twenty-seven Protection Zones adopted by the Commission in the *AWS-3 Report and Order* for this band. For operations with a maximum EIRP greater than 20 dBm, up to a maximum EIRP of 30 dBm, nationwide coordination will be required unless otherwise specified by Commission rule, order, or notice. See *id.* at ¶¶ 19, 90 and App. A; 47 C.F.R. § 2.106, US note 88; 47 C.F.R. § 27.1134(c). See also *AWS-3 Report and Order* at ¶¶ 220-22. The forty-seven Federal earth stations located in these Protection Zones will operate on a co-equal, primary basis with commercial AWS licensees. See 47 C.F.R. § 2.106, US note 88. In order to facilitate coordination, uplink/mobile transmit devices in the 1695-1710 MHz band must be under the control of, or associated with, a base station as a means to facilitate shared use of the band and prevent interference to Federal operations. See *AWS-3 Report and Order* at ¶¶ 19, 100-102.

1755-1780 MHz band are being made available on a shared basis with a limited number of Federal incumbents indefinitely, while many of the Federal systems will over time relocate out of the band.¹² Licenses to operate in the 1695-1710 MHz and 1755-1780 MHz bands are subject to the condition that the licensee must not cause harmful interference to an incumbent Federal entity relocating from these bands under an approved Transition Plan.¹³ This condition remains in effect until NTIA terminates the applicable authorization of the incumbent Federal entity.¹⁴ The 2155-2180 MHz band is already allocated for exclusive non-Federal, commercial use. Although there are no Federal users currently licensed or operating in this band, there are non-Federal incumbent Fixed Microwave and Broadband Radio Service licensees in the band. AWS-3 licensees will have to protect or relocate and/or share in the cost of relocating such incumbent licensees.¹⁵

C. Commercial Spectrum Enhancement Act/Spectrum Act Requirements

8. The spectrum in the 1695-1710 MHz and 1755-1780 MHz bands is covered by a Congressional mandate that requires that auction proceeds fund the estimated relocation or sharing costs of incumbent Federal entities.¹⁶ In 2004, the Commercial Spectrum Enhancement Act (“CSEA”) established a Spectrum Relocation Fund (“SRF”) to reimburse eligible Federal agencies operating on certain frequencies that have been reallocated from Federal to non-Federal use for the cost of relocating their operations.¹⁷ The SRF is funded with cash proceeds attributable to “eligible frequencies” in an auction of licenses involving such frequencies.¹⁸ The CSEA requires the NTIA to notify the Commission at least six months in advance of a scheduled auction of eligible frequencies of eligible Federal entities’ estimated relocation or sharing costs and the timelines for such relocation or sharing.¹⁹

¹² See *AWS-3 Report and Order* at ¶ 2. Operations in the 1755-1780 MHz band will be subject to successful coordination with Federal incumbents in the Protection Zones adopted by the Commission in the *AWS-3 Report and Order* for this band. See *id.* at ¶¶ 91, 220-222 and App. A; 47 C.F.R. § 2.106, US note 91; 47 C.F.R. § 27.1134(f). The default zone is nationwide unless otherwise specified by Commission rule, order, or notice. *Id.* The Federal systems located in these Protection Zones will operate on a co-equal, primary basis with commercial AWS licensees. See 47 C.F.R. § 2.106, US note 91. The Federal systems that will relocate from the band pursuant to an approved transition plan will operate on a primary basis until they are reaccommodated. *Id.* In order to facilitate coordination, uplink/mobile transmit devices in the 1755-1780 MHz band must be under the control of, or associated with, a base station as a means to facilitate shared use of the band and prevent interference to Federal operations. See *AWS-3 Report and Order* at ¶¶ 43, 100-102.

¹³ See *AWS-3 Report and Order* at ¶ 219 and App. A; 47 C.F.R. § 27.5(h) (Note). See also 47 U.S.C. § 309(j)(16)(C).

¹⁴ See *id.* Although this license condition does not apply to the permanent sharing scenario, the Commission’s rules require successful coordination to avoid causing harmful interference to these Federal incumbents.

¹⁵ See *AWS-3 Report and Order* at ¶¶ 194-196 and App. A; 47 C.F.R. §§ 27.1111, 27.1131, 27.1132.

¹⁶ See 47 U.S.C. §§ 309(j)(8)(D), 923(g).

¹⁷ See 47 U.S.C. § 928.

¹⁸ See 47 U.S.C. §§ 309(j)(8)(D), 928(b). “Eligible frequencies” are defined as those in the 216-220 MHz, 1432-1435 MHz, 1710-1755 MHz and 2385-2390 MHz bands, as well as any other band of frequencies reallocated from Federal use to non-Federal use after January 1, 2003 that is assigned by the Commission through competitive bidding pursuant to Section 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(j). See 47 U.S.C. § 923(g)(2).

¹⁹ See 47 U.S.C. § 923(g)(4). The Spectrum Act amendments to the CSEA require Federal agencies authorized to use eligible frequencies to submit a transition plan no later than 240 days before an auction for such frequencies is scheduled to begin. See 47 U.S.C. § 923(h)(1). The Federal agency transition plans are reviewed by a Technical Panel, which must submit a report on the sufficiency of each transition plan to the NTIA and the applying Federal agency no later than 30 days after submission of the plan. See 47 U.S.C. § 923(h)(4)(A); see 47 C.F.R. § 301.120(a). If the Technical Panel finds a Federal agency’s plan to be insufficient with respect to the execution, timing, or cost (continued...)

9. On May 13, 2014, pursuant to the CSEA, the NTIA notified the Commission of the estimated relocation or sharing costs and relocation timelines for eligible Federal entities assigned to frequencies in the 1695-1710 MHz and 1755-1780 MHz bands.²⁰ The NTIA reported that the total estimated relocation or sharing costs for the 1695-1710 MHz band equal \$527,069,000, and that the total estimated relocation or sharing costs for the 1755-1780 MHz band equal \$4,575,603,000.²¹

10. In addition to requiring that specified auction proceeds be deposited in the SRF, the CSEA, as amended by the Spectrum Act, requires that the total cash proceeds from any auction of eligible frequencies must equal at least 110 percent of the estimated relocation or sharing costs provided to the Commission by NTIA, and prohibits the Commission from concluding any auction of eligible frequencies that falls short of this revenue requirement.²² In the *CSEA/Part 1 Declaratory Ruling*, the Commission determined, among other things, that “total cash proceeds” for purposes of meeting the CSEA’s revenue requirement means winning bids net of any applicable bidding credit discounts at the end of bidding.²³ Thus, whether CSEA’s revenue requirements regarding eligible frequencies have been met at the end of an auction involving such frequencies depends upon whether winning bids that are attributable to such spectrum, net of any applicable bidding credit discounts, equal at least 110 percent of estimated relocation costs. In the *CSEA/Part 1 Report and Order*, the Commission, among other things, modified its reserve price rule pursuant to the CSEA to ensure that the CSEA’s revenue requirement would be met.²⁴

III. DUE DILIGENCE

11. Each potential bidder is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the licenses that it is seeking in this auction. Each bidder is responsible for assuring that, if it wins a license, it will be able to build and operate facilities in accordance with the Commission’s rules. **The Commission makes no representations or warranties about the use of this spectrum for particular services. Each applicant should be aware that a Commission auction represents an opportunity to become a Commission licensee, subject to certain conditions and regulations. A Commission auction does not constitute an endorsement by the Commission of any particular service, technology, or product, nor does a Commission license constitute a guarantee of business success.**

12. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. Each potential bidder should perform technical analyses and/or refresh any previous analyses to assure itself that, should it become a winning bidder for any Auction 97 license, it will be able to build and operate facilities that will fully comply with all applicable technical and regulatory requirements. We strongly encourage each applicant to inspect any prospective transmitter

(Continued from previous page) _____
of the agency’s planned transition, the agency must submit a revised plan within 90 days. See 47 U.S.C. § 923(h)(4)(B). The NTIA must make the transition plans available on its website (with the exception of any classified information contained therein) no later than 120 days before the auction’s scheduled start date. See 47 U.S.C. § 923(h)(5).

²⁰ See 47 U.S.C. § 923(g)(4)(A).

²¹ Letter from Lawrence E. Strickling, Assistant Secretary for Communications and Information, U.S. Department of Commerce, to Tom Wheeler, Chairman, Federal Communications Commission at Attachments B1 and B2 (May 13, 2014) (“*NTIA May 13 Notification Letter*”), available at <http://www.ntia.doc.gov/category/aws-3-transition>.

²² See 47 U.S.C. § 309(j)(16)(A), (B).

²³ Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, WT Docket No. 05-211, *Declaratory Ruling and Notice of Proposed Rule Making*, 20 FCC Rcd 11268, 11270-72 ¶¶ 5-12 (2005).

²⁴ Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Bidding Rules and Procedures, *Report and Order*, 21 FCC Rcd 891, 894 ¶¶ 6-7 (2006) (“*CSEA/Part 1 Report and Order*”); 47 C.F.R. § 1.2104(c).

sites located in, or near, the geographic area for which it plans to bid; confirm the availability of such sites; and familiarize itself with the Commission's rules regarding the National Environmental Policy Act.²⁵

13. We strongly encourage each applicant to conduct its own research prior to Auction 97 in order to determine the existence of pending administrative, rulemaking, or judicial proceedings that might affect its decisions regarding participation in the auction.

14. We strongly encourage participants in Auction 97 to continue such research throughout the auction. The due diligence considerations mentioned in this Public Notice do not constitute 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.

15. In addition to the foregoing due diligence considerations, which we encourage of bidders in all auctions, we call particular attention in this auction to the unique requirements presented by the occupancy of some of the available frequencies by incumbent Federal users. The *AWS-3 Report & Order* explains that AWS-3 licensees can expect to share portions of the AWS-3 bands with various incumbent Federal users for a period of time as such users transition out of the bands, which may vary by geography and frequency. Moreover, some Federal users will remain in the AWS-3 bands, with shared use continuing indefinitely. The *AWS-3 Report & Order* further explains that the Commission and the NTIA intend to release additional information regarding the extent of sharing in the AWS-3 bands and the methods of coordination between commercial and Federal users. Additionally, as discussed in Section II.C. above, the CSEA, as amended by the Spectrum Act, stipulates that Federal agencies that will receive reimbursement for their costs in relocating their operations from, or sharing, the "eligible frequencies" offered in this auction based on their approved transition plans, which the NTIA will make available to the public. We expect that all of this information will be material to an applicant's potential participation in Auction 97. Therefore, we strongly encourage each applicant to closely follow releases from the Commission and the NTIA concerning these issues and to carefully consider the technical and economic implications for commercial use of the AWS-3 bands.

IV. BUREAU SEEKS COMMENT ON AUCTION PROCEDURES

16. Consistent with the provisions of section 309(j)(3)(E)(i) of the Communications Act of 1934, as amended, 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 a given 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.²⁶ We therefore seek comment on the following issues relating to the conduct of Auction 97.

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

²⁶ 47 U.S.C. § 309(j)(3)(E)(i). 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 WTBS 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*").

A. Auction Design**1. Simultaneous Multiple-Round Auction**

17. The Bureau proposes to conduct Auction 97 using a simultaneous multiple-round (“SMR”) auction format.²⁷ As described further below, an SMR auction offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids. Typically, bidding remains open on all licenses until bidding stops on every license. The Bureau seeks comment on this proposal.²⁸

2. Anonymous Bidding

18. Consistent with past practice, the Bureau proposes to adopt procedures for limited information disclosure or “anonymous bidding” for Auction 97.²⁹ 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.

19. Under these proposed limited information procedures, the amount of every bid placed and whether a bid was withdrawn (if withdrawals are permitted) would be disclosed after the close of every round, but the identities of bidders placing specific bids or withdrawals (if permitted) and the net bid amounts (reflecting bidding credits) would not be disclosed until after the close of the auction.

20. 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 FCC Auction System.³⁰

21. 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.³¹ Specifically, the Bureau would notify separately each applicant with a short-form application on file for participation in Auction 97 whether applicants with short-form applications to participate in a pending auction, including but not limited to Auction 97, have applied for licenses in any of the same or overlapping geographic areas as that applicant.

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

²⁷ 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.

²⁸ If any commenter proposes an alternative auction format, they should specify that format, including whether it should apply to all licenses, and describe the advantages compared with the proposed SMR format.

²⁹ See, e.g., *Auction 73 and 76 Procedures Public Notice*, 22 FCC Rcd at 18181-85 ¶¶ 145-56; 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 ¶¶ 140-57 (2006) (“*Auction 66 Procedures Public Notice*”); Auction of 700 MHz Band Licenses Scheduled for July 19, 2011; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 92, *Public Notice*, DA 11-420, 26 FCC Rcd 3342, 3372-73 ¶¶ 126-29 (2011).

³⁰ The FCC Auction System is also known as the “Integrated Spectrum Auction System” or “ISAS.”

³¹ See 47 C.F.R. § 1.2105(c).

23. The Bureau seeks comment on the details of its proposal for implementing anonymous bidding in Auction 97. The Bureau also seeks comment on alternatives to the use of anonymous bidding procedures for Auction 97. When the Commission originally proposed limited information disclosure procedures, 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.³² The Bureau encourages parties to provide information about the benefits and costs of complying with limited information procedures in this auction 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 in Auction 97 until after the auction, they should explain their reasoning.

3. Acknowledgement for Auction 97 Applicants

24. As discussed in Section II.B. above, there are Federal incumbent users in the 1695-1710 MHz and 1755-1780 MHz bands. In the *AWS-3 Report and Order*, the Commission adopted rules to address commercial operations in these bands in light of the temporary and indefinite sharing of the bands by Federal incumbent users and commercial licensees, including a requirement that commercial licensees operate on a co-equal, primary operations with Federal systems within specified geographic zones,³³ and a requirement that licensees in the 1755-1780 MHz band accept interference from Federal systems as long as such systems remain in the band.³⁴ To implement these rules, we propose to require an Auction 97 applicant to submit with its short-form application a signed statement acknowledging that the applicant's operations in the 1755-1780 MHz band may be subject to interference from Federal systems in certain geographic zones, that the applicant must accept interference from such Federal systems in those zones, and that the applicant has considered these risks before submitting any bids for applicable licenses in Auction 97. We seek comment on this proposal.

B. Auction Structure

1. Bidding Rounds

25. Under our proposal to use an SMR auction format, Auction 97 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.

26. The Commission will conduct Auction 97 over the Internet using the FCC Auction System. Bidders will also have the option of placing bids by telephone through a dedicated, toll-free Auction Bidder Line. The toll-free telephone number for the Auction Bidder Line will be provided to qualified bidders prior to the start of the auction.

27. 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 should 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.

³² *Auction 66 Comment Public Notice*, 21 FCC Rcd at 799.

³³ See 47 C.F.R. § 2.106, US note 88 and US note 91.

³⁴ See 47 C.F.R. §27.1134(f). See also See 47 C.F.R. § 2.106, US note 91.

2. Stopping Rule

28. The Bureau has discretion to establish stopping rules before or during multiple round auctions in order to complete the auction within a reasonable time.³⁵ For Auction 97, under our SMR auction proposal, we propose to employ a simultaneous stopping rule approach. Using a simultaneous stopping rule means all licenses remain available for bidding until bidding stops on every license. More specifically, bidding will close 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 (if withdrawals are permitted).³⁶ Thus, under our SMR proposal, unless we announce alternative stopping procedures, the simultaneous stopping rule will be used in this auction, and bidding will remain open on all licenses until bidding stops on every license, regardless of whether bids are placed on individual licenses of licenses. Consequently, it is not possible to determine in advance how long Auction 97 will last.

29. Further, we propose to retain the discretion to exercise any of the following options during Auction 97:

- 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 a 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 a license that is not FCC-held. Thus, absent any other bidding activity, a bidder placing a new bid on a license that does not already have a provisionally winning bid (an “FCC-held” license) 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 places any new bids, applies a waiver, or withdraws (if withdrawals are permitted) any provisionally winning bids. In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

30. We propose 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 these options, we are likely to attempt to change the pace of the auction by, for example, changing the number of bidding rounds per day and/or the minimum acceptable bids. We

³⁵ 47 C.F.R. § 1.2104(e).

³⁶ Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round. They are discussed in Section IV.C.6. (Provisionally Winning Bids). Proactive waivers are described in Section IV.C.3. (Activity Rule Waivers and Reducing Eligibility), and bid withdrawals are described in Section IV.C.8. (Bid Withdrawal) below.

propose 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

31. We propose that the Bureau may delay, suspend, or cancel Auction 97 in the event of a 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 We will notify participants of any such delay, suspension or cancellation by public notice and/or through the FCC Auction System's announcement function. If the auction is delayed or suspended, we may, in our sole discretion, elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. We emphasize that we will exercise this authority solely at our discretion, and note that the exercise of our authority in this regard is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. We seek comment on this proposal.

C. Auction Procedures

1. Upfront Payments and Bidding Eligibility

32. 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.³⁸ An upfront payment is a refundable deposit made by each bidder to establish its 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.³⁹ For Auction 97, we propose to make the upfront payments equal to approximately half the proposed minimum opening bids, which are established as described in Section IV.C.4., below.⁴⁰ The upfront payments for each license are set forth in Attachment A to this Public Notice. We seek comment on this proposal.

33. The Bureau further proposes that the amount of the upfront payment submitted by a bidder will determine its initial bidding eligibility in bidding units. We propose to assign each license a specific number of bidding units, equal to one bidding unit per dollar of the upfront payment proposed for the license. The specific bidding units for each license are set forth in Attachment A to this Public Notice. The number of bidding units for a given license is fixed and does not change during the auction as prices change. A bidder's upfront payment is not attributed to specific licenses of licenses. Rather, a bidder may place bids on any combination of the licenses it selected on its short-form application (FCC Form 175), provided that the total number of bidding units associated with those licenses does not exceed its current eligibility. Table 2 below provides an example of how this process operates. A bidder cannot

³⁷ 47 C.F.R. § 1.2104(i). Additionally, with respect to the "eligible frequencies" being auctioned in Auction 97, the Commission is required by the CSEA to cancel an auction of those frequencies if the total cash proceeds attributable to any such frequencies do not equal at least 110 of the estimated relocation or sharing expenses of incumbent Federal entities. See 47 U.S.C. §§ 309(j)(16)(B).

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

³⁹ See *Second Report and Order*, 9 FCC Rcd at 2377-79 ¶¶ 169-76.

⁴⁰ As described in Section IV.C.4., the minimum opening bids are calculated using a formula based on bandwidth and license area population, adjusted using an index of relative winning bid amounts in previous auctions. The results of those calculations are then rounded and subject to a minimum of \$2,500 per license. Our proposed calculation of upfront payment amounts divides by two the unrounded result of the minimum opening bid calculation, prior to applying the \$2,500 minimum per license. Our standard rounding procedures are then applied. See note 68 (concerning rounding), below.

increase its eligibility during the auction; it can only maintain its eligibility or decrease its eligibility. Thus, in calculating its upfront payment amount and hence its initial bidding eligibility, an applicant must determine the maximum number of bidding units on which it may wish to bid (or hold provisionally winning bids) in any single round and submit an upfront payment amount covering that total number of bidding units. We seek comment on these proposals.

Table 2: Upfront Payments, Bidding Eligibility, and Bidding Flexibility Example

| License | Market | Description | Bidding Units | Upfront Payment |
|-------------|--------|-----------------|---------------|-----------------|
| AW-CMA247-G | CMA247 | Lafayette, IN | 23,000 | \$23,000 |
| AW-CMA282-G | CMA282 | Bloomington, IN | 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 of these licenses, 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 Lafayette license but not the Bloomington license.

2. Activity Rule

34. 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.⁴¹

35. The Bureau proposes to divide the auction into at least two stages, each characterized by a different activity requirement.⁴² 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 bidding units associated with licenses on which there are new bids,⁴³ the number of new bids, and the increase in revenue. The Bureau seeks comment on these proposals.

36. 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 bidding units associated with 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

⁴¹ See Section IV.C.3. (Activity Rule Waivers and Reducing Eligibility) below.

⁴² See 47 C.F.R. § 1.2104(f).

⁴³ 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.

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).

37. The Bureau seeks 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.⁴⁴ If the Bureau exercises this discretion, it will alert bidders by announcement in the FCC Auction System.

3. Activity Rule Waivers and Reducing Eligibility

38. When a bidder's eligibility in the current round is below the required minimum level, it may preserve its current level of eligibility through an activity rule waiver. An activity rule waiver applies to an entire round of bidding, not to a particular bid. Activity rule waivers, which can be either proactive or automatic, are principally a mechanism for a bidder to avoid the loss of bidding eligibility in the event that exigent circumstances prevent it from bidding in a particular round.

39. 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, the bidder's current eligibility will be permanently reduced, possibly curtailing or eliminating the ability to place additional bids in the auction.

40. 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 it into compliance with the activity rule 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.

41. 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 (if permitted), 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

⁴⁴ 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).

will preclude it from placing any bids in that round.⁴⁵ Applying a waiver is irreversible; once a proactive waiver is submitted, it cannot be unsubmitted, even if the round has not yet closed.

42. Consistent with recent Commission auctions, the Bureau proposes that each bidder in Auction 97 be provided with a total of 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 and Minimum Opening Bids

43. Section 309(j) calls upon the Commission to prescribe methods for establishing a reasonable reserve price or a minimum opening bid amount when Commission licenses are subject to auction, unless the Commission determines that a reserve price or minimum opening bid amount is not in the public interest.⁴⁶ 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.⁴⁷

44. Normally, a reserve price is an absolute minimum price below which an item or items will not be sold in a given auction. If a reserve price is utilized, the specific amount of the reserve price may be disclosed or undisclosed.⁴⁸ 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.

45. Among other factors the Bureau must consider in deciding whether to employ either or both of these mechanisms is the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on the spectrum being auctioned.⁴⁹

a. Reserve Price

46. The Commission is statutorily obliged to consider and balance a variety of public interests and objectives when establishing service rules and licensing procedures with respect to the public spectrum resource. These objectives include promoting recovery for the public a portion of the value of that resource.⁵⁰ As discussed above, certain of the frequencies in the AWS-3 bands are "eligible frequencies" under the CSEA, and the CSEA requires that auction proceeds fund the estimated relocation or sharing costs of incumbent federal entities operating on these frequencies.⁵¹ In view of this, we will establish reserve prices for the AWS-3 licenses offered in Auction 97.

47. The CSEA requires that the total cash proceeds attributable to "eligible frequencies" be at least 110 percent of the total estimated relocation or sharing costs provided to the Commission pursuant to the CSEA before the Commission may conclude an auction involving such frequencies.⁵² If this

⁴⁵ 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 in that round, including placing bids or withdrawing bids.

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

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

⁴⁸ *See* 47 C.F.R. § 1.2104(c). *See also Part 1 Third Report and Order*, 13 FCC Rcd at 455 ¶ 140.

⁴⁹ *Part 1 Third Report and Order*, 13 FCC Rcd at 454-56 ¶ 141.

⁵⁰ 47 U.S.C. § 309(j)(3)(C).

⁵¹ *See* 47 U.S.C. §§ 309(j)(8)(D), 923(g); *see also* Section II.C. (Commercial Spectrum Enhancement Act/Spectrum Act Requirements) above.

⁵² *See* 47 U.S.C. § 309(j)(16)(B).

condition is not met, the CSEA requires the Commission to cancel the auction.⁵³ For purposes of determining whether the CSEA's revenue requirement has been met, the Commission has determined that "total cash proceeds" means winning bids net of any applicable bidding credit discounts at the end of bidding (e.g., exclusive of any Tribal lands bidding credit).⁵⁴

48. The NTIA has notified the Commission that the total estimated relocation or sharing costs for the 1695-1710 MHz band equal \$527,069,000, and that the total estimated relocation or sharing costs for the 1755-1780 MHz band equal \$4,575,603,000.⁵⁵ Accordingly, we propose one aggregate reserve price for the 1695-1710 MHz band and a separate aggregate reserve price for the paired 1755-1780/2155-2180 MHz band.

49. We propose to establish an aggregate reserve price of \$579,775,900 for the licenses in the 1695-1710 MHz band. This aggregate reserve price is 110 percent of total estimated relocation or sharing costs of \$527,069,000 provided by the NTIA for this band and, therefore, the minimum reserve price required by the CSEA. Given that the 1695-1710 MHz band consists entirely of "eligible frequencies," we propose that the winning bid for each license in this band (i.e., the licenses in Blocks A1 and B1), net of any applicable bidding credit discounts at the end of bidding (e.g., exclusive of any Tribal lands bidding credit), will be counted toward meeting the reserve price for the band. Thus, the aggregate reserve price will be met if the total winning bids for the licenses in Blocks A1 and B1, net of any applicable bidding credit discounts at the end of bidding (e.g., exclusive of any Tribal lands bidding credit), is at least \$579,775,900.⁵⁶

50. As discussed in Section II.A. above, the 1755-1780 MHz band will be licensed paired with the 2155-2180 MHz band. The lower half of the frequencies in each paired license, i.e., those in the 1755-1780 MHz band, are "eligible frequencies" and are thus subject to CSEA requirements.⁵⁷ To meet CSEA's requirements, we propose to establish an aggregate reserve price of \$5,033,163,300 for the 1755-1780 MHz frequencies. This aggregate reserve price is 110 percent of total estimated relocation or sharing costs of \$4,575,603,000 for the 1755-1780 MHz band provided by the NTIA and, therefore, the minimum reserve price required by CSEA. Because these frequencies are one half of the frequencies authorized for use by each of the 1755-1780/2155-2180 MHz paired licenses, we propose that one-half of each winning bid for each of the paired 1755-1780/2155-2180 MHz licenses (i.e., the licenses in Blocks G, H, I, and J), net of any applicable bidding credit discounts at the end of bidding, will be counted toward meeting the reserve price. The aggregate reserve price will be met if one half of the total winning bids for the licenses in Blocks G, H, I, and J, net of any applicable bidding credit discounts at the end of

⁵³ *Id.*

⁵⁴ See *CSEA/Part 1 Declaratory Ruling*, 20 FCC Rcd at 11270-72, ¶¶ 5-12.

⁵⁵ See *NTIA May 13 Notification Letter* at Attachments B1 and B2, available at <http://www.ntia.doc.gov/category/aws-3-transition>. These figures are the current total estimated relocation or sharing costs contained in the Federal agencies' approved transition plans. We note that Federal agencies are required to periodically update their transition plans as such plans are implemented to reflect any changed circumstances, including changes in estimated relocation or sharing costs or the timeline for relocation or sharing. See 47 U.S.C. § 923(h)(6).

⁵⁶ Our proposed aggregate reserve price for licenses in the 1695-1710 MHz band is calculated based on the current total estimated relocation or sharing costs contained in the Federal agencies' approved transition plans. To the extent that total estimated relocation or sharing costs changes as the result of any transition plan updates, the aggregate reserve price for Auction 97 will be adjusted accordingly to ensure that it represents 110 percent of the total estimated relocation or sharing costs consistent with the CSEA's requirement. However, we will apply the same formula for determining whether the reserve has been met regardless of any adjustment to the aggregate reserve price.

⁵⁷ See Section II. (Licenses to be Offered in Auction 97) above.

bidding (e.g., exclusive of any Tribal lands bidding credit), is at least \$5,033,163,300.⁵⁸ Therefore, the winning “net” bids for the paired 1755-1780/2155-2180 MHz licenses must be at least twice that amount, or \$10,066,326,600, in order for the Commission to conclude the auction.

51. We seek comment on our proposed reserve prices for Auction 97 and our proposals for implementing them. We encourage commenters to address any additional specific issues related to the use of reserve prices. We ask that commenters describe in detail the specific factors that lead them to their conclusions.

52. In light of our proposal to adopt procedures for limited information disclosure for Auction 97,⁵⁹ if information regarding net bid amounts is not provided during the auction, we propose to issue an announcement in the FCC Auction System, viewable by bidders and the general public, stating that a reserve price has been met immediately following the first round in which that occurs. However, due to factors such as bid withdrawals and the effect of bidding credits, an announcement that the reserve price has been met following a round of the auction does not guarantee that the reserve price will continue to be met. Accordingly, we will make a further announcement in the FCC Auction System after any round in which the reserve price status changes. We seek comment this proposal.

b. Minimum Opening Bids

53. In light of section 309(j)’s requirements, the Bureau proposes to establish minimum opening bid amounts for Auction 97. 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.⁶⁰ We propose minimum opening bids that should accelerate the progress of the auction toward meeting (1) the reserve prices established to meet CSEA requirements and (2) the Spectrum Act deadline for licensing identified frequencies.⁶¹ The proposed minimum opening bids are higher than the proposed upfront payments so that the competitive bidding process can be accelerated without increasing the cost of eligibility.⁶²

54. The Bureau proposes to calculate minimum opening bid amounts for Auction 97 on a license-by-license basis using a formula based on bandwidth and license area population,⁶³ similar to our approach in many previous spectrum auctions. We propose to use a calculation based on \$0.15 per

⁵⁸ Our proposed aggregate reserve price for the paired 1755-1780/2155-2180 MHz licenses is calculated based on the current total estimated relocation or sharing costs contained in the Federal agencies’ approved transition plans for the 1755-1780 MHz band. To the extent that total estimated relocation or sharing costs for this band changes as the result of any transition plan updates, the aggregate reserve price for Auction 97 will be adjusted accordingly to ensure that it represents 110 percent of the total estimated relocation or sharing costs for the 1755-1780 MHz band consistent with the CSEA’s requirement. However, we will apply the same formula for determining whether the reserve has been met regardless of any adjustment to the aggregate reserve price.

⁵⁹ See Section IV.A.2. (Anonymous Bidding) above.

⁶⁰ 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 16354 (1997); Auction of the Phase II 220 MHz Service Licenses, Auction Notice and Filing Requirements for 908 Licenses Consisting of Economic Area (EA), Economic Area Grouping (EAG), and Nationwide Licenses, Scheduled for September 15, 1998, Minimum Opening Bids and Other Procedural Issues, *Public Notice*, DA 98-1010, 13 FCC Rcd 16445 (1998).

⁶¹ See discussion above in Section I. (Introduction) and Section II.C. (Commercial Spectrum Enhancement Act/Spectrum Act Requirements).

⁶² The proposed upfront payments are similar to those used in the recent auction of H Block licenses in the 1915-1920 MHz and 1995-2000 MHz bands, which were established using \$0.07 per MHz-pop.

⁶³ All population figures are from the 2010 U.S. Census, U.S. Department of Commerce, Bureau of the Census. See Census 2010 Summary File 1 (SF1) and Island Areas: 2010 Census Summary File (covering the U.S. Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa).

megahertz of bandwidth per population (per “MHz-pop”) for paired licenses and \$0.05 per MHz-pop for unpaired licenses, adjusted for past geographic variations. Specifically, we propose to incorporate pricing information from previous auctions to adjust the minimum opening bid calculations based on an index of relative winning bid amounts for licenses in each CMA and EA, subject to a minimum of \$0.01 per MHz-pop.⁶⁴ This modification results in amounts ranging from \$0.01 per MHz-pop to \$0.53 per MHz-pop. We further propose a minimum of \$2,500 per license. We propose to set the minimum opening bid amounts for the licenses covering the Gulf of Mexico at \$2,000 per megahertz.

55. The proposed minimum opening bid amount for each AWS-3 license available in Auction 97, calculated pursuant to the procedures described above, is set forth in Attachment A.

56. 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, they should explain why this is so and comment on the desirability of an alternative approach. If a commenter requests an alternative approach for a specific frequency block or a lower minimum opening bid amount for a specific license, it should justify the requested change in detail. If commenters disagree with our proposed use of \$0.15 per MHz-pop and \$0.05 per MHz-pop, our approach to tailoring minimum opening bid amounts to account for relative prices among the CMAs and EAs in past auctions, or our selection of which past results to consider, we ask commenters to support their claims with valuation analyses and suggested minimum opening bid amount levels or formulas.

57. In establishing minimum opening bid amounts, we particularly seek comment on factors that could reasonably have an impact on valuation of the licenses being auctioned, including the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the service areas, the size of the geographic service areas, issues of interference with other spectrum bands and any other relevant factors. 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.

58. 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

59. The Bureau proposes that, in each round, an eligible bidder will be able to place a bid on a given license using one or more pre-defined bid amounts.⁶⁵ 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.

a. Minimum Acceptable Bids

60. 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. The Bureau proposes to calculate minimum acceptable bids based on provisionally winning bids and an activity-based formula.

61. 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 activity-based formula described below. In general, the percentage

⁶⁴ The index of the relative price difference will be calculated using the winning bid amounts for the CMA and EA licenses in Auctions 66, 73, and 96.

⁶⁵ Bidders must have sufficient eligibility to place a bid on the particular license. *See* Section IV.C.1. (Upfront Payments and Bidding Eligibility) above.

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.⁶⁶

62. The percentage of the provisionally winning bid used to establish the minimum acceptable bid amount (“the additional percentage”) is calculated based on an activity index at the end of each round. The activity index is a weighted average of (a) the number of distinct bidders placing a bid on the license in that round, and (b) the activity index from the prior round.⁶⁷ 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. The additional percentage is then multiplied by the provisionally winning bid amount to obtain the minimum acceptable bid for the next round.⁶⁸ 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 are shown in Attachment B. We seek comment on whether to use this activity-based formula or a different approach.

b. Additional Bid Amounts

63. The Bureau proposes to calculate any additional bid amounts 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 5 percent, the calculation of the first additional acceptable bid amount is (minimum acceptable bid amount) * (1 + 0.05), rounded, or (minimum acceptable bid amount) * 1.05, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.10, rounded; etc. The Bureau will round the results using the Commission’s standard rounding procedures for auctions.⁶⁹ The Bureau proposes initially to set the bid increment percentage at 5 percent.

64. For Auction 97, the Bureau proposes to begin the auction with nine acceptable bid amounts per license (the minimum acceptable bid amount and eight additional bid amounts).

c. Bid Amount Changes

65. 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 the Bureau determines that circumstances so dictate. Further, the Bureau retains the discretion to do so on a license-by-license basis. 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 \$10 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 \$20 million higher than the provisionally winning bid on a license, the

⁶⁶ See Section IV.B.7. (Bid Removal) and Section IV.B.8. (Bid Withdrawal) below.

⁶⁷ 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. 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.

⁶⁸ The Bureau will round the result using its standard rounding procedures: results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10.

⁶⁹ See note 68 (concerning rounding), above.

minimum acceptable bid amount would instead be capped at \$10 million above the provisionally winning bid. The Bureau seeks comment on the circumstances under which we 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 other parameters—such as changing the minimum acceptable bid percentage, the bid increment percentage, or the number of acceptable bid amounts. If the Bureau exercises this discretion, it will alert bidders by announcement in the FCC Auction System.

66. The Bureau seeks comment on the above proposals. If commenters disagree with the proposal to begin the auction with nine acceptable bid amounts per license, they should suggest an alternative number of acceptable bid amounts to use at the beginning of the auction and an alternative number to use later in the auction. 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

67. 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, the FCC Auction System determines a provisionally winning bid for each license based on the highest bid amount received for the license. These bids become the provisionally winning bids for the round.

68. If identical high bid amounts are submitted on a license in any given round (i.e., tied bids), the FCC Auction System will use a random number generator to select a single provisionally winning bid from among the tied bids. (The Auction System assigns a random number to each bid when the bid is entered. 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.

69. The set of provisionally winning bids is determined after every round in which new bids are submitted. As stated above, the provisionally winning bids at the end of the auction become winning bids, provided that any applicable reserve prices have been met. We remind bidders that provisionally winning bids count toward activity for purposes of the activity rule.⁷⁰

7. Bid Removal

70. For Auction 97, the Bureau proposes 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 a selected bid in the FCC Auction System, a bidder may effectively “undo” any bid placed within that round. Once a round closes, a bidder may no longer remove a bid. We seek comment on this bid removal proposal.

8. Bid Withdrawal

71. When permitted in an auction, bid withdrawals provide a bidder with the option of withdrawing bids placed in prior rounds that have become provisionally winning bids. 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.⁷¹ 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.

⁷⁰ See Section IV.C.2. (Activity Rule) above.

⁷¹ *Part 1 Third Report and Order*, 13 FCC Rcd at 459-60 ¶ 150.

72. Applying this reasoning to Auction 97, the Bureau proposes to allow each bidder to withdraw provisionally winning bids in no more than two rounds during the course of the auction. To permit a bidder to withdraw bids in more than two rounds may encourage insincere bidding or the use of withdrawals for anti-competitive purposes. The two rounds in which a bidder may withdraw provisionally winning bids will be at the bidder's discretion, and there is no limit on the number of provisionally winning bids that a bidder may withdraw in either of the rounds in which it withdraws bids. Withdrawals must be in accordance with the Commission's rules, including the bid withdrawal payment provisions specified in section 1.2104(g).⁷²

73. We seek comment on this proposal. If commenters disagree with this proposal, we ask them to support their arguments by taking into account the licenses available, the impact on auction dynamics and the pricing mechanism, and the effects on the bidding strategies of other bidders.

D. Post-Auction Payments

1. Interim Withdrawal Payment Percentage

74. 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).⁷³ 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.⁷⁴ 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.⁷⁵ Section 1.2104(g)(1) of the Commission's 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.⁷⁶

75. 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.⁷⁷ 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.⁷⁸ With respect to the AWS-3 licenses being offered in Auction 97, the service rules permit a wide variety of advanced services, some of which may best be offered by combining licenses on adjacent frequencies or in adjacent areas, and the licenses will be offered under different geographic licensing schemes and bandwidth sizes. Balancing the potential need for bidders to use withdrawals to avoid

⁷² See 47 C.F.R. §§ 1.2104(g). See also 47 C.F.R. § 1.2109.

⁷³ 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.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ See *id.*, as amended by *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 901-04 ¶¶ 27-32.

⁷⁷ See *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 903-04 ¶ 31.

⁷⁸ See *id.* at 904 n.57.

winning incomplete combinations of licenses with the Bureau's interest in deterring undesirable strategic use of withdrawals, the Bureau proposes a percentage below the maximum twenty percent permitted under the current rules but above the three percent previously provided by the Commission's rules. Specifically, the Bureau proposes to establish an interim bid withdrawal payment of ten percent of the withdrawn bid for this auction. The Bureau seeks comment on this proposal.

2. Additional Default Payment Percentage

76. 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 and timely final 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 Auction 97 bidder's winning 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.

77. The Commission's rules provide that, in advance of each auction, it will establish a percentage between three and twenty percent of the applicable bid to be assessed as an additional default payment.⁷⁹ As the Commission has indicated, the level of this additional payment in each auction will vary based on the nature of the service and the inventory of the licenses being offered.⁸⁰

78. 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 up to twenty percent will be more effective in deterring defaults than the three percent used in some earlier auctions.⁸¹ At the same time, we do not believe the detrimental effects of any defaults in Auction 97 are likely to be unusually great. Balancing these considerations, for Auction 97, we propose to establish an additional default payment of fifteen percent of the applicable bid. The Bureau seeks comment on this proposal.

V. DEADLINES AND FILING PROCEDURES

79. Comments are due on or before June 9, 2014, and reply comments are due on or before June 23, 2014. All filings related to procedures for Auction 97 must refer to AU Docket No. 14-78. Comments may be submitted using the Commission's Electronic Comment Filing System ("ECFS") or by filing paper copies.⁸² We strongly encourage interested parties to file comments electronically.

80. *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. 14-78. 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.

81. *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.

⁷⁹ See 47 C.F.R. § 1.2104(g)(2)(ii).

⁸⁰ See *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 903-04 ¶¶ 30-31.

⁸¹ *Id.* at 902-04 ¶ 29-31.

⁸² See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, *Report and Order*, FCC 98-56, 13 FCC Rcd 11322 (1998).

- 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 must be addressed to 445 12th Street, SW, Washington DC 20554.

82. *Auction 97 E-mail*: We also request that a copy of all comments and reply comments be submitted electronically to the following address: auction97@fcc.gov.

83. 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>.

84. This proceeding has been designated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁸³ 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.⁸⁴

85. 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 Government Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

VI. CONTACTS

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

Broadband Division, Wireless Telecommunications Bureau

For AWS-3 service rule questions:

Nancy Zaczek (legal) or Janet Young
(technical), at (202) 418-2487

Auctions and Spectrum Access Division, Wireless Telecommunications Bureau

For general auction questions:

Jeff Crooks at (202) 418-0660 or Linda
Sanderson at (717) 338-2868

⁸³ 47 C.F.R. §§ 1.1200(a), 1.1206.

⁸⁴ The Commission substantially revised its *ex parte* rules in 2011. These revised rules require for example, that an *ex parte* notice must be filed for each oral *ex parte* presentation, not just for those presentations that involve new information or arguments not already in the record. Further, a filer typically must submit an *ex parte* notice electronically in machine-readable format. A filer may not submit a PDF image created by scanning a paper document, except in a situation in which a word processing version of the document is not available. See Amendment of the Commission’s *Ex Parte* Rules and Other Procedural Rules, GC Docket No. 10-43, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-11, 26 FCC Rcd 4517 (2011).

For auctions legal questions:

Valerie Barrish at (202) 418-0660

Office of Communications Business Opportunities

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

- FCC -

ATTACHMENT A

Licenses to Be Auctioned

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

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 the 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 for the license 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