

identification is made by the television station whose signals are being rebroadcast by the translator, to furnish current information with regard to the translator's call letters and location, and the name, address and telephone number of the licensee to be contacted in the event of malfunction of the translator.

The furnishing of current information is used by the primary station licensee and/or FCC staff in field investigations to contact the translator licensee in the event of malfunction of the translator.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00-9901 Filed 4-19-00; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

April 14, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 19, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should

advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1-A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418-0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060-0683.

Title: Direct Broadcast Satellite Service—47 CFR Section 100.

Type of Review: Extension of a currently approved collection.

Form Number: Not applicable.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 8.

Estimated Time Per Response: 400 hours.

Frequency of Response: On occasion.

Total Annual Burden: 3,200 hours.

Total Annual Costs: \$0.

Needs and Uses: The information requested under CFR Part 100 of the Commission's rules is used by the Commission to determine whether applicants are legally, technically and financially qualified to hold a DBS authorization. Without such information, the Commission could not make determinations for authorization to provide service to successful applicants and would therefore not be able to fulfill its statutory obligations in accordance with the Communications Act of 1934, as amended.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00-9902 Filed 4-19-00; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC-00-33-B (Auction No. 33); DA 00-781]

Auction of Licenses for the 700 MHz Guard Bands Scheduled for June 14, 2000; Auction Notice and Filing Requirements for 104 Licenses in the 700 MHz Guard Band Auction Scheduled for June 14, 2000 Minimum Opening Bids and Other Procedural Issues

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This public notice announces the procedures and minimum opening

bids for the upcoming auction of licenses for fixed and mobile services in the 746-747/776-777 and 762-764/792-794 MHz bands ("Auction No. 33") scheduled to commence on June 14, 2000.

DATES: Auction No. 33 is scheduled for June 14, 2000.

FOR FURTHER INFORMATION CONTACT:

Auctions and Industry Analysis

Division: Howard Davenport, Attorney,

Auctions Legal Branch at (202) 418-

0660; Kathy Garland, Project Manager,

Auctions Operations Branch at (717)

338-2888, or Craig Bomberger, Analyst,

Auctions Operations Branch at (202)

418-0660. *Media Contact:* Meribeth

McCarrick at (202) 418-0654.

Commercial Wireless Division: Roger

Noel, Chief, Licensing and Technical

Analysis Branch, at (202) 418-0620.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released April 10, 2000. The complete text of the public notice, including Attachments A through H, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW, Washington, DC. Attachments C, D, and H where corrected in DA 00-850, released April 13, 2000 and is also available in the FCC Reference Center. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW, Washington, D.C. 20036, (202) 857-3800. It is also available on the Commission's web site at <http://www.fcc.gov>.

List of Attachments available at the FCC:

Attachment A—Auction No. 33 Licenses to be Auctioned Revised Upfront Payments and Minimum Opening Bids

Attachment B—FCC Auction Seminar

Registration Form Auction No. 33

Attachment C—Electronic Filing and

Review of the FCC Form 175

(Corrected in DA 00-850 released April 13, 2000)

Attachment D—Guidelines for Completion of FCC Form 175 and Exhibits (Corrected in DA 00-850 released April 13, 2000)

Attachment E—Auction-Specific Instructions for FCC Remittance Advice (FCC Form 159)

Attachment F—FCC Bidding Preference/Remote Software Order Form Auction No. 33

Attachment G—Bid Increments and Exponential Smoothing

Attachment H—Accessing the FCC Network Using Windows 95/98

(Corrected in DA 00-850 released April 13, 2000)
Attachment I—Summary Listing of Documents from the Commission and the Wireless Telecommunications Bureau Addressing Application of the Anti-Collusion Rules
Attachment J—Incumbent Television Licenses on Channels 59 through 68

I. General Information

A. Introduction

1. This public notice announces the procedures and minimum opening bids for the upcoming auction of licenses for fixed and mobile services in the 746-747/776-777 and 762-764/792-794 MHz bands ("Auction No. 33"). On March 10, 2000, the Wireless Telecommunications Bureau ("Bureau") released a public notice, seeking comment on the establishment of reserve prices or minimum opening bids for Auction No. 33, in accordance with the Balanced Budget Act of 1997. *See* DA 00-559, Auction of Licenses for the 700 MHz Guard Bands Scheduled for June 14, 2000 (*Auction No. 33 Comment Public Notice*) 65 FR 14561 (March 17, 2000). In addition, the Bureau sought comment on a number of procedures to be used in Auction No. 33. The Bureau received four comments and five reply comments in response to the *Auction No. 33 Comment Public Notice*.

(i) Background of Proceeding

2. The 746-806 MHz band has historically been used exclusively by television stations (Channels 60-69). Incumbent analog television broadcasters are permitted by statute to continue operations in this band until their markets are converted to digital television ("DTV"). *See* Advanced Television Systems and Their Impact Upon Existing Television Broadcast Service (*Fifth Report and Order*) 63 FR 15774 (April 1, 1998). The Budget Act directed the Commission to reallocate this spectrum for public safety and commercial use by December 31, 1997, and to commence competitive bidding for the commercial licenses on the reallocated spectrum after January 1, 2001. In November 1999, Congress enacted a consolidated appropriations statute that revised the latter instruction. This legislation accelerated the schedule for auction of the commercial spectrum bands, and requires that the proceeds from the auction of these bands be deposited in the U.S. Treasury by September 30, 2000.

(ii) Licenses To Be Auctioned

3. The licenses available in this auction consist of one 4 megahertz

license (a pair of 2 megahertz blocks) and one 2 megahertz license (a pair of 1 megahertz blocks) in each of 52 Major Economic Areas (MEAs). These licenses are listed in this public notice on Attachment A. The following table contains the Block/Frequency Band cross-references for Auction No. 33:

FREQUENCIES (MHZ)

License suffix	Frequencies
A	746-747, 776-777
B	762-764, 792-794

B. Rules and Disclaimers

(i) Relevant Authority

4. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to the 700 MHz band, contained in title 47, part 27 of the Code of Federal Regulations, and those relating to application and auction procedures, contained in title 47, part 1 of the Code of Federal Regulations.

5. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, "Terms") contained in this public notice; the *Auction No. 33 Comment Public Notice*; Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules (*700 MHz Second Report & Order*), FCC 00-90, 65 FR 17594 (April 4, 2000), and First Report and Order, FCC 00-5 (*700 MHz First Report & Order*), 65 FR 3139 (January 20, 2000) *recon pending*; Reallocation of Television Channels 60-69, the 746-806 MHz Band, ET Docket No. 97-157, (*Report and Order*), 63 FR 6669 (February 10, 1998), *recon.*, 63 FR 63798 (November 17, 1998) (*Reallocation Reconsideration*).

6. The terms contained in the Commission's rules, relevant orders and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Internet node via anonymous ftp@ftp.fcc.gov or the FCC Auctions World Wide Web site at <http://www.fcc.gov/wtb/auctions>. Additionally, documents may be

obtained for a fee by calling the Commission's copy contractor, International Transcription Service, Inc. (ITS), at (202) 314-3070. When ordering documents from ITS, please provide the appropriate FCC number (for example, FCC 00-5 for the *700 MHz First Report & Order*).

(ii) Prohibition of Collusion

7. To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition begins with the filing of short-form applications, and ends on the down payment due date after the auction. Bidders competing for licenses in the same geographic license areas are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he/she is authorized to represent in the auction. Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or consulting firm), a violation could similarly occur. At a minimum, in such a case, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.

8. The Bureau, however, cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred nor will it preclude the initiation of an investigation when warranted. In Auction No. 33, for example, the rule would apply to any applicants bidding for the same MEA. Therefore, applicants that apply to bid for "all markets" would be precluded from communicating with all other applicants after filing the FCC Form 175. However, applicants may enter into bidding agreements *before* filing their FCC Form 175 short-form applications, as long as they disclose the existence of the agreement(s) in their Form 175 short-form applications. If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application under § 1.2105(c), even if the agreement has not been reduced

to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other applicants for the same geographic license areas. By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with § 1.2105(c). In addition, § 1.65 of the Commission's Rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, § 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders are therefore required to make such notification to the Commission immediately upon discovery.

(iii) Protection of Public Safety Operations

9. Section 337(d)(4) of the Budget Act requires that the Commission establish rules insuring that public safety services licensees using spectrum reallocated pursuant to subsection (a)(1) shall not be subject to harmful interference from television broadcast licensees. The Conference Report pertaining to that section states that the Commission should ensure that public safety service licensees in the 746–806 MHz band “continue to operate free of interference from any new commercial licensees.” To achieve this end, the Commission established “Guard Bands” in the 746–747 MHz, 762–764 MHz, 776–777 MHz, and 792–794 MHz bands. The Commission required that entities operating in the Guard Bands adhere to the same out-of-band emission (“OOBE”) criteria that was adopted for 700 MHz public safety users. In addition, these entities must coordinate their frequency use with public safety frequency coordinators and also comply with the adjacent channel coupled power out-of-band emission limits. In addition, operations in the Guard Bands are restricted to entities that do not use a cellular system architecture.

(iv) Protection of Television Services

10. Licensees operating on the spectrum associated with Channels 60, 62, 65, and 67 must comply with the co-channel and adjacent channel provisions of § 27.60 of our rules. For example, an entity operating on any portion of the 746–747 MHz Guard Band, which is contained in Channel 60, must provide co-channel protection

to Channel 60, and adjacent channel protection to Channels 59 and 61.

a. Negotiations With Incumbent Broadcast Licensees

11. As the Commission noted in the *700 MHz First Report & Order*: “The Congressional plan set forth in sections 336 and 337 of the [Communications] Act and in the 1997 Budget Act is to transition this spectrum from its current use for broadcast services to commercial use and public safety services.” Congress also has directed the Commission to auction 36 MHz of spectrum, six of which are the subject of this auction, allocated for commercial use at least six years before the relocation deadline for incumbent broadcasters in this spectrum, while adopting interference limits and other technical restrictions necessary to protect full-service analog and digital television service during the transition to DTV. In these circumstances, the Commission will consider specific regulatory requests needed to implement voluntary agreements reached between incumbent licensees and new licensees in these bands. In considering whether the public interest would be served by approving specific requests, the Commission would, for example, consider the benefits to consumers of the provision of new wireless services, such as next generation mobile services or Internet fixed access services. The Commission would also consider whether such agreements would help clear spectrum for public safety use in these bands and could result in the provision of new wireless service in rural and other relatively underserved communities. On the other hand, the Commission would also consider loss of service to the broadcast community of the licensee. For example, the Commission would consider the availability of the licensee's former analog programming within the service area, through simulcast of that programming on the licensee's DTV channel or distribution of the programming on cable or DBS, or the availability of similar broadcast services within the service area (e.g., whether the lost service is the only network service, the only source for local service, or the only source for otherwise unique broadcast service).

b. Canadian and Mexican Border Regions

12. There are currently separate agreements with Canada and Mexico covering TV broadcast use of the UHF 470–806 MHz band. Such agreements do not reflect the additional use or services adopted in the *700 MHz First*

Report & Order and the *700 MHz Second Report & Order* for 746–764 and 776–794 MHz bands. While the Commission staff has been involved in discussions with both countries regarding coordination of interference criteria for the use of these bands in the border areas for the additional services, agreements have yet to be reached. Therefore, until such agreements have been finalized, the Commission found it necessary to adopt certain interim requirements for licenses in these bands along the Canada and Mexico borders. Accordingly, licenses issued for these bands within 120 km of the borders will be made subject to whatever future agreements the United States develops with those two countries. In that the existing agreements for the protection of TV stations in those countries are still in effect and must be recognized until they are replaced or modified to reflect the new uses, the Commission decided that licenses in the border areas will be granted on the condition that harmful interference may not be caused to, but must accept interference from, UHF TV transmitters in Canada and Mexico. Furthermore, the Commission pointed out that modifications may be necessary to comply with whatever provisions are ultimately specified in future agreements with Canada and Mexico regarding the use of these bands. Pending further negotiations, the Commission has adopted the protection criteria found in § 90.545 of the Commission's Rules, 47 CFR 90.545, as an interim criteria for protecting Canadian and Mexican TV and DTV stations. Potential bidders should be aware that a petition for reconsideration of the TV protection criteria has been filed. Based on future Commission action on this petition, the protection criteria and license conditions, as described, could be modified.

(v) Due Diligence

13. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

14. Potential bidders are reminded that there are a number of incumbent broadcast television licensees already

licensed and operating in the 746–764 and 776–794 MHz bands (television Channels 60–62 and 65–67), six megahertz of which will be subject to the upcoming auction. The Commission made clear that geographic area licensees operating on the spectrum associated with Channels 60, 62, 65, and 67 must comply with the co-channel and adjacent channel provision of § 90.545 of the Commission's rules. In addition, geographic area licensees operating fixed stations in the 746–764 MHz band must comply with the relevant provisions for "base stations" in §§ 90.309 and 90.545 of the Commission's rules; and licensees operating fixed stations in the 776–794 MHz band must comply with the relevant provisions for "control stations" in those sections of the rules.

15. These limitations may restrict the ability of such geographic licensees to use certain portions of the electromagnetic spectrum or provide service to certain regions in their geographic license areas. Listed in Attachment J are the facilities of incumbent television permittees and licensees on television Channels 59–68. However, prospective bidders should not rely solely on this list, but should carefully review the Commission's databases and records before formulating bidding strategies. Records relating to these stations are available for public inspection during regular business hours in the Reference Information Center at the Federal Communications Commission, 445 Twelfth Street, SW, CY–A257, Washington, DC 20554. The Commission makes no representation or guarantees regarding the accuracy or completeness of the information in Attachment J. In addition, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the databases. Potential bidders are strongly encouraged to physically inspect any sites located in or near the geographic area for which they plan to bid.

Potential bidders should also be aware of the following filings:

- QUALCOMM Incorporated, Petition for Declaratory Ruling Giving Effect to the Mandate of the District of Columbia Circuit Court of Appeals, Service Rules for the 746–764 and 776–794 MHz Bands and Revisions to Part 27 of the Commission's Rules, Petition for Declaratory Ruling (filed January 28, 2000).

- "Wireless Telecommunications Bureau Seeks Comment On QUALCOMM Incorporated's Petition for Declaratory Ruling Seeking 700 MHz Band License Pursuant to

Ruling of U.S. Circuit Court of Appeals," *Public Notice*, DA 00–219 (rel. February 4, 2000); Extension of Filing Deadline for Comments to QUALCOMM Incorporated's Petition for Declaratory Ruling, *Public Notice*, DA 00–273 (rel. February 11, 2000). 65 FR 9266 (February 24, 2000)

Potential bidders should also be aware that certain applications (including those for modification), petitions for rulemaking, waiver requests, requests for special temporary authority ("STA"), petitions to deny, petitions for reconsideration, and applications for review may be pending before the Commission that relate to the facilities in Attachment J. We note that resolution of these pending matters could have an impact on the availability of spectrum for licensees in the 746–764 and 776–794 MHz bands. While the Commission will continue to act on pending matters, some of these matters may not be resolved by the time of auction. Potential bidders are strongly encouraged to conduct their own research prior to Auction No. 33 in order to determine the existence of pending proceedings that might affect their decisions regarding participation in the auction. Participants in Auction No. 33 are strongly encouraged to continue such research during the auction.

(vi) Bidder Alerts

16. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

17. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 33 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a "cold call" from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example by including all documents and papers needed for the transfer of funds maintained in IRA accounts.

- The amount of the minimum investment is less than \$25,000.

- The sales representative makes verbal representations that: (a) The Internal Revenue Service ("IRS"), Federal Trade Commission ("FTC"), Securities and Exchange Commission ("SEC"), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

18. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific 700 MHz proposals may also call the FCC Consumer Center at (888) CALL–FCC ((888) 225–5322).

(vii) National Environmental Policy Act (NEPA) Requirements

19. The licensee must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a 700 MHz facility is a federal action and the permittee must comply with the Commission's NEPA rules for each such facility. See 47 CFR 1.1305–1.1319. The Commission's NEPA rules require that, among other things, the permittee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corp of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The permittee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The permittee must also prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

(i) Auction Date

20. The auction will begin on Wednesday, June 14, 2000. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

(ii) Auction Title

21. Auction No. 33—700 MHz Guard Band

(iii) Bidding Methodology

22. The bidding methodology for Auction No. 33 will be simultaneous multiple round bidding. Bidding will be permitted only from remote locations, either electronically (by computer) or telephonically.

(iv) Pre-Auction Dates and Deadlines

23. The following are important events and deadlines related to Auction No. 33:

April 27, 2000

Auction Seminar

May 9, 2000; 6 p.m. ET

Short-Form Application (FCC FORM 175)

May 26, 2000; 6 p.m. ET

Upfront Payments (via wire transfer)

May 30, 2000; 6 p.m. ET

Orders for Remote Bidding Software

June 12, 2000

Mock Auction

June 14, 2000

Auction Begins

(v) Requirements for Participation

24. Those wishing to participate in the auction must:

- Submit a short form application (FCC Form 175) electronically by 6 p.m. ET, May 9, 2000.

- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. ET May 26, 2000.

- Comply with all provisions outlined in this public notice.

(vi) General Contact Information

25. The following is a list of general contact information relating to Auction No. 33:

General Auction Information

General Auction Questions

Seminar Registration

Orders for Remote Bidding Software

FCC Auctions Hotline, (888) 225-5322, Press Option #2, or direct (717) 338-2888. Hours of service: 8 a.m.–6:00 p.m. ET

Auction Legal Information

Auction Rules, Policies, Regulations
Auctions and Industry Analysis

Division, Legal Branch (202) 418-0660

Licensing Information

Rules, Policies, Regulations

Licensing Issues

Incumbency/Protection Issues

Commercial Wireless Division, (202) 418-0620

Technical Support

Electronic Filing Assistance

Software Downloading

FCC Auctions Technical Support

Hotline, (202) 414-1250 (Voice), (202)

414-1255 (TTY). Hours of service: 8

a.m.–6 p.m. ET

Payment Information

Wire Transfers

Refunds

FCC Auctions Accounting Branch, (202) 418-1995, (202) 418-2843 (Fax)

*Telephonic Bidding**FCC Copy Contractor*

Will be furnished only to qualified bidders

Additional Copies of Commission Documents

International Transcription Services, Inc., 445 12th Street, SW Room CY-B400, Washington, DC 20554, (202) 314-3070

Press Information

Meribeth McCarrick, (202) 418-0654

FCC Forms

(800) 418-3676 (outside Washington, DC),

(202) 418-3676 (in the Washington Area)

<http://www.fcc.gov/formpage>

FCC Internet Sites

<http://www.fcc.gov/wtb/auctions>

<http://www.fcc.gov>

<ftp://ftp.fcc.gov>

II. Short-Form (FCC Form 175) Application Requirements

26. Guidelines for completion of the short-form (FCC Form 175) are set forth in Attachment D to this public notice. The short-form application seeks the applicant's name and address, legal classification, status, bidding credit eligibility, identification of the authorization(s) sought, the authorized bidders and contact persons, and specific ownership information.

A. Ownership Disclosure Requirements (Form 175 Exhibit A)

27. All applicants must comply with the uniform part 1 ownership disclosure

standards and provide information required by §§ 1.2105 and 1.2112 of the Commission's rules. Specifically, in completing Form 175, applicants will be required to file an Exhibit A providing a full and complete statement of the ownership of the bidding entity. The ownership disclosure standards for the short-form are set forth in § 1.2112 of the Commission's rules.

B. Consortia and Joint Bidding Arrangements (Form 175 Exhibit B)

28. Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the licenses being auctioned, including any agreements relating to post-auction market structure. *See* 47 CFR 1.2105(a)(2)(viii), 1.2105(c)(1). Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular construction permits on which they will or will not bid. *See* 47 CFR 1.2105(a)(2)(ix). As discussed, if an applicant has had discussions, but has not reached a joint bidding agreement by the short-form deadline, it would not include the names of parties to the discussions on its application and may not continue discussions with applicants for the same geographic license area(s) after the deadline. In cases where applicants have entered into consortia or joint bidding arrangements, applicants must submit an Exhibit B to the FCC Form 175.

29. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for construction permits in the same geographic license area provided that (i) the attributable interest holder(s) certify that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants,

bidders are reminded that certain discussions or exchanges could broach on impermissible subject matters because they may convey pricing information and bidding strategies.

C. Small Business Bidding Credits (Form 175 Exhibit C)

30. In the 700 MHz *Second Report & Order*, the Commission adopted small business provisions to promote and facilitate the participation of small businesses in competitive bidding for Guard Band licenses in the 700 MHz band.

(i) Eligibility

31. Bidding credits are available to small businesses and very small businesses as defined in 47 CFR 27.502(a). For purposes of determining which entities qualify as very small businesses or small businesses, the Commission will consider the gross revenues of the applicant, its controlling interests, and affiliates of the applicant and its controlling interests. The Commission does not impose specific equity requirements on controlling interests. Once principals or entities with a controlling interest are determined, only the revenues of those principals or entities, the applicant and its affiliates will be counted in determining small business eligibility. The term "control" includes both *de facto* and *de jure* control of the applicant. Typically, *ownership of at least 50.1 percent of an entity's voting stock evidences de jure control. De facto* control is determined on a case-by-case basis. The following are some common indicia of control:

- The entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or
- The entity plays an integral role in management decisions.

32. A consortium of small businesses, or very small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which *individually* satisfies the definition of small or very small business in § 27.502. Thus, each consortium member must disclose its gross revenues along with those of its affiliates, controlling interests, and controlling interests' affiliates. We note that although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for small or very small business credits, this information must

be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

(ii) Application Showing

33. Applicants must file supporting documentation as Exhibit C to their FCC Form 175 short form applications to establish that they satisfy the eligibility requirements to qualify as a small business or very small business (or consortia of small or very small businesses) for this auction.

Specifically, for Auction No. 33, applicants applying to bid as small or very small businesses (or consortia of small or very small businesses) will be required to disclose on Exhibit C to their FCC Form 175 short-form applications, *separately and in the aggregate*, the gross revenues for the preceding three years of each of the following: (a) the applicant; (b) the applicant's affiliates; (c) the applicant's controlling interests; and (d) the affiliates of the applicant's controlling interests. Certification that the average gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its affiliates, and its controlling interests, a schedule of gross revenues for *each* of the preceding three years, as well as a statement of total average gross revenues for the three-year period. If the applicant is applying as a consortium of very small or small businesses, this information must be provided for each consortium member.

(iii) Bidding Credits

34. Applicants that qualify under the definitions of small business and very small business (or consortia of small or very small businesses) as are set forth in 47 CFR 27.502, are eligible for a bidding credit that represents the amount by which a bidder's winning bids are discounted. The size of a bidding credit in the 700 MHz guard band auction depends on the average gross revenues for the preceding three years of the bidder and its controlling interests and affiliates:

- A bidder with average gross revenues of not more than \$40 million for the preceding three years receives a 15 percent discount on its winning bids for 700 MHz Guard Band manager licenses ("small business");
- A bidder with average gross revenues of not more than \$15 million for the preceding three years receives a 25 percent discount on its winning bids for 700 MHz Guard Band manager licenses ("very small business").

35. Bidding credits are not cumulative: qualifying applicants receive either the 15 percent or the 25 percent bidding credit, but not both.

36. Bidders in Auction No. 33 should note that unjust enrichment provisions apply to winning bidders that use bidding credits and subsequently assign or transfer control of their licenses to an entity not qualifying for the same level of bidding credit. Finally, bidders should also note that there are no installment payment plans in Auction No. 33.

D. Other Information (Form 175 Exhibits D and E)

37. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(b)(2), may attach an exhibit (Exhibit D) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of "designated entities" in its auctions. Applicants wishing to submit additional information may do so in Exhibit E, Miscellaneous Information to the FCC Form 175.

E. Minor Modifications to Short-Form Applications (FCC Form 175)

38. After the short-form filing deadline (May 9, 2000), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (e.g., change their license selections, change the certifying official or change control of the applicant or change bidding credits). See 47 CFR 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants should make these changes on-line, and submit a letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Suite 4-A760 Washington, DC 20554, briefly summarizing the changes. Questions about other changes should be directed to Howard Davenport of the Auctions and Industry Analysis Division at (202) 418-0660.

F. Maintaining Current Information in Short-Form Applications (FCC Form 175)

39. Applicants have an obligation under 47 CFR 1.65, to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible decisional significance in information

contained in FCC Form 175 applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

III. Pre-Auction Procedures

A. Auction Seminar

40. On Thursday, April 27, 2000, the FCC will sponsor a free seminar for Auction No. 33 at the Federal Communications Commission, located at 445 12th Street, S.W., Washington, D.C. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC remote bidding software, and the 700 MHz Guard Band service and auction rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

41. To register, complete the registration form that is included as Attachment B of this public notice and submit it by Tuesday, April 25, 2000. Registrations are accepted on a first-come, first-served basis.

B. Short-Form Application (FCC Form 175)—Due May 9, 2000

42. In order to be eligible to bid in this auction, applicants must first submit a FCC Form 175 application. This application must be submitted electronically and received at the Commission by 6 p.m. ET on May 9, 2000. Late applications will not be accepted.

43. There is no application fee required when filing a FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment. See part III.D.

(i) Electronic Filing

44. Applicants must file their FCC Form 175 applications electronically. Applications may generally be filed at any time from April 27, 2000 until 6 p.m. ET on May 9, 2000. Applicants are strongly encouraged to file early, and applicants are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on May 9, 2000.

45. Information about accessing the FCC Form 175 is included in Attachment C. Technical support is available at (202) 414-1250 (voice) or (202) 414-1255 (text telephone (TTY)); the hours of service are 8 a.m. to 6 p.m. ET, Monday through Friday.

(ii) Completion of the FCC Form 175

46. Applicants must carefully review 47 CFR 1.2105, and must complete all

items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment D of this public notice. Applicants are encouraged to begin preparing the required attachments for FCC Form 175 prior to submitting the form. Attachments C and D to this public notice provide information on the required attachments and appropriate formats.

(iii) Electronic Review of FCC Form 175

47. The FCC Form 175 electronic review system may be used to review and print applicants' FCC Form 175 information. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. For this reason, it is important that applicants do not include their Taxpayer Identification Numbers (TINs) on any Exhibits to their FCC Form 175 applications. See Attachment C for details on accessing the review system.

C. Application Processing and Minor Corrections

48. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (a) those applications accepted for filing (including FCC account numbers and the licenses for which they applied); (b) those applications rejected; and (c) those applications that have minor defects that may be corrected, and the deadline for filing such corrected applications.

49. As described more fully in the Commission's rules, after the May 9, 2000, short form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (e.g., change their license selections, change the certifying official, change control of the applicant, or change bidding credit eligibility).

D. Upfront Payments—Due May 26, 2000

50. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by a FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6 p.m. ET on May 26, 2000.

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 33 go to a lockbox number different from the ones used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the May 26, 2000 deadline will result in dismissal of the application and disqualification from participation in the auction.

(i) Auction Payments by Wire Transfer

51. Wire transfer payments must be received at Mellon Bank by 6 p.m. ET on May 26, 2000. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline.

Applicants will need the following information:

ABA Routing Number: 043000261,
Receiving Bank: Mellon Pittsburgh,
BNF: FCC/AC 910-1174, OBI Field:

(Skip one space between each information item)

“AUCTIONPAY”,
TAXPAYER IDENTIFICATION NO.

(same as FCC Form 159, block 26),
PAYMENT TYPE CODE (enter “A33U”),
FCC CODE 1 (same as FCC Form 159,
block 23A: “33”),
PAYER NAME (same as FCC Form 159,
block 2),
LOCKBOX NO. #358405.

Note: The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

52. Applicants must fax a completed FCC Form 159 to Mellon Bank at (412) 236-5702 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write “Wire Transfer—Auction Payment for Auction Event No. 33.”

Applicants are strongly encouraged to confirm timely transmission and receipt of their upfront payment at Mellon Bank and can do so by contacting their sending financial institution.

(ii) FCC Form 159

53. A completed FCC Remittance Advice Form (FCC Form 159) must be faxed to Mellon Bank to accompany each upfront payment wire transfer. Proper completion of FCC Form 159 is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment E to this public

notice. An electronic version of the FCC form 159 is available after submitting the FCC Form 175. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

(iii) Amount of Upfront Payment

54. In the Part 1 Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making (*Part 1 Order*), the Commission delegated to the Bureau the authority and discretion to determine an appropriate upfront payment for each license being auctioned. See 62 FR 13540 (March 21, 1997). In the *Auction No. 33 Comment Public Notice*, the Bureau proposed upfront payments for Auction No. 33. Several comments were submitted regarding the amount of upfront payments proposed for this auction, and a revised list of upfront payments appears as Attachment A.

55. Comments concerning the proposed upfront payment were submitted by AMTA, and Motorola. According to Motorola, the proposed amounts for upfront payments are extremely high given the level of incumbency and restrictions required of licensees in this band. Furthermore, Motorola argues that a Guard Band Manager, where TV incumbency is an issue, may not realize any return on its license investment until December of 2006 and Guard Band Managers are unlikely to be in a position to assess the nature of adjacent commercial operations prior to bidding. Moreover, Motorola claims that the proposed upfront payments preclude participation by small business and private land mobile coordinators. To address these concerns, Motorola urges that the Bureau use the same formula employed in the 1999 220 MHz auction ("Auction No. 24") to set minimum opening bids and upfront payments. According to Motorola, applying the formula in this proceeding would result in upfront payments that total \$2,108,178 for Block A and \$4,209,287 for Block B licenses. AMTA raises similar concerns in recommending that the Commission reduce the upfront payments to one-third or one-quarter of their current valuations. AMTA also notes that this spectrum is affected by the existence of co-channel or adjacent channel television broadcast stations in virtually every market of significant size around the nation and that these licensees are not required to vacate the spectrum until 2006 and that some licensees may be eligible for an extension of that deadline. AMTA cites several other factors, including anticipated interference from

Commercial Mobile Radio Service ("CMRS") operating in the neighboring 30 MHz and the technical requirement that must be adopted to ensure interference protection for public safety systems.

56. In its reply comments, AMTA points out that all parties who addressed this issue took the position that the proposed upfront payments are too high. AMTA cites several factors in support of its position. AMTA urges that the Commission use the upfront payments proposed by Motorola as absolute upper limits, with further reductions in markets that are encumbered. In its reply comments, ITA strongly supports Motorola's alternative formula for use in calculating upfront payments. Similarly, Mobex, in its reply comments, stated that adoption of such a standard will provide better assurance that the Guard Band licenses will be sold, in keeping with the Commission's goals to provide spectrum to the public at a reasonable price in an expeditious manner. MRFAC emphasizes on reply that if the Commission hopes to ensure true competitive bidding between and among a variety of qualified bidders, it should significantly reduce the amounts proposed for upfront payments. On reply, PCIA questions the amount of the proposed upfront payment in light of the incumbency on the channels, the fact that most of the spectrum to be auctioned will be unusable for six years, the fact that the licensing format is new and untested, the cost associated with being a Band Manager, and the level of interference protection that must be provided to adjacent channel public safety systems.

57. Upon careful consideration of the comments and reply comments, the Bureau has decided to exercise its discretion to adjust the upfront payments and has set them forth in Attachment A. The revised figures are approximately one-third of the original proposal. In making this reduction, we recognize the concerns expressed regarding incumbency and interference issues and uncertainty in when the spectrum may become unencumbered. We also respond to concerns raised concerning the opportunity for small businesses to participate in this auction.

58. Please note that upfront payments are not attributed to specific licenses, but instead will be translated to bidding units to define a bidder's maximum bidding eligibility. For Auction No. 33, the amount of the upfront payment will be translated into bidding units on a one-to-one basis, e.g., a \$1,000,000 upfront payment provides the bidder with 1,000,000 bidding units. The total upfront payment defines the maximum

number of bidding units on which the applicant will be permitted to bid (including standing high bids) in any single round of bidding. Thus, an applicant does not have to make an upfront payment to cover all licenses that an applicant has selected on FCC Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold high bids at any given time.

59. In order to be able to place a bid on a license, in addition to having specified that license on the FCC Form 175, a bidder must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on the FCC Form 175, or else the applicant will not be eligible to participate in the auction.

60. In calculating its upfront payment amount, an applicant should determine the *maximum* number of bidding units it may wish to bid on in any single round, and submit an upfront payment covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all licenses on which it seeks to bid in any given round. Bidders should check their calculations carefully as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

Note: An applicant may, on its FCC Form 175, apply for every license being offered, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment.

(iv) Applicant's Wire Transfer Information for Purposes of Refunds

61. The Commission will use wire transfers for all Auction No. 33 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed be supplied to the FCC. Applicants may either submit the information electronically after filing their short-form application or fax the wire transfer instructions by May 26, 2000, to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Michelle Bennett or Gail Glasser, at (202) 418-2843. Should the payer fail to submit the requested information, the refund will be returned to the original payer. For additional information, please call (202) 418-1995.

Name of Bank, ABA Number, Contact and Phone Number, Account Number to Credit, Name of Account Holder,

Correspondent Bank (if applicable), ABA Number, Account Number.

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in part V.D.

E. Auction Registration

62. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

63. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, each containing a portion of the confidential identification codes required to place bids. These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.

64. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Friday, June 9, 2000, must contact the Auctions Hotline at 717-338-2888. Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

65. Qualified bidders should note that lost login codes, passwords or bidder identification numbers can be replaced only by appearing *in person* at the FCC Auction Headquarters located at 445 12th St., SW, Washington, DC 20554. Only an authorized representative or certifying official, as designated on the applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacement codes. Qualified bidders requiring replacement codes must call technical support prior to arriving at the FCC to arrange preparation of new codes.

F. Remote Electronic Bidding Software

66. Qualified bidders are allowed to bid electronically or by telephone. If choosing to bid electronically, each bidder must purchase their own copy of the remote electronic bidding software. Electronic bids will only be accepted from those applicants purchasing the

software. However, the software may be copied by the applicant for use by its authorized bidders at different locations. The price of the FCC's remote bidding software is \$175.00 and must be ordered by Tuesday, May 30, 2000. For security purposes, the software is only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that auction software is tailored to a specific auction, so software from prior auctions will not work for Auction No. 33. If bidding telephonically, the telephonic bidding phone number will be supplied in the second Federal Express mailing of confidential login codes. Qualified bidders that do not purchase the software may only bid telephonically. To indicate your bidding preference, an FCC Bidding Preference/Remote Software Order Form can be accessed when submitting the FCC Form 175 and completed electronically. A copy of this form is included as Attachment F in this public notice.

G. Mock Auction

67. All qualified bidders will be eligible to participate in a mock auction scheduled for Monday, June 12, 2000. The mock auction will enable applicants to become familiar with the electronic software prior to the auction. Free demonstration software will be available for use in the mock auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

68. The first round of bidding for Auction No. 33 will begin on Wednesday, June 14, 2000. The initial bidding schedule will be announced in the public notice listing the qualified bidders which is released approximately 10 days before the start of the auction.

A. Auction Structure

(i) Simultaneous Multiple Round Auction

69. In the *Auction No. 33 Comment Public Notice*, we proposed to award 104 Guard Band Manager licenses in the 700 MHz guard bands in a single, simultaneous multiple round auction. We received no comment on this issue. We conclude that it is operationally feasible and appropriate to auction the 700 MHz Guard Band manager licenses through a single, simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction. This approach, we believe, allows bidders to take advantage of any synergies that exist among licenses and

is most administratively efficient. For Auction No. 33, no applicant may be deemed the winning bidder of both the Block A and the Block B license in a single geographic service area.

(ii) Maximum Eligibility and Activity Rules

70. In the *Auction No. 33 Comment Public Notice*, we proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder. We received no comments on this issue.

71. For Auction No. 33 we will adopt this proposal. The amount of the upfront payment submitted by a bidder determines the initial maximum eligibility (in bidding units) for each bidder. Note again that upfront payments are not attributed to specific licenses, but instead will be translated into bidding units to define a bidder's initial maximum eligibility. The total upfront payment defines the maximum number of bidding units on which the applicant will initially be permitted to bid. As there is no provision for increasing a bidder's maximum eligibility during the course of an auction (as described under "Auction Stages" as set forth in part IV.A.(iv)), prospective bidders are cautioned to calculate their upfront payments carefully. The total upfront payment does not define the total dollars a bidder may bid on any given license.

72. 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 the end before participating. Bidders are required to be active on a specific percentage of their maximum eligibility during each round of the auction.

73. A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. A bidder is considered active on a license in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits an acceptable bid in the current round (see "Minimum Accepted Bids" in part IV.B.(iii)). The minimum required activity level is expressed as a percentage of the bidder's maximum bidding eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions as set forth under "Auction Stages" in part IV.A.(iv) and "Stage Transitions" in part

IV.A.(v), we adopt them for Auction No. 33.

(iii) Activity Rule Waivers and Reducing Eligibility

74. In the *Auction No. 33 Comment Public Notice*, we proposed that each bidder in the auction would be provided five activity rule waivers that may be used in any round during the course of the auction. We received no comment on this issue.

75. Based upon our experience in previous auctions, we adopt our proposal that each bidder be provided five activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. We are satisfied that our practice of providing five waivers over the course of the auction provides a sufficient number of waivers and maximum flexibility to the bidders, while safeguarding the integrity of the auction.

76. The FCC automated auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any round where a bidder's activity level is below the minimum required unless: (a) There are no activity rule waivers available; or (b) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

77. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the reduce eligibility function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in "Auction Stages" (see part IV.A.(iv)). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

78. Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be

preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open.

(iv) Auction Stages

79. In the *Auction No. 33 Comment Public Notice*, we proposed to conduct the auction in three stages and employ an activity rule. We further proposed that, in each round of Stage One, a bidder desiring to maintain its current eligibility would be required to be active on licenses encompassing at least 80 percent of its current bidding eligibility. In each round of Stage Two, a bidder desiring to maintain its current eligibility would be required to be active on at least 90 percent of its current bidding eligibility. Finally, we proposed that a bidder in Stage Three, in order to maintain eligibility, would be required to be active on 98 percent of its current bidding eligibility. We received no comment on these proposals.

80. We conclude that the auction will be composed of three stages, which are each defined by an increasing activity rule. We will adopt our proposals for the activity rules. Here are the activity levels for each stage of the auction. The FCC reserves the discretion to further alter the activity percentages before and/or during the auction.

Stage One: During the first stage of the auction, a bidder desiring to maintain its current eligibility will be required to be active on licenses that represent at least 80 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the sum of bidding units of the bidder's standing high bids and valid bids during the current round by five-fourths (5/4).

Stage Two: During the second stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 90 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage Two, reduced eligibility for the next round will be calculated by multiplying the sum of bidding units of the bidder's standing high bids and valid bids during the current round by ten-ninths (10/9).

Stage Three: During the third stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its

current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). In this final stage, reduced eligibility for the next round will be calculated by multiplying the sum of bidding units of the bidder's standing high bids and valid bids during the current round by fifty-fortyninths (50/49).

CAUTION: Since activity requirements increase in each auction stage, bidders must carefully check their current activity during the bidding period of the first round following a stage transition. This is especially critical for bidders that have standing high bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required minimum activity level by using the bidding software's bidding module.

Because the foregoing procedures have proven successful in maintaining proper pace in previous auctions, we adopt them for Auction No. 33.

(v) Stage Transitions

81. In the *Auction No. 33 Comment Public Notice*, we proposed that the auction would generally advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is below 10 percent for three consecutive rounds of bidding in each stage. However, we further proposed that the Bureau would retain the discretion to change stages unilaterally by announcement during the auction. This determination, we proposed, would be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. We received no comments on this subject.

82. We adopt our proposal. Thus, the auction will start in Stage One. Under the FCC's general guidelines the auction will start in Stage One and will advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when, in each of three consecutive rounds of bidding, the high bid has increased on 10 percent or less of the licenses being auctioned (as measured in bidding units). However,

the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. We believe that these stage transition rules, having proven successful in prior auctions, are appropriate for use in Auction No. 33.

(vi) Auction Stopping Rules

83. For Auction No. 33, the Bureau proposed to employ a simultaneous stopping rule. Under this rule, bidding will remain open on all licenses until bidding stops on every license. The auction will close for all licenses when one round passes during which no bidder submits a new acceptable bid on any license, applies a proactive waiver, or withdraws a previous high bid. After the first such round, bidding closes simultaneously on all licenses.

84. The Bureau also proposed a modified version of the simultaneous stopping rule. This modified version will close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder will not keep the auction open under this modified stopping rule. The Bureau further sought comment on whether this modified stopping rule should be used unilaterally or only in stage three of the auction.

85. The Bureau further proposed retaining the discretion to keep an auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn in a round. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use an activity rule waiver (if it has any left).

86. In addition, we proposed that the Bureau reserve the right to 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 final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. We proposed to exercise this option only in circumstances such as where the

auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage where bidders will be required to maintain a higher level of bidding activity), increasing the number of bidding rounds per day.

87. No comments were received on any of these issues therefore we adopt all of the proposals concerning the auction stopping rules. Auction No. 33 will begin under the simultaneous stopping rule, and the Bureau will retain the discretion to invoke the other versions of the stopping rule. Adoption of these rules, we believe, is most appropriate for Auction No. 33 because our experience in prior auctions demonstrates that the auction stopping rules balance the interests of administrative efficiency and maximum bidder participation. The substitutability between and among licenses in different geographic areas and the importance of preserving the ability of bidders to pursue backup strategies support the use of these stopping rules.

(vii) Auction Delay, Suspension, or Cancellation

88. In the *Auction No. 33 Comment Public Notice*, we proposed that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding.

89. Because this approach has proven effective in resolving exigent circumstances in previous auctions, we will adopt our proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureau may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to: resume the auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety.

Network interruption may cause the Bureau to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

(i) Round Structure

90. The initial bidding schedule will be announced in the public notice listing the qualified bidders which is released approximately 10 days before the start of the auction. This public notice will be included with the registration mailings. The round structure for each bidding round contains a single bidding round followed by the release of the round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will be included in the Qualified Bidder Public Notice.

91. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The FCC may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

(ii) Reserve Price or Minimum Opening Bid

92. *Background.* The Balanced Budget Act of 1997 calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. See FCC 97-413, Amendment of Part 1 of the Commission's Rules-Competitive Bidding Procedures (*Third Report and Order*) 63 FR 770 (January 7, 1998). Among other factors, the Bureau must consider 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 valuation of the spectrum

being auctioned. The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.

93. In the *Auction No. 33 Comment Public Notice*, the Bureau proposed to establish minimum opening bids for Auction No. 33 and to retain discretion to lower the minimum opening bids. Specifically, for Auction No. 33, the Commission proposed calculating the minimum opening bid based on information available in the form of a Congressional estimate of the value of the spectrum. In response to the *Auction No. 33 Comment Public Notice*, AMTA, ITA, Mobex and Motorola all filed comments concerning the proposed minimum opening bids.

94. In its comments, AMTA states that it is unlikely that its members will elect to participate unless the Commission significantly reduces the minimum opening bids proposed for the Guard Band spectrum. AMTA cites several factors in support of its position. First AMTA points out that the Guard Band spectrum will not become available until 2006 and that deadline may be further extended. Also AMTA asserts that the Guard Band spectrum is susceptible to interference from CMRS systems operating in the neighboring 30 MHz and that the economic utility of the Guard Band allocation will be affected by the technical requirements adopted to ensure interference protection for public safety systems. According to AMTA, these factors support a reduction to one-third or one-quarter of the proposed valuations in minimum opening bids in the Guard Band auction.

95. ITA claims that the Commission needs to revisit the amount set for the minimum opening bids in order to give consideration to the interference protection that must be provided public safety users. According to ITA, the protection requirements have the potential to erode the ability of the Guard Band Manager to fully maximize use of the spectrum. Further, according to ITA, the Guard Band Manager must also consider potential interference from adjacent band commercial users and avoid causing interference to incumbent broadcast operations. ITA argues that basing minimum bids upon traditional calculations, when there is the possibility that use of the spectrum cannot be fully maximized simply makes it that much more difficult to attract a wide pool of prospective Guard Band Managers. In view of these factors, ITA strongly encourages the Commission to reevaluate the methodology it used in setting the opening minimum bids. ITA did not

state what minimum opening bid would be appropriate.

96. Mobex claims that the minimum opening bids: (i) Are cost prohibitive for most small businesses; (ii) contradict the requirements of the 1996 Telecommunications Act, specifically section 309(j); and (iii) will have a long term negative impact on the few remaining small businesses in the SMR industry, including Mobex. According to Mobex, the Commission's excessive minimum opening bids effectively preclude countless small businesses from realistically participating in the auction proceeding. Mobex cites to section 309(j) of the Telecommunications Act, which Mobex says requires the Commission to avoid excessive concentration of licenses by disseminating licenses among a wide variety of applicants, including small businesses. Mobex did not indicate what would be a more acceptable minimum opening bid.

97. Motorola argues that the proposed minimum opening bid amounts fail to account for: (i) The presence of incumbent broadcast stations; (ii) the possibility of interference from adjacent commercial licensees; and (iii) the barrier to entry these amounts present for small businesses and associations likely to be interested in the role of Guard Band Manager. Motorola further argues that the Commission did not explain the valuation expected for the Guard Band licenses as compared to the amount anticipated to be raised by the licenses available on the other 30 megahertz of spectrum allocated for commercial use in the 700 MHz band. Thus, Motorola says that it has no way of knowing what specific value the Bureau placed on the Guard Band spectrum. Motorola adds that because of TV incumbency issues, there are some markets where a Guard Band Manager may not be able to recognize a return on its license until December, 2006. Further, Motorola claims that the Guard Band spectrum faces potential interference from users of the remaining 30 megahertz of commercial spectrum in the 700 MHz band. Moreover, Motorola argues that the current values for upfront payments preclude small businesses and private land mobile frequency coordinators from participation in the auction. Motorola asserts that the bidding credits do not help because the credits are not applied to upfront payment amounts and the time constraints to raise the capital are extremely short due to the Congressional requirement to deposit the proceeds by September 30, 2000. Motorola recommends that the Bureau use the same formula that it used in

setting the minimum opening bids for the 220 MHz spectrum in Auction No. 24 and that the Bureau maintain the 33% ratio, used in this proceeding, between minimum opening bids and upfront payments. Furthermore, Motorola claims that markets which are encumbered should be subject to a further reduction in minimum opening bids.

98. Reply comments were submitted by AMTA, ITA, Mobex, MRFAC, and PCIA.

99. On reply, AMTA notes that all of the initial comments filed in this proceeding took the position that the proposed minimum opening bids were unreasonably high. AMTA says that collectively the factors cited by commenters support a reduction in both the upfront payment and minimum opening bids in Auction No. 33. AMTA argues that those few parties that are able to participate in the auction will have to pass on unreasonably high acquisition costs to potential lessees, thus negatively impacting, if not eliminating, participation by small businesses. AMTA reiterates that the Commission should reduce the upfront payments and the minimum opening bids for the Guard Band spectrum to one-third or one-quarter of their current valuations to bring the valuations in line with the 220 MHz auction figures. AMTA concludes by stating that it supports Motorola's proposal to maintain a ratio of 33% between minimum opening bids and upfront payments and that the Commission should use Motorola's proposal as the absolute upper limits, with further reductions in markets that are encumbered.

100. In its reply comments, ITA also notes that all of those filing comments agreed that the Commission should revisit the amount of minimum opening bids. According to ITA, because the guard band manager must protect public safety users from interference, while avoiding interference to incumbent broadcast operations, it is much more difficult to attract a wide pool of prospective bidders. ITA states that it supports Motorola's proposal to apply the valuations used in the 220 MHz auction to set upfront payments and minimum opening bids.

101. In its reply comments, Mobex notes that all parties who submitted initial comments are in agreement that the Commission's proposed minimum opening bids would be cost prohibitive for many small businesses. Mobex states that the Commission should reduce the valuation for the Guard Band, citing arguments of potential interference from users within the 30 megahertz block, the

lack of out-of-band limitations on the 30 megahertz block, the requirement to protect public safety users, and the existence of co-channel or adjacent channel television broadcast stations in virtually every market of significant size around the nation. Mobex also notes that a financial return on the guard band spectrum may be delayed until December, 2006 and beyond. In view of the foregoing, Mobex urges the Commission to adopt the valuations proposed by Motorola in this proceeding.

102. MRFAC states that the minimum opening bid amounts are too high, considering that the spectrum in many of these markets will be encumbered until December, 2006, or even beyond. According to MRFAC, no rational investor would risk these kind of sums for an encumbered asset. MRFAC, therefore, urges that the Commission use minimum opening bids that are in line with those for the 220 MHz auction.

103. As in the case of the amount of upfront payments, the Bureau is persuaded by the comments and reply comments that it is appropriate to make a downward adjustment in the minimum opening bids. In doing so, we recognize concerns expressed with regard to when the spectrum may become available, interference and technical issues, and other factors cited in response to the *Auction No. 33 Comment Public Notice*. Accordingly, the Bureau has lowered the proposed minimum opening bids for the licenses in the Guard Band, establishing minimum opening bids that are approximately one-third of the original proposal, as set forth in Attachment A.

(iii) Bid Increments and Minimum Accepted Bids

104. In the *Auction No. 33 Comment Public Notice*, we proposed to use a smoothing methodology to calculate minimum bid increments. We further proposed to retain the discretion to change the minimum bid increment if circumstances so dictate. We received no comment on this issue.

105. We will adopt our proposal for a smoothing formula. The smoothing methodology is designed to vary the increment for a given license between a maximum and minimum value based on the bidding activity on that license. This methodology allows the increments to be tailored to the activity level of a license, decreasing the time it takes for active licenses to reach their final value. The formula used to calculate this increment is included as Attachment G.

106. We adopt our proposal of initial values for the maximum of 0.2, or 20 percent of the license value, and a

minimum of 0.1, or 10 percent of the license value. The Bureau retains the discretion to change the minimum bid increment if it determines that circumstances so dictate. The Bureau will do so by announcement in the Automated Auction System. Under its discretion, the Bureau may also implement an absolute dollar floor for the bid increment to further facilitate a timely close of the auction. The Bureau may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant. As an alternative approach, the Bureau may, in its discretion, adjust the minimum bid increment gradually over a number of rounds as opposed to single large changes in the minimum bid increment (e.g., by raising the increment floor by one percent every round over the course of ten rounds). The Bureau also retains the discretion to use alternate methodologies, such as a flat percentage increment for all licenses, for Auction No. 33 if circumstances warrant.

(iv) High Bids

107. Each bid will be date-and time-stamped when it is entered into the FCC computer system. In the event of tie bids, the Commission will identify the high bidder on the basis of the order in which the Commission receives bids. The bidding software allows bidders to make multiple submissions in a round. As each bid is individually date-and time-stamped according to when it was submitted, bids submitted by a bidder earlier in a round will have an earlier date and time stamp than bids submitted later in a round.

(v) Bidding

108. During a bidding round, a bidder may submit bids for as many licenses as it wishes, subject to its eligibility, as well as withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each bidding round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round, and the date-and time-stamp of that bid reflects the latest time the bid was submitted.

109. Please note that all bidding will take place remotely either through the automated bidding software or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of

the close of a round. Normally, four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 33.

110. A bidder's ability to bid on specific licenses in the first round of the auction is determined by two factors: (a) the licenses applied for on FCC Form 175; and (b) the upfront payment amount deposited. The bid submission screens will be tailored for each bidder to include only those licenses for which the bidder applied on its FCC Form 175. A bidder also has the option to further tailor its bid submission screens to call up specified groups of licenses.

111. The bidding software requires each bidder to login to the FCC auction system during the bidding round using the FCC account number, bidder identification number, and the confidential security codes provided in the registration materials. Bidders are strongly encouraged to download and print bid confirmations *after* they submit their bids.

112. The bid entry screen of the automated auction system software for Auction No. 33 allows bidders to place multiple increment bids, which will let bidders increase high bids from one to nine bid increments. A single bid increment is defined as the difference between the standing high bid and the minimum acceptable bid for a license. The bidding software will display the bid increment for each license.

113. To place a bid on a license, the bidder must increase the standing high bid by one to nine times the bid increment. This is done by entering a whole number between 1 and 9 in the bid increment multiplier (Bid Mult) field in the software. This value will determine the amount of the bid (Amount Bid) by multiplying the bid increment multiplier by the bid increment and adding the result to the high bid amount according to the following formula:

$$\text{Amount Bid} = \text{High Bid} + (\text{Bid Mult} * \text{Bid Increment})$$

114. Thus, bidders may place a bid that exceeds the standing high bid by between one and nine times the bid increment. For example, to bid the minimum acceptable bid, which is equal to one bid increment, a bidder will enter "1" in the bid increment multiplier column and press submit.

115. For any license on which the FCC is designated as the high bidder (i.e., a license that has not yet received a bid in the auction or where the high bid was withdrawn and a new bid has not yet been placed), bidders will be limited to bidding only the minimum acceptable bid. In both of these cases no

increment exists for the licenses, and bidders should enter "1" in the Bid Mult field. Note that in this case, any whole number between 1 and 9 entered in the multiplier column will result in a bid value at the minimum acceptable bid amount. Finally, bidders are cautioned in entering numbers in the Bid Mult field because, as explained in the following section, a high bidder that withdraws its standing high bid from a previous round, even if mistakenly or erroneously made, is subject to bid withdrawal payments.

(vi) Bid Removal and Bid Withdrawal

116. In the *Auction No. 33 Comment Public Notice*, we proposed bid removal and bid withdrawal rules. With respect to bid withdrawals, we proposed limiting each bidder to withdrawals in no more than two rounds during the course of the auction. The two rounds in which withdrawals are utilized, we proposed, would be at the bidder's discretion. We received no comment on this issue.

117. In previous auctions, we have detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While we continue to recognize the important role that bid withdrawals play in an auction, *i.e.*, reducing risk associated with efforts to secure various geographic area licenses in combination, we conclude that, for Auction No. 33, adoption of a limit on their use to two rounds is the most appropriate outcome. By doing so we believe we strike a reasonable compromise that will allow bidders to use withdrawals. Our decision on this issue is based upon our experience in prior auctions, particularly the PCS D, E and F block auctions, and 800 MHz SMR auction, and is in no way a reflection of our view regarding the likelihood of any speculation or "gaming" in this auction.

118. The Bureau will therefore limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals during the auction will still be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market. If a high bid is withdrawn, the license will be offered in the next round at the second highest bid price, which may be less than, or equal to, in the case of tie bids, the amount of the withdrawn bid, without any bid increment. The

Commission will serve as a "place holder" on the license until a new acceptable bid is submitted on that license.

119. *Procedures.* Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bid" function in the software, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.* a bid that is subsequently removed does not count toward the bidder's activity requirement. This procedure, about which we received no comments, will enhance bidder flexibility during the auction. Therefore, we will adopt these procedures for Auction No. 33.

120. Once a round closes, a bidder may no longer remove a bid. However, in the next round, a bidder may withdraw standing high bids from previous rounds using the "withdraw bid" function (assuming that the bidder has not exhausted its withdrawal allowance). A high bidder that withdraws its standing high bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). The procedure for withdrawing a bid and receiving a withdrawal confirmation is essentially the same as the bidding procedure described in "High Bids," part IV.B.(iv).

121. *Calculation.* Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. Specifically, a bidder ("Bidder X") that withdraws a high bid during the course of an auction is subject to a bid withdrawal payment equal to the difference between the amount withdrawn and the amount of the subsequent winning bid. If a high bid is withdrawn on a license that remains unsold at the close of the auction, Bidder X will be required to make an interim payment equal to three (3) percent of the net amount of the withdrawn bid. This payment amount is deducted from any upfront payments or down payments that Bidder X has deposited with the Commission. If, in a subsequent auction, that license receives a valid bid in an amount equal to or greater than the withdrawn bid amount, then no final bid withdrawal payment will be assessed, and Bidder X may request a refund of the interim three (3) percent payment. If, in a subsequent auction, the selling price for that license is less than Bidder X's withdrawn bid amount, then Bidder X

will be required to make a final bid withdrawal payment, less the three percent interim payment, equal to either the difference between Bidder X's net withdrawn bid and the subsequent net winning bid, or the difference between Bidder X's gross withdrawn bid and the subsequent gross winning bid, whichever is less.

(vii) Round Results

122. Bids placed during a round will not be published until the conclusion of that bidding period. After a round closes, the Commission will compile reports of all bids placed, bids withdrawn, current high bids, new minimum accepted bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 33 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

(viii) Auction Announcements

123. The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available on the FCC remote electronic bidding system, as well as on the Internet.

(ix) Maintaining the Accuracy of FCC Form 175 Information

124. As noted in part II.E., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and certain revisions to exhibits. Filers must make these changes on-line, and submit a letter summarizing these changes to: Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

A separate copy of the letter should be mailed to Howard Davenport, Auctions and Industry Analysis Division, briefly summarizing the changes. Questions about other changes should be directed to Howard Davenport, Auctions and Industry Analysis Division at (202) 418-0660.

V. Post-Auction Procedures

A. Down Payments and Withdrawn Bid Payments

125. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bids and bidders for each license, and listing bid withdrawal payments due.

126. Within ten business days after release of the auction closing public notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any applicable bidding credits). *See* 47 CFR 1.2107(b). In addition, by the same deadline all bidders must pay any withdrawn bid amounts due under 47 CFR 1.2104(g), as discussed in "Bid Removal and Bid Withdrawal," part IV.B.(vi). (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.) In the *700 MHz Second Report and Order*, in light of the statutory deadline for depositing auction proceeds, the Commission delegated to the Bureau authority to suspend payment deadlines and require that winning bidders on all licenses in the 700 MHz bands pay the full balance of their winning bids upon submission of their long-form application. (*See* 700 MHz Second Report and Order at ¶ 105.) The Bureau will announce via Public Notice if it chooses to exercise this authority.

B. Long-Form Application

127. Within ten business days after release of the auction closing public notice, winning bidders must file: (1) FCC Form 601 and all required exhibits electronically via the Universal Licensing System ("ULS"); and (2) FCC Form 602 manually pursuant to § 1.919 of the Commission's Rules. Winning bidders may file a single application for all markets won at auction. Winning bidders that are small businesses or very small businesses must include and exhibit demonstrating their eligibility for bidding credits. *See* 47 CFR 1.2112(b). Further, more detailed filing instructions will be provided to auction winners at the close of the auction.

C. Default and Disqualification

128. Any high bidder that defaults or is disqualified after the close of the 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) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at their final bid. *See* 47 CFR 1.2109(b) and (c). In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant. *See* 47 CFR 1.2109(d).

D. Refund of Remaining Upfront Payment Balance

129. All applicants that submitted upfront payments but were not winning bidders for a 700 MHz guard band license may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid.

130. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. However, bidders that reduce their eligibility and remain in the auction are not eligible for partial refunds of upfront payments until the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a refund request which includes wire transfer instructions and a Taxpayer Identification Number ("TIN"), to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Shirley Hanberry, 445 12th Street, S.W., Room 1-A824 Washington, DC 20554.

131. Bidders are encouraged to file their refund information electronically using the Refund Information portion of the FCC Form 175, but bidders can also fax their request to the Auctions Accounting Group at (202) 418-2843. Once the request has been approved, a refund will be sent to the party identified in the refund information.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact

Michelle Bennett or Gail Glasser at (202) 418-1995.

Federal Communications Commission.

Louis J. Sigalos,

Deputy Chief, Auctions and Industry Analysis Division.

[FR Doc. 00-9905 Filed 4-19-00; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC-00-31-E (Auction No. 31); DA 00-785]

747-762 and 777-792 MHz Band Auction Filing Dates and Changes to Attachment J

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces new dates relevant to the upcoming auction of licenses in the 747-762 and 77-792 MHz bands (Auction No. 31) scheduled to begin June 7, 2000.

DATES: Auction No. 31 will begin June 7, 2000.

FOR FURTHER INFORMATION CONTACT:

Howard Davenport, Auctions and Industry Analysis Division, at (202) 418-0660 or Kathy Garland, Auctions Operations at (717) 338-2801.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released April 12, 2000. The complete text of the public notice, including corrected Attachment J (Incumbent Television Licenses on Channels 59-68) is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW, Washington, DC 20554. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 1231 20th Street, NW, Washington, DC 20036, (202) 857-3800. It is also available on the Commission's web site at <http://www.fcc.gov>.

1. The upcoming auction of licenses in the 747-762 and 777-792 MHz bands has been postponed until June 7, 2000. *See* DA 00-573, 747-762 and 777-792 MHz Band Auction Postponed Until June 7, 2000 (*Postponement Public Notice*) 65 FR 16202 (March 27, 2000). In the light of the postponement, the Wireless Telecommunications Bureau ("Bureau") announces changes to related dates. The new dates and the dates already announced are as follows: