

comply with any regulations that have been issued under CWA section 311(j), 33 U.S.C. 1321(j), may be assessed an administrative civil penalty of up to \$137,500 by EPA. Class II proceedings under CWA section 311(b)(6) are conducted in accordance with 40 CFR part 22.

The procedures by which the public may comment on a proposed Class II penalty order, or participate in a Clean Water Act Class II penalty proceeding, are set forth in 40 CFR 22.45. The deadline for submitting public comment on this proposed final order is November 24, 2000. All comments will be transferred to the Environmental Appeals Board ("EAB") of EPA for consideration. The powers and duties of the EAB are outlined in 40 CFR 22.04(a).

Pursuant to CWA section 311(b)(6)(C), EPA will not issue an order in this proceeding prior to the close of the public comment period.

Dated: October 18, 2000.

**David A. Nielsen,**

*Director, Multimedia Enforcement Division,  
Office of Enforcement and Compliance  
Assurance.*

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BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6890-8]

### New York State Prohibition on Marine Discharges of Vessel Sewage; Receipt of Petition and Tentative Determination

**AGENCY:** Environmental Protection  
Agency.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that a petition was received from the State of New York on April 29, 1999 requesting a determination by the Regional Administrator, Environmental Protection Agency (EPA), pursuant to section 312(f) of Public Law 92-500, as amended by Public Law 95-217 and Public Law 100-4 (the Clean Water Act), that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of the Hudson River and its tributaries including, but not limited to, Rondout Creek, Esopus Creek and Catskill Creek. The southern boundary of the proposed No Discharge Area (NDA) in this application would begin at the Battery in Manhattan, New York and the northern boundary would be the Federal Dam in Troy, New York. This area includes waters up to the New Jersey-New York boundary and does not

include waters in New Jersey. EPA is currently reviewing a petition submitted by the New Jersey Department of Environmental Protection requesting a No Discharge Area for the New Jersey waters of the Hudson River. The area proposed by the State of New York is 153 miles long and encompasses approximately 81,000 acres of tidal waters and wetlands.

Following EPA's review of the petition and discussions with EPA, the State revised the application on certain occasions, most recently on August 24, 2000.

Previously, EPA established on December 13, 1995 two NDAs to protect drinking water intake zones. Zone 1 is bounded by the northern confluence of the Mohawk River on the south and Lock 2 on the north. It is approximately 8 miles long. Zone 2 is bounded on the south by the Village of Roseton on the western shore and bounded on the north by the southern end of Houghtaling Island. Zone 2 is approximately 60 miles long.

This petition was made by the New York State Department of State, in conjunction with the New York State Department of Environmental Conservation. Upon receipt of a final affirmative determination in response to this petition, the State of New York would completely prohibit the discharge of sewage, whether treated or not, from any vessel on the Hudson River in the area north of the Battery in Manhattan, New York and south of Federal Dam in Troy, New York in accordance with section 312(f)(3) of the Clean Water Act and 40 CFR 140.4(a).

According to the State's petition, the vessel population for the waters of the Hudson River is approximately 7300 vessels. This number is based on analyses of aerial photographs taken before and during the Labor Day weekend. Each photo was identified by the embayment or reach and all boats were counted. Totals were tabulated by embayment. Surveys of the marinas operating on the Hudson River were also used when estimating the size of the fleet operating on the Hudson River. Information regarding commercial vessels indicates that many of the commercial operators have installed pumpout facilities at their docks to service their vessels. These operators include NY Waterway, Circle Line and World Yacht. Other operators make arrangements with local waste haulers to service their vessels while docked at facilities such as the Brooklyn Naval Yard. Marinas which are capable of providing pumpout service to commercial vessels are Liberty Landing Marina and Port Imperial Marina in

New Jersey. Liberty Landing Marina can accommodate essentially any size commercial vessel, while Port Imperial Marina has a draft restriction of 4 feet and a length restriction of 45 feet. In New York, Pancor Marine, Inc., White's Marina and Kingston West Strand provide pumpout service to commercial vessels according to the application submitted by the State of New York.

With 35 pumpout facilities available to vessels, the ratio of boats is approximately 208 vessels per pumpout. Standard guidelines refer to acceptable ratios falling in the range of 300 to 600 vessels per pumpout. The State of New York divided the river into 8 segments and analyzed pumpout availability for each segment. All segments met the more stringent criterion of 300 vessels per pumpout. There are also 21 facilities capable of servicing portable toilets.

The EPA hereby makes a tentative affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the Hudson River, New York. A final determination on this matter will be made following the 30-day period for public comment and will result in a New York State prohibition of any sewage discharges from vessels in the Hudson River from the Battery in Manhattan, New York to the Federal Dam at Troy, New York.

Comments and views regarding this petition and EPA's tentative determination may be filed on or before November 24, 2000. Comments or requests for information or copies of the applicant's petition should be addressed to Walter E. Andrews, U.S. Environmental Protection Agency, Region II, Water Programs Branch, 290 Broadway, 24th Floor, New York, New York, 10007-1866. Telephone: (212) 637-3880.

Dated: September 28, 2000.

**Jeanne M. Fox,**

*Regional Administrator, Region II.*

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## FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC-00-38-A (Auction No. 38);  
DA 00-2291]

**Auction of Licenses for the 700 MHz  
Guard Bands Scheduled for February  
13, 2001; Comment Sought on Reserve  
Prices or Minimum Opening Bids and  
Other Auction Procedural Issues**

**AGENCY:** Federal Communications  
Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the auction of eight Guard Band Manager licenses ("Auction No. 38") in the 700 MHz Guard Bands to commence on February 13, 2001. This auction will include the licenses that remained unsold in Auction No. 33, which closed on September 21, 2000.

**DATES:** Comments are due on or before October 20, 2000, and reply comments are due on or before October 27, 2000.

**ADDRESSES:** An original and four copies of all pleadings must be filed with the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW., TW-A325, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:**

Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Howard Davenport, Auctions Attorney, or Craig Bomberger, Auctions Analyst, at (202) 418-0660; or Linda Sanderson, Project Manager, at (717) 338-2888.

**SUPPLEMENTARY INFORMATION:** This is a summary of a Public Notice released October 13, 2000. The complete text of the public notice, including Attachment A, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW, Washington, DC. 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>.

**I. General Information**

1. The Wireless Telecommunications Bureau ("Bureau") has before it a "Request for Waiver" filed by Harbor Wireless, LLC (Harbor) on September 26, 2000 and a "Supplement to Request for Waiver" filed by Harbor on September 28, 2000. These filings seek to have the Commission offer Harbor three of the licenses herein on which Harbor formerly held the high bid in Auction No. 33. The Bureau will respond to Harbor's request in a separate Order.

2. Auction No. 38 will include the following licenses:

Market No.	Market name	Block	Bandwidth
MEA012 .....	Pittsburgh, PA .....	A	2 MHz
MEA014 .....	Columbus, OH .....	B	4 MHz
MEA028 .....	Little Rock, AR .....	B	4 MHz
MEA034 .....	Omaha, NE .....	B	4 MHz
MEA037 .....	Oklahoma City, OK .....	B	4 MHz
MEA048 .....	Hawaii .....	B	4 MHz
MEA049 .....	Guam and the Northern Mariana Islands .....	B	4 MHz
MEA051 .....	American Samoa .....	B	4 MHz

3. The frequency allocation for the "A" Block license is 746-747/776-777 MHz. The frequency allocation for the "B" Block licenses is 762-764/792-794 MHz.

4. The Balanced Budget Act of 1997 requires the Commission to "ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed \* \* \* before issuance of bidding rules, to permit notice and comment on proposed auction procedures \* \* \*." Consistent with the provisions of the Balanced Budget Act and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction. We therefore seek comment on the following issues relating to Auction No. 38.

**II. Auction Structure****A. Simultaneous Multiple Round Auction Design**

5. We propose to award the licenses in a single stage, simultaneous multiple-round auction. As described further, this methodology offers every license for bid at the same time in successive

bidding rounds. We seek comment on this proposal.

**B. Upfront Payments and Initial Maximum Eligibility**

6. The Bureau has delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned taking into account such factors as the population in each geographic license area, and the value of similar spectrum. As described further, the upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on licenses. Upfront payments related to the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. For Auction No. 38, we propose to use the same upfront payments used for Auction No. 33. Those calculations were based on information available in the form of a congressional estimate of the value of the spectrum. Accordingly, we list all licenses, including the related license area population and the proposed upfront payment for each, in Attachment A. We seek comment on this proposal.

7. We further propose that the amount of the upfront payment submitted by a bidder will determine the initial

maximum eligibility (as measured in bidding units) for each bidder. Upfront payments will not be attributed to specific licenses, but instead will be translated into bidding units to define a bidder's initial maximum eligibility, which cannot be increased during the auction. The maximum eligibility will determine the licenses on which a bidder may bid in each round of the auction. Thus, in calculating its upfront payment amount, an applicant must determine the *maximum* number of bidding units it may wish to bid on (or hold high bids on) in any single round, and submit an upfront payment covering that number of bidding units. We seek comment on this proposal.

**C. Activity Rules**

8. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to either place a valid bid and/or be the standing high bidder during each round of the auction rather than waiting until the end to participate. A bidder that does not satisfy the activity rule will either use an activity rule waiver, if any remain, or lose bidding eligibility in the auction.

9. We propose a single stage auction with the following activity requirement. In each round of the auction, a bidder desiring to maintain its eligibility to

participate in the auction is required to be active on one hundred (100) percent of its bidding eligibility. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's bidding eligibility, thus eliminating the bidder from the auction. We seek comment on this proposal.

#### *D. Activity Rule Waivers and Reducing Eligibility*

10. 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. Activity waivers are principally a mechanism for auction participants to avoid the loss of auction eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

11. The FCC 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 bidding period where a bidder's activity level is below the minimum required unless: (i) there are no activity rule waivers available; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

12. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding period 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. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

13. 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 bidding period 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 will not keep the auction open.

14. We propose that each bidder in Auction No. 38 be provided with two activity rule waivers that may be used

at the bidder's discretion during the course of the auction. We seek comment on this proposal.

#### *E. Information Relating to Auction Delay, Suspension or Cancellation*

15. For Auction No. 38, we propose 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. 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. We seek comment on this proposal.

### **III. Bidding Procedures**

#### *A. Round Structure*

16. The Commission will use its Automated Auction System to conduct the electronic simultaneous multiple round auction format for Auction No. 38. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction, and will be included in the registration mailings. The simultaneous multiple round format will consist of sequential bidding rounds, each followed by the release of round results. Details regarding the location and format of round results will be included in the same public notice.

17. The Bureau 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 Bureau 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. We seek comment on this proposal.

#### *B. Reserve Price or Minimum Opening Bid*

18. The Balanced Budget Act 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 the Commission has accepted mutually exclusive applications for those licenses), unless the Commission determines that a reserve price or minimum bid is not in the public interest. Consistent with this mandate, the Commission has 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.

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

20. In light of the Balanced Budget Act, the Bureau proposes to establish minimum opening bids for Auction No. 38. The Bureau believes a minimum opening bid, which has been utilized in other auctions, is an effective bidding tool. A minimum opening bid, rather than a reserve price, will help to regulate the pace of the auction and provides flexibility. For Auction No. 38, we propose to use the same upfront payments used for Auction No. 33. Those calculations were based on information available in the form of a Congressional estimate of the value of the spectrum. Accordingly, we list all licenses, including the related license area population and the proposed minimum opening bid for each, in Attachment A. We seek comment on this proposal.

21. If commenters believe that these minimum opening bids will result in substantial numbers of unsold licenses, or are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. In establishing the minimum opening bids, we particularly seek comment on such factors as, among other things, the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, issues of interference with

other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the 700 MHz Guard Bands. Alternatively, comment is sought on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

#### *C. Minimum Accepted Bids and Bid Increments*

22. Once there is a standing high bid on a license, a bid increment will be applied to that license to establish a minimum acceptable bid for the following round. For Auction No. 38, we propose to set a minimum 10 percent increment. This means that a new bid placed by a bidder must be at least 10 percent greater than the previous bid received on the license. The Bureau retains the discretion to change the methodology for determining the minimum bid increment if they determine the circumstances so dictate. Advanced notice of the Bureau's decision to do so will be announced via the Automated Auction System.

23. Bidders will enter their bid as multiples of the bid increment (*i.e.*, with a 10 percent bid increment, a bid of 1 increment will place a bid 10 percent above the previous high bid, a bid of 2 increments will place a bid 20 percent above the previous high bid). We seek comment on this proposal.

#### *D. Information Regarding Bid Withdrawal and Bid Removal*

24. For Auction No. 38, we proposed the following bid removal and bid withdrawal procedures. Before the close of a bidding period, a bidder has the option of removing any bid 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 a withdrawal payment. Once a round closes, a bidder may no longer remove a bid. We seek comment on this bid removal procedure.

25. In the *Part 1 Third Report and Order*, 63 FR 2315 (January 15, 1998) the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of efficient backup strategies as information becomes available during the course of an auction. In Auction No. 38, however, aggregation of licenses will not be possible because only eight licenses will be auctioned. Accordingly, for this auction, we propose that bidders not be permitted to withdraw bids in any round. We seek comment on this proposal.

#### *E. Stopping Rule*

26. For Auction No. 38, the Bureau proposes to employ a simultaneous stopping rule approach. The Bureau has discretion "to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time." A simultaneous stopping rule means that all licenses remain open until the first round in which no new acceptable bids or proactive waivers are received. After the first such round, bidding closes simultaneously on all licenses. Thus, unless circumstances dictate otherwise, bidding would remain open on all licenses until bidding stops on every license.

27. The Bureau seeks comment on a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver 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 would not keep the auction open under this modified stopping rule. The Bureau further seeks comment on whether this modified stopping rule should be used unilaterally or only in stage three of the auction.

28. The Bureau proposes to retain the discretion to keep an auction open even if no new acceptable bids or proactive waivers are submitted. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. The activity rule, therefore, will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver.

29. Finally, we propose 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. The Bureau proposes to exercise this option only in certain circumstances, such as, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or 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 would be required to

maintain a higher level of bidding activity), increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity. We seek comment on these proposals.

#### **IV. Comments**

30. An original and four copies of all pleadings must be filed with the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW., TW-A325, Washington, DC 20554. In addition, one copy of each pleading must be delivered to each of the following locations: (i) The Commission's duplicating contractor, International Transcription Service, Inc. (ITS), 1231 20th Street, NW., Washington, DC 20036; (ii) Office of Media Relations, Public Reference Center, 445 Twelfth Street, SW., Suite CY-A257, Washington, DC 20554; (iii) Rana Shuler, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 445 Twelfth Street, SW., Suite 4-A628, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY-A257, 445 12th Street, SW., Washington, DC 20554.

Federal Communications Commission.

**Margaret Wiener,**

*Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.*

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**BILLING CODE 6712-01-U**

#### **FEDERAL DEPOSIT INSURANCE CORPORATION**

##### **Agency Information Collection Activities: Submission for OMB Review; Comment Request**

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

**SUMMARY:** In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the following information collection systems described below.