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**Dated:** August 22, 2006.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

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## FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC-06-69-A (Auction No. 69);  
 DA 06-1016; AU Docket No. 06-104]

### Auction of 1.4 GHz Bands Licenses Scheduled for February 7, 2007; Comments Sought on Competitive Bidding Procedures for Auction No. 69

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the auction of 1.4 GHz Band licenses scheduled to commence on February 7, 2007 (Auction No. 69). This document also seeks comments on the competitive bidding procedures for Auction No. 69.

**DATES:** Comments are due on or before September 11, 2006 and reply comments are due on or before September 18, 2006.

**ADDRESSES:** You may submit comments, identified by AU Docket No. 06-104; DA 06-1016 by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Bureau continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary Attn: WTB/ASAD, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-

delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554. The Bureau also requests that a copy of all comments and reply comments be submitted electronically to the following address: [auction69@fcc.gov](mailto:auction69@fcc.gov).

#### FOR FURTHER INFORMATION CONTACT:

Wireless Telecommunications Bureau, Auctions and Spectrum Access Division, *for legal questions:* Howard Davenport at (202) 418-0660. *For general auction questions:* Roy Knowles or Barbara Sibert at (717) 338-2888.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction No. 69 Comment Public Notice* released on August 28, 2006. The complete text of the *Auction No. 69 Comment Public Notice*, including attachments and related Commission documents is available for public inspection and copying from 8 a.m. to 4:30 p.m. Monday through Thursday or from 8 a.m. to 11:30 a.m. on Friday at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The *Auction No. 69 Comment Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-488-5300, facsimile 202-488-5563, or you may contact BCPI at its Web site: <http://www.BCPIWEB.com>. When ordering documents from BCPI please provide the appropriate FCC document number for example, DA 06-1016. The *Auction No. 69 Comment Public Notice* and related documents are also available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/69/>.

#### I. Licenses To Be Offered in Auction No. 69

1. In Auction No. 69, two 3-megahertz blocks, each consisting of a pair of 1.5 megahertz segments in the 1392-1395 MHz and 1432-1435 MHz bands, will be offered in each of six regions known as Economic Area Groupings (EAGs).

Additionally, one 2-megahertz block of unpaired spectrum in the 1390-1392 MHz band will be offered in each of 52 geographic areas known as Major Economic Areas (MEAs). The licenses available in Auction No. 69 are also listed in Attachment A of the *Auction No. 69 Comment Public Notice*.

2. *Permissible Services.* When adopting its service rules for these bands, the Commission established a flexible regulatory and licensing framework in order to promote the provision of new and technologically innovative services. Licensees may provide both fixed and mobile services including wireless internet, high speed data as well as advanced two-way mobile and paging services.

#### 3. International Coordination.

Currently, the United States does not have international agreements with Canada and Mexico governing operations in the 1392-1395 MHz, 1432-1435 MHz or the 1390-1392 MHz bands. Licensees in these bands operating near the borders must protect stations in Canada and Mexico from harmful interference. The Bureau also notes that operation in these bands may be subject to future agreements with Canada and Mexico and therefore may be subject to further modification.

4. *Incumbency Issues.* Potential applicants are advised that there are several government operations that will continue to operate in these bands:

#### 1390-1392 MHz

Radio astronomy observations may be assigned in the 1350-1400 MHz band on an unprotected basis at the 16 radio astronomy observatories. Government operations authorized as of March 22, 1995, at the 17 sites will continue to operate on a fully protected basis until January 1, 2009. All other government operations, except for medical telemetry (1395-1400 MHz), will operate on a non-interference basis to authorized non-Government operations and shall not hinder implementation of any non-Government operations.

#### 1392-1395 MHz and 1432-1435 MHz

Government operations authorized as of March 22, 1995, at the 17 sites will continue to operate on a fully protected basis until January 1, 2009. All other government operations, except for medical telemetry (1395-1400 MHz), will operate on a non-interference basis to authorized non-Government operations and shall not hinder implementation of any non-Government operations. Government stations in the fixed and mobile services may operate indefinitely on a primary basis at the 23 sites. All other Government stations in

the fixed and mobile services shall operate on a primary basis until re-accommodated in accordance with the National Defense Authorization Act of 1999.

5. *Spectrum Relocation Fund*. The upper half of paired frequencies for 1.4 GHz Bands licenses, *i.e.*, 1432–1435 MHz, is spectrum covered by a Congressional mandate that requires that auction proceeds fund the estimated relocation costs of incumbent Federal entities. Specifically, the Commercial Spectrum Enhancement Act (CSEA) established a Spectrum Relocation Fund (SRF), to which the cash proceeds attributable to eligible frequencies in an auction of licenses involving such frequencies would be deposited.

6. On December 27, 2005, pursuant to CSEA, NTIA notified the Commission that there are no costs associated with relocating Federal operations from the 1432–1435 MHz band.

## II. Bureau Seeks Comment on Auction Procedures

7. Section 309(j)(3) of the Communications Act of 1934, as amended, requires the Commission to ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed before issuance of bidding rules, to permit notice and comment on proposed auction procedures. Consistent with the provisions of section 309(j)(3) and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction. The Bureau seeks comment on the following issues relating to Auction No. 69.

### A. Auction Structure

#### i. Simultaneous Multiple-Round Auction Design

8. The Bureau proposes to auction all licenses included in Auction No. 69 in a simultaneous multiple-round auction. This type of auction offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses. Typically, bidding remains open on all licenses until bidding stops on every license. The Bureau seeks comment on this proposal.

9. *Information Available to Bidders Before and During an Auction*. The Bureau also seeks comment on whether to implement procedures that would

limit the disclosure of information on bidder interests and identities relative to the information procedures that have typically been used for Commission auctions. Commenters should indicate what factors support the position they take on this issue. In particular, commenters should specifically address whether technological considerations or the likely level of competition in this auction weighs in favor of or against limiting the disclosure of information relative to most past Commission spectrum auctions.

10. *Package Bidding*. The Bureau has considered the possibility of using a simultaneous multiple-round with package bidding (SMR–PB) format for this auction, but is not inclined to believe that SMR–PB would be appropriate for the auction of these licenses. Under the Commission's package bidding rules, bidders can place bids on any groups of licenses they wish to win together, with the result that they win either all the licenses in a group or none of them. In the SMR–PB auction format, each bidder can have at most a single winning bid. Consequently, because bidders cannot win a group of licenses unless they have explicitly placed a bid on that exact combination, package bidding may be more complex for bidders if they wish to aggregate any or all of a number of licenses. However, we seek comment on this issue. If commenters believe that an SMR–PB design should be implemented for this auction, they should indicate what specific factors lead them to that conclusion.

#### ii. Round Structure

11. The Commission will conduct Auction No. 69 over the Internet. Alternatively, telephonic bidding will also be available via the Auction Bidder Line. The toll-free telephone number for telephonic bidding will be provided to qualified bidders.

12. The auction will consist of sequential bidding rounds. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction.

13. The Bureau proposes to retain the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. Under this proposal, the Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon bidding activity levels and other factors. The Bureau seeks comment on this proposal.

#### iii. Stopping Rule

14. The Bureau has discretion to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time. For Auction No. 69, the Bureau proposes to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all licenses remain available for bidding until bidding closes simultaneously on all licenses. More specifically, bidding will close simultaneously on all licenses after the first round in which no bidder submits any new bids, applies a proactive waiver, or submits a withdrawal. Thus, unless circumstances dictate otherwise, bidding will remain open on all licenses until bidding stops on every license.

15. Further, the Bureau proposes to retain the discretion to exercise any of the following options during Auction No. 69: (a) Use a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder applies a waiver, places a withdrawal, or submits any new bids on any license for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule; (b) Keep the auction open even if no bidder submits any new bids, applies a waiver, or submits a withdrawal. In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule, therefore, will apply as usual and a bidder with insufficient activity will either lose bidding eligibility or use a remaining waiver; and (c) Declare that the auction will end after a specified number of additional rounds (special stopping rule). If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) after which the auction will close.

16. The Bureau proposes to exercise these options only in certain circumstances, 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 these options, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day and/or changing the minimum acceptable bid percentage. The Bureau seeks comment on these proposals.

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

17. For Auction No. 69, the Commission 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 efficient 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. The Bureau emphasizes that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureau seeks comment on this proposal.

*B. Auction Procedures*

i. Upfront Payments and Bidding Eligibility

18. The Bureau has delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned. The upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on licenses. Upfront payments related to the licenses for specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. With these factors in mind, the Bureau proposes to calculate upfront payments on a license-by-license basis using a formula based on bandwidth and license area population:

$$\$0.005 * \text{MHz} * \text{License Area Population with a minimum of } \$1,000 \text{ per license.}$$

19. The Bureau further proposes that the amount of the upfront payment submitted by a bidder will determine the bidder's initial bidding eligibility in bidding units. The Bureau proposes that each license be assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 69 Comment Public Notice*, on a bidding unit per dollar basis. The number of bidding units for a given license is fixed and does not change during the auction as prices rise. A bidder's upfront payment is not

attributed to specific licenses. Rather, a bidder may place bids on any combination of licenses it selected on its FCC Form 175 as long as the total number of bidding units associated with those licenses does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount and hence its initial bidding eligibility, an applicant must determine the maximum number of bidding units it may wish to bid on (or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that total number of bidding units. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round.

20. The proposed number of bidding units for each license and associated upfront payment amounts are listed in Attachment A of the *Auction No. 69 Comment Public Notice*. The Bureau seeks comment on these proposals.

ii. Activity Rule

21. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. A bidder's activity in a round will be the sum of the bidding units associated with any licenses upon which it places bids during the current round and the bidding units associated with any licenses for which it holds provisionally winning bids. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place bids in the auction.

22. The Bureau proposes to divide the auction into two stages, each characterized by a different activity requirement. The auction will start in Stage One. The Bureau proposes that the auction generally will advance from Stage One to Stage Two when the auction activity level, as measured by the percentage of bidding units receiving new provisionally winning bids, is approximately 20 percent or below for three consecutive rounds of bidding. However, the Bureau further proposes that the Bureau retains the discretion to change stages unilaterally by announcement during the auction. In exercising this discretion, the Bureau will consider a variety of measures of

bidder activity, including, but not limited to, the auction activity level, the percentage of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage of increase in revenue. The Bureau seeks comment on these proposals.

23. For Auction No. 69, the Bureau proposes the following activity requirements: *Stage One*: In each round of the first stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on licenses representing at least 80 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by five-fourths (5/4). *Stage Two*: In each round of the second stage, a bidder desiring to maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage Two, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by twenty-nineteenths (20/19).

24. The Bureau seeks comment on this proposal. Commenters that believe this activity rule should be modified should explain their reasoning and comment on the desirability of an alternative approach. Commenters are advised to support their claims with analyses and suggested alternative activity rules.

iii. Activity Rule Waivers and Reducing Eligibility

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

26. The FCC Auction System assumes that a bidder that does not meet the activity requirement would prefer to apply an activity rule waiver (if available) rather than lose bidding

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

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

28. A bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity rule waiver (using the apply waiver function in the FCC Auction System) during a bidding round in which no bids or withdrawals are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC Auction System in a round in which there are no new bids, withdrawals or proactive waivers will not keep the auction open. A bidder cannot submit a proactive waiver after submitting a bid in a round, and submitting a proactive waiver will preclude a bidder from placing any bids in that round. Applying a waiver is irreversible; once a proactive waiver is submitted, that waiver cannot be unsubmitted, even if the round has not yet closed.

29. The Bureau proposes that each bidder in Auction No. 69 be provided with three activity rule waivers that may be used at the bidder's discretion during the course of the auction as set forth above. The Bureau seeks comment on this proposal.

#### iv. Reserve Price or Minimum Opening Bid

30. Section 309(j) calls upon the Commission to prescribe methods for establishing a reasonable reserve price

or a minimum opening bid amount when FCC licenses are subject to auction, unless the Commission determines that a reserve price or minimum opening bid amount is not in the public interest. Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of a minimum opening bid amount and/or reserve price prior to the start of each auction.

#### a. Reserve Price

31. In CSEA, Congress requires the Commission to prescribe methods by which the total cash proceeds from any auction of licenses authorizing use of eligible frequencies, such as 1432–1435 MHz, shall equal at least 110 percent of the total estimated relocation costs provided to the Commission pursuant to CSEA. For purposes of determining whether a CSEA revenue requirement has been met, the Commission has determined that total cash proceeds means winning bids net of any applicable bidding credit discounts at the end of bidding. CSEA also requires that the total cash proceeds attributable to eligible spectrum must be at least 110 percent of the total estimated relocation costs before the Commission may conclude the auction. If this condition is not met, CSEA requires that the Commission shall cancel the auction. On December 27, 2005, pursuant to CSEA, NTIA notified the Commission that there are no costs associated with relocating Federal operations from the 1432–1435 MHz band. The Bureau does not propose any reserve price to cover relocation cost under CSEA.

#### b. Minimum Opening Bid

32. In contrast to a reserve price, a minimum opening bid amount 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. The auctioneer, however, often has the discretion to lower the minimum opening bid amount during the course of the auction. It is also possible for the minimum opening bid amount and the reserve price to be the same amount.

33. In light of section 309(j)'s requirements, the Bureau proposes to establish minimum opening bid amounts for Auction No. 69. The Bureau believes a minimum opening bid amount, which has been used in other auctions, is an effective bidding tool for accelerating the competitive bidding process. The Bureau does not propose a separate reserve price for the licenses to be offered in Auction No. 69.

34. Specifically, for Auction No. 69, the Bureau proposes to calculate minimum opening bid amounts on a license-by-license basis using a formula based on bandwidth and license area population:

$$\begin{aligned} & \$0.005 * \text{MHz} * \text{License Area} \\ & \text{Population with a minimum of} \\ & \$1,000 \text{ per license.} \end{aligned}$$

This proposed minimum opening bid amount for each license available in Auction No. 69 is set forth in Attachment A of the *Auction No. 69 Comment Public Notice*. The Bureau seeks comment on this proposal.

35. If commenters believe that this minimum opening bid amount will result in unsold licenses, or is not a reasonable amount, or should instead operate as a reserve price, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid amount levels or formulas. In establishing minimum opening bid amounts, the Bureau particularly seeks comment on such factors as the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the service areas, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the 1.4 GHz Bands licenses being auctioned. The Bureau also seeks comment on whether, consistent with section 309(j), the public interest would be served by having no minimum opening bid amount or reserve price.

#### v. Bid Amounts

36. The Bureau proposes that, in each round, eligible bidders be able to place a bid on a given license in any of nine different amounts. Under this proposal, the FCC Auction System interface will list the nine acceptable bid amounts for each license.

37. The first of the nine acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a license will be equal to its minimum opening bid amount until there is a provisionally winning bid for the license. After there is a provisionally winning bid for a license, the minimum acceptable bid amount for that license will be equal to the amount of the provisionally winning bid plus a percentage of that bid amount calculated using the formula described below. In general, the percentage will be higher for a license receiving many bids than for a license receiving few bids. In

the case of a license for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the license.

38. The percentage of the provisionally winning bid used to establish the minimum acceptable bid amount (the additional percentage) is calculated at the end of each round, based on an activity index which is a weighted average of the number of bids in that round and the activity index from the prior round. Specifically, the activity index is equal to a weighting factor times the number of bids on the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The additional percentage is determined as one plus the activity index times a minimum percentage amount, with the result not to exceed a given maximum. The additional percentage is then multiplied by the provisionally winning bid amount to obtain the minimum acceptable bid for the next round. The Commission will initially set the weighting factor at 0.5, the minimum percentage at 0.1 (10%), and the maximum percentage at 0.2 (20%). Hence, at these initial settings, the minimum acceptable bid for a license will be between 10% and 20% higher than the provisionally winning bid, depending upon the bidding activity for the license.

39. The eight additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded. If, for example, the bid increment percentage is 5 percent, the calculation is (minimum acceptable bid amount) \* (1 + 0.05) rounded, or (minimum acceptable bid amount) \* 1.05, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) \* 1.1, rounded; the third additional acceptable bid amount equals the minimum acceptable bid amount times one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) \* 1.15, rounded; etc. The Bureau will round the results of these calculations, as well as the calculations to determine the minimum acceptable bid amounts, using our standard rounding procedures. For Auction No. 69, the Bureau proposes to use a bid increment percentage of 5 percent to calculate the eight additional acceptable bid amounts.

40. The Bureau retains the discretion to change the minimum acceptable bid amounts, the parameters of the formula to determine the percentage of the provisionally winning bid used to determine the minimum acceptable bid, and the bid increment percentage if it determines that circumstances so dictate. The Bureau will do so by announcement in the FCC Auction System during the auction. The Bureau seeks comment on these proposals.

#### vi. Provisionally Winning Bids

41. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round. At the end of a bidding round, a provisionally winning bid for each license will be determined based on the highest bid amount received for the license. In the event of identical high bid amounts being submitted on a license in a given round (*i.e.*, tied bids), the Bureau will use a random number generator to select a single provisionally winning bid from among the tied bids. The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid. If any bids are received on the license in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the license.

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

#### vii. Bid Removal and Bid Withdrawal

43. For Auction No. 69, the Bureau proposes the following bid removal procedures. Before the close of a bidding round, a bidder has the option of removing any bid placed in that round. By removing selected bids in the FCC Auction System, a bidder may effectively unsubmit any bid placed within that round. In contrast to the bid withdrawal provisions, 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.

44. A bidder may withdraw its provisionally winning bids using the withdraw bids function in the FCC Auction System. A bidder that withdraws its provisionally winning

bid(s) is subject to the bid withdrawal payment provisions of the Commission rules. The Bureau seeks comment on these bid removal and bid withdrawal procedures.

45. In the *Part 1 Third Report and Order*, 65 FR 13540, May 21, 1997, the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of backup strategies as information becomes available during the course of an auction. The Commission noted, however, that in some instances bidders may seek to withdraw bids for improper reasons. The Bureau, therefore, has discretion in managing the auction to limit the number of withdrawals to prevent any bidding abuses. The Commission stated that the Bureau should assertively exercise its discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if the Bureau finds that a bidder is abusing the Commission's bid withdrawal procedures.

46. Applying this reasoning, the Bureau proposes to limit each bidder to withdrawing provisionally winning bids in no more than two rounds during the course of the auction. To permit a bidder to withdraw bids in more than two rounds may encourage insincere bidding or the use of withdrawals for anti-competitive purposes. The two rounds in which withdrawals may be used will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's rules. There is no limit on the number of provisionally winning bids that may be withdrawn in either of the rounds in which withdrawals are used. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules.

#### C. Post-Auction Procedures

##### i. Establishing the Interim Withdrawal Payment Percentage

47. The Bureau seeks comment on the appropriate percentage of a withdrawn bid that should be assessed as an interim withdrawal payment, in the event that a final withdrawal payment cannot be determined at the close of the auction. In general, the Commission's rules provide that a bidder that withdraws a bid during an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or subsequent auction(s). However, if a license for which there has been a withdrawn bid is neither subject to a

subsequent higher bid nor won in the same auction, the final withdrawal payment cannot be calculated until a corresponding license is subject to a higher bid or won in a subsequent auction. When that final payment cannot yet be calculated, the bidder responsible for the withdrawn bid is assessed an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed. The Commission recently amended its rules to provide that in advance of the auction, the Commission shall establish the percentage of the withdrawn bid to be assessed as an interim bid withdrawal payment between three percent (3%) and twenty percent (20%).

48. When it adopted the new rule, the Commission indicated that the level of the interim withdrawal payment in a particular auction will be based on the nature of the service and the inventory of the licenses being offered. The Commission noted that it may impose a higher interim withdrawal payment percentage to deter the anti-competitive use of withdrawals when, for example, bidders likely will not need to aggregate licenses offered, such as when few licenses are offered that are not on adjacent frequencies or in adjacent areas, or there are few synergies to be captured by combining licenses.

49. With respect to an auction of the licenses in the 1.4 GHz Bands, the service rules permit a variety of fixed and mobile services, some of which may best be offered by combining licenses on adjacent frequencies or in adjacent areas. Balancing the potential need for bidders to use withdrawals to avoid incomplete combinations of licenses with our interest in deterring strategic withdrawals, the Bureau proposes a percentage below the maximum 20 percent (20%) permitted under the current rules but above the 3 percent (3%) previously provided by the Commission's rules. Specifically, the Bureau proposes to establish the percentage of the withdrawn bid to be assessed as an interim bid withdrawal payment at ten percent (10%) for the 1.4 GHz Bands auction. The Bureau seeks comment on this proposal.

#### ii. Establishing the Additional Default Payment Percentage

50. Any winning bidder that defaults or is disqualified after the close of an auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) is liable for a default payment under 47 CFR 1.2104(g)(2). This payment consists

of a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less. Until recently this additional payment for non-combinatorial auctions has been set at 3 percent of the defaulter's bid or of the subsequent winning bid, whichever is less.

51. The *CSEA/Part 1 Report and Order*, 71 FR 6214, February 7, 2006, modified section 1.2104(g)(2) by, *inter alia*, increasing the 3 percent limit on the additional default payment for non-combinatorial auctions to 20 percent. Under the modified rule, the Commission will, in advance of each non-combinatorial auction, establish an additional default payment for that auction of 3 percent up to a maximum of 20 percent. As the Commission has indicated, the level of this payment in each case will be based on the nature of the service and the inventory of the licenses being offered.

52. For Auction No. 69, the Bureau proposes to establish an additional default payment of 10 percent. As noted in the *CSEA/Part 1 Report and Order*, defaults weaken the integrity of the auctions process and impede the deployment of service to the public, and an additional default payment of more than the previous 3 percent will be more effective in deterring defaults. At the same time, the Bureau does not believe the detrimental effects of any defaults in Auction No. 69 are likely to be unusually great. Balancing these considerations, the Bureau proposes an additional default payment of 10 percent of the relevant bid. The Bureau seeks comment on this proposal.

### III. Conclusion

53. Comments are due on or before September 11, 2006, and reply comments are due on or before September 18, 2006. All filings related to the auction of 1.4 GHz Bands licenses should refer to AU Docket No. 06-104. Comments may be submitted using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. The Bureau strongly encourages interested parties to file comments electronically, and requests submission of a copy via the Auction No. 69 e-mail box ([auction69@fcc.gov](mailto:auction69@fcc.gov)).

54. This proceeding has been designated as a permit-but-disclose proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are

reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules.

Federal Communications Commission.

**William W. Huber,**

*Associate Chief, Auctions and Spectrum Access Division, WTB.*

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## FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC-06-68-A (Auction No. 68); DA 06-997; AU Docket No. 06-101]

### Auction of FM Broadcast Construction Permits Scheduled for January 10, 2007; Comments Sought on Competitive Bidding Procedures for Auction No. 68

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the auction of nine FM broadcast construction permits scheduled to commence on January 10, 2007 (Auction No. 68). This document also seeks comments on reserve prices or minimum opening bids and other procedures for Auction No. 68.

**DATES:** Comments are due on or before September 6, 2006 and reply comments are due on or before September 13, 2006.

**ADDRESSES:** Comments and reply comments must be identified by AU Docket No. 06-101; DA 06-997. The Bureaus request that a copy of all comments and reply comments be submitted electronically to the following address: [auction68@fcc.gov](mailto:auction68@fcc.gov). In addition, comment and reply comments may be submitted by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Federal Communications Commission's Web site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters,