

any final bid withdrawal payment that is ultimately assessed. The Commission's recently adopted rules provide that in advance of the auction, the Commission shall establish the percentage of the withdrawn bid to be assessed as an interim bid withdrawal payment between three percent and twenty percent.

42. 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 authorizations 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 permits offered, such as when few permits are offered that are not on adjacent frequencies or in adjacent areas, or there are few synergies to be captured by combining permits.

43. The Commission has observed that it may be appropriate to impose a higher interim withdrawal payment percentage to deter the anti-competitive use of withdrawals in auctions where it is much less likely that bidders will need to assemble complete sets of licenses. With respect to the permits being offered in Auction No. 70, the Bureaus have little evidence that bidders have a significant need to use withdrawals to avoid incomplete combinations of licenses. Citing experience with FM Auction No. 37, among others, the Commission has "observed a disproportionate number of withdrawals late in our auctions, indicating that some bidders have been placing and then withdrawing bids primarily to discourage potential or existing market competitors from seeking to acquire licenses." Consistent with its interest in deterring strategic withdrawals, the Bureaus propose to establish the percentage of the withdrawn bid to be assessed as an interim bid withdrawal payment at the maximum twenty percent permitted under the Commission's rules. The Bureaus seek comment on this proposal.

ii. Establishing the Additional Default Payment Percentage

44. 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 construction permit 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 most auctions has been set at three percent of the defaulter's bid or of the subsequent winning bid, whichever is less.

45. On January 24, 2006, the Commission released the *Commercial Spectrum Enhancement Act Report and Order (CSEA/Part 1 Report and Order)*, 71 FR 6214, February 7, 2006, in which it modified § 1.2104(g)(2) by increasing the three percent limit on the additional default payment for non-combinatorial auctions to twenty percent. Under the modified rule, the Commission will, in advance of each auction, establish an additional default payment for that auction of three percent up to a maximum of twenty percent. The level of this payment in each case will be based on the nature of the service and the inventory of the construction permits being offered.

46. For Auction No. 70, the Bureaus propose to establish additional default payment of twenty percent. As noted in the *CSEA/Part 1 Report and Order*, defaults weaken the integrity of the auctions process and may impede the deployment of service to the public, and an additional default payment of more than the previous three percent will be more effective in deterring defaults. In light of its proposal for the interim bid withdrawal payment amount as discussed above, the Bureaus are concerned that setting an additional default payment of less than the twenty percent maximum amount may encourage post-auction defaults, which further undermine the integrity of the auction process. In light of these considerations for Auction No. 70, the Bureaus propose an additional default payment of twenty percent of the relevant bid. The Bureaus seek comment on this proposal.

III. Conclusion

47. 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 47 CFR 1.1206(b).

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

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FEDERAL ELECTION COMMISSION

Sunshine Act Meeting Notice

PREVIOUSLY SCHEDULED DATE AND TIME:

Thursday, September 28, 2006, Meeting Open to the Public. This meeting was cancelled.

DATE AND TIME: *Tuesday, October 3, 2006 at 10 a.m.*

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: *Wednesday, October 4, 2006 at 10 a.m.*

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes. Advisory Opinion 2006-20: Unity 08 by counsel, John J. Duffy.

Advisory Opinion 2006-24: National Republican Senatorial Committee by General Counsel William J. McGinley; Democratic Senatorial Campaign Committee by counsel, Marc Elias; Republican State Committee of Pennsylvania by General Counsel Lawrence J. Tabas.

Report of the Audit Division on Daniel Mongiardo for U.S. Senate.

Management and Administrative Matters.

PERSON TO CONTACT FOR INFORMATION:

Mr. Robert Biersack, Press Officer.

Mary W. Dove,

Secretary of the Commission.

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