

As part of its EMS, Lucent has established facility-specific Local Environmental Advisory Groups (LEAGs) for all of its facilities globally. Each LEAG is composed of local stakeholders including environmental organizations, community groups, employees, and other interested citizens. The LEAGs provide input on the XL project and the EMS. The LEAGs unanimously approved the draft umbrella FPA.

DATES: The period for submission of comments ends on July 29, 1998.

ADDRESSES: All comments on the draft Final Project Agreement should be sent to: Rich Kampf, U.S. EPA, Region III, 841 Chestnut Street (3WP00), Philadelphia, PA 19107, or L. Nancy Birnbaum, U.S. EPA, 401 M Street, SW, Room 1025WT (1802), Washington, DC 20460. Comments may also be faxed to Mr. Kampf at (215) 566-2301 or Ms. Birnbaum at (202) 401-2474. Comments will also be received via electronic mail sent to: kampf.rich@epamail.epa.gov or birnbaum.nancy@epamail.epa.gov.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the proposed Final Project Agreement or Fact Sheet, contact: Rich Kampf, U.S. EPA, Region III, 841 Chestnut Street (3WP00), Philadelphia, PA 19107, or L. Nancy Birnbaum, U.S. EPA, 401 M Street, SW, Room 1025WT (1802), Washington, DC 20460. The documents are also available via the Internet at the following location: "<http://www.epa.gov/ProjectXL>". In addition, public files on the Project are located at EPA Region III in Philadelphia. Questions to EPA regarding the documents can be directed to Rich Kampf at (215) 566-2105 or L. Nancy Birnbaum at (202) 260-2601. To be included on the Lucent Project XL mailing list to receive information about future public meetings, XL progress reports and other mailings from Lucent on the XL Project, contact: Debra Hennelly, Lucent Technologies, Inc., 219 Mount Airy Road, Room 2F236, P.O. Box 612, Basking Ridge, NJ 07920-0612. Ms. Hennelly can also be reached by telephone at (908) 953-4960. For information on all other aspects of the XL Program contact Christopher Knopes at the following address: Office of Reinvention, United States Environmental Protection Agency, Room 1029, 401 M Street, SW (1802), Washington, DC 20460. Additional information on Project XL, including documents referenced in this notice, other EPA policy documents related to

Project XL, regional XL contacts, application information, and descriptions of existing XL projects and proposals, is available via the Internet at "<http://www.epa.gov/ProjectXL>" and via an automated fax-on-demand menu at (202) 260-8590.

Dated: June 23, 1998.

Lisa Lund,

Deputy Associate Administrator for Reinvention Programs, Office of Reinvention.

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BILLING CODE 6560-50-U

FEDERAL COMMUNICATIONS COMMISSION

[DA 98-1010; Report No. AUC-98-18-B (Auction No. 18)]

Auction of the Phase II 220 MHz Service Licenses; Scheduled for September 15, 1998—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 Phase II 220 MHz Service ("220 MHz Service") auction. On January 13, 1998, the Commission released a Public Notice, ("220 MHz Public Notice"), seeking comment on the establishment of reserve prices or minimum opening bids for the 220 MHz Service auction. In addition, the Commission also sought comment on a number of procedures to be used in the 220 MHz Service auction.

EFFECTIVE DATES: June 29, 1998.

FOR FURTHER INFORMATION CONTACT: Lisa Hartigan, Bob Reagle, or Frank Stilwell, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau at (202) 418-0660, Scott A. Mackoul, Commercial Wireless Division at (202) 418-7240, or Marty Liebman, Policy Division, Wireless Telecommunications Bureau at (202) 418-1310.

SUPPLEMENTARY INFORMATION: This is the summary of a Public Notice released May 29, 1998. The text of the public notice in its entirety, including attachments, is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC and also may be

purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS), 1231 20th Street, NW, Washington, DC 20036, (202) 857-3800. In addition, the text of the public notice in its entirety, including attachments, is available on the World Wide Web at <http://www.fcc.gov/wtb/auctions/220/220.html#PN>.

1. Introduction

1. The Federal Communications Commission ("FCC" or "Commission") will hold an auction for 908 licenses to operate in the 220-222 MHz band. These licenses encompass the United States, the Northern Mariana Islands, Guam, American Samoa, the United States Virgin Islands and Puerto Rico. Specifically, the licenses include: (1) five licenses in each of 172 geographic areas known as Economic Areas (EAs) and three EA-like areas; (2) five licenses in six Economic Area Groupings (EAGs); and (3) three Nationwide licenses which encompass the same territory as all of the EAGs combined (see Attachment A for a complete listing of licenses). The licenses include the following channels:

	Channels
(1) EA Block:	
A: Channel Groups 2, 13	10
B: Channel Groups 3, 16	10
C: Channel Groups 5, 18	10
D: Channel Groups 8, 19	10
E: Channel 171-180	10
(2) EAG Block:	
F: Channel Groups 1, 6, 11	15
G: Channel Groups 4, 9, 14	15
H: Channel Groups 7, 12, 17	15
I: Channel Groups 10, 15, 20	15
J: Channel 186-200	15
(3) Nationwide Block:	
K: Channels 51-60	10
L: Channels 81-90	10
M: Channels 141-150	10

Auction Date: The auction will commence on September 15, 1998. 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 will be conducted on each business day until bidding has stopped on all licenses.

Auction Title: The Phase II 220 MHz Service—Auction No. 18.

Bidding Methodology: Simultaneous multiple round bidding. Bidding will be permitted only from remote locations, either electronically (by computer) or telephonically.

Pre-Auction Deadline

- Auction Seminar
- Short Form Application (FCC Form 175)

August 6, 1998.

August 17, 1998; 5:30 p.m. ET.

- Upfront Payments (via wire transfer)
- Orders for Remote Bidding Software
- Mock Auction

August 31, 1998; 6:00 p.m. ET.
September 1, 1998; 5:30 p.m. ET.
September 11, 1998 (time TBA).

Telephone Contacts

- FCC National Call Center
- FCC Technical Support Hotline

(888) CALL-FCC ((888) 225-5322) (For Bidder Information Packages, General Auction, Information, and Seminar Registration, press option #2 at the prompt). Hours of service: 8 a.m.-5:30 p.m. ET.
(202) 414-1250 (V), (202) 414-1255 (TTY). Hours of service: 8 a.m.-6 p.m. ET, Monday-Friday; 9 a.m.-5 p.m. ET, weekend of August 15-16, 1998.

List of Attachments

- Attachment A
Summary of Phase II 220 Mhz
Licenses to be Auctioned
- Attachment B
List of Cases Pending before the
Commission Involving Non-
Nationwide Phase I 220 MHz
Licensees
- Attachment C
Guidelines for Completion of FCC
Forms 175 and 159, and Exhibits
- Attachment D
Electronic Filing and Review of FCC
Form 175
- Attachment E
Summary Listing of Documents from
the Commission and the Wireless
Telecommunications Bureau
Addressing Application of the Anti-
Collusion Rules
- Attachment F
List of Commenters

I. Background

2. In March 1997, the Commission restructured the licensing framework that governs the 220 MHz Service. Site-specific licensing, used in the Phase I 220 MHz Service, is to be replaced with a geographic-based system in the Phase II 220 MHz Service which is the subject of the upcoming auction. This geographic-based licensing methodology is similar to that used in other commercial mobile radio services ("CMRS"). The geographic areas for the licenses were created based upon Economic Areas (EAs), developed by the Bureau of Economic Analysis of the U.S. Department of Commerce. The Economic Area Groupings (EAGs), developed by the Commission, include groupings of EAs and encompass the sum total of all EAs. Three Nationwide licenses, including all of the EAGs, are also to be offered in the Phase II 220 MHz Service auction. Service and operational requirements for the Phase II 220 MHz Service are contained in Part 90 of the Commission's Rules, 47 CFR Part 90.

3. On May 21, 1998, the Commission released a *Memorandum Opinion and*

Order on Reconsideration in PR Docket No. 89-552, 63 FR 32579; June 12, 1998. Among other things the Commission removed the spectrum efficiency standard that applied to equipment operating in the 220-222 MHz band, eliminated installment payments for small business and very small businesses, and increased bidding credits for such entities.

II. Due Diligence

4. Potential bidders are reminded that there are a number of incumbent Phase I 220 MHz licensees already licensed and operating on frequencies that will be subject to the upcoming auction. Such incumbents must be protected from harmful interference by Phase II 220 MHz licensees in accordance with the Commission's Rules. See 47 CFR 90.763. These limitations may restrict the ability of such geographic area licensees to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license areas.

5. In addition, potential bidders seeking licenses for geographic areas that are near the Canadian border should be aware that the use of some or all of the channels they acquire in the auction could be restricted as a result of a future agreement with Canada on the use of 220-222 MHz spectrum in the border area.

6. Potential bidders should also be aware that certain applications (including those for modification), waiver requests, petitions for reconsideration and applications for review are pending before the Commission that relate to particular incumbent non-nationwide 220 MHz licensees. The Commission notes that resolution of these matters could have an impact on the availability of spectrum for EA and EAG licensees. In addition, while the Commission will continue to act on pending applications, requests and petitions, some of these matters may not be resolved by the time of the auction.

III. Potential Bidders Are Solely Responsible for Investigating and Evaluating the Degree to Which Such Pending Matters May Affect Spectrum Availability in Areas Where They Seek EA or EAG Licenses

7. To aid potential bidders, Attachment B to this Public Notice lists pending matters of which the Commission is aware that relate to licenses or applications for the 220 MHz service. The Commission makes no representations or guarantees that the listed matters are the only pending matters that could affect spectrum availability in the 220-222 MHz band. Parties may submit additions or corrections to the list, provided such additions or corrections are filed with the Commission within ten (10) business days from release of this Public Notice. Such submissions should be limited to identifying pleadings or papers previously filed with the Commission. No new pleadings or arguments on the merits will be accepted as explicitly provided by Commission Rules.

8. Corrections and additions must be filed with the Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554. One copy of each submission should also be sent to International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, while an additional courtesy copy may be sent to Scott A. Mackoul, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, 2100 M Street, NW., 7th Floor, Washington, DC 20554. Parties filing additions or corrections should include the internal reference number (DA 98-1010) on their submissions. Parties also are reminded that some of the proceedings are restricted proceedings governed by the Commission's ex parte rules. Accordingly, any submission filed pursuant to this Public Notice that is directed to the merits or outcome of any restricted proceeding must be served on

all parties to that restricted proceeding. See generally 47 CFR 1.1200–1.1216.

9. Additional information regarding matters identified in Attachment B is available to the public. Licensing information is contained in the Commission's licensing database, which is available for inspection in the Wireless Telecommunications Bureau's Public Reference Rooms, located at 2025 M Street, NW., Room 5608, Washington, DC 20554, and 1270 Fairfield Road, Gettysburg, PA 17325. In addition, copies of the pleadings are available for public inspection only in the Gettysburg Public Reference Room.

10. In addition, potential bidders may search for information (but not the pleadings) regarding incumbent 220 MHz licensees on the World Wide Web at <http://www.fcc.gov/wtb>. In particular, information can be accessed by downloading databases by selecting "WTB Database Files" (<http://www.fcc.gov/wtb/databases.html>), or searching on-line by selecting "Search WTB Databases" (<http://gulfoss.fcc.gov:8080/cgi-bin/ws.exe/beta/genmen/index.htm>). Any telephone inquiries regarding these matters should be directed to the Technical Support Hotline at (202) 414–1250 (V) or (202) 414–1255 (TTY).

IV. 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 Database. Potential Bidders Are Strongly Encouraged to Physically Inspect any Sites Located in or Near the Geographic Area for Which They Plan to Bid

11. *Participation:* Those wishing to participate in the auction must:

- Submit a short form application (FCC Form 175) by the above-listed deadline.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by the above-listed deadline.
- Comply with all provisions outlined in this Public Notice.

12. *Prohibition of Collusion:* 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. In the 220 MHz Service auction, for example, the rule would apply to an applicant bidding for an EAG and an applicant

bidding for an EA within that EAG. Applicants that apply to bid for "all markets" or a nationwide license would be precluded from communicating with all other applicants. An exception is where applicants enter into a bidding agreement before filing their short-form applications, and disclose the existence of the agreement in their short-form applications. See 47 CFR 1.2105(c). The Commission notes that Section 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, Section 1.65 requires an auction applicant to bring to the Commission's attention any communication not permissible under the applicant's certification of compliance with § 1.2105(c). Finally, bidders are reminded that they have a duty 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.

13. *Bidder Information Package:* More complete details about this auction are contained in a Bidder Information Package. The Commission will provide one copy to each company free of charge. Additional copies may be ordered at a cost of \$16.00 each, including postage, payable by Visa or Master Card, or by check payable to "Federal Communications Commission" or "FCC." To place an order, contact the FCC National Call Center at (888) CALL-FCC (888) 225–5322, press option #2 at the prompt). Prospective bidders that have already contacted the FCC at this number expressing an interest in this auction will receive a Bidder Information Package in approximately three weeks, and need not call again unless they wish to order additional copies.

14. *Relevant Authority:* Prospective bidders must familiarize themselves thoroughly with the Commission's Rules relating to the Phase II 220 MHz Service, contained in Title 47, Part 90 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.

15. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, "Terms") contained in Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service, PR

Docket No. 89–552, RM–8506, GN Docket No. 93–252, PP Docket No. 93–253, *Third Report and Order and Fifth Notice of Proposed Rulemaking*, 12 FCC Rcd 10943 (1997), 62 FR 15978 (April 3, 1997) ("220 MHz Third Report and Order"). The Commission resolved petitions for reconsideration of the 220 MHz *Third Report and Order* in Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PR Docket No. 89–552, GN Docket No. 93–252, PP Docket No. 93–253, FCC 98–93, *Memorandum Opinion and Order on Reconsideration* (rel. May 21, 1998), 63 FR 32580 (June 12, 1998) ("220 MHz MO&O").

16. For general background on the Phase I 220 MHz Service, see, among other materials: Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Services, PR Docket No. 89–552, *Report and Order*, 6 FCC Rcd 2356 (1991), 56 FR 19598 (April 29, 1991); Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Services, PR Docket No. 80–552, *Memorandum Opinion and Order*, 7 FCC Rcd 4484 (1992), 57 FR 32448 (July 22, 1992).

17. For further information about the 220 MHz Service, see Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service, PR Docket No. 89–552, GN Docket No. 93–252, *Second Report and Order*, 11 FCC Rcd 3668 (1996), 61 FR 3841 (Feb. 2, 1996) ("220 MHz Second Report and Order"); Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service, PR Docket No. 89–552, *Fourth Report and Order*, 12 FCC Rcd 13453 (1997), 62 FR 46211 (Sept. 2, 1997).

18. The Terms contained in the Commission's Rules, relevant orders, public notices and bidder information package are not negotiable. Potential bidders are reminded that the 220 MHz MO&O, released May 21, 1998, which resolved petitions for reconsideration filed in response to the 220 MHz *Second Report and Order* and the 220 MHz *Third Report and Order* altered some of the decisions and rules adopted in those orders. In addition, the decisions reached in the 220 MHz proceeding are

the subject of a judicial appeal and may be the subject of additional reconsideration or appeal. *See, e.g., PLMRS Narrowband Corp., et al. v. Federal Communications Commission*, No. 92-1432, *et al.* (D.C. Cir., filed September 18, 1992).

19. The Commission may amend or supplement the information contained in its public notices or the bidder information package 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 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., at (202) 857-3800.

20. **Bidder Alerts:** 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.

V. 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

21. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use the Phase II 220 MHz Service auction 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.

22. 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 Phase II 220 MHz Service proposals may also call the FCC National Call Center at (888) CALL-FCC ((888) 225-5322).

2. Bidder Eligibility and Small Business Provisions

A. General Eligibility Criteria

23. As described above, this auction offers: (1) Five licenses in each of 172 geographic areas known as Economic Areas (EAs) and three EA-like areas; (2) five licenses in six Economic Area Groupings (EAGs); and (3) three Nationwide licenses which encompass the same territory as all of the EAGs combined (*see* Attachment A for a complete listing of licenses).

(1) Determination of Revenues

24. For purposes of determining which entities qualify as very small businesses or small businesses, the Commission will attribute to the applicant the gross revenues of all of its controlling principals and affiliates. For purposes of this auction, the Commission will not impose specific

equity requirements on controlling principals. However, in order to qualify as a very small business or small business, an applicant's qualifying principals must maintain control of the applicant. The term "control" includes both *de facto* and *de jure* control of the applicant. Typically, *de jure* control is evidenced by ownership of at least 50.1 percent of an entity's voting stock. *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.

(2) Application Showing

25. Applicants should note that they will be required to file supporting documentation to establish that they satisfy the eligibility requirements to qualify as a very small business or small business for this auction. *See* 47 CFR 90.1009 and 1.2105.

B. Bidding Credits

26. Qualifying Phase II 220 MHz applicants are eligible for bidding credits. The size of a Phase II 220 MHz bidding credit depends on the annual gross revenues of the bidder and its controlling principals and affiliates, as averaged over the preceding three years:

- A bidder with gross annual revenues of not more than \$15 million receives a 25 percent discount on its winning bids for Phase II 220 MHz Service licenses; and,
- A bidder with gross annual revenues of not more than \$3 million receives a 35 percent discount on its winning bids for Phase II 220 MHz Service licenses.

27. Bidding credits are not cumulative: applicants that qualify receive either the 25 percent or the 35 percent bidding credit, but not both. The definitions of very small business and small business (including calculation of gross annual revenue) are set forth in 47 CFR 90.1021(b).

28. Phase II 220 MHz Service bidders 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 levels of bidding credits. *See* 47 CFR 90.1017(b). Finally, Phase II 220 MHz Service bidders should also note that there are no

installment payment plans in the 220 MHz Service auction.

3. Pre-Auction Procedures

A Short-form Application (FCC Form 175)—Due August 17, 1998

29. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be received at the Commission by 5:30 p.m. ET on August 17, 1998. Late applications will not be accepted.

30. There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment. See 3.C. *infra*.

(1) Filing Options

31. Auction applicants are strongly encouraged to file their applications electronically in order to take full advantage of the greater efficiencies and convenience of electronic filing, bidding and access to bidding data. For example, electronic filing enables the applicant to: (a) receive interactive feedback while completing the application; and (b) receive immediate acknowledgement that the FCC Form 175 has been submitted for filing. In addition, only those applicants that file electronically will have the option of bidding electronically. However, manual filing (via hard copy) is also permitted. Please note that manual filers will not be permitted to bid electronically and must bid telephonically, unless the FCC Form 175 is amended electronically prior to the resubmission date for incomplete or deficient applications. Applicants that file electronically may make amendments to their applications until the filing deadline. The following is a brief description of each filing method.

(a) Electronic Filing

32. Applicants wishing to file electronically may generally do so on a 24-hour basis beginning July 20, 1998. The window for filing the FCC Form 175 electronically will remain open until 5:30 p.m. ET on August 17, 1998. Information about installing and running the FCC Form 175 application software is included in Attachment D to this Public Notice. Technical support is available at (202) 414-1250 (V) or (202) 414-1255 (TTY); the hours of service are 8 a.m.-6 p.m. ET, Monday-Friday, and 9 a.m.-5 p.m. ET, the weekend of August 15-16.

(b) Manual Filing

33. Auction applicants will be permitted to file their FCC Form 175 applications in hard copy. When any manually filed FCC Form 175 and 175-S

exceeds five pages in length, the FCC additionally requires that all attachments be submitted on a 3.5-inch diskette, or the entire application be filed in a microfiche version. Manual filers must use the May 1998 version of FCC Form 175 and the October 1995 edition of the 175-S (if applicable). Earlier versions of the FCC Form 175 will not be accepted for filing. Copies of FCC Forms 175 and 175-S can be obtained by calling (202) 418-FORM.

34. Manual applications may be submitted by hand delivery (including private "overnight" courier) or by U.S. mail (certified mail with return receipt recommended), addressed to: FCC Form 175 Filing, Auction No. 18, Federal Communications Commission, Wireless Telecommunications Bureau, Auctions & Industry Analysis Division, 1270 Fairfield Road, Gettysburg, PA 17325-7245.

Note: Manual applications delivered to any other location will not be accepted.

(2) Completion of the FCC Form 175

35. Applicants should carefully review 47 CFR 90.1009 and 1.2105, and must complete all items on the FCC Form 175 (and Form 175-S, if applicable). Instructions for completing the FCC Form 175 are in Attachment C of this Public Notice.

36. Failure to sign a manually filed FCC Form 175 (for both electronic and manual filers) will result in dismissal of the application and loss of the ability to participate in the auction. Only original signatures will be accepted for manually filed applications.

(3) Electronic Review of FCC Form 175

37. The FCC Form 175 review software may be used to review and print applicants' FCC Form 175 applications. In other words, applicants that file electronically may review their own completed FCC Form 175. Applicants also have access to 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. There is a fee of \$2.30 per minute for accessing the system. See Attachment D for details.

B. Application Processing and Minor Corrections

38. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (1) those applications accepted for filing (including FCC account numbers and the licenses for which they applied); (2)

those applications rejected; and (3) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

39. As described more fully in the Commission's Rules, after the August 17, 1998, short form filing deadline, applicants may make only minor corrections to the 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). See 47 CFR 90.1009 and 1.2105.

C. Upfront Payments—Due August 31, 1998

40. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). Manual filers must use the July 1997 version of FCC Form 159. Earlier versions of this form will not be accepted. All upfront payments must be received at Mellon Bank in Pittsburgh, PA, by 6:00 p.m. ET on August 31, 1998.

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. 18 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 August 31, 1998 deadline will result in dismissal of the application and disqualification from participation in the auction.

(1) Making Auction Payments by Wire Transfers

41. Wire transfer payments must be received by 6:00 p.m. ET on August 31, 1998. 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 910-0171.

OBI Field: (Skip one space between

each information item)

"Auctionpay".

Taxpayer Identification No.: (Same as FCC Form 159, block 26).

Payment Type Code: (Enter "A22U").

FCC Code: 1 (Same as FCC Form 159, block 23A: "18").

Payer Name: (Same as FCC Form 159, block 2).

Lockbox No.: 358430.

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.

42. 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. 18." Bidders may confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

(2) FCC Form 159

43. Each upfront payment must be accompanied by a completed FCC Remittance Advice Form (FCC Form 159). 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 C to this Public Notice and will also be included in the Bidder Information Package.

(3) Amount of Upfront Payment

44. In the *220 MHz Third Report and Order*, the Commission delegated to the Bureau the authority and discretion to determine an appropriate upfront payment for each license being auctioned. 62 FR at 15981. In the *220 MHz Public Notice*, (63 FR 2976, January 20, 1998) the Commission proposed for the Phase II 220 MHz Service auction an upfront payment of one cent per MHz/POP with no amount less than \$2,500. 63 FR at 2978.

45. For the Phase II 220 MHz Service auction the Commission will adopt its proposal of one cent per MHz/POP with no amount less than \$2,500. This upfront payment amount, based upon the data in Attachment A, will be the amount required to bid on a particular license(s) in Auction No. 18. The Commission believes that this is the appropriate upfront payment formula, considering such factors as the population in each geographic license area, and the value of spectrum similar to that being offered in the 220 MHz Service. The Commission notes that this upfront payment amount is lower than that used in many previous auctions—e.g., the PCS spectrum auctions—but believes a reduction is appropriate, for the reasons expressed by a commenter, namely, the size of the likely

participants in the 220 MHz Service auction.

46. The upfront payments are not attributed to specific licenses, but instead will be translated to bidding units to define the bidder's maximum bidding eligibility. For Auction No. 18, the total number of bidding units assigned to each bidder is equal to the amount of the upfront payment, e.g., a \$25,000 upfront payment provides the bidder with 25,000 bidding units. The total upfront payment defines the maximum amount 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 for which the applicant has applied, but rather to cover the maximum number of bidding units associated with licenses the bidder wishes to place bids on and hold high bids on at any given time. In order to be able to place a bid on a license, in addition to having specified that license on 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 FCC Form 175, or else the applicant will not be eligible to participate in the auction.

47. In calculating the 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.

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.

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

48. Because experience with prior auctions has shown that in most cases wire transfers provide quicker and more efficient refunds than paper checks, the Commission will use wire transfers for all Auction No. 18 refunds. To avoid delays in processing refunds, applicants should include wire transfer instructions with any refund request they file; they may also provide this information in advance by faxing it to the FCC Billings and Collections Branch, ATTN: Linwood Jenkins or Geoffrey Idika, at (202) 418-2843. Please include the following information:

Name of Bank
ABA Number
Account Number to Credit
Correspondent Bank (if applicable)

ABA Number
Account Number
Contact and Phone 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 5.D., *infra*.

D. Auction Registration

49. 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 that have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

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

51. 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 Thursday, September 10, 1998 should contact the FCC National Call Center at (888) CALL-FCC ((888) 225-5322, press option #2 at the prompt). 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.

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 2 Massachusetts Avenue, NE., Washington, DC 20002. Only an authorized representative or certifying official, as designated on an 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.

E. Remote Electronic Bidding Software

52. Qualified bidders that file or amend the FCC Form 175 electronically are allowed to bid electronically, but must purchase remote electronic bidding software for \$175.00 by September 1, 1998. (Auction software is tailored to a specific auction, so software from prior auctions will not

work for Auction No. 18.) A software order form is included in the Bidder Information Package.

F. Auction Seminar

53. On August 6, 1998, the FCC will sponsor a seminar for the Phase II 220 MHz Service auction in Washington, DC. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC remote bidding software, and the 220 MHz Service and auction rules.

54. To register, complete the registration form to be included in the upcoming Phase II 220 MHz Service auction Bidder Information Package. The registration form will include details about the time and location of the seminar. Registrations are accepted on a first-come, first-served basis.

G. Mock Auction

55. All applicants whose FCC Form 175 and 175-S have been accepted for filing will be eligible to participate in a mock auction beginning September 11, 1998. 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. Due to different bidding procedures in the Phase II 220 MHz Service auction from previous Commission auctions, participation by all bidders is strongly recommended. Details will be announced by public notice.

4. Auction Event

56. The first round of the auction will begin on September 15, 1998. The initial round schedule will be announced in a Public Notice listing the qualified bidders, to be released approximately 10 days before the start of the auction.

A. Auction Structure

(1) Simultaneous Multiple Round Auction

57. The Commission adopts its proposal, in the *220 MHz Public Notice*, to award the 908 licenses in the Phase II 220 MHz Service in a single, simultaneous multiple round auction. 63 FR at 2977. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction. This approach, the Commission believes, is most administratively efficient. In addition, the Commission believes that the Phase II 220 MHz licenses are interdependent and bidders may prefer to substitute different types of licenses during the same auction.

(2) Maximum Eligibility and Activity Rules

58. In the *220 MHz Public Notice*, the Commission 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. For the Phase II 220 MHz Service auction the Commission 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. 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. The Commission notes that there is no provision for increasing a bidder's maximum eligibility during the course of an auction.

59. 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.

60. 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 4.B.(3), *infra*). A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. The minimum required activity level is expressed as a percentage of the bidder's maximum bidding eligibility, and increases 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 4.A.(4) and "Stage Transitions" in Part 4.A.(5), *infra*, the Commission adopts them for the 220 MHz Service auction.

(3) Activity Rule Waivers and Reducing Eligibility

61. In the *220 MHz Public Notice*, the Commission 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.

62. Based upon the Commission's experience in previous auctions, the Commission concludes that each bidder

will 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.

63. 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 round where a bidder's activity level is below the minimum required unless: (1) there are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

64. 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 States," Part 4.A.(4). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

65. 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.

(4) Auction Stages

66. In the *220 MHz Public Notice*, the Commission proposed to conduct the auction in stages and employ an activity rule. The Commission concludes that the auction will be composed of three stages, which are each defined by an increasing activity rule. Below are the proposed activity levels for each stage of the auction. The FCC reserves the discretion to alter the activity percentages before and/or during the auction.

67. *Stage One:* In each round of the first stage of the auction, a bidder desiring to maintain its current

eligibility is required to be active on licenses encompassing at least 80 percent of its current bidding eligibility. Failure to maintain the requisite 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 current round activity by five-fourths ($\frac{5}{4}$).

68. *Stage Two*: In each round of the second stage, a bidder desiring to maintain its current eligibility is required to be active on 90 percent of its current bidding eligibility. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the current round activity by ten-ninths ($\frac{10}{9}$).

69. *Stage Three*: In each round of the third stage, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. In this final stage, reduced eligibility for the next round will be calculated by multiplying the current round activity by fifty-fortyninths ($\frac{50}{49}$).

Caution: Since activity requirements increase in each auction stage, bidders must carefully check their current activity during the bidding round 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 reverify 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.

70. Because the foregoing procedures have proven successful in maintaining proper tempo in previous auctions, the Commission will adopt them for the Phase II 220 MHz Service auction.

(5) Stage Transitions

71. In the *220 MHz Public Notice*, the Commission proposed that the auction would 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).

72. The Commission concludes that the auction will start in Stage One. Under the FCC's general guidelines it 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. The Commission believes that these stage transition rules, having proven successful in prior auctions, are appropriate for use in the Phase II 220 MHz Service auction.

(6) Auction Stopping Rules

73. In the *220 MHz Public Notice*, the Commission proposed to retain the discretion to keep the auction open, even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn. In addition, the Commission proposed that the Bureau reserve the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule").

74. Barring extraordinary circumstances, bidding will remain open on all licenses until bidding stops on every license. Thus, 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.

75. The Bureau retains the discretion, however, to keep an auction open even if no new acceptable bids or proactive waivers are submitted, and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder has 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).

76. Further, in its discretion, the Bureau reserves the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the FCC 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 FCC intends to exercise this option only in extreme 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 FCC 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.

77. Adoption of these rules, the Commission believes, is most appropriate for the Phase II 220 MHz auction because our experience in prior auctions demonstrates that the simultaneous stopping rule balanced 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 use of a simultaneous stopping rule.

(7) Auction Delay, Suspension, or Cancellation

78. In the *220 MHz Public Notice*, the Commission proposed that, by police 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.

79. Because this approach has proven effective in resolving exigent circumstances in previous auctions, the Commission will adopt our proposed auction cancellation rules. By public notice or by announcement during the action, 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. The Commission 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.

B. Bidding Procedures

(1) Round Structure

80. The initial bidding schedule will be announced by public notice at least one week before the start of the auction, and will be included in the registration mailings. The round structure for each bidding round contains a single bidding round followed by the release of the round results.

81. 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.

(2) Reserve Price or Minimum Opening Bid

82. 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 with 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 has directed the Wireless Telecommunications Bureau ("Bureau") to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. The Bureau was directed to seek comment on the methodology to be employed in establishing each of these mechanisms. Among other factors, the Bureau should 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 inference 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.

83. In the *220 MHz Public Notice*, the Bureau proposed to establish minimum opening bids for the 220 MHz Service auction and to retain discretion to lower the minimum opening bids. Specifically, the Bureau proposed the following formula for calculating minimum opening bids for Auction 18:

1. EA Licenses
\$0.0175 MHz * POP
2. EAG Licenses

\$0.015 MHz * POP

3. Nationwide Licenses

\$0.02 MHz * POP

with a minimum of no less than \$2,500 per license. In the alternative, the Bureau sought comment on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

84. The Commission adopts minimum opening bids for each of the licenses in the Phase II 220 MHz Service auction that are reducible at the discretion of the Bureau. The levels will be set as follows:

1. EA Licenses
\$0.015 MHz * POP
2. EAG License
\$0.0125 MHz * POP
3. Nationwide Licenses
\$0.0175 MHz * POP

with a minimum of no less than \$2,500 per license.

85. As was the case in prescribing minimum opening bids in the auction of the upper channels in the 800 MHz SMR service and the LMDS auctions, Congress has enacted a presumption that unless the Commission determines otherwise, minimum opening bids or reserve prices are in the public interest. The Bureau is unpersuaded by commenters' assertions that minimum opening bids for the Phase II 220 MHz Service auction are not in the public interest. Setting the level of the minimum opening bids is a difficult task, especially in the case of the Phase II 220 MHz Service where the channels are narrow, encumbered and the potential uses of the band remain to be explored. To address this concern, the minimum opening bids adopted here are reducible. This will allow the Bureau flexibility to adjust the minimum opening bids if circumstances warrant. The Commission emphasizes, however, that such discretion will be exercised sparingly and early in the auction, *ie.*, before bidders lose all waivers and begin to lose eligibility. During the course of the auction, the Bureau will not entertain any bidder requests to reduce the minimum opening bids on specific licenses.

86. The Commission concludes that the revised formula presented here best meets the objectives of our auction authority in establishing a reasonable minimum opening bid. The Commission has noted in the past that the reserve price and minimum opening bid provision is not a requirement to maximize auction revenue but rather a protection against assigning licenses at unacceptably low prices and that the Commission must balance the revenue

raising objective against its other public interest objectives in setting the minimum bid level. In doing so, the Commission agree with commenters that the 220 MHz channels are narrow and the likely auction participants will be small business entrepreneurs. In addition, the Commission recognizes that the EAG licenses are more substantially encumbered than are the other license types. The Commission has adjusted its minimum opening bids accordingly. In sum, the Commission's experience in using minimum opening bids in the 800 MHz SMR auction and the LMDS auction supports the fact that minimum opening bids promote efficient allocation of licenses and speed the course of the auction while ensuring that valuable assets are not sold for nominal prices.

(3) Minimum Accepted Bids

87. In the *220 MHz Public Notice*, the Commission proposed to use an exponential smoothing methodology to calculate minimum bid increments. The Commission further proposed to retain the discretion to change the minimum bid increment if circumstances so dictate.

88. Because these techniques have proven effective in prior auctions, the Commission adopts its proposal for the 220 MHz Service auction. 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 the Phase II 220 MHz Service auction, the Commission will utilize, as described immediately below, an exponential smoothing methodology to calculate minimum bid increments. The Bureau retains the discretion to change the minimum bid increment if it determines that circumstances so dictate. The exponential smoothing methodology has been used in previous auctions, including the WCS auction and the 800 MHz SMR auction.

Exponential Smoothing

89. The exponential smoothing formula calculates the bid increment for each license based on a weighted average of the activity received on each license in the current and all previous rounds. This methodology will tailor the bid increment for each license based on activity, rather than setting a global increment for all licenses. For every license that receives a bid, the bid increment for the next round for that license will be established using the exponential smoothing formula.

90. Using exponential smoothing, the calculation of the percentage bid increment for each license will be based

on an activity index, which is calculated as the weighted average of the current activity and the activity index from the previous round. The activity index at the start of the auction (round 0) will be set at 0. The current activity index is equal to a weighing factor times the number of new bids received on the license in the current bidding round plus one minus the weighting factor times the activity index from the previous round. The activity index is then used to calculate a percentage increment by multiplying a minimum percentage increment by one plus the activity index with that result being subject to a maximum percentage increment. The Commission will initially set the weighting factor at 0.5, the minimum percentage increment at 0.05, and the maximum percentage increment at 0.15.

Equations

$$A_i = (C * B_i) + ((1 - C) * A_{i-1})$$

$$I_i = \text{smaller of } (1 + A_i) * N \text{ and } M$$

Where:

A_i = activity index for the current round (round i)

C = activity weight factor

B_i = number of bids in the current round (round i)

A_{i-1} = activity index from previous round (round $i - 1$), A_0 is 0

I_i = percentage bid increment for the current round (round i)

N = minimum percentage increment

M = maximum percentage increment

Under the exponential smoothing methodology, once a bid has been received on a license, the minimum acceptable bid for that license in the following round will be the new high bid plus the dollar amount associated with the percentage increment (variable I_i from above times the high bid). This result will be rounded to the nearest thousand if it is over ten thousand or to the nearest hundred if it is under ten thousand.

Examples

License 1

$C=0.5$, $N=0.05$, $M=0.15$

Round 1 (2 new bids, high bid = \$1,000,000)

1. Calculation of percentage increment using exponential smoothing:

$$A_1 = (0.5 * 2) + (0.5 * 0) = 1$$

$$I_1 = (1 + 1) * 0.05 = 0.1$$

2. Minimum bid increment using the percentage increment (I_1 from above)

$$0.1 * \$1,000,000 = \$100,000$$

3. Minimum acceptable bid for round 2 = \$1,100,000

Round 2 (3 new bids, high bid = \$2,000,000)

1. Calculation of percentage increment using exponential smoothing:

$$A_2 = (0.5 * 3) + (0.5 * 1) = 2$$

$$I_2 = (1 + 2) * 0.05 = 0.15$$

2. Minimum bid increment using the percentage increment (I_2 from above)

$$0.15 * \$2,000,000 = \$300,000$$

3. Minimum acceptable bid for round 3 = \$2,300,000

Round 3 (1 new bid, high bid = \$2,300,000)

1. Calculation of percentage increment using exponential smoothing:

$$A_3 = (0.5 * 1) + (0.5 * 2) = 1.5$$

$$I_3 = (1 + 1.5) * 0.05 + 0.125$$

2. Minimum bid increment using the percentage increment (I_3 from above)

$$0.125 * \$2,300,000 = \$287,500$$

3. Minimum acceptable bid for round 4 = \$2,588,000

(4) High Bids

91. Each bid will be date- and time-stamped when it is entered into the computer system. In the event of tie bids, the Commission will identify the high bidder on the basis of the order in which bids are received by the Commission, starting with the earliest bid. 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-stamped than bids submitted later in a round.

(5) Bidding

92. During a bidding round, a bidder may submit bids for as many licenses for which it is eligible, 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, and will not have a separate period to withdraw bids. 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-stamped of that bid reflect the latest time the bid was submitted.

93. Please note that all bidding will take place either through the automated bidding software or by telephonic bidding (Telephonic bid assistants are required to use a script when handling 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, because four to five minutes are necessary to complete a bid

submission.) There will be no on-site bidding during Auction No. 18.

94. A bidder's maximum eligibility in the first round of the auction is determined by two factors: (1) the licenses applied for on FCC Form 175; and (2) 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.

95. The bidding software requires each bidder to log in 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.

96. The bid entry screen of the Automated Auction System software for the Phase II 220 MHz Service auction 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.

97. To place a bid on a license, the bidder must enter a whole number between 1 and 9 in the bid increment multiplier (Bid Mult) field. 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:

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

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 "16" in the bid increment multiplier column and press submit.

98. 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 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.

(6) Bid Removal and Bid Withdrawal

99. In the *20 MHz Public Notice*, the Commission proposed bid removal and bid withdrawal rules. With respect to bid withdrawals, the Commission proposed limiting each bidder to withdrawals in no more than two rounds during the course of the auction.

a. Procedures

100. 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. This procedure will enhance bidder flexibility and, may serve to expedite the course of the action. Therefore, the Commission will adopt these procedures for the 220 MHz Service auction.

101. 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 withdraw its standing high bid from a previous round is subject to the bid withdrawal payments specified in 47 CFR 90.1007, 1.2104(g), and 1.2109. The procedure for withdrawing a bid and receiving a withdrawal confirmation is essentially the same as the bidding procedure described in "High Bids," Part 4.B.2.c.(4).

102. In previous auctions, the Commission has detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While the Commission continues 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, the Commission concludes that, for the 220 MHz Service auction, adoption of a limit on their use to two rounds is the most appropriate outcome. By doing so the Commission believes it strikes a reasonable compromise that will allow

bidders to use withdrawals. The Commission's decision on this issue is based upon its experience in prior auctions, particularly the PCS D, E and F block auction, 800 MHz SMR auction, and LMDS auction, and is in no way a reflection of its view regarding the likelihood of any speculation or "gaming" in the 220 MHz Service auction.

103. 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 will still be subject to the bid withdrawal payments specified in 47 CFR 90.1007, 1.2104(g), and 1.2109. 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.

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

b. Calculation

105. Generally, a bidder that withdraws a standing high bid during the course of an auction will be subject to a payment equal to the lower of: (1) the difference between the net withdrawn bid and the subsequent net winning bid; or (2) the difference between the gross withdrawn bid and the subsequent gross winning bid for that license. See 47 CFR 90.1007, 1.2104(g), and 1.2109. No withdrawal payment will be assessed if the subsequent winning bid exceeds the withdrawn bid.

(7) Round Results

106. The bids placed during a round are not published until the conclusion of that bidding period. After a round closes, the FCC will compile reports of all bids placed, bids withdrawn, current high bids, a new minimum accepted bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access.

107. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 18 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.

(8) Auction Announcement

108. 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 the Internet and the FCC Bulletin Board System.

(9) Other Matters

109. As noted in 3.B., 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 revision of exhibits. Filers 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, 2025 M Street, N.W., Room 5202, Washington, D.C. 20554 (and mail a separate copy to Frank Stilwell, Auctions and Industry Analysis Division), briefly summarizing the changes. Questions about other changes should be directed to Frank Stilwell of the FCC Auctions and Industry Analysis Division at (202) 418-0660.

5. Post-Auction Procedures

A. Down Payments and Withdrawn Bid Payments

110. 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 withdrawn bid payments due.

111. Within ten business days after release of the auction closing 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 90.1011(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 4.B.2.c.(6). (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

B. Long-Form Application

112. Within ten business days after release of the auction closing, notice winning bidders must submit a properly completed long-form application and required exhibits for each Phase II 220

MHz Service license won through the auction. Winning bidders that are small businesses or very small businesses must include an exhibit demonstrating their eligibility for bidding credits. See 47 CFR 90.1013. Further filing instructions will be provided to auction winners at the close of the auction.

C. Default and Disqualification

113. 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 bidders (in descending order) at their final bids. 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

114. All applicants that submitted upfront payments but were not winning bidders for any Phase II 220 MHz Service 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.

115. 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 written refund request which includes wire transfer instructions, a Taxpayer Identification Number ("TIN"), and a copy of their bidding eligibility screen print, to: Federal Communications Commission, Billings and Collections Branch, Attn: Regina Dorsey or Linwood Jenkins, 1919

M Street, NW. Room 452, Washington, DC 20554.

116. Bidders can also fax their request to the Billings and Collections Branch at (202) 418-2843. Once the request has been approved, a refund will be sent to the address provided on the FCC Form 159.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Linwood Jenkins or Geoffrey Idika at (202) 418-1995.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

Attachment A—Summary of Phase II 220 MHz Licenses to be Auctioned

Attachment B—List of Cases Pending Before the Commission Involving Non-Nationwide Phase I 220 MHz Licensees

Attachment C—Guidelines for completion of FCC Forms 175 and 159, and Exhibits

Attachment D—Electronic Filing and Review of FCC Form 175

Attachment E—Summary Listing of Documents From the Commission and the Wireless Telecommunications Bureau Addressing Application of The Anti-Collusion Rules

Attachment F—List of Commenters

Note: Attachments A through F are not printed in the **Federal Register**. See the beginning of the Supplementary Information section for availability.

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BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed continuing information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning information required from employees of the Federal Emergency Management Agency who file a claim with the Agency under 31 U.S.C. 3721 for the loss of or damage to personal property which is incident to their service.

Supplementary Information. 31 U.S.C. 3721 requires claimants to substantiate their claims as a condition of payment by the Agency. The Agency's substantiation requirements are set forth in 44 CFR 11.76. There is no set form required by the Agency for filing a claim under this statute.

Collection of Information

Title: Claims of Federal Personnel for Personal Property Loss or Damage.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067-0167.

Form Numbers: None.

Abstract: The information is provided by FEMA personnel to make a claim against FEMA for personal property damage incident to service. The information is used by FEMA to determine the appropriate disposition and payment of claims.

Affected Public: Federal Government.

Number of Respondents: 7.

Frequency of Response: On occasion.

Hours Per Response: 1 hour.

Estimated Total Annual Burden

Hours: 7.

Estimated Cost: None.

Comments

Written comments are solicited to: (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646-2625. FAX number (202) 646-3524.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Robert S. Brock, Associate General Counsel for General Law, Office of General Counsel, Federal Emergency