



PUBLIC NOTICE

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AUCTION OF MULTICHANNEL VIDEO DISTRIBUTION AND DATA SERVICE LICENSES RESCHEDULED FOR JUNE 25, 2003

COMMENT SOUGHT ON RESERVE PRICES OR MINIMUM OPENING BIDS AND OTHER AUCTION PROCEDURES

Report No. AUC-03-53-A (Auction No. 53)

By this Public Notice, the Wireless Telecommunications Bureau ("Bureau") announces that the auction of licenses in the Multichannel Video Distribution and Data Service ("MVDDS") previously scheduled to commence on August 6, 2003 ("Auction No. 53") has been rescheduled for June 25, 2003.¹ This Public Notice seeks comment on specific terms and conditions of this auction. The key dates are listed below:

Auction Seminar:	May 1, 2003
Short Form Deadline: (FCC Form 175 Application)	May 12, 2003
Upfront Payment Deadline:	May 30, 2003
Mock Auction:	June 20, 2003
Auction Begins:	June 25, 2003

Auction No. 53 will offer one block of unpaired spectrum in the 12.2 – 12.7 GHz band. MVDDS licensees may use this spectrum for any digital fixed one-way non-broadcast service including direct-to-home/office

¹ See Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2-12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to Provide A Fixed Service in the 12.2-12.7 GHz Band, ET Docket No. 98-206, *Memorandum Opinion and Order and Second Report and Order*, 17 FCC Rcd 9614 ("MVDDS Second Report and Order"). The following eligibility restriction applies to MVDDS licenses: no cable operator, nor any entity owning an attributable interest in a cable operator, may hold an attributable interest in an MVDDS license if such cable operator's service area significantly overlaps the MVDDS license area. See 47 C.F.R. § 101.1412.

wireless service.² Mobile and aeronautical services are not authorized. Two-way services may be provided by using other spectrum or media for the return or upstream path.³

In the *MVDDS Second Report and Order*, the Commission adopted Component Economic Areas (“CEAs”) as the geographic licensing areas for this service.⁴ CEAs are based on Economic Areas delineated by the United States Department of Commerce. There are a total of 354 CEAs and FCC-defined CEA-like service areas that encompass the United States, American Samoa, Guam, the Northern Mariana Islands, San Juan (Puerto Rico), Mayagüez/Aguadilla-Ponce (Puerto Rico), and the United States Virgin Islands.⁵ The Commission has before it petitions for reconsideration of the *MVDDS Second Report and Order*, and a pleading filed in response to these petitions that urges the Commission, *inter alia*, to reconsider its decision to use CEAs and instead use Designated Market Areas (“DMAs”) as the geographic licensing areas.⁶ DMAs have been developed by Nielsen Media Research (“Nielsen”) utilizing audience survey information from cable and non-cable households to determine the assignment of counties to local television markets.⁷ There are a total of 214 DMAs and FCC-defined DMA-like service areas that encompass the United States, Guam and the Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, and American Samoa.⁸ To minimize any delay in the auction process that might result from a decision by the Commission to change the MVDDS geographic license areas, the Bureau seeks comment on reserve prices, minimum opening bids, and other auction procedures as they would apply to an auction of either CEA licenses or DMA licenses. With respect to licenses for the 210 DMAs developed by Nielsen, we seek comment on reserve prices, minimum opening bids, and other auction procedures as they would apply to DMAs as defined in Nielsen’s publication entitled “U.S. Television Household Estimates” dated September 2002.⁹

² 47 C.F.R. §101.1407. Broadcast services are intended for reception of the general public and not on a subscribership basis.

³ *Id.*

⁴ See *MVDDS Second Report and Order*, 17 FCC Rcd at 9664-66, ¶¶ 128-132.

⁵ See Kenneth P. Johnson, *Redefinition of the BEA Economic Areas*, 2 Survey of Current Business (February 1995). The 354 CEA service areas are based on the 348 Component Economic Areas delineated by the Regional Economic Analysis Division, Bureau of Economic Analysis, U.S. Department of Commerce, February 1995, with the following six FCC-defined service area additions: American Samoa, Guam, the Northern Mariana Islands, San Juan (Puerto Rico), Mayagüez/Aguadilla-Ponce (Puerto Rico), and the United States Virgin Islands. County definitions for the 348 U.S. Department of Commerce Component Economic Areas can be obtained from a file posted on the internet at <http://www.fcc.gov/oet/info/maps/areas/> via the link labeled “CEA DATA.” (This link is to a compressed file (ceadata.zip) that includes the text file Eacodes.fin. The Eacodes.fin file includes county, metro area, Component Economic Area, and Economic Area codes for each county, and alphabetic names for all counties, Component Economic Areas, and Economic Areas.)

⁶ See Consolidated Response of Northpoint Technology, Ltd., and Broadwave USA, Inc., to Petitions for Reconsideration of Second Report and Order at 3 (filed September 3, 2002). See also Letter to David Schwartz-Leeper, Vice President/GC, Nielsen Media Research, from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, FCC, and Jane Mago, General Counsel, FCC, dated January 24, 2003.

⁷ See <http://www.nielsenmedia.com/DMAs.html>. Nielsen determines what constitutes a separate market by applying a complex statistical formula based upon viewership and other factors. Nielsen owns the copyright to the DMA listing.

⁸ The 214 service areas are based on the 210 DMAs delineated by Nielsen in its publication entitled “U.S. Television Household Estimates” dated September 2002 plus the following four FCC-defined service area additions: Alaska - Balance of State (all geographic areas of Alaska not included in Nielsen’s three DMAs for the state: Anchorage, Fairbanks, and Juneau), Guam and the Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, and American Samoa. While most DMAs consist of one contiguous geographic area, a few are composed of multiple noncontiguous areas.

⁹ This publication lists estimates of television households “as of January 2003” and can be found at Nielsen's

As discussed below, the Bureau proposes to use the same auction rules and procedures for an auction of MVDDS licenses whether the licenses are based on CEAs or DMAs, but the Bureau proposes different upfront payments and minimum opening bids for each of these geographic licensing areas.

A complete list of the CEA licenses that are available for Auction No. 53 is included in Attachment A. Attachment B provides a complete list of the licenses that would be available in Auction No. 53 if licenses were based on DMAs.

The following table describes the licenses that will be auctioned, depending on whether we use a CEA or DMA geographic license area:

Frequencies	Bandwidth	Geographic Area Type	No. of Licenses
12.2 – 12.7 GHz	500 MHz	CEA	354
12.2 – 12.7 GHz	500 MHz	DMA	214

The Balanced Budget Act of 1997 requires the Commission to “ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed . . . before issuance of bidding rules, to permit notice and comment on proposed auction procedures”¹⁰ Consistent with the provisions of the Balanced Budget Act and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority,¹¹ to seek comment on a variety of auction-specific procedures prior to the start of each auction.¹² We therefore seek comment on the issues set forth below relating to Auction No. 53. Parties submitting comments in response to this Public Notice should file an additional copy of such comments in ET Docket No. 98-206. Instructions for filing comments are provided below.

website. See <http://www.nielsenmedia.com>. Interested parties are advised to consult this website and contact Nielsen directly for relevant market data.

¹⁰ 47 U.S.C. § 309(j) (as amended by Section 3002(a)(E)(i), Balanced Budget Act of 1997, Pub. L. 105-33, 111 Stat. 251 (1997) (“Balanced Budget Act”).

¹¹ See Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Proceeding, WT Docket No. 97-82, Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making, 12 FCC Rcd 5686, 5697, ¶ 16 (1997) (“Part 1 Order”) (clarifying that pursuant to Section 0.131 of the Commission’s rules, the Chief, Wireless Telecommunications Bureau, has delegated authority to implement all of the Commission’s rules pertaining to auctions procedures).

¹² See Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz, WT Docket No. 97-82, ET Docket No. 94-32, Third Report and Order and Second Further Notice of Proposed Rule Making, 13 FCC Rcd 374, 448, ¶ 124 (1998) (“Part 1 Third Report and Order”). The Commission directed the Bureau to seek comment on specific mechanisms related to day-to-day auction conduct including, for example, the structure of bidding rounds and stages, establishment of minimum opening bids or reserve prices, minimum accepted bids, initial maximum eligibility for each bidder, activity requirements for each stage of the auction, activity rule waivers, criteria for determining reductions in eligibility, information regarding bid withdrawal and bid removal, stopping rules, and information relating to auction delay, suspension or cancellation. *Id.* at ¶ 125.

I. Auction Structure

A. Simultaneous Multiple Round (SMR) Auction Design

We propose to award all licenses included in Auction No. 53 in a simultaneous multiple-round auction. As described further below, this methodology offers every license for bid at the same time with successive bidding rounds in which bidders may place bids. We seek comment on this proposal.

B. Upfront Payments and Initial Maximum Eligibility

The Bureau has been delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned, taking into account such factors as the population in each geographic license area, and the value of similar spectrum.¹³ As described further below, the upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on licenses. Upfront payments related to the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction.¹⁴ With these guidelines in mind for Auction No. 53, we propose to calculate upfront payments on a license-by-license basis.

We propose to calculate upfront payments on a license-by-license basis for CEAs using the following formula:

$$\$0.025 * \text{License Area Population}^{15} \text{ with a minimum of } \$1,000 \text{ per license.}^{16}$$

Accordingly, we list all CEA licenses, including the related license area population and proposed upfront payment for each license, in Attachment A. We seek comment on this proposal.

We propose to calculate upfront payments on a license-by-license basis for DMAs as follows:

From the total upfront payment amount for all CEA licenses (\$7,139,300), subtract the upfront payments for CEA349-CEA354 (\$104,700), for a remainder of \$7,034,600. For each DMA (DMA001-DMA210), the upfront payment is calculated by multiplying \$7,034,600 by a percentage that is the ratio of television households in that DMA to the total television households in DMA001-DMA210, with a minimum of \$1,000 per license.¹⁷ The upfront payment for DMA211 is set at the minimum upfront payment amount of \$1,000. Upfront payments for DMA212-DMA214 are calculated as the sum of the upfront payments for the corresponding CEA licenses.¹⁸ Accordingly, we list all DMA licenses, including the

¹³ *Part 1 Order*, 12 FCC Rcd at 5697-98, ¶ 16; *see also Part 1 Third Report and Order*, 13 FCC Rcd at 425, ¶ 86.

¹⁴ *See Implementation of Section 309(j) of the Communications Act - Competitive Bidding*, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348, 2378-79, ¶¶ 171-176 (1994).

¹⁵ All population figures are from the 2000 U.S. Census, U.S. Department of Commerce, Bureau of the Census. *See Census 2000 Summary File 1 (SF1)* and July 3, 2001, News Releases covering the U.S. Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.

¹⁶ Results are rounded using our standard rounding procedure: results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10.

¹⁷ Results are rounded using our standard rounding procedure: results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10.

¹⁸ That is, the upfront payment for DMA212 equals the sum of the upfront payments for CEA352-CEA354; for

related percentage of total television households and proposed upfront payment for each license, in Attachment B. We seek comment on this proposal.

We further propose that the amount of the upfront payment submitted by a bidder will determine the number of bidding units on which a bidder may place bids. This limit is a bidder's "maximum initial eligibility." Each license is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A (CEAs) or Attachment B (DMAs), on a bidding unit per dollar basis. This number does not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific licenses. Rather, a bidder may place bids on any combination of licenses as long as the total number of bidding units associated with those licenses does not exceed the bidder's eligibility. Eligibility cannot be increased during the auction. Thus, in calculating its upfront payment amount, an applicant should determine the **maximum** number of bidding units it may wish to bid on (or hold high bids on) in any single round and submit an upfront payment covering that number of bidding units. We seek comment on this proposal.

C. Activity Rules

In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively on a percentage of their current bidding eligibility during each round of the auction rather than waiting until the end to participate. A bidder that does not satisfy the activity rule will either use an activity rule waiver (if any remain) or lose bidding eligibility for the next round.

We propose to divide the auction into three stages, each characterized by an increased activity requirement. The auction will start in Stage One. We propose that the auction generally will advance to the next stage (i.e., from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is approximately twenty percent or below for three consecutive rounds of bidding. However, we further propose that the Bureau retain 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,¹⁹ the number of new bids, and the percentage increase in revenue. We seek comment on these proposals.

For Auction No. 53, we propose the following activity requirements:

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 representing 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 (5/4).

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 (10/9).

DMA213, the sum of the upfront payments for CEA350 and CEA351; and for DMA214, the upfront payment for CEA349.

¹⁹ For example, when monitoring activity for determining when to change stages, we may consider the percentage of bidding units of the licenses receiving new high bids, excluding any FCC-held licenses.

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/forty-ninths (50/49).

We seek comment on these proposals. Commenters that believe these activity rules 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.

D. Activity Rule Waivers and Reducing Eligibility

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

The FCC Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any 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 requirements. **Note: If a bidder has no waivers remaining and does not satisfy the required activity level, its current eligibility will be permanently reduced, possibly eliminating the bidder from the auction.**

A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding period by using the "reduce eligibility" function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described above. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

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 system) during a bidding period in which no bids or withdrawals 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.

We propose that each bidder in Auction No. 53 be provided with five activity rule waivers that may be used at the bidder's discretion during the course of the auction as set forth above. We seek comment on this proposal.

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

For Auction No. 53, we propose that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of competitive bidding.²⁰ 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

²⁰ 47 C.F.R. § 1.2104(i).

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

II. Bidding Procedures

A. Round Structure

The Commission will conduct Auction No. 53 over the Internet. Telephonic Bidding will also be available. As a contingency, the FCC Wide Area Network will be available as well. The telephone number through which the backup FCC Wide Area Network may be accessed will be announced in a later public notice. Full information regarding how to establish such a connection, and related charges, will be provided in the public notice announcing details of auction procedures.

The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction, and will be included in the registration mailings. The simultaneous multiple round format will consist of sequential bidding rounds, each followed by the release of round results. Details regarding the location and format of round results will be included in the same public notice.

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

B. Reserve Price or Minimum Opening Bid

The Balanced Budget Act calls upon the Commission to prescribe methods for establishing a reasonable reserve price or a minimum opening bid when FCC licenses are subject to auction, unless the Commission determines that a reserve price or minimum opening bid is not in the public interest.²¹ Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.²²

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

In light of the Balanced Budget Act's requirements, the Bureau proposes to establish minimum opening bids for Auction No. 53. The Bureau believes a minimum opening bid, which has been utilized in other auctions, is an effective bidding tool.²³

²¹ 47 U.S.C. § 309(j) (as amended by Balanced Budget Act, Section 3002(a)). The Commission's authority to establish a reserve price or minimum opening bid is set forth in 47 C.F.R. § 1.2104(c) and (d).

²² *Part 1 Third Report and Order*, 13 FCC Rcd at 454-455, ¶ 141.

²³ See, e.g., Auction of 800 MHz SMR Upper 10 MHz Band, Minimum Opening Bids or Reserve Prices, *Order*, 12 FCC Rcd 16354 (1997); Auction of the Phase II 220 MHz Service Licenses, Auction Notice and Filing Requirements for 908 Licenses Consisting of Economic Area (EA), Economic Area Grouping (EAG), and Nationwide Licenses, Scheduled for September 15, 1998, Minimum Opening Bids and Other Procedural Issues, *Public Notice*, 13 FCC Rcd 16445 (1998).

For Auction No. 53, we propose the following license-by-license formula for calculating minimum opening bids for CEAs:

$$\$0.05 * \text{License Area Population}^{24} \text{ with a minimum of } \$1,000 \text{ per license.}^{25}$$

The specific minimum opening bid for each CEA license available in Auction No. 53 is set forth in Attachment A herein. Comment is sought on this proposal.

We propose to calculate minimum opening bids on a license-by-license basis for DMAs as follows:

From the total minimum opening bid amount for all CEA licenses (\$14,283,500), subtract the minimum opening bids for CEA349-CEA354 (\$210,500), for a remainder of \$14,073,000. For each DMA (DMA001-DMA210), the minimum opening bid is calculated by multiplying \$14,073,000 by a percentage that is the ratio of television households in that DMA to the total television households in DMA001-DMA210, with a minimum of \$1,000 per license.²⁶ The minimum opening bid for DMA211 is set at the minimum amount of \$1,000. Minimum opening bids for DMA212-DMA214 are calculated as the sum of the minimum opening bids for the corresponding CEA licenses.²⁷ Accordingly, we list all DMA licenses, including the related percentage of total television households and proposed minimum opening bid for each license, in Attachment B. We seek comment on this proposal.

If commenters believe that these minimum opening bids will result in substantial numbers of unsold licenses, or are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. In establishing the minimum opening bids, we particularly seek comment on such factors as the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the MVDDS spectrum. Alternatively, comment is sought on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

C. Minimum Acceptable Bids and Bid Increments

In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts.²⁸ The FCC Automated Auction System interface will list the nine acceptable bid amounts for

²⁴ All population figures are from the 2000 U.S. Census, U.S. Department of Commerce, Bureau of the Census. *See* Census 2000 Summary File 1 (SF1) and July 3, 2001, News Releases covering the U.S. Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.

²⁵ Results are rounded using our standard rounding procedure: results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10.

²⁶ Results are rounded using our standard rounding procedure: results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10.

²⁷ That is, the minimum opening bid for DMA212 equals the sum of the minimum opening bids for CEA352-CEA354; for DMA213, the sum of the minimum opening bids for CEA350 and CEA351; and for DMA214, the minimum opening bid for CEA349.

²⁸ Bidders must have sufficient eligibility to place a bid on the particular license. *See* Section I.B., (“Upfront Payments and Initial Maximum Eligibility”), *supra*.

each license. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. In the rounds after an acceptable bid is placed on a license, the minimum acceptable bid for that license will be equal to the standing high bid plus the defined increment.

Once there is a standing high bid on a license, the FCC Automated Auction System will calculate a minimum acceptable bid for that license for the following round, as described below. The difference between the minimum acceptable bid and the standing high bid for each license will define the **bid increment**. The nine acceptable bid amounts for each license consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (i.e., the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. The additional bid amounts for licenses that have not yet received a bid will be calculated differently, as explained below.

For Auction No. 53, we propose to calculate minimum acceptable bids by using a smoothing methodology, as we have done in several other auctions. The smoothing formula calculates minimum acceptable bids by first calculating a **percentage increment**, not to be confused with the **bid increment**. The percentage increment for each license is based on bidding activity on that license in all prior rounds; therefore, a license which has received many bids throughout the auction will have a higher percentage increment than a license which has received few bids.

The calculation of the percentage increment used to determine the minimum acceptable bids for each license for the next round is made at the end of each round. The computation is 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.²⁹ The current activity index is equal to a weighting factor times the number of new bids received on the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior 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 0.1 (10%), and the maximum percentage increment at 0.2 (20%). Hence, at these initial settings, the percentage increment will fluctuate between 10% and 20% depending upon the number of bids for the license.

Equations

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

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

$$X_{i+1} = I_{i+1} * Y_i$$

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+1} = percentage increment for the next round (round i+1)

N = minimum percentage increment or percentage increment floor

M = maximum percentage increment or percentage increment ceiling

²⁹ For Round 1 calculations, because there is no prior round (i.e., no round 0), the activity index from the prior round is set at 0.

X_{i+1} = dollar amount associated with the percentage increment
 Y_i = high bid from the current round

Under the 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 high bid from the current round plus the dollar amount associated with the percentage increment, with the result 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

$C=0.5$, $N = 0.1$, $M = 0.2$

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

1. Calculation of percentage increment for round 2 using the smoothing formula:

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

$$I_2 = \text{The smaller of } ((1 + 1) * 0.1) = 0.2 \text{ or } 0.2 \text{ (the maximum percentage increment)}$$

2. Calculation of dollar amount associated with the percentage increment for round 2 (using I_2 from above):

$$X_2 = 0.2 * \$1,000,000 = \$200,000$$

3. Minimum acceptable bid for round 2 = \$1,200,000

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

1. Calculation of percentage increment for round 3 using the smoothing formula:

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

$$I_3 = \text{The smaller of } ((1 + 2) * 0.1) = 0.3 \text{ or } 0.2 \text{ (the maximum percentage increment)}$$

2. Calculation of dollar amount associated with the percentage increment for round 3 (using I_3 from above):

$$X_3 = 0.2 * \$2,000,000 = \$400,000$$

3. Minimum acceptable bid for round 3 = \$2,400,000

Round 3 (1 new bid, high bid = \$2,400,000)

1. Calculation of percentage increment for round 4 using the smoothing formula:

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

$$I_4 = \text{The smaller of } ((1 + 1.5) * 0.1) = 0.25 \text{ or } 0.2 \text{ (the maximum percentage increment)}$$

2. Calculation of dollar amount associated with the percentage increment for round 4 (using I_4 from above):

$$X_4 = 0.2 * \$2,400,000 = \$480,000$$

3. Minimum acceptable bid for round 4 = \$2,880,000

As stated above, until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. The additional bid amounts are calculated using the difference between the minimum opening bid times one plus the minimum percentage increment, rounded as described above, and the minimum opening bid. That is, $I = (\text{minimum opening bid})(1 + N)\{\text{rounded}\} - (\text{minimum opening bid})$. Therefore, when N equals 0.1, the first additional bid amount will be

approximately ten percent higher than the minimum opening bid; the second, twenty percent; the third, thirty percent; etc.

In the case of a license for which the standing high bid has been withdrawn,³⁰ the minimum acceptable bid will equal the second highest bid received for the license. The additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid.

The Bureau retains the discretion to change the minimum acceptable bids and bid increments if it determines that circumstances so dictate. The Bureau will do so by announcement in the FCC Automated Auction System. We seek comment on these proposals.

D. High Bids

At the end of a bidding round, the high bids will be determined based on the highest gross bid amount received for each license. A high bid from a previous round is sometimes referred to as a “standing high bid.” A “standing high bid” will remain the high bid until there is a higher bid on the same license at the close of a subsequent round. Bidders are reminded that standing high bids confer bidding activity.³¹

In the event of identical high bids on a license in a given round (i.e., tied bids), we propose to use a random number generator to select a high bid from among the tied bids. The remaining bidders, as well as the high bidder, will be able to submit a higher bid in a subsequent round. If no bidder submits a higher bid in a subsequent round, the high bid from the previous round will win the license. If any bids are received on the license in a subsequent round, the high bid again will be determined by the highest gross bid amount received for the license.

E. Information Regarding Bid Withdrawal and Bid Removal

For Auction No. 53, we propose the following bid removal and bid withdrawal procedures. Before the close of a bidding period, a bidder has the option of removing any bid placed in that round. By removing selected bids in the bidding system, a bidder may effectively “unsubmit” any bid placed within that round. A bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid.

A high bidder may withdraw its standing high bids from previous rounds using the withdraw function in the bidding system. A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payment provisions of the Commission rules.³² We seek comment on these bid removal and bid withdrawal procedures.

In the *Part 1 Third Report and Order*, the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of efficient backup strategies as information becomes available during the course of an auction. 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

³⁰ See Section II.E., “Information Regarding Bid Withdrawal and Bid Removal,” *infra*.

³¹ See Section I.C., “Activity Rules,” *supra*.

³² 47 C.F.R. §§ 1.2104(g), 1.2109.

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.³³

Applying this reasoning, we propose to limit each bidder in Auction No. 53 to withdrawing standing high 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 would likely encourage insincere bidding or the use of withdrawals for anti-competitive purposes. The two rounds in which withdrawals are utilized 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 standing high bids that may be withdrawn in either of the rounds in which withdrawals are utilized. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules. We seek comment on this proposal.

F. Stopping Rule

The Bureau has discretion "to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time."³⁴ For Auction No. 53, the Bureau proposes to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all licenses remain open until bidding closes simultaneously on all licenses.

Bidding will close simultaneously on all licenses after the first round in which no new acceptable bids, proactive waivers, or withdrawals are received. Thus, unless circumstances dictate otherwise, bidding will remain open on all licenses until bidding stops on every license.

However, the Bureau proposes to retain the discretion to exercise any of the following options during Auction No. 53:

1. Utilize a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this modified stopping rule. The Bureau further seeks comment on whether this modified stopping rule should be used at any time or only in stage three of the auction.
2. Keep the 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 had submitted a proactive waiver. The activity rule, therefore, will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver.
3. 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) only for licenses on which the high bid increased in at least one of a specified preceding number of rounds.

The Bureau proposes to exercise these options only in certain circumstances, such as, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising 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 increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity. We seek comment on these proposals.

³³ *Part 1 Third Report and Order*, 13 FCC Rcd at 460, ¶ 150.

³⁴ 47 C.F.R. § 1.2104(e).

III. Conclusion

Comments are due on or before February 13, 2003, and reply comments are due on or before February 20, 2003. Because of the disruption of regular mail and other deliveries in Washington, DC, the Bureau requires that all comments and reply comments be filed electronically. Comments and reply comments must be sent by electronic mail to the following address: auCTION53@fcc.gov. The electronic mail containing the comments or reply comments must include a subject or caption referring to Auction No. 53 Comments. The Bureau requests that parties format any attachments to electronic mail as Adobe[®] Acrobat[®] (pdf) or Microsoft[®] Word documents. **In addition, the Bureau requests that commenters fax a courtesy copy of their comments and reply comments to the attention of Kathryn Garland at (717) 338-2850.**

Parties submitting comments in response to this Public Notice should file an additional copy of such comments in ET Docket No. 98-206. Comments may be filed in ET Docket No. 98-206 using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998). Commenters that wish confidential treatment of their submissions should request that their submission, or specific part thereof, be withheld from public inspection.³⁵

Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. Because multiple docket or rulemaking numbers appear in the caption of the MVDDS rulemaking proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an email to ecfs@fcc.gov, and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. Because more than one docket or rulemaking number appears in the caption of the MVDDS rulemaking proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. 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 we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. 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 mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Commenters also should send four (4) paper copies of their filings to **Jennifer Burton**, Federal Communications Commission, Room 4-C425, 445 12th Street, S.W., Washington, D.C. 20554. Copies of comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY-A257, 445 12th Street, SW, Washington, DC 20554.

³⁵ *See* 47 C.F.R. § 0.459.

This proceeding and the MVDDS rulemaking proceeding have been designated as “permit-but-disclose” proceedings in accordance with the Commission’s *ex parte* rules.³⁶ 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.³⁷ Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in Section 1.1206(b) of the Commission’s rules.³⁸

For further information concerning this proceeding, contact the Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, as listed below:

For legal questions: Brian Carter (202) 418-0660

For general auction questions: Roy Knowles (717) 338-2888
Barbara Sibert (717) 338-2888

For service rule questions: Jennifer Burton (legal), Michael Pollak (technical) at (202) 418-0680

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³⁶ 47 C.F.R. §§ 1.1200(a), 1.1206.

³⁷ 47 C.F.R. § 1.1206(b).

³⁸ *Id.*