

increases in high-cost loop support. For the three years beginning with 2004, and ending with the estimate of high-cost loop support for 2006, high-cost loop support provided to average schedule companies has increased by 16.4 percent, 38.7 percent, and 41.6 percent, respectively. NECA states that increases in support are primarily driven by the increases in costs reported by sample average schedule companies. Although support for 2006 is estimated to be going up by over 41%, NECA's filing also shows that the support will be provided to more carriers. We also note that the increase in NECA's high-cost loop support estimate is due, in part, to NECA's implementation of loop count reporting modifications pursuant to a 2004 Commission order. NECA makes marginal reference to this order without specific details of the effect on universal service fund payments resulting from its implementation of the loop count adjustment. For future filings, we find that NECA should clearly disclose and quantify any significant modifications to the development of average schedule universal service formulas in its annual average schedule universal service filings. We require NECA to disclose when a Commission order or rule change causes a change in aggregate universal service support to average schedule companies by more than five percent of the previous year's universal service support. Similarly, we require USAC to disclose when a Commission order or rule change causes a change in aggregate local switching universal service support to average schedule companies by more than five percent of the previous year's support.

**IV. Ordering Clauses**

7. Pursuant to §§ 0.91 and 0.291 of the Commission's rules, 47 CFR 0.91, 0.291, that the average schedule formula proposed by the Universal Service Administrative Company on September 30, 2005, for local switching support IS adopted, effective retroactively as of January 1, 2006.

8. Pursuant to §§ 0.91 and 0.291 of the Commission's rules, 47 CFR 0.91, 0.291, that the average schedule cost per loop formula described by the National Exchange Carrier Association on August 30, 2005, for high-cost loop support is adopted, effective retroactively as of January 1, 2006.

9. Pursuant to section 4(i) of the Communications Act of 1934, as Amended, 47 U.S.C. 154(i), §§ 0.91 and 0.291 of the Commission's rules, 47 CFR 0.91, 0.291, that this order is effective upon its release.

Federal Communications Commission.

**Cathy Carpino,**

*Deputy Chief, Wireline Competition Bureau, Telecommunications Access Policy Division.*

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**FEDERAL COMMUNICATIONS COMMISSION**

**[AU Docket No. 06-30; Report No. AUC-06-66-A (Auction No. 66); DA 06-238]**

**Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006 Comment Sought on Reserve Prices or Minimum Opening Bids and Other Procedures**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the auction of Advance Wireless Services licenses in the 1710-1755 MHz and 2110-2155 MHz (AWS-1) bands. The auction is scheduled to commence on June 29, 2006. This document also seeks comments on reserve prices or minimum opening bids and other procedures for Auction No. 66.

**DATES:** Comments are due on or before February 14, 2006 and reply comments are due on or before February 28, 2006.

**ADDRESSES:** Comments and reply comments may be submitted using the Commission's electronic comment filing system (ECFS) at <http://www.fcc.gov/cgb/ecfs/>. The Wireless

Telecommunications Bureau (Bureau) also requested that a copy of all comments and reply comments be submitted by electronic mail to the following address: [auctions66@fcc.gov](mailto:auctions66@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** For legal questions: Scott Mackoul at (202) 418-0660. For general auction questions: Lisa Stover at (717) 338-2888.

For service rules questions: Peter Corea at (202) 418-2487.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Auction No. 66 Comment Public Notice released on January 31, 2006. The complete text of the Auction No. 66 Comment Public Notice, including attachments and related Commission documents is available for public inspection and copying from 8 a.m. to 4:30 p.m. Monday through Thursday or from 8 a.m. to 11:30 a.m. on Friday at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The Auction No. 66 Comment Public Notice and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone 202-488-5300, facsimile 202-488-5563, or you may contact BCPI at its Web site: <http://www.BCPIWEB.com>. When ordering documents from BCPI please provide the appropriate FCC document number for example, DA 06-238. The Auction No. 66 Comment Public Notice and related documents are also available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/66/>.

**I. Licenses To Be Offered at Auction**

1. The 90 megahertz of spectrum in the AWS-1 bands consists of 1,122 licenses: 36 Regional Economic Area Grouping (REAG) licenses, 352 Economic Area (EA) licenses, and 734 Cellular Market Area (CMA) licenses.

2. License Descriptions. The following table describes the AWS-1 licenses:

Block	Frequency bands (MHz)	Total bandwidth (MHz)	Geo-graphic area type	Number of licenses
A .....	1710-1720/2110-2120	20	CMA .....	734
B .....	1720-1730/2120-2130	20	EA .....	176
C .....	1730-1735/2130-2135	10	EA .....	176
D .....	1735-1740/2135-2140	10	REAG .....	12
E .....	1740-1745/2140-2145	10	REAG .....	12
F .....	1745-1755/2145-2155	20	REAG .....	12

The AWS-1 licenses available at auction are also listed in Attachment A of the *Auction No. 66 Comment Public Notice*.

3. Incumbency Issues/Spectrum Relocation Fund. The lower half of paired frequencies for AWS-1 licenses, *i.e.*, 1710–1755 MHz, is spectrum covered by a Congressional mandate that requires that auction proceeds fund the estimated relocation costs of incumbent federal entities. Specifically, the Commercial Spectrum Enhancement Act (CSEA) established a Spectrum Relocation Fund (SRF), to which the cash proceeds attributable to eligible frequencies in an auction of licenses involving such frequencies would be deposited.

4. In addition to requiring that specified auction proceeds be deposited in the SRF, CSEA prohibits the Commission from concluding any auction of eligible frequencies if the total cash proceeds attributable to such spectrum are less than 110 percent of the estimated relocation costs provided to the Commission by the National Telecommunications and Information Administration (NTIA). NTIA has collected estimates of the relocation costs for the eligible frequencies in the AWS-1 bands.

5. In 2005, the Commission opened a proceeding to address CSEA implementation. In the *CSEA/Part 1 Declaratory Ruling*, 70 FR 43372 (July 27, 2005), the Commission determined, among other things, that total cash proceeds for purposes of meeting CSEA's revenue requirement means winning bids net of any applicable bidding credit discounts at the end of bidding. Thus, to determine whether CSEA's revenue requirements regarding eligible frequencies have been met at the end of a CSEA auction, the Commission will have to determine whether winning bids net of any applicable bidding credit discounts at the end of bidding that are attributable to such spectrum equal at least 110 percent of estimated relocation costs. On January 24, 2006, the Commission released the *CSEA/Part 1 Report and Order*, FCC 06-4 (rel. January 24, 2006), addressing CSEA implementation. Among other provisions, the *CSEA/Part 1 Report and Order* modified the Commission's reserve price rules pursuant to CSEA to ensure that CSEA's revenue requirement will be met.

## II. Seeking Comment on Auction Procedures

6. Section 309(j)(3) of the Communications Act of 1934, as amended, requires the Commission to "ensure that, in the scheduling of any

competitive bidding under this subsection, an adequate period is allowed \* \* \* before issuance of bidding rules, to permit notice and comment on proposed auction procedures \* \* \*." Consistent with the provisions of section 309(j)(3) and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction. The Bureau therefore seeks comment on the following issues relating to the auction of AWS-1 licenses.

### A. Proposals for Auction Design

#### i. Simultaneous Multiple Round Auction(s)—With or Without Package Bidding

7. The Bureau proposes to auction all of the AWS-1 licenses in a single auction using the Commission's standard simultaneous multiple-round (SMR) auction format. This type of auction offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses. A bidder may bid on, and potentially win, any number of licenses. Typically, bidding remains open on all licenses until bidding stops on every license, unless a modified stopping rule is invoked.

8. Although the Bureau proposes to offer all of the AWS-1 licenses in a single auction using its standard SMR format, in the alternative, the Bureau seeks comment on the feasibility and desirability of allocating the AWS-1 licenses among two auctions, run concurrently, with one of the auctions using the standard SMR format and the other using the FCC's package bidding format (SMR-PB). The Bureau recommends that the two auctions be run concurrently, rather than sequentially, in order to permit bidders interested in winning licenses in both auctions to coordinate their bidding across auctions, and in order to facilitate the application of the aggregate reserve price.

9. Under the SMR-PB format, bidders can place bids on groups of licenses they wish to win in combination, with the result that they win either all of the licenses in a group or none of them, in contrast to the license-by-license bidding in the FCC's SMR format. In the SMR-PB auction format, each bidder can have at most a single winning bid, so that in order to win any particular

license combination, the bidder must have placed a package bid on that license or specific group of licenses.

10. This option could allow bidders to better express the value of any synergies (*i.e.*, benefits from combining complementary items) that may exist among licenses, and to avoid the risk of winning only part of a desired aggregation.

11. At the same time the Bureau notes that package bidding under the SMR-PB format may be more complex for bidders if they wish to aggregate any or all of a number of licenses because they cannot win a group of licenses unless they have explicitly placed a bid on that exact combination. In an SMR-PB auction, bidders may need to place a large number of bids in order to completely express their interests. If they do not place the bids, the system may not be able to find a consistent set of smaller bids that collectively exceeds the amount of a large package bid, thereby potentially making it more difficult for bidders interested in small groups or single licenses to compete against bidders interested in large aggregations.

12. The Bureau believes that offering all licenses in a single standard SMR auction will provide bidders with the simplest and most flexible means of obtaining single AWS-1 licenses or aggregations of AWS-1 licenses. A single auction will apply a single set of familiar rules to all bidders, bids and licenses. Bidders interested in licenses in several blocks will not have to try to manage their bidding activity and eligibility across two auctions, as they might if the different blocks were offered in two different auctions.

13. Furthermore, the Bureau believes that an SMR auction format, together with a bandplan which offers bidders the option to bid on several blocks of large regional licenses, will provide bidders with the opportunity to create efficient aggregations of licenses without creating the difficulties that a package bidding format may introduce for bidders trying to win single licenses or smaller groups of licenses. The Bureau, therefore, proposes to offer the 1,122 AWS-1 licenses in one SMR auction without package bidding.

14. If commenters feel that it would be feasible and desirable to offer some of the licenses in the AWS-1 inventory in a concurrent but separate auction using the SMR-PB format, the Bureau seeks comment on which blocks of licenses should be included in the package bidding auction.

ii. Information Available to Bidders Before and During an Auction

15. Economic theory and recent analysis suggest that the competitiveness and economic efficiency of an SMR auction may in some circumstances be enhanced if certain information about bids and bidder identities is not revealed publicly prior to and during the auction. Recognizing that there are benefits as well as potential harms from publicly revealing all information during the auction process, the Commission, in the past, reserved the option to limit the availability of information on an auction-by-auction basis, and retained discretion in the Bureau, under its existing delegated authority, to limit the information disclosed to bidders. With certain exceptions, the Bureau has generally opted to make bidders' license selections public at the conclusion of the application process, as well as to release the identities of all bidders and their bid amounts at the conclusion of each round during the auction.

16. The particular circumstances of the AWS-1 auction, however, suggest that the Commission's statutory mandates under section 309(j)(3) of the Communications Act would better be served by withholding, until after the auction closes, the public release of (1) information on bidder interests, normally made available prior to the start of the auction, and (2) the identities of bidders placing bids and the amounts of non-winning bids, normally released after each bidding round. In the years since the Commission's SMR auction design was first developed, economists have observed, as a potential drawback to disclosing information, that bidders could use the information revealed over the multiple rounds to signal each other and implement a division of the licenses at lower than market prices, and in some cases, to retaliate against competing bidders. In particular, the potential for such anti-competitive bidding behavior is greater when an auction offers multiple, substitutable blocks of licenses for sale and when the number of bidders is expected to be relatively low compared to the number of licenses offered. Given that the AWS-1 auction is likely to meet these criteria—i.e., there are multiple spectrum blocks offered with over 1100 licenses and perceived license values may limit the number of potential bidders—the Bureau believes that the potential harm from coordinated behavior that is facilitated by full information on bidders' interests and

bidding behavior is likely to outweigh the benefits.

17. Moreover, the Bureau also believes that the potential benefits from fully revealing bid and bidder information are less likely to be important in the AWS-1 auction than they have been in other FCC auctions, particularly in early auctions. The Commission previously identified certain benefits to disclosing bidder identities and other information during an auction, including: Bidders may bid more confidently if they know the bids of their potential competitors; information on the identities of likely other licensees may provide useful technical information, such as the degree of possible signal interference or the potential for negotiating roaming agreements; and full transparency during an auction promotes confidence in the Commission's auction process.

18. The Bureau believes these benefits may be less significant in an auction of AWS-1 licenses. With respect to the argument that bidders will have more confidence in their bids if they know against whom they are bidding, the Bureau notes that the evolving market for wireless services and a record of spectrum license sales gives bidders far more information about how they should value spectrum licenses than bidders in early spectrum auctions had. Furthermore, the Bureau notes that even under the proposal to limit bid information, the number of bids placed on a license in a round will continue to be publicly available as well as the amount of the provisionally winning bid. With respect to the benefit of knowing bidders' identities to account for technical information, the Bureau expects that the flexible and sophisticated technologies employed by successful bidders for the AWS-1 spectrum licenses will make any technical information conveyed through bidder identities of limited value relative to its value in certain other services or at an earlier stage in the development of the wireless industry. Finally, confidence in the Commission's auctions has been established over the course of many auctions, and is likely to be enhanced further by a procedure that reduces the potential for anti-competitive bidding behavior.

19. Based on the increased likelihood that fully revealing bid and bidder information may lead to anti-competitive bidding behavior under the particular circumstances of the AWS-1 auction and the belief that any potential benefits to the auction process from fully revealing such information are unlikely to be significant, the Bureau believes that the competitive bidding for

AWS-1 licenses would be enhanced by not releasing certain information about bids and bidders until after bidding in the auction closes. In particular, in contrast to its general practice, the Bureau proposed not to reveal until the close of the auction: (1) Bidders' license selections on their short form applications and the amount of their upfront payments; (2) the amounts of non-provisionally winning bids and the identities of bidders placing those bids; and (3) the identities of bidders making provisionally winning bids. Thus, during the auction, the only information about bids that the Bureau proposes to reveal to the public is the gross, not the net, amount of any provisionally winning bids. However, as in past auctions, after each round each bidder individually may access reports regarding whether their own bids are provisionally winning bids. This proposed approach will strike a balance between withholding information that is likely to foster anticompetitive behavior, and making essential information available to bidders so that the multiple round structure of the auction enables efficient outcomes to emerge.

20. In the event that the Bureau decides to allocate the AWS-1 licenses between two auctions, one with package bidding, the Bureau proposes to limit information only in the SMR auction without package bidding. The Bureau proposes to disclose full information about bids and bidders in an SMR-PB auction because, among other things, the Bureau has not yet analyzed the role of revealing information in an SMR-PB auction and both the Commission and bidders have only limited experience with this type of auction. The Bureau seeks comment on this approach.

### *B. Auction Structure*

#### *i. Round Structure*

21. The Commission will conduct the AWS-1 auction(s) over the Internet. Alternatively, telephonic bidding will also be available via the Auction Bidder Line. The toll-free telephone number for telephonic bidding will be provided to qualified bidders.

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

23. The Bureau retains the discretion to change the bidding schedule(s) 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 bidding activity levels and other factors.

24. In the event that two auctions are run concurrently, the Bureau will make an effort to structure the timing of the rounds so as to facilitate the participation of bidders potentially interested in winning licenses in both auctions. The Bureau seeks comment on this approach.

#### ii. Stopping Rule

25. The Bureau has discretion to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time. The Bureau proposes two different stopping rules for the auction of AWS-1 licenses, the first in the event there is a single auction of AWS-1 licenses, and the second in the event there are two concurrent auctions of AWS-1 licenses.

26. *Single Auction*—For a single auction of AWS-1 licenses, the Bureau proposes to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all licenses remain available for bidding until bidding closes simultaneously on all licenses. More specifically, bidding will close simultaneously on all licenses after the first round in which no bidder submits any new bids, applies a proactive waiver, or submits a withdrawal. Thus, unless circumstances dictate otherwise, bidding will remain open on all licenses until bidding stops on every license.

27. Further, the Bureau proposes to retain the discretion to exercise any of the following options during a single AWS-1 auction: (a) Use a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder applies a waiver, places a withdrawal, or submits any new bids on any license for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule; (b) keep the auction open even if no bidder submits any new bids, applies a waiver, or submits a withdrawal. In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule, therefore, will apply as usual and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver; (c) declare that the auction will end after a specified number of additional rounds

(special stopping rule). If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) after which the auction will close.

28. The Bureau proposes to exercise these options only in certain circumstances, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising these options, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day and/or changing the minimum acceptable bid percentage. The Bureau seeks comment on these proposals.

29. *Two Auctions*—In the event that the Commission holds two concurrent auctions of AWS-1 licenses, the Bureau proposes that all licenses in both auctions will remain available for bidding until bidding closes simultaneously on all licenses in both auctions. Accordingly, even though there may be a round in one auction in which no bidder submits any new bids, applies a proactive waiver or submits a withdrawal, that auction will remain open so long as there are new bids, proactive waivers applied, or withdrawals submitted in the other concurrent AWS-1 auction.

30. This proposal reflects two connections between two concurrent AWS-1 auctions. First, concurrent auctions offering AWS-1 licenses will be offering licenses that may be used together. Individual applicants may seek combinations of licenses offered in separate concurrent auctions. If one auction of AWS-1 licenses stops while another continues, bids in the first will become final before bids in the second. In contrast, if the bidding remains open in both auctions, bidders may better be able to achieve their desired aggregations, which may facilitate the assignment of licenses to the parties that value them most highly.

31. Second, two auctions offering AWS-1 licenses will be subject to an aggregate reserve price, as fully described below. Congress provided in CSEA that an auction for licenses authorizing use of eligible frequencies, which includes frequencies from 1710–1755 MHz, may conclude only if the total cash proceeds attributable to such spectrum are at least 110 percent of the total estimated relocation costs of federal entities previously assigned to the spectrum. The Commission has determined that total cash proceeds in an auction for purposes of the CSEA shall be measured by the winning bids

net of applicable discounts at the end of bidding. If an aggregate reserve price applies to both auctions and one auction stops first, applicants in the first auction would be unable to raise their bids to meet the reserve price in the event that bidding in the second auction did not satisfy the reserve price. Of course, if the reserve price is satisfied by the first auction in which bidding stops, it will not be necessary to hold that auction open to assure that the reserve price is met.

32. The Bureau seeks comment on its proposal. Comments regarding the appropriate stopping rule for two concurrent auctions should specify whether the comments apply regardless of how AWS-1 licenses are divided between the auctions.

33. The Bureau also seeks comment on an alternative stopping rule for two concurrent auctions. In this alternative, if the first auction to have a round with no new bids, proactive waivers or withdrawals satisfies the reserve price by itself, bidding will close simultaneously on all licenses in that auction, even though bidding will continue in the second auction.

34. Finally, the Bureau proposes to retain the discretion to exercise any of the following options during two concurrent AWS-1 auctions: (a) Use a modified version of the simultaneous stopping rule. The modified stopping rule would close the auctions for all licenses after the first round in which no bidder applies a waiver, places a withdrawal, or submits any new bids on any license or package of licenses for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the provisionally winning bidder would not keep the auctions open under this modified stopping rule; (b) keep the auctions open even if no bidder submits any new bids, applies a waiver, or makes a withdrawal. In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule, therefore, will apply as usual and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver; (c) declare that the auctions will end after a specified number of additional rounds (special stopping rule). If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) after which the auctions will close.

35. The Bureau proposes to exercise these options only in certain circumstances, for example, where the auctions are proceeding very slowly, there is minimal overall bidding

activity, or it appears likely that the auctions will not close within a reasonable period of time. Before exercising these options, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day and/or changing the minimum acceptable bid percentage. The Bureau seeks comment on these proposals.

### iii. Information Relating to Auction Delay, Suspension, or Cancellation

36. For the AWS-1 auction(s), the Bureau proposes that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction(s) in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction(s) starting from the beginning of the current round(s), resume the auction(s) starting from some previous round(s), or cancel the auction(s) in their entirety. Network interruption may cause the Bureau to delay or suspend the auction(s). The Bureau emphasizes that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureau seeks comment on this proposal.

### C. Bidding Procedure Considerations

37. In the sections that follow, there are considerations that apply regardless of auction format and others that are specific to either the SMR or the SMR-PB format. Similarly, there are considerations that differ based on whether a single auction of all the AWS-1 licenses is held, or whether the Bureau conduct two concurrent auctions. In each section, the Bureau first discusses the procedures that apply generally and then the Bureau discusses format-specific (SMR or SMR-PB), or auction number-specific, procedures separately. The Bureau seeks comment on the options set forth below.

#### i. Upfront Payments and Bidding Eligibility

38. The Bureau has delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned, taking into account such factors as the population in each geographic license area and the value of similar spectrum. A bidder's upfront payment is a refundable deposit

to establish eligibility to bid on licenses. Upfront payments related to licenses for 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. With these guidelines in mind for AWS-1 auction(s), the Bureau proposes to calculate upfront payments on a license-by-license basis using the following formula:  $\$0.05 * \text{MHz} * \text{License Area Population}$ .

39. Consistent with the Bureau's usual practice, the Bureau further proposes that the amount of the upfront payment submitted by a bidder will determine the bidder's initial bidding eligibility in bidding units. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Each license is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 66 Comment Public Notice*, on a bidding unit per dollar basis. The number of bidding units for a given license is fixed and does not change during the auction as prices change. A bidder's upfront payment is not attributed to specific licenses. If there are two concurrent auctions and bidders wish to participate in both, they must submit separate upfront payments.

40. The proposed upfront payment and number of bidding units for each AWS-1 license are set forth in Attachment A of the Auction No. 66 Comment Public Notice.

41. SMR—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 its current eligibility. Thus, in calculating its upfront payment amount and hence its initial bidding eligibility, an applicant must determine the maximum number of bidding units it may wish to bid on (or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that total number of bidding units. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round.

42. SMR-PB—With package bidding, bidders can submit bids on groups of one or more licenses, but each bidder can have at most one provisionally winning bid. The number of bidding units associated with each bid in an SMR-PB auction is the sum of the bidding units assigned to the individual licenses comprising the package. As in an SMR auction, a bidder's eligibility limits the total number of bidding units that a bidder can win. However, because any licenses that a bidder wins in a

package bidding auction must be packaged together in a single bid, the bidder's eligibility limits the total number of bidding units that can be included in the bidder's largest (in terms of bidding units) single bid. Therefore, to calculate its upfront payment amount and initial bidding eligibility, an applicant must determine the largest number of bidding units associated with licenses it may wish to include in a single package bid, and submit an upfront payment amount covering that total number of bidding units. Bidders should note that the eligibility rules will permit them to place multiple package bids, as long as the number of bidding units associated with any one bid does not exceed their current eligibility.

#### ii. Activity Rule

43. In order to ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating.

44. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. Failure to maintain the required activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place bids in the auction.

45. The Bureau proposes to divide the auction into two stages, each characterized by a different activity requirement. The auction will start in Stage One. The Bureau proposes that the auction generally will advance from Stage One to Stage Two when the auction activity level, as measured by the percentage of bidding units receiving new provisionally winning bids, is approximately twenty percent or below for three consecutive rounds of bidding. However, the Bureau further proposes that it retains the discretion to change stages unilaterally by announcement during the auction. In exercising this discretion, the Bureau will consider a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentage of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage of increase in revenue.

46. In the event there are two concurrent auctions for the AWS-1 licenses, bidders will be required to manage their eligibility and activity separately for each auction.

47. 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.

48. SMR—A bidder's activity in a round will be the sum of the bidding units associated with any licenses upon which it places bids during the current round and the bidding units associated with any licenses for which it holds provisionally winning bids.

49. For an SMR auction for AWS-1 licenses, the Bureau proposes the following activity requirements:

*Stage One:* In each round of the first stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on licenses representing at least 80 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by five-fourths ( $5/4$ ).

*Stage Two:* In each round of the second stage, a bidder desiring to maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage Two, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by twenty-nineteenths ( $20/19$ ).

50. SMR-PB—A bidder's activity in a round will be the number of bidding units associated with the bidder's largest (in terms of bidding units) active bid. Active bids include current provisionally winning bids, new bids and any bids from previous rounds which are at or above the current minimum acceptable bid.

51. For an SMR-PB auction, the Bureau proposes the following activity requirements, while noting again that it retains the discretion to change stages unilaterally by announcement during the auction:

*Stage One:* In each round of the first stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on licenses representing at least 60 percent (three-fifths) of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule

waiver is used). During Stage One, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by five-thirds ( $5/3$ ).

*Stage Two:* In each round of the second stage, a bidder desiring to maintain its current bidding eligibility is required to be active on 90 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage Two, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by ten-ninths ( $10/9$ ). The Bureau maintains the discretion not to transition to Stage Two if the Bureau believes the auction is progressing satisfactorily under the Stage One activity requirement, and in the alternative, to transition to Stage Two with an activity requirement that is lower than the 90 percent proposed herein, by announcement during the auction.

### iii. Activity Rule Waivers

53. Use of an activity rule waiver preserves the bidder's eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding. Activity rule waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

54. The FCC Auction System assumes that a bidder that does not meet the activity requirement would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round where a bidder's activity level is below the minimum required unless: (1) The bidder has no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirement. If a bidder has no waivers remaining and does not satisfy the required activity level, its eligibility will be permanently reduced, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

55. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic

waiver mechanism during the bidding round by using the reduce eligibility function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described above. Reducing eligibility is an irreversible action. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility, even if the round has not yet closed.

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

57. The Bureau proposes that each bidder in the AWS-1 auction(s) be provided with three activity rule waivers that may be used at the bidder's discretion during the course of the auction as set forth above. Waivers apply to a specific auction.

### iv. Reserve Price or Minimum Opening Bid

58. Section 309(j) calls upon the Commission to prescribe methods for establishing a reasonable reserve price or a minimum opening bid amount when FCC licenses are subject to auction, unless the Commission determines that a reserve price or minimum opening bid amount is not in the public interest. Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of a minimum opening bid amount and/or reserve price prior to the start of each auction.

#### a. Reserve Price

59. In CSEA, Congress requires the Commission to prescribe methods by which the total cash proceeds from any auction of licenses authorizing use of eligible frequencies, such as 1710-1755 MHz, shall equal at least 110 percent of the total estimated relocation costs provided to the Commission pursuant to

CSEA. For purposes of determining whether a CSEA revenue requirement has been met, the Commission has determined that total cash proceeds means winning bids net of any applicable bidding credit discounts at the end of bidding.

60. CSEA also requires that the total cash proceeds attributable to eligible spectrum must be at least 110 percent of the total estimated relocation costs before the Commission may conclude the auction. If this condition is not met, CSEA requires that the Commission shall cancel the auction. One-half of the frequencies covered by the AWS-1 licenses authorize use of CSEA eligible spectrum. Accordingly, the Bureau proposes that one-half of each winning bid net of any applicable bidding credit discounts at the end of bidding will be counted toward meeting the reserve price. In light of the proposed procedures on information available to bidders, the Bureau also seeks comment on whether the Commission should announce before the close of bidding whether the reserve price has been met.

61. On December 27, 2005, pursuant to CSEA, NTIA notified the Commission of the estimated relocation costs and timelines for relocation of eligible Federal entities assigned to frequencies from 1710 to 1755 MHz. NTIA reported that the total estimated relocation costs equal \$935,940,312. This information can be found at <http://www.ntia.doc.gov/osmhome/reports/specrelo/index.htm>.

62. Single Auction—The Bureau proposes to establish an aggregate reserve price of \$1,029,534,343.20 for all AWS-1 licenses. This aggregate reserve price, \$1,029,534,343.20, is 110 percent of total estimated relocation costs of \$935,940,312 and therefore the minimum reserve price required by CSEA. This reserve price will be met if half of the total winning bids for AWS-1 licenses net of any applicable bidding credit discounts at the end of bidding equals \$1,029,534,343.20.

63. Two Auctions—In the event that the Commission conducts two auctions of AWS-1 licenses, the aggregate reserve price will apply jointly to both auctions. In other words, half of the total winning bids for all AWS-1 licenses net of any applicable bidding credit discounts at the end of bidding must equal at least \$1,029,534,343.20 to meet the reserve price. If the reserve price is not met, the Commission will cancel both auctions pursuant to CSEA.

#### b. Minimum Opening Bid

64. In contrast to a reserve price, a minimum opening bid amount is the minimum bid price set at the beginning

of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. The auctioneer, however, often has the discretion to lower the minimum opening bid amount during the course of the auction. It is also possible for the minimum opening bid amount and the reserve price to be the same amount.

65. In light of section 309(j)'s requirements, the Bureau proposes to establish minimum opening bid amounts for the AWS-1 auction(s). The Bureau believes a minimum opening bid amount, which has been used in other auctions, is an effective bidding tool for accelerating the competitive bidding process.

66. Specifically, for the AWS-1 auction(s), the Commission proposes the following license-by-license formula for calculating minimum opening bids:  $\$0.05 * \text{MHz} * \text{License Area Population}$ .

67. The specific proposed minimum opening bid for each AWS-1 license available at auction is set forth in Attachment A of the *Auction No. 66 Comment Public Notice*.

68. If commenters believe that these minimum opening bid amounts will result in unsold licenses, or are not reasonable amounts, 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 minimum opening bid amount levels or formulas. In establishing the minimum opening bid amounts, the Bureau particularly seeks comment on such factors as the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the AWS-1 licenses. The Bureau also seeks comment on whether, consistent with section 309(j), the public interest would be served by having no minimum opening bid amounts.

#### v. Bid Amounts

69. The Bureau proposes that, in each round, eligible bidders be able to place bids in any of nine different amounts. Under this proposal, the FCC Auction System interface will list the nine acceptable bid amounts for each license (or package). The first of the nine acceptable bid amounts, called the minimum acceptable bid amount, is calculated using a formula that takes into account the amount of bidding activity on the license (or package). The eight additional bid amounts are determined by adding successively

higher multiples of a fixed bid increment amount to the minimum acceptable bid.

70. The Bureau retains the discretion to change the minimum acceptable bid amounts, the parameters of the formula to determine the percentage increment, and the bid increment percentage if it determines that circumstances so dictate. If it does make any of these changes, the Bureau will do so by announcement in the FCC Auction System during the auction.

71. SMR—The minimum acceptable bid amount for a license will be equal to its minimum opening bid amount until there is a provisionally winning bid for the license. After there is a provisionally winning bid for a license, the minimum acceptable bid amount for that license will be equal to the amount of the provisionally winning bid plus an additional amount calculated using the formula described below. The Bureau will round the result using its standard rounding procedures.

72. The Bureau proposes to calculate minimum acceptable bid amounts by using an activity-based formula, as it has done in several other auctions. The formula calculates minimum acceptable bid amounts by first calculating a percentage increment. The percentage increment for each license is a function of bidding activity on that license in prior rounds; therefore, a license that has received many bids will have a higher percentage increment than a license that has received few bids.

73. The calculation of the percentage increment used to determine the minimum acceptable bid amounts 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. The current activity index is equal to a weighting factor times the number of bidders that submit bids on the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The 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 and examples are

shown in Attachment C of the *Auction No. 66 Comment Public Notice*.

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

75. The acceptable bid amounts in addition to the minimum acceptable bid amount for each license are calculated using a bid increment percentage. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded—e.g., if the increment percentage is 10 percent, the calculation is (minimum acceptable bid amount) \* (1 + 0.10), rounded, or (minimum acceptable bid amount) \* 1.10, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) \* 1.20, rounded; the third additional acceptable bid amount equals the minimum acceptable bid amount times one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) \* 1.30, rounded; etc.

76. SMR-PB—Because bids are submitted on groups of licenses in SMR-PB, there generally are not provisionally winning bid amounts associated with individual licenses, as there are in an SMR auction where bids are submitted on a license-by-license basis. Consequently, in order to determine license-specific acceptable bid amounts for the next round, after each round the auction system will assign a price to each license using an algorithm that takes into account the bids placed so far in the auction that include that license. These prices, or current price estimates (CPEs), form the basis for calculating minimum acceptable bids and the additional increment bid amounts, much as the per-license provisionally winning bids do in the SMR format. The algorithm for computing CPEs is described in detail in Attachment B of the *Auction No. 66 Comment Public Notice*.

77. Once CPEs are determined following a round, the minimum acceptable bids for each license will be calculated as the CPE plus a percentage of the CPE. This percentage (known as the percentage increment) is determined according to a formula based on the number of bids placed that included a given license. The percentage increment will be higher for licenses that have been included in many bids than for licenses receiving little bidding activity.

78. As in an SMR auction, the computation of the percentage

increment for each license 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. The current activity index is equal to a weighting factor times the number of bidders that submit bids on packages that include 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 and examples are shown in Attachment C of the *Auction No. 66 Comment Public Notice*.

79. The percentage increment is added to the CPE in order to determine minimum acceptable bids for each license. The minimum acceptable bid amount for a package will be the sum of the minimum acceptable bid amounts for the license(s) comprising the package. Once the minimum acceptable bids have been calculated for a package, the additional eight bid amounts will be calculated by adding successively higher multiples of a fixed bid increment amount to the minimum acceptable bid.

#### vi. Provisionally Winning Bids

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

by the highest bid amount received for the license.

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

82. SMR-PB—At the end of each bidding round in an SMR-PB auction, the FCC Auction System will determine the set of provisionally winning bids by considering all of the bids that have been placed in the auction and determining which combination of non-overlapping bids yields the highest aggregate gross bid amount while not allowing a bidder to have more than one provisionally winning bid.

83. If more than one set of bids generates the same highest aggregate gross bid amount (i.e., the sets of bids are tied), the Bureau will randomly select a provisionally winning set of bids from among the tied sets. Specifically, each license in each bid will be assigned a random number. The sum of random numbers for the licenses comprising the bid will determine a selection number for each bid. The provisionally winning set of bids will be that set of bids that generates the highest aggregate gross bid amount and that maximizes the sum of selection numbers for the bids in the set. Bidders, regardless of whether they hold a provisionally winning bid, can submit higher bids in subsequent rounds. However, if the auction were to end, the winning bidders would be those that placed the provisionally winning bids.

84. In the SMR-PB format, all bids placed in the auction will be considered when determining the provisionally winning set of bids. This contrasts with the SMR format in which only provisionally winning bids from the previous round and bids placed during the current round are considered when determining new provisionally winning bids. As a consequence, in SMR-PB a bid that does not become a provisionally winning bid at the conclusion of the round in which it was placed may become a provisionally winning bid at the conclusion of a subsequent round. This may occur even if the bidder no longer has the bidding eligibility to cover the newly-provisionally winning bid. Bids cannot be withdrawn in an SMR-PB auction.

85. The rule that a bidder can hold only one of the bids in the provisionally winning set of bids may increase the likelihood that bids placed in previous rounds may appear in the provisionally



winning set for the first time many rounds later. Bids at very competitive prices may have been excluded from the provisionally winning set because the bidder placed another bid which, in combination with the bids of others, yielded a higher aggregate gross bid amount. However, if a bid placed by another bidder displaces the bidder's provisionally winning bid from the set of provisionally winning bids, an old bid by that bidder may fit better into the new set of winning bids.

86. The set of provisionally winning bids is determined after every round in which new bids are submitted.

vii. Bid Removal and Bid Withdrawal

87. SMR—Before the close of a bidding round, a bidder has the option of removing any bid placed in that round. By removing selected bids in the FCC Auction System, a bidder may effectively unsubmit any bid placed within that round. In contrast to the bid withdrawal provisions described below, 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.

88. A bidder may withdraw its provisionally winning bids using the withdraw bids function in the FCC Auction System. A bidder that withdraws its provisionally winning bid(s) is subject to the bid withdrawal payment provisions of the Commission rules. The Bureau seeks comment on these bid removal and bid withdrawal procedures.

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

90. Applying this reasoning, the Bureau proposes to limit each bidder in an auction using the SMR format to withdrawing provisionally winning bids in no more than two rounds during the

course of the auction. To permit a bidder to withdraw bids in more than two rounds may encourage insincere bidding or the use of withdrawals for anti-competitive purposes. The two rounds in which withdrawals may be used will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's rules. There is no limit on the number of provisionally winning bids that may be withdrawn in either of the rounds in which withdrawals are used.

Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules.

91. SMR—PB—As in the SMR format, before the close of a round a bidder has the option of removing any bid placed in that round, effectively unsubmitting any bid placed in the round. Once a round closes, a bidder may no longer remove a bid. However, in contrast to SMR, bidders will not be permitted to withdraw any bids after a round has closed.

92. As discussed above, the *Part 1 Third Report and Order* permits withdrawals in the SMR format in part to allow bidders to avoid being the winning bidder on some, but not all, of a desired set of licenses. In contrast to the license-by-license bidding of SMR, the SMR—PB format does not expose bidders to the risk of winning incomplete aggregations. In SMR—PB, bidders can only win licenses that were submitted as part of a single package bid and therefore, withdrawals are not needed to avoid winning an incomplete set of licenses.

93. Bids in an SMR—PB auction are much more interdependent than in an SMR auction. In an SMR auction, whether a bid on a license becomes provisionally winning depends only upon whether it is the highest bid submitted for the license and, in the case of ties, on its random number assignment. In contrast, in the SMR—PB format, whether a bid becomes part of the provisionally winning set depends in part upon the particular configuration of package bids submitted by other bidders and upon the identities of the bidders submitting them, because a given bidder can only have one bid in the provisionally winning set. Consequently, a withdrawn bid in an SMR—PB auction may significantly change the current set of provisionally winning bids and seriously disrupt the bidding strategies of other bidders.

94. Hence, because the potential benefits to bidders from being able to withdraw bids are much lower in an SMR—PB auction than in an SMR auction and because the potential harms to other bidders from withdrawn bids

are potentially much greater, no withdrawals will be permitted in an auction using the SMR—PB format.

*D. Considerations Relating to Certain Post-Auction Payment Rules*

i. Apportioning Package Bids

95. In the event that it offers AWS—1 licenses in an auction using SMR—PB, the Bureau seeks comment on the appropriate mechanism for apportioning package bids among the individual licenses comprising the package. In package bidding, when bidders place winning all-or-nothing bids on groups of licenses, there will be no identifiable bid amounts on the individual licenses that comprise packages of more than one license. However, the Commission's competitive bidding rules and procedures assume that the amount of each bid on an individual license always is known.

96. In the event that it offers AWS—1 licenses in an auction using SMR—PB, the Bureau proposes to use final current price estimates as a mechanism for apportioning package bids among the individual licenses comprising the package when regulatory calculations require a bid amount on an individual license. As summarized below and described in detail in Attachment B of the *Auction No. 66 Comment Public Notice*, current price estimates (CPEs) for each license in an SMR—PB auction reflect the demand expressed by bids in the auction that include the license. CPEs are calculated in each round of the auction using an algorithm that takes into account all the bids placed in the auction that include that license, whether the bids are for the individual license or include the license in a package with other licenses. The algorithm assures that the sum of CPEs for individual licenses in a package that is part of the provisionally winning set equals the provisionally winning bid amount for the package. Thus, CPEs in effect apportion the provisionally winning bid amount for a package in the provisionally winning set among the individual licenses in the package based on the relative demand for each license as expressed by bids in the auction. Final CPEs, or final price estimates (FPEs), are the CPEs from the final round of the auction. Accordingly, FPEs reflect all bids made in the auction and can be used to apportion a winning bid on a package. The Bureau seeks comment on this proposal.

ii. Establishing the Interim Withdrawal Payment Percentage

97. The Bureau seeks comment on the appropriate percentage of a withdrawn

bid that should be assessed as an interim withdrawal payment, in the event that a final withdrawal payment cannot be determined at the close of the auction. In general, the Commission's rules provide that a bidder that withdraws a bid during an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or subsequent auction(s). However, if a license for which there has been a withdrawn bid is neither subject to a subsequent higher bid nor won in the same auction, the final withdrawal payment cannot be calculated until a corresponding license is subject to a higher bid or won in a subsequent auction. When that final payment cannot yet be calculated, the bidder responsible for the withdrawn bid is assessed an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed. The Commission recently amended its rules to provide that in advance of the auction, the Commission shall establish the percentage of the withdrawn bid to be assessed as an interim bid withdrawal payment between three percent (3%) and twenty percent (20%).

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

99. With respect to an auction of AWS-1 licenses, the service rules permit a wide range of advanced services, some of which may best be offered by combining licenses on adjacent frequencies or in adjacent areas. In addition, an auction of AWS-1 licenses will make available multiple licenses on adjacent frequencies in geographic areas of varying sizes. Given the availability of so many different licenses and the Bureau's interest in deterring strategic withdrawals, the Bureau proposes a percentage above the 3 percent (3%) previously provided by the Commission's rules. Specifically, taking into account the factors discussed above, the Bureau proposes to establish the percentage of the withdrawn bid to be assessed as an interim bid

withdrawal payment at ten percent (10%) for the AWS-1 auction. The Bureau seeks comment on this proposal.

### iii. Establishing the Additional Default Payment Percentage

100. The Bureau seeks comment on the appropriate percentage of an applicable bid that should be assessed as an additional default payment in an auction under the SMR format. If, after the close of an auction, a winning bidder defaults on a down payment or final payment obligation or is disqualified, the bidder is liable for a default payment. This payment consists of a deficiency portion, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less. Under both prior and recently adopted Commission rules, in an auction under the SMR-PB format, the additional default payment will be twenty-five percent (25%) of the defaulted bid. However, the Commission's recently adopted new rule provides that in auctions under the SMR format, the Commission shall establish in the advance of the auction the percentage of the applicable bid to be assessed as an additional payment between three percent (3%) and twenty percent (20%).

101. When it adopted the new rule, the Commission indicated that the level of the additional default payment in a particular SMR auction will be based on the nature of the service and the inventory of the licenses being offered. In this regard, the Bureau believes that it is significant that the auction of AWS-1 licenses will be the first opportunity for bidders to obtain licenses to provide advanced wireless services. This context heightens the public interest in avoiding any delay in providing access to the spectrum that might result from defaults on winning bids. Furthermore, the public interest in rapid deployment of new advanced wireless services might be adversely affected by defaults.

102. Given its interest in deterring defaults, the Bureau proposes a percentage above the 3 percent (3%) minimum previously provided by the Commission's rules. The Bureau proposes to set the additional default payment for the auction of AWS-1 licenses at ten percent (10%) of the applicable bid. The Bureau seeks comment on this proposal.

### III. Conclusion

103. Comments are due on or before February 14, 2006, and reply comments are due on or before February 28, 2006. All filings related to the auction(s) of AWS-1 licenses should refer to AU Docket No. 06-30. Comments may be submitted using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. The Bureau encourages interested parties to file electronically.

104. Electronic Filers: Parties who choose to file electronically through ECFS need submit only one copy. Comments may be filed electronically using the Internet by accessing the ECFS at <http://www.fcc.gov/cgb/ecfs/>. Filers should follow the instructions provided on the website for submitting comments. In completing the transmittal screen, filers 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, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

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

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

Federal Communications Commission.

**Gary D. Michaels,**

*Deputy Chief, Auctions Spectrum and Access Division.*

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