

competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll free at 1-866-208-3676, or for TTY, (202) 502-8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-14497) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: July 22, 2013.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2013-18064 Filed 7-26-13; 8:45 am]

BILLING CODE 6717-01-P

## FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 13-178; DA 13-1540]

### Auction of H Block Licenses in the 1915-1920 MHz and 1995-2000 MHz Bands; Comment Sought on Competitive Bidding Procedures for Auction 96

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the intention to hold an auction of H Block licenses in the 1915-1920 and 1995-2000 MHz bands. This document also seeks comment on competitive bidding procedures for Auction 96.

**DATES:** Comments are due on or before August 5, 2013, and reply comments are due on or before August 16, 2013.

**ADDRESSES:** All filings in response to this public notice must refer to AU Docket No. 13-178. The Wireless Telecommunications Bureau strongly

encourages interested parties to file comments electronically, and request that an additional copy of all comments and reply comments be submitted electronically to the following address: [auction96@fcc.gov](mailto:auction96@fcc.gov). Comments may be submitted by any of the following methods:

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

■ Federal Communications Commission's Web site: <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.

■ 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.

■ All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street SW., Room TW-A325, Washington, DC 20554. 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, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

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

#### FOR FURTHER INFORMATION CONTACT:

*Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* For auction legal questions: Valerie Barrish at (202) 418-0660; for general auction questions: Jeff Crooks at (202) 418-0660 or Debbie Smith or Linda Sanderson at (717) 338-2868. *Broadband Division:* For H Block service rule questions: Matthew Pearl (legal) or Janet Young (technical) at (202) 418-2487.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction 96 Comment Public Notice* released on July 15, 2013. The complete text of the *Auction 96*

*Comment Public Notice*, including all attachments and related Commission documents, is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW., Room CY-A257, Washington, DC 20554. The *Auction 96 Comment Public Notice* and its attachments, as well as related Commission documents, also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW., Room CY-B402, Washington, DC 20554, telephone 202-488-5300, fax 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 13-1540. The *Auction 96 Comment Public Notice* and related documents also are available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/96/>, or by using the search function for AU Docket No. 13-178 on the Commission's Electronic Comment Filing System (ECFS) Web page at <http://www.fcc.gov/cgb/ecfs/>.

## I. Introduction

1. The Wireless Telecommunications Bureau (Bureau) announces its intention to hold an auction of licenses in the 1915-1920 MHz (Lower H Block) and 1995-2000 MHz (Upper H Block) bands (collectively, the H Block), and seeks comment on the procedures to be used for this auction. The staff will be prepared to conduct this auction, which will be designated as Auction 96, by or as early as January 14, 2014.

2. The Commission is offering the licenses in Auction 96 pursuant to the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act). The Spectrum Act requires, among other things, that the Commission allocate for commercial use and license spectrum in the H Block using a system of competitive bidding no later than February 23, 2015.

## II. Licenses To Be Offered In Auction 96

### A. Description of Licenses

3. In the *H Block Report and Order*, FCC 13-88, the Commission concluded that licenses for H Block spectrum should be awarded on an Economic Areas (EA) basis in all areas, including the Gulf of Mexico. Auction 96 will offer one license for each of the 176 EAs. The Lower H Block and Upper H Block frequencies will be licensed as

paired 5 megahertz blocks, with each license having a total bandwidth of 10 megahertz; 1915–1920 MHz for mobile and low power fixed (i.e., uplink) operations and 1995–2000 MHz for base station and fixed (i.e., downlink) operations. A complete list of the licenses offered in Auction 96 is available in Attachment A to the *Auction 96 Comment Public Notice*.

#### B. Cost-Sharing Obligations

4. The spectrum in the Lower H Block and the Upper H Block is subject to cost-sharing requirements related to the past clearing and relocation of incumbent users from these bands. Consistent with its long-standing policy that cost-sharing obligations for both the Lower H Block and the Upper H Block be apportioned on a *pro rata* basis against the relocation costs attributable to the particular band, the Commission adopted cost-sharing rules in the *H Block Report and Order* that require H Block licensees to pay a *pro rata* share of expenses previously incurred by UTAM, Inc. (UTAM) and by Sprint Nextel, Inc. (Sprint) in clearing incumbents from the Lower H Block and the Upper H Block, respectively.

5. Under the cost sharing formula adopted in the *H Block Report and Order*, the reimbursement amount owed to UTAM with respect to the 1915–1920 MHz band will be determined by dividing the gross winning bid for an H Block license by the sum of the gross winning bids for all H Block licenses won in Auction 96 and then multiplying that result by \$12,629,857—the total amount owed to UTAM for clearing the Lower H Block. The *H Block Report and Order* adopted the same cost-sharing formula for the Upper H Block (1995–2000 MHz band) related to Sprint's clearing costs of \$94,875,516.

6. Winning bidders are required to pay UTAM and Sprint, as applicable, the reimbursement amounts owed within thirty days after the grant of the winning bidders' long-form license applications.

7. The Commission also adopted a contingency plan in the *H Block Report and Order* that will be triggered in the unlikely event that licenses won in this auction cover less than forty percent of the U.S. population. If such an event occurs, winning bidders—in this auction and in subsequent H Block auctions—will be required to timely pay UTAM and Sprint, respectively, their *pro rata* share calculated by dividing the population of the individual EA by the total U.S. population and then multiplying this quotient by \$12,629,857 for UTAM and by \$94,875,516 for Sprint.

8. The cost-sharing rules and contingency plan adopted in the *H Block Report and Order* are designed to ensure that UTAM and Sprint receive full reimbursement after this auction by effectively apportioning the reimbursement costs associated with any unsold H Block licenses among the winning bidders, except in cases where the contingency plan is triggered or a successful bidder's long-form application is not filed or granted. If any of the licenses won in this auction are not awarded, the license at issue will be deemed to have triggered a reimbursement obligation that will be paid by the licensee acquiring the license in a subsequent auction.

#### III. Due Diligence

9. Each potential bidder is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the licenses that it is seeking in this auction. Each bidder is responsible for assuring that, if it wins a license, it will be able to build and operate facilities in accordance with the Commission's rules. The Commission makes no representations or warranties about the use of this spectrum for particular services. Each applicant should be aware that a Commission auction represents an opportunity to become a Commission licensee, subject to certain conditions and regulations. A Commission auction does not constitute an endorsement by the Commission of any particular service, technology, or product, nor does a Commission license constitute a guarantee of business success.

10. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. Each potential bidder should perform technical analyses and/or refresh any previous analyses to assure itself that, should it become a winning bidder for any Auction 96 license, it will be able to build and operate facilities that will fully comply with all applicable technical and regulatory requirements. The Bureau strongly encourages each applicant to inspect any prospective transmitter sites located in, or near, the geographic area for which it plans to bid; confirm the availability of such sites; and familiarize itself with the Commission's rules regarding the National Environmental Policy Act.

11. The Bureau strongly encourages each applicant to conduct its own research prior to Auction 96 in order to determine the existence of pending administrative, rulemaking, or judicial proceedings that might affect its

decisions regarding participation in the auction.

12. The Bureau strongly encourages participants in Auction 96 to continue such research throughout the auction. The due diligence considerations mentioned in the *Auction 96 Comment Public Notice* do not constitute an exhaustive list of steps that should be undertaken prior to participating in this auction. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon the specific facts and circumstances related to its interests.

#### IV. Bureau Seeks Comment on Auction Procedures

13. 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 conduct of Auction 96.

##### A. Auction Design

##### i. Simultaneous Multiple-Round Auction—With or Without Package Bidding

14. The Bureau proposes to conduct Auction 96 using a simultaneous multiple-round (SMR) auction format. An SMR auction offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids. Typically, bidding remains open on all licenses until bidding stops on every license.

15. The Bureau additionally proposes to incorporate provisions for a simple form of package bidding into the simultaneous multiple-round auction. In particular, the Bureau proposes to use a form of package bidding called hierarchical package bidding (HPB) in which, in addition to being able to bid on individual licenses, bidders would also be able to bid on certain tiered, non-overlapping packages of licenses. The Commission concluded in the *H Block Report and Order* that the H Block spectrum should be licensed on an EA basis. Consistent with that conclusion, the Bureau proposes that the basic bidding tier under HPB be individual EA licenses. The *H Block Report and Order* also noted that the decision to license at the EA level would facilitate aggregations at the larger Major Economic Area (MEA) and Regional Economic Area Grouping (REAG) levels. The Bureau therefore seeks comment on the use of predefined packages of EAs in MEAs and potentially larger packages such as REAGs, as well as a package

comprising all markets in the contiguous 48 states. The Bureau seeks more detailed comment on its proposals and on various alternatives.

16. By permitting only non-overlapping packages at each tier (for example, a given EA could be included in only one MEA, which in turn could be included in only one REAG), HPB considerably simplifies bidder strategy and computational complexity compared to some other forms of package bidding. The pricing rules used with HPB are transparent and make it clear to bidders how package bids are evaluated relative to individual bids, hence making it easier than in more complex package bidding formats for bidders interested in individual licenses to compete with bidders interested in packages. As a result of these and other advantages, HPB and similar packaging formats have performed well in tests of overall auction efficiency. Auction 96 is the first H Block auction and a single complete set of nationwide EA licenses is available. Consequently, offering predefined packages might allow for significant economies of scale that may well correspond to a variety of business plans. Bidders that wish smaller or more tailored aggregations than the allowable predefined packages would be able to bid on individual EAs instead of or in addition to the predefined packages.

17. The Bureau used a variant of HPB in Auction 73 under considerably different circumstances. Most notably, in Auction 73 the Bureau implemented SMR bidding across the five available blocks of licenses and determined that package bidding would be permitted in only one of the blocks. Further, if the aggregate reserve price that was applicable to the package bidding block in Auction 73 was not met, the performance and public interest requirements pertaining to the licenses in the block would change significantly. As a result, special procedures were needed to allow bidders to shift their bidding across the multiple available blocks, the rest of which were subject to a different bidding format. Those complicating factors—and their implications for bidder strategies—are not present in Auction 96, which includes only a single block of licenses. Hence, the bidding rules implementing HPB would be considerably simpler than those for Auction 73.

18. Briefly, HPB as proposed for Auction 96 could be implemented as follows. The Bureau would determine the predefined packages according to a non-overlapping hierarchical structure, with an initial tier consisting of individual EA licenses. The Bureau could adopt a two-tier structure

composed simply of the initial tier of EAs and MEA packages. Any subsequent tiers could consist of non-overlapping packages of the licenses in the initial tier and all subsidiary tiers. For example, if the Bureau were to adopt MEA, REAG, and nationwide packages, these packages would all nest accordingly (e.g., EAs nest to MEAs, MEAs nest to REAGs, and REAGs nest to the national package). The winning set of bids could consist of bids from various tiers, as long as each license is included in only one winning bid. That is, in the four-tier construct, the winning set could potentially include individual licenses in one part of the country, MEA packages in other areas, and potentially REAG packages as well, provided the value of all of these individual and package bids exceeds a bid on a nationwide package. A bidder may place bids on any combination of individual licenses or packages.

19. After each round, the Commission would determine the combination of package and/or single license bids that yields the highest gross amount, and those bids would become provisionally winning. When determining provisionally winning bids, the FCC Auction System would consider each bidder's highest bid on each license or package placed up to that point in the auction, regardless of whether the bids were provisionally winning after the rounds in which they were placed. Considering these bids from previous rounds makes it possible for new bids on individual licenses to combine with other bids in order to compete with bids on packages. The provisionally winning bids would be determined by comparing aggregate gross bid amounts, at each tier, for various combinations of package and individual license bids.

20. The Bureau seeks comment generally on its proposed simultaneous multiple-round auction format with hierarchical package bidding. Would HPB balance aggregation needs with tractability, transparency, and simplicity? The Bureau seeks comment also on what packages should be available for various tiers. Should the Bureau allow a simple structure of EAs and MEAs, or some other set of tiers of MEAs, REAGs, and/or a nationwide package? Alternatively, would the Bureau standard SMR auction format without package bidding sufficiently accommodate economies of scale or other complementarities? If the Bureau does not implement package bidding for Auction 96, it proposes to conduct the auction using standard SMR procedures.

21. The Bureau proposes to conduct Auction 96 as a single round sealed bid auction. While not as common for

spectrum auctions as the SMR format, the Bureau has previously used the single round sealed bid format. The Bureau proposes this alternative because Auction 96 offers licenses in only a single spectrum block and a single round auction may simplify the process for bidders and reduce the costs of auction participation. In a single round format the Bureau could also offer one or more tiers of non-overlapping packages for HPB. The Bureau seeks comment on any design features of the sealed bid format (e.g., first-price or second-price). The Bureau seeks comment on this alternative proposal and on any other auction formats it should consider for Auction 96.

#### ii. Anonymous Bidding

22. In several prior Commission auctions, the Bureau has adopted procedures to limit the disclosure of certain bidder-specific information until after the auction. Consistent with that practice, the Bureau proposes to adopt certain procedures for limited information disclosure or anonymous bidding for Auction 96. Specifically, the Bureau proposes to withhold, until after the close of bidding, public release of (1) bidders' license selections on their short-form applications (FCC Form 175), (2) the amounts of bidders' upfront payments and bidding eligibility, and (3) information that may reveal the identities of bidders placing bids and taking other bidding-related actions.

23. Under these proposed limited information procedures, the amount of every bid placed and whether a bid was withdrawn would be disclosed after the close of every round, but the identities of bidders placing specific bids or withdrawals (if permitted) and the net bid amounts would not be disclosed until after the close of the auction.

24. Bidders would have access to additional information about their own bids. For example, bidders would be able to view their own level of eligibility, before and during the auction, through the FCC Auction System.

25. Moreover, for the purpose of complying with 47 CFR 1.2105(c), which prohibits certain communications between applicants (formerly referred to as the anti-collusion rule), applicants would be made aware of other applicants with which they will not be permitted to cooperate, collaborate, or communicate—including discussing bids, bidding strategies, or post-auction market structure. Specifically, the Bureau would notify separately each applicant with a short-form application

on file for participation in Auction 96 whether applicants with short-form applications to participate in a pending auction, including but not limited to Auction 96, have applied for licenses in any of the same or overlapping geographic areas as that applicant.

26. After the close of bidding, bidders' license selections, upfront payment amounts, bidding eligibility, bids, and other bidding-related actions would be made publicly available.

27. The Bureau seeks comment on the details of its proposal for implementing anonymous bidding in Auction 96. The Bureau also seeks comment on alternatives to the use of anonymous bidding procedures for Auction 96. When the Commission originally proposed limited information disclosure procedures, it did so in response to analysis suggesting that under certain circumstances the competitiveness and economic efficiency of a simultaneous multiple-round auction may be enhanced if such information is withheld until after the close of the auction. The Bureau encourages parties to provide information about the benefits and costs of complying with limited information procedures as compared with the benefits and costs of alternative procedures that would provide for the disclosure of more information on bidder identities and interests in the auction. If commenters believe that the Bureau should not adopt procedures to limit the disclosure of certain bidder-specific information until after the auction, they should explain their reasoning.

#### *B. Auction Structure*

##### *i. Bidding Rounds*

28. Under the Bureau's proposal to use an SMR format, Auction 96 will consist of sequential bidding rounds. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction.

29. The Commission will conduct Auction 96 over the Internet using the FCC Auction System. Bidders will also have the option of placing bids by telephone through a dedicated, toll-free Auction Bidder Line. The toll-free telephone number for the Auction Bidder Line will be provided to qualified bidders prior to the start of the auction.

30. The Bureau proposes to retain the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. Under this proposal, the

Bureau may change the amount of time for bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors. The Bureau seeks comment on this proposal. Commenters on this issue should address the role of the bidding schedule in managing the pace of the auction, specifically discussing the tradeoffs in managing auction pace by bidding schedule changes, by changing the activity requirements or bid amount parameters, or by using other means.

##### *ii. Stopping Rule*

31. The Bureau has discretion to establish stopping rules before or during multiple round auctions in order to complete the auction within a reasonable time. For Auction 96, under its SMR proposal, the Bureau proposes to employ a simultaneous stopping rule approach. Using a simultaneous stopping rule means all licenses remain available for bidding until bidding stops on every license. More specifically, bidding will close on all licenses and packages after the first round in which no bidder submits any new bids, applies a proactive waiver, or withdraws any provisionally winning bids (if withdrawals are permitted). Thus, under the Bureau's SMR proposal, unless the Bureau announces alternative stopping procedures, the simultaneous stopping rule will be used in this auction, and bidding will remain open on all licenses until bidding stops on every license, regardless of whether bids are placed on individual licenses or packages of licenses. Consequently, it is not possible to determine in advance how long Auction 96 will last.

32. Further, the Bureau proposes to retain the discretion to exercise any of the following options during Auction 96: (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, withdraws a provisionally winning bid, or places any new bids on a license or package for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license or package for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule; (b) Use a modified version of the simultaneous stopping rule that would close the auction for all licenses after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid, or places any new bids on a license or package that is not FCC

held. Thus, absent any other bidding activity, a bidder placing a new bid on a license that does not already have a provisionally winning bid (an FCC-held license) would not keep the auction open under this modified stopping rule; (c) Use a modified version of the simultaneous stopping rule that combines (a) and (b); (d) 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; or (e) Keep the auction open even if no bidder places any new bids, applies a waiver, or withdraws (if withdrawals are permitted) any provisionally winning bids. In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

33. The Bureau proposes to exercise these options only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising these options, the Bureau is likely to attempt to change the pace of the auction by, for example, changing the number of bidding rounds per day and/or the minimum acceptable bids. The Bureau proposes to retain the discretion to exercise any of these options with or without prior announcement during the auction. The Bureau seeks comment on these proposals.

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

34. For Auction 96, the Bureau proposes that it may delay, suspend, or cancel the auction in the event of a natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. The Bureau will notify participants of any such delay, suspension or cancellation by public notice and/or through the FCC Auction System's announcement function. If the auction is delayed or suspended, the Bureau may, in its sole discretion, elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The

Bureau emphasize that it will exercise this authority solely at its discretion, and note that the exercise of the Bureau's authority in this regard 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. Auction Procedures

#### i. Upfront Payments and Bidding Eligibility

35. 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 efficiency of the auction process and the potential value of similar licenses. An upfront payment is a refundable deposit made by each bidder to establish its eligibility to bid on licenses. Upfront payments that are related to the specific licenses being auctioned 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. For Auction 96, the Bureau proposes to make the upfront payments equal to the proposed minimum opening bids. The upfront payments for each license are set forth in Attachment A to the *Auction 96 Comment Public Notice*. The Bureau seeks comment on this proposal.

36. The Bureau further proposes that the amount of the upfront payment submitted by a bidder will determine its initial bidding eligibility in bidding units. The Bureau proposes to assign each license a specific number of bidding units, equal to one bidding unit per dollar of the upfront payment proposed for the license. The specific bidding units for each license are set forth in Attachment A to the *Auction 96 Comment Public Notice*. 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 or packages of licenses. Rather, a bidder may place bids on any combination of the licenses it selected on its short-form application (FCC Form 175), provided that the total number of bidding units associated with those licenses does not exceed its current eligibility. A bidder cannot increase its eligibility during the auction; it can only maintain its eligibility or decrease its eligibility. Thus, in calculating its upfront payment amount and hence its initial bidding eligibility, an applicant must determine the maximum number of bidding units on which it may wish to bid (or hold provisionally winning bids) in any single round and submit an

upfront payment amount covering that total number of bidding units. The Bureau requests comment on these proposals.

37. Under HPB procedures, the number of bidding units for a package equals the sum of the bidding units for the licenses in that package. The bidding units for a license and a package including that license will be counted only once in determining bidding eligibility. Thus, when an applicant calculates its upfront payment amount by determining the maximum number of bidding units on which it may wish to bid in any single round (in addition to its current provisionally winning bids), it should count the bidding units associated with each license only once even if it may wish to bid on an individual license and a package containing that license. The Bureau seeks comment on these proposals.

#### ii. Activity Rule

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

39. The Bureau proposes to divide the auction into at least two stages, each characterized by a different activity requirement. The auction will start in Stage One. The Bureau proposes to advance the auction to the next stage by announcement during the auction. In exercising this discretion, the Bureau will consider a variety of measures of auction activity, including but not limited to the percentage of bidding units associated with licenses on which there are new bids, the number of new

bids, and the increase in revenue. The Bureau seeks comment on these proposals.

40. The Bureau proposes the following activity requirements, while noting again that the Bureau 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 bidding units associated with licenses representing at least 80 percent of its current bidding eligibility, counting the bidding units associated with a bid on an individual license and a package including that license only once. Failure to maintain the required activity level will result in the use of an activity rule waiver or a reduction in the bidder's bidding eligibility for the next round of bidding. 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 ( $\frac{5}{4}$ ). 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 the use of an activity rule waiver or a reduction in the bidder's bidding eligibility for the next round of bidding. 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 ( $\frac{20}{19}$ ).

41. The Bureau requests comment on these activity requirements. Under this proposal, the Bureau will retain the discretion to change the activity requirements during the auction. For example, the Bureau could decide to add an additional stage with a higher activity requirement, not to transition to Stage Two if it believes the auction is progressing satisfactorily under the Stage One activity requirement, or to transition to Stage Two with an activity requirement that is higher or lower than the 95 percent proposed herein. If the Bureau exercises this discretion, it will alert bidders by announcement in the FCC Auction System.

#### iii. Activity Rule Waivers and Reducing Eligibility

42. When a bidder's eligibility in the current round is below the required minimum level, it may preserve its current level of eligibility through an activity rule waiver. An activity rule waiver applies to an entire round of bidding, not to a particular bid. Activity rule waivers, which can be either proactive or automatic, are principally a

mechanism for a bidder to avoid the loss of bidding eligibility in the event that exigent circumstances prevent it from bidding in a particular round.

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

44. 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 it into compliance with the activity rule. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility, even if the round has not yet closed.

45. Under the proposed simultaneous stopping rule, 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 are placed or withdrawn, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC Auction System in a round in which there are no new bids, withdrawals, or proactive waivers will not keep the auction open. A bidder cannot apply a proactive waiver after bidding in a round, and applying a proactive waiver will preclude it from placing any bids in that round. Applying a waiver is irreversible; once a proactive waiver is submitted, it cannot be unsubmitted, even if the round has not yet closed.

46. Consistent with recent Commission auctions, the Bureau proposes that each bidder in Auction 96 be provided with a total of three activity rule waivers that may be used at the

bidder's discretion during the course of the auction. The Bureau seeks comment on this proposal.

#### iv. Reserve Price and Minimum Opening Bids

47. 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.

48. Normally, a reserve price is an absolute minimum price below which an item or items will not be sold in a given auction. If a reserve price is utilized, the specific amount of the reserve price may be disclosed or undisclosed. 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. It is possible for the minimum opening bid and the reserve price to be the same amount.

49. Among other factors the Bureau must consider in deciding whether to employ either or both of these mechanisms is the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on the spectrum being auctioned.

#### a. Reserve Price

50. The Commission is statutorily obliged to consider and balance a variety of public interests and objectives when establishing service rules and licensing procedures with respect to the public spectrum resource. These objectives include promoting recovery for the public a portion of the value of that resource. With respect to the H Block licenses being offered in Auction 96, the Spectrum Act specifically directs that proceeds from an auction of H Block spectrum be deposited into the Public Safety Trust Fund and be used for, among other things, funding (or reimbursement to the U.S. Treasury for the funding) of the nationwide, interoperable public safety broadband network by the First Responder Network Authority. In view of the various public interest objectives it must consider, the Bureau proposes to establish a reserve price for the H Block licenses offered in Auction 96. The Bureau further proposes to utilize an aggregate reserve price based on the aggregate of the gross bids for the H Block licenses, rather than license-by-license reserve prices.

The Bureau seeks comment on these proposals.

51. The Bureau seeks comment on the implementation of a reserve price. What factors should the Bureau consider in determining the amount of the reserve? Should the Bureau disclose the amount of the reserve price publicly prior to the auction, or should the reserve price amount remain undisclosed? The Bureau also seeks comment on how to evaluate unsold licenses in determining whether an aggregate reserve price has been met. The Bureau encourages commenters to address any additional specific issues related to the use of reserve prices. The Bureau asks that commenters describe in detail the specific factors that lead them to their conclusions.

#### b. Minimum Opening Bids

52. The Bureau proposes to establish minimum opening bid amounts for Auction 96. 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.

53. For Auction 96 the Bureau proposes to calculate minimum opening bid amounts on a license-by-license basis using a formula based on bandwidth and license area population, similar to the Bureau's approach in many previous spectrum auctions. The Bureau proposes to use a calculation based on \$0.07 per megahertz of bandwidth per population (per MHz-pop). Additionally, the Bureau proposes to incorporate pricing information from previous auctions to tailor the results of its calculation to the relative prices for each EA. For this the Bureau proposes to create an index of the relative price of each EA using the winning bid amounts for the EA licenses of paired spectrum from Auctions 66 and 73. This modification to the use of \$0.07 per MHz-pop results in amounts ranging from less than \$0.01 per MHz-pop to \$0.16 per MHz-pop. The Bureau further proposes a minimum of \$1,000 per license. For the license covering the Gulf of Mexico, the Bureau proposes to set the minimum opening bid at \$20,000. The minimum opening bid amount for a package will equal the sum of the minimum opening bid amounts for all of the licenses in that package.

54. The proposed minimum opening bid amount for each H Block license available in Auction 96, calculated pursuant to these procedures, is set forth in Attachment A of the *Auction 96 Comment Public Notice*. For packages, the Bureau proposes that the minimum opening bid amount of a package will equal the sum of the minimum opening

bid amounts for all of the licenses in that package.

55. The Bureau seeks comment on all of these proposals concerning minimum opening bids. 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. If a commenter requests a lower minimum opening bid amount for a specific license, it should justify the requested change in detail. If commenters disagree with the Bureau's proposed use of \$0.07 per MHz-pop, its approach to tailoring minimum opening bid amounts to account for relative prices among the EAs in past auctions, or its selection of which past results to consider, the Bureau asks commenters to support their claims with valuation analyses and suggested minimum opening bid amount levels or formulas.

56. In establishing minimum opening bid amounts, the Bureau particularly seeks comment on factors that could reasonably have an impact on valuation of the licenses being auctioned, including the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the service areas, the size of the geographic service areas, issues of interference with other spectrum bands and any other relevant factors. The Bureau also seeks comment on whether the public interest would be served by having no minimum opening bid amount.

57. Commenters may also wish to address the general role of minimum opening bids in managing the pace of the auction. For example, commenters could compare using minimum opening bids—e.g., by setting higher minimum opening bids to reduce the number of rounds it takes licenses to reach their final prices—to other means of controlling auction pace, such as changes to bidding schedules or activity requirements.

#### v. Bid Amounts

58. The Bureau proposes that, in each round, an eligible bidder will be able to place a bid on a given license or package using one or more pre-defined bid amounts. Under this proposal, the FCC Auction System interface will list the acceptable bid amounts for each license and package. The Bureau proposes to calculate bid amounts in the following manner.

##### a. Minimum Acceptable Bids

59. The first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum

acceptable bid amount for a license will be equal to its minimum opening bid amount until there is a provisionally winning bid on the license itself or on a package that includes the license. The minimum acceptable bid amount for a package will be the sum of the minimum acceptable bid amounts for the licenses in the package. The Bureau proposes to calculate minimum acceptable bids based on current price estimates and an activity-based formula.

60. After there is a provisionally winning bid covering a license, the FCC Auction System will determine a current price estimate (CPE) for each license in each round as a basis for calculating minimum acceptable bids. The CPE is the provisionally winning bid for the license, or—if the provisionally winning bid covering the license is a package bid—a proxy for an individual license bid calculated as a share of the provisionally winning package bid. Attachment B to the *Auction 96 Comment Public Notice* describes in more detail the proposed mechanism for determining CPEs in an HPB auction format.

61. Once CPEs are calculated, minimum acceptable bids are then determined for each license as the amount of the CPE plus a percentage of the CPE. The percentage is calculated using an activity-based formula. In general, the percentage will be higher when many bidders are bidding on a license, or on a package containing a license, than when few bidders are bidding on a license.

62. The percentage of the CPE used to establish the minimum acceptable bid amount is calculated based on an activity index at the end of each round. The activity index is a weighted average of (a) the number of distinct bidders placing a bid on the license, including package bids, in that round, and (b) the activity index from the prior round. Specifically, the activity index is equal to a weighting factor times the number of bidders placing a bid covering the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The additional percentage is determined as one plus the activity index times a minimum percentage amount, with the result not to exceed a given maximum. The additional percentage is then multiplied by the CPE amount to obtain the minimum acceptable bid for the next round. The Bureau proposes initially to set the weighting factor at 0.5, the minimum percentage at 0.1 (10%), and the maximum percentage at 0.25 (25%). Hence, at these initial settings, the minimum acceptable bid for a license

will be between ten percent and twenty-five percent higher than the CPE, depending upon the bidding activity covering the license. Equations and examples are shown in Attachment C of the *Auction 96 Comment Public Notice*. The Bureau seeks comment on whether to use this activity-based formula or a different approach. For example, should the Bureau use a fixed percentage above the CPE?

##### b. Additional Bid Amounts

63. The Bureau proposes to calculate any additional bid amounts using the minimum acceptable bid amount and a bid increment percentage—more specifically, by multiplying the minimum acceptable bid by one plus successively higher multiples of the bid increment percentage. If, for example, the bid increment percentage is 5 percent, the calculation of the first additional acceptable bid amount is (minimum acceptable bid amount) \* (1 + 0.05), rounded, or (minimum acceptable bid amount) \* 1.05, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) \* 1.10, rounded; etc. The Bureau will round the results using the Commission's standard rounding procedures for auctions. The Bureau proposes initially to set the bid increment percentage at 5 percent.

64. For Auction 96 the Bureau proposes to begin the auction with three acceptable bid amounts per license (the minimum acceptable bid amount and two additional bid amounts) and one acceptable bid amount per package (the minimum acceptable bid amount and no additional bid amounts). More acceptable bidding amounts are proposed for licenses than for packages to help ensure that bids on individual licenses or on smaller packages can compete with bids on larger packages, even when there may not be active competition on all the separate components of the large package.

##### c. Bid Amount Changes

65. The Bureau retains the discretion to change the minimum acceptable bid amounts, the additional bid amounts, the number of acceptable bid amounts, and the parameters of the formulas used to calculate minimum acceptable bid amounts and additional bid amounts if the Bureau determines that circumstances so dictate. Further, the Bureau retains the discretion to do so on a license-by-license and package-by-package basis. The Bureau also retains the discretion to limit (a) the amount by



which a minimum acceptable bid for a license may increase compared with the corresponding CPE, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, the Bureau could set a \$10 million limit on increases in minimum acceptable bid amounts over CPEs. Thus, if the activity-based formula calculates a minimum acceptable bid amount that is \$20 million higher than the CPE on a license, the minimum acceptable bid amount would instead be capped at \$10 million above the CPE. The Bureau seeks comment on the circumstances under which it should employ such a limit, factors it should consider when determining the dollar amount of the limit, and the tradeoffs in setting such a limit or changing other parameters—such as changing the minimum acceptable bid percentage, the bid increment percentage, or the number of acceptable bid amounts. If the Bureau exercises this discretion, it will alert bidders by announcement in the FCC Auction System.

66. The Bureau seeks comment on its proposals. If commenters disagree with the Bureau's proposed acceptable bid amounts, they should suggest an alternative number of acceptable bid amounts to use at the beginning of the auction, an alternative number to use later in the auction, and whether the same number of bid amounts should be used for both licenses and packages. Commenters may wish to address the role of the minimum acceptable bids and the number of acceptable bid amounts in managing the pace of the auction and the tradeoffs in managing auction pace by changing the bidding schedule, activity requirements, or bid amounts, or by using other means.

#### vi. Provisionally Winning Bids

67. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round. At the end of a bidding round, the FCC Auction System determines which combination of individual and package bids together yields the highest aggregate gross bid amount, taking into consideration each bidder's highest bid on each license or package submitted up to that point in the auction. These bids become the provisionally winning bids for the round.

68. If identical high bid amounts are submitted on a license or package in any given round (i.e., tied bids), the FCC Auction System will use a random number generator to select a single provisionally winning bid from among

the tied bids. (The Auction System assigns a random number to each bid when the bid is entered. 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 provisionally winning bid.

69. The set of provisionally winning bids is determined after every round in which new bids are submitted. The provisionally winning bids at the end of the auction become winning bids provided that any applicable reserve prices have been met. The Bureau reminds bidders that provisionally winning bids count toward activity for purposes of the activity rule.

#### vii. Bid Removal

70. For Auction 96, the Bureau proposes the following bid removal procedures. Before the close of a bidding round, a bidder has the option of removing any bid placed in that round. By removing a selected bid in the FCC Auction System, a bidder may effectively undo any bid placed within that round. Once a round closes, a bidder may no longer remove a bid. The Bureau seeks comment on this bid removal proposal.

#### viii. Bid Withdrawal

71. Under the Bureau's proposal to use SMR with HPB procedures, the Bureau proposes not to permit any bids, provisionally winning or otherwise, to be dropped or withdrawn from consideration in Auction 96. The benefits that bidders may realize from withdrawing bids in a typical SMR auction are minimized under the proposed package bidding format. In addition, in an SMR auction with package bidding there are significant risks associated with bid withdrawals that are not present in an SMR auction without package bidding. As the Commission has previously explained, under its typical SMR auction format without package bidding, 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.

72. Under the HPB auction format that the Bureau proposes for Auction 96, the

potential benefits of withdrawn or dropped bids in facilitating aggregations are far lower than they would be in a typical SMR auction. While the predetermined packages may not coincide with the all or nothing aggregation needs of all bidders, the hierarchical packages should significantly reduce the overall risk that bidders will win only some of the licenses in a desired set. Therefore, to the extent that package bids allow bidders to avoid such risk, withdrawals are less useful to bidders. Further, because the licenses available in Auction 96 consist of a single frequency block, bidders will not need to use withdrawals to pursue backup strategies in other blocks, as they sometimes have in other Commission spectrum auctions conducted with SMR procedures. At the same time, in an auction with package bidding, dropping bids from consideration can have negative effects that would not arise in a typical SMR auction. Withdrawals by one bidder on licenses subject to package bidding can be more disruptive to the bidding strategies of others than withdrawals on licenses not subject to package bidding. In a non-package bidding auction, whether a bid on a license becomes provisionally winning depends only upon the bids submitted for that license. In contrast, whether a bid becomes provisionally winning on a license subject to package bidding depends upon the bids submitted for that license, the bids submitted for the packages containing that license, and the bids submitted for other licenses in those packages. Consequently, a withdrawn bid on a license subject to package bidding has the potential to alter the composition of the provisionally winning set of bids, and may adversely affect other bidders. Moreover, because bidders interested in single licenses or smaller packages need their bids to combine with the bids by other bidders in order to be competitive with bids on larger packages, having even non-provisionally winning bids withdrawn from consideration can adversely affect their ability to compete. In addition, because CPEs for a license depend in part on package bids including the license, the process for determining current price estimates is more stable—and less subject to undesirable manipulation—if bids cannot be withdrawn from consideration. Hence, because of the potential under the proposed package bidding auction format for withdrawn bids, provisionally winning or not, to affect auction dynamics and the bidding strategies of other bidders, the Bureau



proposes not to allow any bids to be withdrawn after the round in which they were placed has closed.

73. The Bureau seeks comment on this proposal not to allow bids to be withdrawn or removed from consideration under its proposed HPB auction procedures. If bidders disagree with this proposal, the Bureau asks them to support their arguments by taking into account the structure of the H Block inventory, the impact on auction dynamics and the pricing mechanism, and the effects on the bidding strategies of other bidders. In the event the Bureau does not utilize HPB procedures with an SMR format, should it allow bid withdrawals? In the past, when the Bureau has allowed bid withdrawals in SMR auctions, it typically limited withdrawn bids to a maximum of three rounds, and sometimes set a lower limit on the number of withdrawal rounds. What would be the appropriate number of rounds in Auction 96 if the Bureau permits bid withdrawals?

#### *D. Post-Auction Payments*

##### *i. Apportioning Package Bids*

74. In package bidding, when a bidder places an all-or-nothing bid on a package of licenses, there will be no identifiable bid amounts on the individual licenses that compose the package. However, the Commission's competitive bidding rules and procedures assume that the amount of each bid on an individual license always is known. For example, rules for calculating the amount of small business, new entrant, or tribal land bidding credits presume that the winning bid on the license is known. Similarly, in determining the amount of a default or withdrawal payment, which involves a comparison between the withdrawing or defaulting bidder's bid and a subsequent bid, the rules assume that there are bid amounts for individual licenses. Accordingly, the Commission adopted a rule providing that, in advance of each auction with package bidding, the Commission shall establish a methodology for determining how to estimate the price or bid on an individual license included in a package of licenses.

75. The Bureau proposes that under its HPB procedures, it will use final CPEs as an estimate of the price or bid on an individual license for the purpose of later apportioning package bids. Therefore, when regulatory calculations require individual license bid amounts, the Bureau will divide the package bid amount among the licenses composing the package in proportion to the final

round CPEs for the licenses. The Bureau seeks comment on this proposal.

##### *ii. Interim Withdrawal Payment Percentage*

76. The Bureau seeks comment related to its proposal to use HPB procedures on not permitting any bids, provisionally winning or otherwise, to be withdrawn or dropped from consideration in Auction 96. Under the Bureau's proposal, it would have no need to determine an appropriate interim withdrawal payment percentage.

77. The Bureau seeks comment, however, on the appropriate interim withdrawal payment percentage to apply if it allows withdrawals under procedures for an SMR auction without package bidding for Auction 96. Specifically, the Bureau seeks comment on the 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). If a bid is withdrawn and no subsequent higher bid is placed and/or the license is not won in the same auction, the final withdrawal payment cannot be calculated until after the close of a subsequent auction in which a higher bid for the license (or the equivalent to the license) is placed or the license is won. 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. 47 CFR 1.2104(g)(1) requires that the percentage of the withdrawn bid to be assessed as an interim bid withdrawal payment be between three percent and twenty percent and that it be set in advance of the auction.

78. The Commission has determined 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 has 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 the licenses being offered in the auction, such as when few licenses are offered that are on adjacent frequencies or in adjacent areas, or

when there are few synergies to be captured by combining licenses. However, as the Bureau has discussed in connection with its proposal to use package bidding for Auction 96, there may be significant benefits for some bidders from aggregating EA licenses. Hence, if the Bureau does not use package bidding, withdrawals may be useful to protect bidders against incomplete aggregations in Auction 96. Balancing the potential need for bidders to use withdrawals to avoid winning incomplete combinations of licenses with the Bureau's interest in deterring undesirable strategic use of withdrawals, the Bureau proposes a percentage below the maximum twenty percent permitted under the current rules but above the three percent previously provided by the Commission's rules. Specifically, the Bureau proposes to establish an interim bid withdrawal payment of fifteen percent of the withdrawn bid for this auction. The Bureau seeks comment on this proposal.

##### *iii. Additional Default Payment Percentage*

79. Any winning bidder that defaults or is disqualified after the close of an auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full and timely final payment, or is otherwise disqualified) is liable for a default payment under 47 CFR 1.2104(g)(2). This payment consists of a deficiency payment, equal to the difference between the amount of the Auction 96 bidder's winning 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.

80. The percentage of the bid that a defaulting bidder must pay in addition to the deficiency will depend on the auction format ultimately chosen for a particular auction. In auctions with package bidding, as the Bureau propose to use in Auction 96, the additional payment is set, pursuant to 47 CFR 1.2104(g)(2)(ii), at twenty-five percent of the applicable bid. This higher level reflects the fact that a defaulted winning bid in an auction with package bidding may affect multiple licenses and perhaps all of the other licenses being offered.

81. In non-package auctions, the amount can range from three percent up to a maximum of twenty percent, established in advance of the auction

and based on the nature of the service and the inventory of the licenses being offered, and so, the Bureau seeks comment on an appropriate additional default payment percentage in the event it does not conduct Auction 96 with package bidding procedures. Defaults weaken the integrity of the auction process and may impede the deployment of service to the public, and an additional default payment of up to twenty percent will be more effective in deterring defaults than the three percent used in some earlier auctions. At the same time, the Bureau does not believe the detrimental effects of any defaults in Auction 96 are likely to be unusually great. Balancing these considerations, the Bureau proposes to establish an additional default payment for Auction 96 of fifteen percent of the applicable bid. The Bureau seeks comment on this proposal.

#### V. *Ex Parte* Rules

82. 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 provisions pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in 47 CFR 1.1206(b).

Federal Communications Commission.

**Gary D. Michaels,**

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

[FR Doc. 2013-18184 Filed 7-26-13; 8:45 am]

**BILLING CODE 6712-01-P**

#### FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 12-375; DA 13-1446]

#### Data on Service Contracts Included in Record of Inmate Calling Service Rates Proceeding

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this document, the Wireline Competition Bureau (Bureau) notifies the public that certain publicly-available inmate calling services (ICS) contracts may be considered as part of the record in this proceeding. On June 6, 2013, the Bureau submitted a letter

into the record noting that certain readily-available information may be relevant to a number of issues raised in this proceeding and may be considered as part of the record. In addition, the Bureau submitted a letter into the record on June 21, 2013, noting that certain readily-available U.S. Census data may be considered in this proceeding. A public notice announcing the submittals was released on June 26, 2013. A copy of the letters is attached.

#### FOR FURTHER INFORMATION CONTACT:

Gregory Haledjian, Wireline Competition Bureau, Pricing Policy Division, (202) 418-1520 or [gregory.haledjian@fcc.gov](mailto:gregory.haledjian@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Public Notice, WC Docket No. 12-375; DA 13-1446, released June 26, 2013. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY-A257, Washington DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (800) 378-3160 or (202) 863-2893, facsimile (202) 863-2898, or via Internet at <http://www.bcpweb.com>.

Federal Communications Commission.

**Kalpak Gude,**

*Division Chief, Pricing Policy Division, Wireline Competition Bureau.*

Federal Communications Commission  
Washington, DC 20554

June 6, 2013

Marlene H. Dortch

Secretary

Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: Rates for Interstate Inmate Calling Services, WC Docket No. 12-375

Dear Ms. Dortch:

The Notice of Proposed Rulemaking in this docket considers whether changes to our rules are necessary to ensure just and reasonable ICS rates for interstate, long distance calling at publicly- and privately-administered correctional facilities.<sup>1</sup>

With this letter, the Wireline Competition Bureau notes that the following readily-available information may be relevant to a number of issues raised in the proceeding and may be considered as part of the record in this

proceeding: certain prison phone contract information referred to in the record in this proceeding<sup>2</sup> and available at <http://prisonphonejustice.org/Prison-Phone-Kickbacks.aspx>.<sup>3</sup>

Respectfully Submitted,

Jamie N. Susskind,

*Acting Legal Advisor to the Bureau Chief Wireline Competition Bureau; Federal Communications Commission. Federal Communications Commission Washington, DC 20554*

June 21, 2013

Marlene H. Dortch

Secretary

Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: Rates for Interstate Inmate Calling Services, WC Docket No. 12-375

Dear Ms. Dortch:

The Notice of Proposed Rulemaking in this docket considers whether changes to our rules are necessary to ensure just and reasonable rates for inmate calling services (ICS) for interstate calling at publicly- and privately- administered correctional facilities.<sup>1</sup>

With this letter, the Wireline Competition Bureau notes that the following readily-available information may be relevant to a number of issues raised in the proceeding and may be considered as part of the record in this proceeding: data on the overall U.S. distribution of incarceration facility sizes that may be used as a basis for this order and obtained from the U.S. Census Bureau, Census of State and Federal Correctional Facilities, 2005;<sup>2</sup> U.S. Bureau of Justice Statistics, Jail Inmates at Midyear 2007;<sup>3</sup> U.S. Census Bureau, Census of Jail Facilities, 2006;<sup>4</sup> and

<sup>2</sup> See Human Rights Defense Center Comments, WC Docket No. 12-375, at 2 and 11 (filed Mar. 25, 2013).

<sup>3</sup> See <http://www.prisonphonejustice.org/Prison-Phone-Kickbacks.aspx> (last visited June 6, 2013).

<sup>1</sup> Rates for Interstate Inmate Calling Services, WC Docket No. 12-375, Notice of Proposed Rulemaking, 27 FCC Rcd 16629 (2012).

<sup>2</sup> See James J. Stephan, *Census of State and Federal Correctional Facilities, 2005*, BUREAU OF JUSTICE STATISTICS, October 1, 2008, available at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=530> (last visited June 20, 2013) (data summary); Study No. 24642, NATIONAL ARCHIVE OF CRIMINAL JUSTICE DATA, AVAILABLE AT <http://dx.doi.org/10.3886/ICPSR24642.v2> (last visited June 20 2013) (actual dataset).

<sup>3</sup> See Todd D. Minton & William J. Sabol, *Jail Inmates at Midyear 2007*, BUREAU OF JUSTICE STATISTICS, June 6, 2008, available at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=1005> (last visited June 20, 2013).

<sup>4</sup> See James J. Stephan & Georgette Walsh, *Census of Jail Facilities, 2006*, BUREAU OF JUSTICE STATISTICS, December 20, 2011, available at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=1005>

Continued

<sup>1</sup> Rates for Interstate Inmate Calling Services, WC Docket No. 12-375, Notice of Proposed Rulemaking, 27 FCC Rcd 16629 (2012).