

result demonstrates that the combinatorial bidding proposal is unsound.

Third, the Commission's combinatorial proposal turns the strengths of the oral bidding format into weaknesses. The winning bidder in an oral auction never has to reveal "how high he would have gone" to obtain an item. Instead, he bids slightly higher than the next highest bidder -- and the bidding stops. Normally, this result is thought to enhance efficiency because it ensures that the person who values an item most highly obtains it, and at a price that avoids the winner's curse. Under the Commission's proposal, however, the oral bidding format suppresses the level of the "winning" oral bid relative to the one it also is competing against -- the highest sealed bid. Since the oral bidder never receives information about this "shadow" bid, he is robbed of the opportunity to trump it by revealing his highest price. There is no reason to believe that stacking the deck against oral bidders in this fashion promotes efficiency. 36/

Continued from previous page

bid. One way of doing so may be to require combinatorial bidders to identify in their bids what portion of the price applies to each license in the combination. This, too, however, may be subject to manipulation.

36/ The NPRM suggests that this disadvantage can be overcome by requiring the highest combination bidder and the collection of highest individual bidders to compete against each other in a further round of sealed bidding. See NPRM at ¶ 60. This suggestion is unworkable because it requires all the individual bidders to be forced together into a bidding consortium, since only then will the two groups be bidding on the same item.

Fourth, the combinatorial proposal will increase bid preparation costs for oral bidders because they will be forced to expend resources estimating the valuations of an unknown (and unknowable) number of rival sealed bidders. For example, in the example used previously, the person who wants only a particular narrowband frequency in the New York MTA would be required to estimate the valuations of that frequency of all possible combinatorial bidders who might include the frequency in their bids. Since bid preparation costs are a barrier to entering an auction, increasing them tends to exclude small entities from participating. Shrinking the universe of potential bidders and increasing the remaining ones' transaction costs are contrary to congressional auction objectives. ^{37/}

In short, combinatorial bidding is an auction structure at war with itself. It requires two auctions to be held -- one sealed bid, another oral -- when only one of them ultimately can yield a winner. The entire expense of the other is a dead-weight economic loss, and it may be of significant proportion. Moreover, it is simply unfair to oral bidders to force them to shoulder the costs of that process (deposits, filing fees, etc.) only to have licenses awarded under combinatorial procedures in which they have no meaningful opportunity to participate. If the Commission believes its rules governing the geographic scope and bandwidth of individual licenses will result in transactional inefficiencies

^{37/} Congress directed the Commission to expand opportunities to participate in auctions and conduct efficiently. See, e.g., Conference Report at 481-483; House Report at 247-249.

when those licenses are auctioned individually, perhaps those rules should be rethought directly (e.g., by making nationwide licenses available). The Commission should not attempt to achieve this result through the back door by adopting complex and irrational auction structures. Such attempts likely will yield inefficient results that will distort competition in new spectrum-based services.

b. Minimum Bid Requirements

PageNet agrees with the Commission's conclusion that it would be counterproductive to spend the resources necessary to establish a "reservation" price below which a license would not be awarded. ^{38/} Developing and implementing procedures for setting such a price necessarily would be a lengthy undertaking that will delay the auction process. Any error in setting the price may skew the auction. These risks are too high to warrant setting a reservation price.

c. Alternative Payment Methods

The Commission is proposing to require all winning bidders, except those designated to receive preferences, to make full payment of their bids in a lump sum at the time a license is issued. ^{39/} PageNet urges the Commission to go further and require all winning bidders to pay the full amount of their bids on the day of the auction. Such a rule will discourage

^{38/} NPRM at ¶¶ 66-67.

^{39/} See id. at ¶ 68.

speculators from submitting bids based on an expectation that, if they win, there will be ample time post-auction to secure financing.

The idea of allowing preferred entities to pay their winning bids through installments is sound only if they also are required to pay market interest. To do otherwise will give them an ongoing subsidy and, as a result, a significant competitive advantage over other licensees. Nothing in the auction statute or its legislative history suggests that Congress intended this result.

Under no circumstances should the Commission utilize royalties as an alternative payment method. The standard rationale for royalties is to maximize a seller's profits where substantial uncertainty exist about the value of an auctioned good. ^{40/} Since maximizing the government's return on spectrum is not one of the goals Congress established for FCC auctions, there is no statutory basis for adopting a royalty payment system.

Previous attempts to use royalties to broaden participation in federal government natural resource auctions generated lengthy litigation and ended in abject failure. ^{41/} Along the way, the affected agencies unanimously concluded that opportunities for small business participation in natural resource auctions were

^{40/} See McAfee & McMillan at 716-718.

^{41/} Such attempts followed 1978 amendments to the Outer Continental Shelf Leasing Act that directed the Executive Branch to experiment with alternative payment methodologies. The Supreme Court ultimately held that use of these methods was subject to Executive Branch discretion, not required by Congress. See generally Watt v. Energy Action Educational Foundation, 454 U.S. 151 (1981).

rationality limited by the risks and capital commitments associated with running a natural resource company, not by an inability to acquire natural resource development rights. ^{42/} This analysis is directly relevant to spectrum auctions because the same economic situation obtains for many new spectrum based services, like PCS. Although the cost of obtaining PCS licenses likely will be substantial, they will be dwarfed by the costs of constructing and operating PCS systems.

The complexity and expense of royalty systems should, alone, be enough to dissuade the Commission from using them. Since a royalty must be expressed as a percentage of output, revenues or net profits, the Commission would have to prescribe detailed accounting rules for identifying, measuring and allocating all licensees' expenditures and revenues. The scope and detail of Department of the Interior's royalty accounting rules, which span nearly 150 pages of the Code of Federal Regulations, provide a warning about how extensive this undertaking would need to be. ^{43/} The Commission could not adopt such rules in any rational time frame, which would necessarily delay auctions since presumably the Commission cannot hold auctions until payment rules are in place. Moreover, spectrum licensees are not now subject to accounting

^{42/} See, e.g., Department of Energy Final Rulemaking Regarding a Fixed Net Profit Share Bidding System for Outer Continental Shelf Oil and Gas Leases, 45 Fed. Reg. 36784, 36786 (May 30, 1980); Department of the Interior, Outer Continental Shelf Oil and Gas Bidding Systems, 48 Fed. Reg. 24873, 24874 (June 3, 1983).

^{43/} See 30 C.F.R. §§ 201-243 (1993).

regulation. Imposing such rules now will generate substantial costs that ultimately must be recovered through increased service rates.

2. Preferences

The Commission seeks comment on the need to treat small, rural and minority-owned business preferentially in the auction process in order to satisfy Congress' desire that these groups be "given the opportunity to participate" in the provision of spectrum-based services. ^{44/} PageNet's thoughts about the preference rules the Commission proposes for specific services are discussed hereafter. At the outset, PageNet wants to make two basic points.

First, barriers to certain spectrum-based markets are so low as to make it unnecessary to use preferences to ensure market entry opportunities. For example, many new licenses will be made available soon under the Commission's recently adopted narrowband PSC rules. Even at the MTA level, the capital needed to obtain a license should be readily available to any entity that is capable of constructing and operating a system. Thus, preferences are not needed to ensure widespread opportunities to participate in the emerging narrowband PSC market. Where, as in narrowband PCS, entry barriers are already low, it makes no sense to adopt preference schemes.

^{44/} See NPRM at ¶ 74, citing Spectrum Auction Act, 47 U.S.C. § 309(j)(4)(D).

Second, the amount of capital necessary to construct and operate certain types of communications systems, such as regional and nationwide broadband PCS systems, is so great as to preclude small businesses from participating in such markets, even if they were licensed to do so. Turning a blind eye to this economic reality will merely reduce the ability of the auction process to function as an efficient license allocation mechanism and ultimately will delay the provision of spectrum-based services to the public.

3. Safeguards

The Commission seeks comment on the need to adopt antitrafficking rules and performance requirements as a means of combatting "unjust enrichment" and spectrum warehousing, respectively. ^{45/} The Commission also seeks comment on the need to adopt rules specifically prohibiting collusive conduct. ^{46/}

a. Antitrafficking Rules

PageNet agrees with the Commission tentative conclusion that rules designed to prevent "unjust enrichment" are not needed when a license is obtained on a non-reserved (i.e., non-preference) basis. In this situation, the winning bidder obtains the license at market price, so subsequent resale of that license will not involve unjust enrichment. Indeed, post-auction license swaps and sales may be necessary to achieve efficient regional and national license aggregation.

^{45/} See id. at ¶¶ 82-92.

^{46/} See id. at ¶¶ 93-94.

Nor should any special requirements be imposed on those designated entities whose "preference" is obtained only in the form of permission to pay off their bid price in installments (plus market interest). In that situation, the bidder has paid a market price and is merely financing it at market rates. Unjust enrichment will not occur if such a license is transferred post-auction.

It is possible that unjust enrichment may occur in a transfer by a "preference" entity of a license obtained through set-aside procedures; however, it is conceivable that the bid price was the market price at the time, and it would be difficult to resolve the issue either way with substantial certainty. Further, if the Commission adopts a minimum three-year holding period on "set-aside" winners, a licensee likely will not make more than a minimal investment, thereby depriving the public of quality service. When all these factors are considered, PageNet believes the wisest course to follow is to allow transfers to occur without regulatory impediment. 47/

47/ If a predominant pattern of early preference license transfers emerges, this would be a valid basis for concluding that set-asides are not working and should be ended. A minimum holding period rule will either be too short to deter speculators or, if longer, will of necessity contain escape hatches for deserving parties that speculators will find and exploit. For example, a lack of capital may warrant a waiver of the similar holding period requirement contained in section 73.3597(a) of the Commission's rules. See 47 C.F.R. § 73.3597(a). Trying to assess whether a lack of capital is genuine or merely contrived to permit transfer is nearly impossible.

b. Performance Requirements

PageNet views performance requirements as an effective means of ensuring that those who obtain valuable licenses put them to productive use. Performance requirements, except with respect to financial obligations, already exist for most services, including narrowband PCS. PageNet believes the combination of existing rules and new auction-driven performance incentives will ensure that auctioned spectrum is utilized.

c. Anticollusion Rules

PageNet also believes the Commission need not adopt detailed rules prohibiting collusive bidding. Such activity is recognized as an unlawful restraint of trade and subject to prosecution and severe penalty under existing antitrust statutes.^{48/} Specific, Commission-developed anticollusion rules are, thus, superfluous. Instead, the Commission should merely state that any evidence of collusion will be referred to the Department of Justice. Anyone found guilty of colluding in connection with a Commission auction should be barred from participating in any FCC auction for five years, and a conviction should be considered by the Commission in connection with any subsequent initial or renewal license application.

^{48/} See, e.g., U.S. v. Reicher, 983 F.2d 168 (10th Cir. 1992) (government contract bid rigging).

D. GENERAL APPLICATION PROCESSING REQUIREMENTS

PageNet believes that the Commission must address in its procedures the differences between auctions for frequencies in existing services and the different considerations involved where auctions are employed to establish new services such as PCS. Where auctions will be used in existing services, PageNet generally agrees with the proposals of the Commission for the processing of applications subject to the new auction procedures, including the use of short and long form applications. ^{49/} Where auctions are being held for individual frequencies to resolve the mutual exclusivity of applications in existing services, normal application procedures should be followed as it is only the method of selecting the winning applicant which differs from existing practice. ^{50/}

Where the Commission is dealing with the creation of a new service such as PCS or is making available substantial amounts of new spectrum in existing services such as 900 MHz SMRs, it should consider modified application procedures designed to ensure service to the public in the most efficient and simple manner for both the Commission and the applicants. It would not be fruitful to attempt to create new general rules to deal with all future situations, but the Commission should consider appropriate

^{49/} NPRM at ¶ 97.

^{50/} The Commission, moreover, should continue its current practice of attempting to find ways to resolve the conflict between mutually exclusive applications by compromise or amendment. Spectrum Auction Act, 47 U.S.C. § 309(j)(6)(E).

modifications on an individual basis when these situations arise. Modified application procedures appropriate for the PCS service are discussed below. See, infra at 38-48.

Situations involving a new service or the addition of substantial new spectrum to an existing service do share some characteristics. First, there is an important public interest in providing new or augmented service to the public expeditiously which requires procedures to assure as far as possible that auctions will be completed without default by parties able to construct and offer service. Second, there are likely to be large numbers of competing applications as demonstrated by the experience in cellular, SMRs and FM broadcasting in connection with Docket 80-90. Third, speculators will be looking for ways to participate. Suggestions for addressing these issues in the context of PCS are set forth below. (Infra at 38-48.) In the following sections, however, we discuss the general principles applicable in the situations involving existing services.

1. The Commission's Proposed Application Approach Is Appropriate for Existing Services

The proposed short form and long form applications ^{51/} should work efficiently in auctions for existing services. It is not unduly burdensome to require the filing of complete applications by all parties even though the Commission will process only the

^{51/} See NPRM at ¶ 97. The short form will resemble a cellular application transmittal sheet while the long form will be the ordinary application form for the particular service such as Form 401.

application filed by the auction winner. ^{52/} This procedure will enable parties to file any petitions to deny early in the process and will permit immediate processing of a complete application upon completion of the auction. ^{53/} A procedure allowing the submission of an application only after an auction would add months to the process. ^{54/}

^{52/} As discussed below in connection with PCS, in some circumstances it would be appropriate to omit location specific information (e.g. Form 401, Schedule B) from the initial long form application.

^{53/} The Commission seeks comment on how it should deal with waiver requests. NPRM at ¶ 99. Permitting someone seeking a waiver to participate in an auction and, perhaps, to prevail contingent upon disposition of the petition for waiver, may result in disruption of the auction process if a waiver is later denied. Not permitting a party seeking a waiver to participate runs the risk of the possible later invalidation of that auction. While either result is harmful, allowing the party seeking a waiver to participate in the auction at least offers the possibility that the waiver issue would be mooted if that party is not the winner. Because this approach offers the greater degree of certainty, it should be adopted.

Mindful of the Congressional mandate that these procedures be used to expedite service to the public, the Commission should make it clear that waivers relating to eligibility or basic qualifications matters are not encouraged and will face a very high hurdle. The Commission also should emphasize that if a waiver request by the auction winner is subsequently denied, and the winner is unable to eliminate the circumstances necessitating a waiver, its application would be dismissed and its deposit forfeited. Such an approach should lead parties to exercise great caution in seeking waivers.

^{54/} NPRM at ¶¶ 97-98. With respect to the long form application, the Commission has asked for comment concerning the use of "highly confident" letters from investment banking firms to establish applicants' financial qualifications. NPRM at ¶ 98, n.89. These letters should not be accepted. These letters may provide adequate assurance of the availability of financing when based on representations of major investment banking firms, but it would be difficult to limit the definition of investment banking firms to the "Merrill

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2. Filing of Pre-Auction Amendments to Applications Should be Deferred

PageNet agrees with the Commission that amendments to the applications should be deferred until after an auction winner is determined. ^{55/} While PageNet also agrees that most major amendments should be prohibited, the Commission should consider some exceptions to this rule with respect to ownership. First would be those kinds of ownership changes which are customarily handled on a pro forma basis. The Commission has recently amended the cellular rules to permit such changes even where they may involve a significant change in ownership as with the death of a major principal of an applicant. The revised rules, which the Commission proposes to apply to PCS, also permit transfers occurring as part of a sale or merger involving the existing business of the applicant, not just the pending applications. ^{56/}

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Lynches" of this world. Because there are so many very small firms without significant track records in raising large amounts of equity, we believe that the Commission should not permit use of these "highly confident" letters. It would be an invitation to litigation challenging the bona fides of these undertakings. For the same reasons, we do not believe that reliance should be had on SBA chartered SSBICs because they also come in too wide a variety of types to provide assurance that they would be able to actually carry out the fund raising they propose.

55/ NPRM at ¶ 101.

56/ See § 22.922. We note that Section 22.922(a)(6) appears to deal with the restructuring of an applicant without a substantial change in actual ownership but the phrasing is unclear as it refers only to a transfer of control. A typical restructuring might involve going from a sole proprietorship or a partnership to a corporate structure with identical actual ownership. That requires an assignment of the license not a transfer of control. For comparable rules

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While some of the actions described in Section 22.922 would constitute major ownership changes, they are not the kinds of changes which the Commission has an interest in barring.

Where conditions change (a bank failure, death of a principal or loss of a site), applicants should be permitted to make changes, but they should not be reported to the Commission by amendment until after the auction when the winner is known, and then only by the winner. Only major changes would trigger a new right to file a petition to deny. 57/

3. The Filing of Post-Auction Amendments Should Be Permitted

The auction winner should be permitted to amend its application after the auction to correct any defects in the application. The adoption of auction procedures and the Congressional directive to employ them in an effort to expedite delivery of service to the public require the Commission to be flexible in its processing of applications of auction winners. To the extent that the consequence of denial of an application during processing would result in forfeiture of the deposit and up-front payment, it is essential that the processing be scrupulously fair and reasonable to avoid offending elementary notions of fair play. Unfortunately, in many instances the current application forms and their instructions are exceptionally brief and incomplete with additional showings being

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relating to broadcast stations, see Spectrum Auction Act,
47 U.S.C. § 73.3540(f).

57/ See, for example, 47 C.F.R. § 73.3584(a) which provides for new petitions to deny broadcast applications where they are amended in a manner requiring a new file number.

required by various sections of the rules for that service. In addition, the rules themselves are often unclear as to what is required. 58/

In addition, where there is to be a series of related auctions as contemplated for PCS, it will be important to participants' ability to plan for the next auctions that the outcomes of earlier auctions are final so that there is no threat of a reauction being required. These factors suggest that the Commission should permit winning applicants an opportunity to correct defects in their application rather than dismissing those applications and conducting a new auction. A similar procedure allowing amendments was adopted for processing FM applications when the Commission abandoned its "hard look" processing. 59/

58/ For example, if the cellular application form or the rules had indicated in any specific way the manner in which the Commission would treat partnerships with alien partners, or if the Commission had permitted the applicants to amend to eliminate the rule violation, years of litigation and delay of service could have been avoided.

59/ Processing Procedures for Commercial FM Broadcast Applications, 7 FCC Rcd 5074 (1992). In the Docket 80-90 FM cases, appeals by applicants who were dismissed as unacceptable for filing made settlements among the other applicants difficult to obtain and were disruptive to the hearing process as the dismissed applicants could (and occasionally did) obtain reinstatement at any stage of the hearing and be entitled to participate fully.

E. AUCTION PROCEDURES

1. Up-Front Payments and Deposits for Existing Services Are Useful To Assure Legitimate Auction Participants

Appropriate up-front payments may make a significant contribution in dissuading insincere or financially unqualified parties from participating in the auction process for existing services. The type of formula suggested by the Commission seems reasonable. ^{60/} If an applicant is only required to have on hand a check for the up-front payment before bidding, the up-front payment will have little effect in discouraging frivolous bidders as they could simply recycle the same payment for subsequent auctions. PageNet advocates requiring a cashier's check in the amount of the up-front fee to be submitted with the application in order to prevent such speculative activities.

PageNet further agrees with the Commission that the winner of an auction ordinarily should be required to make a very substantial deposit at the auction's conclusion. Since it is possible that some parties might bid with the expectation that they will have an opportunity between the bid and the payment date to raise the necessary funds, the total amount of the deposit should be paid immediately.

^{60/} PageNet suggests a more substantial requirement for PCS and similar new services, including a requirement that the entire bid price be paid upon completion of the auction. See, infra at 40-42.

2. In the Event of Default, the Auction Winner's Deposit Should Be Forfeited and It Should Be Disqualified from Participation in Other Auctions

Under Congress' mandate to expedite service to the public by the use of the auction process, authority to retain deposits must be implied. Without such a provision, defaulting parties would have nothing at risk and there would be an enormous incentive to bid for the market at any price and then try to find financing to pay for it or a partner. By accepting bids and returning deposits in the event the bids cannot be paid, the Commission would be encouraging frivolous and speculative bids and subjecting itself to numerous reactions thus destroying the certainty that is so important in many auction situations.

Deposits are used customarily as insurance for the completion of payment and whether a real estate deal or an oil lease, those deposits typically are forfeited if the winning party refuses or is unable to close. While the statute does not give the Commission explicit authority to retain deposits,^{61/} Congress in authorizing the Commission to use auctions granted it great discretion in designing auction procedures.^{62/} Such broad discretion encompasses the Commission's power to give meaning to the auction process by requiring non-refundable deposits. We note that the statute authorizing auctions for on-shore oil and gas leases makes no mention of forfeiting deposits, 39 U.S.C.

^{61/} NPRM at ¶ 109.

^{62/} Spectrum Auction Act § 309(j)(3).

226(b)(1), but the implementing rules provide for the loss of deposits if the full bid is not paid. 43 C.F.R. § 1320.5-3(a). ^{63/}

3. Participation in Reactions Should Be Limited to Existing Applicants

As discussed previously, where an auction winner's application is ultimately dismissed, whether due to a defect or to its failure to come up with the required deposit or final payment, the appropriate procedure is not to select the second party in that auction but to hold a new auction for the frequency and/or market involved. Only existing applicants should be allowed to participate in such new auctions. To permit the submission of additional applications would significantly delay the process due to both the initial processing and the filing of petitions to deny. It is possible that parties who filed applications mutually exclusive with the one dismissed nevertheless decided not to participate in the first auction. Because of intervening events, they may wish to participate in the reaction and should be permitted to do so. All parties would presumably be required to resubmit their up-front fees.

^{63/} There may arise unforeseen circumstances where retention of the deposit would be unfair and unreasonable, as, for example, where the major principal of a bidder died after the auction. In that event, a bidder should be free to seek a waiver and make a showing that would justify return of the deposit. With such a safety valve, it is difficult to perceive any reasonable argument against requiring a non-refundable deposit.

F. USE OF AUCTION PROCEDURES FOR SPECIFIC SERVICES

1. Personal Communications Services (PCS)

The Commission has properly determined that auctions are an appropriate means to award new PCS frequencies and initiate that service. Certainly the publicity surrounding this new service promotes it as a highly desirable subscriber based service, and the enormous interest in it creates a virtual certainty that mutually exclusive applications will be submitted. Because of the widespread publicity and attendant expectations concerning PCS, it is especially important that the Commission deter speculators and those not financially qualified and otherwise assure the smooth roll out of this service. Accordingly, the initiation of this new service through auctions requires some significant modifications to the procedures discussed above.

To expeditiously provide this new service to the public requires both efficient auction procedures and participation only by those qualified to actually build and operate the new systems. In both narrowband and wideband PCS, there are likely to be many parties seeking to develop national or regional systems which would require them to aggregate markets and frequencies. Certainty concerning the outcome of auctions will be of great importance to these bidders as every license they acquire or fail to acquire will trigger decisions relating to the next license auctions. Anything that disrupts this process, such as the reauction of an earlier market, could have a profound effect. The delay and disruption occasioned by reauctions also harms the public. Service over these frequencies is intended, for example,

to compete with cellular; that competition will be delayed. This valuable public resource would lie idle while the auction process repeats itself.

The goals of the auction process are also unrealized where the auction is won by a party who lacks the resources to build on the facilities won at auction. There is no way to be absolutely sure that the auction winner will be qualified, but the procedures suggested below should provide a high level of confidence that auction winners will carry through on their proposals. PageNet believes that procedures can be implemented to achieve these goals and avoid delay.

a. **Applications Should Be Filed for Each License Sought But Submission of Location Specific Information Should Be Deferred**

Short and long form applications are appropriate for PCS. The short form should permit an applicant to identify several persons who would be entitled to bid for it. Because of the expected volume of auctions in PCS, designation of a single representative ^{64/} would be impractical.

In order to be certain about the actual participants in each market, a separate long form application should be submitted by each party identifying the market and frequency sought. For the reasons stated below, however, the applicants should not be required to submit location specific information. ^{65/} Submitting

^{64/} NPRM at ¶ 98.

^{65/} Schedule A of Form 401 does not elicit information regarding the frequencies or markets proposed so this information would have to be supplied separately or in response to Schedule B, Item 31(J).

a long form application at the initial stage of filing not only makes it easy to determine who the bidders will be in each market for each frequency, it also requires other parties to file petitions to deny relating to the information in these applications. Applicants subject to a petition to deny would be able to take it into consideration in deciding whether to bid.

b. **More Substantial Up-Front Payments Are Required for PCS and the Entire Price Rather Than a Deposit Should Be Paid Upon Completion of the Auction**

In order to deter speculation and assure that only qualified bidders participate, the Commission should require all applicants to submit not only their filing fee but also their up-front payment at the time they file their applications. PageNet believes that the payment should be based on \$0.04 per MHz per pop, not \$0.02, and that a minimum payment of \$25,000 should be required for any application above the 12.5 kHz BTA frequencies. In addition, the auction winner should be required to put up the entire bid amount on the day of the auction. ^{66/}

A more demanding requirement for auction participation is warranted where, as here, it appears that there may be substantial speculative activity. ^{67/} In addition, these greater requirements provide more certainty that an auctioned license will not be put up for reauction weeks, months or even years later by an

^{66/} A bidder could be prepared with a cashier's check representing the highest bid it intends to make and the Commission could issue a refund if the actual winning bid amount is lower.

^{67/} Unfortunately, it is precisely an auction for new services which is most likely to attract speculators.

unqualified bidder. If payment of the bid price is delayed until after a grant of the winner's application becomes final, the winner's ability to pay the bid price might not be known for years where alleged defects in the winner's application resulted in litigation. If at the conclusion of the litigation, the winner was unable to make its bid payment, there would have to be another auction of the market.

The requirement of immediate payment eliminates the possibility of a payment default disrupting the auction process. All parties will know immediately whether the bid price has been paid and can be reasonably certain that the market is sold. In the event the price is not paid, the parties are available for an immediate reauction. This eliminates the possibility that a defaulting winner could bar other bidders who were more qualified to expeditiously provide service.

These recommended provisions also can provide the Commission with a much higher degree of comfort that the winning bidder has the resources to construct and operate the subject systems in a reasonable time frame. The costs of construction and operation of these systems is expected to dwarf the spectrum costs, and if winners cannot pay for the spectrum, they most certainly cannot pay for the costs of construction. As the Commission has noted, the ability to make up-front payments and deposits validates an applicant's financial qualifications. ^{68/} PageNet's proposal

^{68/} NPRM at ¶ 104.

provides further assurance that the bidder is qualified to provide service to the public.

These provisions would not be a burden on legitimate parties who will have lined up their financing before the auction and will exclude speculators or the financially unqualified who might otherwise bid in the hope they will be able to raise financing once they can show they have made the winning bid.

PageNet believes that these revised payment provisions are essential to protect the integrity of the auction process. It provides far greater assurance to the Commission and the public that only competent, qualified, serious applicants will win PCS auctions and ultimately provide service to the public. While this is an important goal in all services, it is essential that it be realized in establishing PCS.

**c. The Filing of Location Specific Information
Should Be Deferred in PCS**

While PageNet believes all parties should file specific applications for the frequencies and markets in which they intend to be bidders, they should not be required to provide location specific information such as that sought in Form 401, Schedule B. To do otherwise would be unduly burdensome and wasteful. A party seeking a nationwide narrowband PCS authorization might have to locate a hundreds of sites and provide the technical information required for each site. This would involve the expenditure of substantial resources which may be wasted for all except the auction winner. Even for the winner it would be a largely futile exercise as the build-out of a nationwide system may occur over a

period of years and any site specific information generated at the time of application would have to be reviewed and likely changed at the time the site is actually developed. ^{69/} It would appear more appropriate to use procedures similar to those employed in awarding the nationwide 220 MHz frequencies where the filing of location specific information would occur after the license was awarded as the system is implemented. A similar system now applies in cellular where operators submit the actual site information as they develop their service areas using FCC Form 489. So long as they are within their designated service area, they do not require prior FCC approval to add or change sites. ^{70/}

As many PCS applicants also will be filing for frequencies at numerous sites in many markets to operate local and regional services, it would appear equally appropriate to defer the filing of location specific information for such applicants and their competitors. In each case there is a specified service area, nationwide, MTA or BTA, and a build-out period so that the basic procedures used in cellular could be employed here as well.

^{69/} Further, requiring the submission of location specific information does little to weed out insincere applicants. In cellular, detailed location specific information was required but the application mills simply spread its cost among their clients who each used the same engineering.

^{70/} 47 C.F.R. § 22.923(c).

**d. PCS Frequencies Should Be Auctioned
in Descending Order by Size of Market**

PageNet agrees with the Commission that auctions should proceed from the largest market to the smallest by population. See discussion supra at 17-18. ^{71/} In narrowband PCS, the nationwide spectrum would be auctioned first, then MTAs and, finally BTAs. Within each market, the largest spectrum blocks would be auctioned first. In this way a bidder will know what, if anything, it has in the larger market before making decisions about smaller surrounding markets.

**e. Combinational Bidding Should Not
Be Employed for PCS**

As indicated in the previous general discussion (supra, at 18-22), there are serious problems with the use of combinatorial bidding to "trump" individual auctions. It would be preferable to eliminate combinatorial bidding for this new PCS service, and rely only on oral auctions on the market-by-market basis proposed. Doing so still would permit parties to accumulate nationwide or regional systems, either through the bid process or subsequent acquisition.

**f. Preferences for Designated Entities Should Not
Be Permitted To Disrupt the Auction Process**

Where consortia or other structures containing designated entities claim entitlement to some preference, the potential for abuse is apparent. Having struggled with this issue repeatedly in the context of limited partnerships and other structures in

^{71/} NPRM at ¶ 125.