

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
Implementation of Section 309(j))
of the Communications Act)
Competitive Bidding)

PP Docket No. 93-253

To: The Commission

**JOINT COMMENTS IN RESPONSE
TO NOTICE OF PROPOSED RULEMAKING**

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SUMMARY

PacTel Paging and Midcontinent Media, Inc. (collectively, the "Joint Commenters") are submitting their comments on the manner in which competitive bidding should be conducted for narrowband PCS and non-cellular land mobile service licenses.

The Joint Commenters urge the adoption of rules that will minimize the disruption to existing services to the extent possible. The process should be designed to relieve unnecessary paperwork and create rational assignments which minimize the elements of luck and surprise.

With respect to the narrowband PCS auction rules, the joint commenters favor an open ascending bidding method for narrowband PCS licenses. Most important, blocks of spectrum that are substitutable and equivalent should be auctioned off simultaneously under procedures where all applicants interested in bidding on licenses of a particular type are included in a common bidding pool for all available licenses of that kind.

The Commission's tentative proposal to auction licenses starting with the largest spectrum and geographic assignments makes sense. The Joint Commenters also support, generally, the Commission's approach to up-front payments, deposits, and lump sum payments.

Because of the number of narrowband PCS licenses being made available, set-asides for Designated Entities do not appear necessary in order to insure their meaningful participation in this spectrum-based service opportunity.

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**JOINT COMMENTS IN RESPONSE
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PacTel Paging ("PTP")^{1/} and Midcontinent Media, Inc. ("Midcontinent") (collectively, the "Joint Commenters"), by their attorneys, hereby submit their comments in response to the Notice of Proposed Rulemaking (the "Notice")^{2/} in the above-captioned proceeding. These comments address competitive bidding issues related to the narrowband Personal Communications Services ("narrowband PCS")^{3/} and non-cellular land mobile services. The following is respectfully shown:

^{1/} PTP is a wholly owned subsidiary of PacTel Corporation ("PTC"), a diversified telecommunications company specializing in wireless services. PTC is filing comments in response to the Notice for all of its other wireless services, including cellular telephone service, automatic vehicle location services, and wideband PCS.

^{2/} FCC 93-455, released October 12, 1993.

^{3/} See First Report and Order (ET Docket No. 92-100), FCC 93-329, released July 23, 1993 (the "Narrowband PCS Order").

I. Introduction

1. The Joint Commenters are licensed providers of both private and common carrier mobile radio services throughout the nation.^{4/} Together, they have extensive experience in radio paging, traditional mobile telephone and cellular telephone services. The Joint Commenters also have been active participants in the Commission's proceedings regarding the establishment of allocations and rules for Personal Communications Services ("PCS"), with particular emphasis on the narrowband PCS allocation.^{5/}

2. The Joint Commenters each have extensive licensing experience in connection with the establishment of complex wide-area messaging networks, and have established themselves as serious, *bona fide* providers of mobile communications services to substantial segments of the public. The companies also have

^{4/} PTP holds numerous Part 22 (public mobile) and Part 90 (private mobile) authorizations for paging stations in fourteen states, and provides service to over one million paging units. By industry estimates, PTP is the fourth largest paging service provider, and one of the fastest growing paging companies, in the United States. Midcontinent is a multi-media company with mobile telephone, radio paging, cable television, international teleport, long distance resale, radio and television broadcasting and theater holdings in various locations throughout the U. S. Midcontinent also is a former holder of cellular licenses.

^{5/} PTC filed comments in ET Docket No. 92-100 on November 9, 1993. PTC also filed pioneer preference proposals for two narrowband services: Advanced Architecture Paging, and Ground to Air Paging. See PP-38 and PP-39.

acquired mobile licenses in private transactions that offer substantial insight into the manner in which the Commission's bidding procedures should be conducted in order to produce economically rational results.^{6/} Consequently, the Joint Commenters have a substantial basis in experience for informed comment in this proceeding.^{7/}

II. General Principles to Apply in Auctioning Spectrum

3. The Commission is to be commended for releasing the Notice in a very short time frame while still presenting in such a comprehensive fashion the many issues raised by the amendments to the Communications Act contained in the Budget Act.^{8/} In responding to the seemingly endless array of issues, the Joint Commenters have structured their comments as follows. First, the basic principles they believe should govern the competitive bidding process are set forth, taking into account the legislative mandate and public interest considerations.

^{6/} For instance, PTP has agreed to purchase all of the assets of Aalert Paging Company which include facilities, authorizations, and customers in California, Arizona, and Utah.

^{7/} The Joint Commenters are addressing in particular the manner in which the new auction procedures should be applied in connection with the licensing of narrowband PCS services, and existing public and common carrier radio paging services.

^{8/} The Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, August 10, 1993.

Second, the Joint Commenters address issues specific to narrowband PCS.

A. Disruption to Existing Services Must Be Minimized to the Extent Possible

4. The Joint Commenters participate in industries, such as one-way paging and mobile telephone service, where there are constant requirements for licensing new sites and channels,^{9/} and where mutual exclusivity frequently arises.^{10/} The auction legislation effectively suspends the continued processing of competing applications pending a determination of the manner in which auctions are going to be conducted. The potential for disruption is severe.^{11/}

^{9/} These services currently are licensed on the basis of service area and interference contours. Every time a licensee seeks to expand its service area, it must submit an application to do so and, depending upon the frequency, may be subject to mutually exclusive applications. The Commission has reduced the prospect for mutually exclusive applications in some bands, such as 900 MHz paging. In 900 MHz paging, the Commission has reserved to itself the right to pick the particular frequency to be assigned in a locale, and thus is able to avoid mutually exclusive situations unless the entire pool of frequencies is exhausted.

^{10/} The Notice properly recognizes that Section 309(j) of the Communications Act, as amended in the Budget Act, by its terms, only permits auctions if mutual exclusivity exists among applications that have been accepted for filing. If mutual exclusivity among such applications does not exist, the license is not subject to competitive bidding. The Joint Commenters urge the Commission not to revise long-standing licensing principles in order to create additional mutual exclusivities.

^{11/} For instance, since the addition of a new transmitter in a new geographic area requires the licensee to submit an application, paging and mobile telephone service providers are constantly filing applications. If these applications are delayed, service to the public will be delayed.

5. To some extent, this is unavoidable given the Congressional mandate to cease conducting lotteries to resolve mutual exclusivities between applications accepted for filing after July 26, 1993, without first determining that the applicable radio service is not subject to competitive bidding.^{12/} There are, however, several actions the Commission should take to minimize the disruption.^{13/} First, as a general rule^{14/} the Commission should accept the July 26, 1993 cut-off date specified in the legislation as a "bright line", and continue to process all applications accepted for filing in advance of that date according to pre-existing procedures. This not only will expedite the resolution of long-standing frequency conflicts but also will avoid the unfairness that often occurs with the retroactive application of new procedures.

6. Second, the Commission should protect and preserve licensing mechanisms that encourage and facilitate the voluntary resolution of mutual exclusivities.^{15/} For example, the Public

^{12/} See Budget Act, Section 6002(c) (Special Rule).

^{13/} Of course, the public interest is also not served by having these services disrupted any more than absolutely necessary to meet legislative mandates.

^{14/} Cellular unserved area applications present a special case.

^{15/} For example, the Private Radio Bureau has proposed a licensing scheme for wide area 800 MHz SMR licensing that would accord competing applicants for MTA licenses a 60-day period to resolve their competing requests on a consensual basis. See PR Docket No. 93-144, 8 FCC Rcd 3950 (1993). The Commission should not abandon approaches of this nature simply because it has the authority to auction competing licenses. Indeed, the public interest is served when
(continued...)

Mobile Service rules specifically provide that "Parties to contested proceedings are encouraged to settle their disputes among themselves,"^{16/} and provide procedural relief from the major amendment rule for a frequency change that serves to resolve a frequency conflict.^{17/} The disruption to existing services will be minimized if parties continue to be provided avenues under the rules for reaching private resolutions of their frequency conflicts.^{18/}

7. Third, and most important, the Commission must not allow the focus of attention on new services like PCS to delay the adoption of final rules that will allow applicants in services of long standing to prosecute applications, even

^{15/} (...continued)

competing applicants are able to resolve the mutual exclusivity problem by themselves because it allows for the service to be offered without the delays inherent in auctioning frequencies.

^{16/} 47 C.F.R. §§ 22.29(b). In its comments in the Part 22 Rewrite proceeding (CC Docket No. 92-115), Pactel (and others) recommended the adoption of additional mechanisms to limit situations where mutually exclusive applications could arise, such as making all paging allocations on a block basis, limiting applications to those who serve adjacent areas, and the like.

^{17/} 47. C.F.R. §§ 22.23(g)(2). Normally, an amendment changing the requested frequency would cause the application to be treated as newly filed, and subject to further competing proposals. This rule section creates an exception for frequency changes that resolve mutual exclusivities.

^{18/} Of course, such resolutions may be subject to settlement caps which prevent parties from being paid amounts in excess of their reasonable and prudent expenses in exchange for dismissing a competing application. See, e.g., 47 C.F.R. §22.928.

competing applications, to a prompt conclusion.^{19/} Thus, the Joint Commenters applaud the Commission's announced intention to apply new auction rules "to certain specific services immediately, including...all common carrier services,"^{20/} and urge the Commission not to be swayed from this worthy objective by the deadlines imposed by Congress for the commencement of PCS licensing.^{21/}

B. Auction Rules Should be Designed to Create Rational Assignments

8. If the competitive bidding procedures are not properly crafted, the auctions will create anomalous results that will disrupt the operations of a fully competitive market. The public interest is not served when licensing rules result in luck or surprise being more important factors in the outcome than solid business planning. If the auction process is responsible for creating situations in which some overpay while others underpay for spectrum on which competing services are provided, a

^{19/} The Joint Commenters recommend that the current paging and mobile telephone services be subject to oral auctions without any elaborate filing procedures. For instance, the Commission could send the mutually exclusive applicants a letter setting the date of the auction in the Commission's offices. Also, the public interest will not be served by requiring deposits from applicants in current paging and mobile telephone services because there will be relatively few applicants and, if the winner fails to pay, there may only be one other applicant so there may be no need for an auction.

^{20/} Notice, ¶ 20.

^{21/} The Budget Act requires that PCS licensing commence by May 7, 1994. See Notice, ¶ 1.

level competitive playing field will not exist, and robust competition cannot be assured.

9. The Joint Commenters are serious industry participants who have^{22/} and will pay for the use of spectrum so long as the competitive bidding process is structured to award licenses in a fair, methodical manner. The Joint Commenters suggest that several overriding principles should govern the Commission's design of the auction process to ensure that it meets the public interest. First and foremost, blocks of spectrum that are substitutable and equivalent^{23/} should be auctioned simultaneously so that a market price range can settle across the entire "lot".^{24/} A procedure that results in smaller differences between the prices paid for fungible spectrum will serve the public interest by ensuring that a particular applicant did not gain a market advantage solely through the Commission's

^{22/} The Joint Commenters have acquired certain of their licenses in private transactions under existing rules.

^{23/} The Joint Petitioners would consider spectrum to be equivalent and substitutable if the same bandwidth in the same geographic area is available. Thus, for example, the 5 nationwide symmetrically paired 50 kHz narrowband PCS channels would be considered fungible and should be auctioned at the same time.

^{24/} By simultaneously auctioning all fungible spectrum at the same time, the "winner's curse" can be eliminated because it will be more likely that the winning bidder will be truly paying the market rate.

processes. Simultaneous bidding could be conducted electronically^{25/}, by facsimile or by oral outcry^{26/}.

10. Second, all applicants interested in bidding on a license of a particular type^{27/} in the initial licensing phase should be included in a common bidding pool for all available licenses of that kind in order to assure that each has an equal opportunity to bid.^{28/} Thus, for example, in the initial period of narrowband PCS auctions, all applications should be deemed

^{25/} Contrary to the suggestion in the Notice at paragraph 56, the Joint Commenters do not think that the use of simultaneous ascending bid electronic auctions will necessarily take longer to implement, particularly if the Commission utilizes experienced outside auction consultants to assist in conducting the auctions as contemplated at paragraph 167 of the Notice.

^{26/} The auction procedures proposed by the Joint Commenters at Note 26, supra, results in a relatively small number of licenses being auctioned off simultaneously, so oral auctions are possible. If the auctions are oral, they would need to be in the same room to facilitate dissemination of the bid information.

^{27/} The Joint Commenters envision that the narrowband PCS auctions would take place as follows. For each geographic area, the licenses for the largest amount of spectrum would be auctioned first (e.g., 50 kHz outbound, 50 kHz return link). Then, the Commission would auction the licenses for the next largest amount of bandwidth (e.g., 50 kHz outbound, 12.5 kHz return link). This would continue until all spectrum blocks for that geographic area were licensed. Then the auctioning would move to the next largest geographic area in terms of population.

^{28/} For example, the Commission should avoid licensing rules that create situations in which one channel has a dozen competing auction applicants while another fungible channel has only two. The results will be more rational if, in this situation, all fourteen applicants are able to bid on both channels.

mutually exclusive with all other applications for the same geographic area.

11. To implement these concepts in situations involving frequency lots in which there are multiple available frequency assignments and multiple bidders, the Commission should seriously consider implementing a system of simultaneous bidding in which the bidding lasts a sufficient period of time to allow participants to assess the overall bidding matrix in a meaningful fashion and to make reasoned judgments.

C. The Process Should Be Designed to Relieve Unnecessary Paperwork

12. The Notice properly recognizes that the competitive bidding system "should be simple and easy to administer" and "minimize costs to applicants and the Commission."^{29/} This goal will be advanced substantially if the Commission adopts procedures requiring a minimum of paperwork. The Joint Commenters have several recommendations that will help the Commission reduce unnecessary paperwork.

13. The Budget Act limits the use of lotteries to situations of mutual exclusivity. The Commission should not, however, design licensing procedures that mandate that a single applicant file a multitude of applications covering every spectrum block of conceivable interest, because it would not

^{29/} Notice, ¶ 18.

serve the public interest.^{30/} For example, a party interested in a symmetrically paired (50 kHz inbound and outbound) nationwide narrowband PCS channel, if unsuccessful in the lottery, might also be interested in an asymmetrically paired (50 kHz outbound and 12.5 kHz inbound) nationwide channel, or an unpaired (50 kHz) nationwide channel, or any of a number of combinations of MTA or BTA narrowband PCS licenses. If this applicant is required to file a separate application for each and every channel and geographic area within the scope of its legitimate licensing interest, the Commission will be inundated with filings. Furthermore, such a process would present opportunities for Commission mistakes, such as the failure to list an application for a particular area in which an applicant bids. To avoid overburdening applicants or itself, the Commission should adopt a simple application form that enables an applicant to specify in a single consolidated filing all of the bandwidths and geographic areas in which the applicant wishes to be eligible to bid.^{31/}

^{30/} There will be 5,594 narrowband PCS licenses available. An applicant could theoretically be required to file an application for each frequency in each geographic area to be assured of an opportunity to participate. This would be extremely burdensome and not serve the public interest. In addition, unnecessary paperwork of this magnitude could discourage participation in some auctions, thereby artificially limiting the bidding pool.

^{31/} For narrowband PCS, the Joint Commenters recommend that the Commission establish four application groups: (1) nationwide channels, (2) MTA channels, (3) BTA symmetrical channels, and (4) BTA 12.5 kHz channels. An applicant wishing to participate in auctions for channels in all four of these groups would be required to file four applications. An applicant for MTA licenses only, however, would be required
(continued...)

14. The Joint Commenters also urge the Commission to avoid bidding mechanisms which call for elaborate payment and refund procedures. The more payments the Commission has to accept and return, the greater the procedural burden on both the applicants and the Commission and the greater the prospects for errors and delay. As is set forth in greater detail below, the Joint Commenters have a proposed procedure for the narrowband PCS auctions that will assure that participants have the financial wherewithal to meet the bid requirements, with a minimum of paperwork.^{32/}

15. Finally, the Joint Commenters recommend that the Commission avoid "mixed" bidding procedures (e.g., a combination of oral bidding and sealed bidding) or elaborate "second round" bidding mechanisms (e.g., those in which a group of top bidders are given additional opportunities to submit "final and best" offers) for both current paging and mobile telephone services and narrowband PCS. These mechanisms bring an element of complexity to the process that is inappropriate at this nascent stage of the

^{31/}(...continued)

to file only one application. An applicant would be permitted to bid in the auction of any spectrum within that geographic group (e.g. an MTA applicant would be able to bid on any MTA license, New York, Chicago, etc.) without any additional application. The Joint Commenters further recommend that each application have a separate filing window of at least five business days to ease the Commission's burden in accepting these applications.

^{32/} See discussion infra.

Commission's experimentation with alternative bidding forms.^{33/}
The public interest is best served by straightforward procedures
that achieve the stated goal of speeding the delivery of new
services to the public.

**D. Intermediate Links
Should Not Be Subject to Auction**

16. The Commission tentatively concludes in the Notice
that licenses used in services as an intermediate link in the
provision of a continuous end-to-end service offering to a
subscriber be subject to competitive bidding.^{34/} As an example,
the Commission cites a cellular carrier utilizing its own point-
to-point microwave facilities to interconnect cell sites and the
MTSO.^{35/} The Joint Commenters oppose this proposal. These links
do not directly serve the public and are part and parcel with the
underlying auctioned spectrum.^{36/} Auctioning intermediate links
also presents difficult issues when the spectrum is shared
between private services (which may not be subject to auction)
and commercial mobile services.

^{33/} Indeed, most mutually exclusive applications for current
services involve only two or three applications. Such a
situation does not merit such procedures.

^{34/} Notice, ¶ 28.

^{35/} Id. at ¶ 29. This could also mean that paging control link
frequencies are subject to auction.

^{36/} In fact, for paging control frequencies, they are listed on
the paging license.

17. The language of the Budget Act does not require intermediate repeater and control stations to be subject to competitive bidding. The precatory language in new Section 309(j)(2)(a) of the Communications Act allows the Commission to look to the "principal use" of spectrum for the purpose of determining whether competitive bidding is permitted.^{37/} In the case of microwave links utilized by a mobile service provider to connect sites, the spectrum is not directly dedicated to services for which the licensee is receiving compensation from subscribers. Thus, the Commission may properly find that the principal use does not fall within the category of auctionable licenses.

18. This interpretation finds support in the general principle that the new auction procedures were intended to apply to initial license applications, not to modification applications.^{38/} The addition of a repeater or control link to an existing mobile radio system is in the nature of a license modification that should not be subject to competitive bidding.^{39/}

19. Competitive bidding of intermediate links also will not foster the rapid deployment of new technologies and services as required by Section 309(j)(3)(A). For instance, the

^{37/} Notice, ¶ 11.

^{38/} See Notice, ¶ 2.

^{39/} For instance, paging control links are included as part of the paging license.

licensing of microwave stations is already so bogged down in Gettysburg that the Commission has adopted a "Blanket STA" procedure to permit licensees to install critical links promptly. Adding the complication of auctions will only exacerbate the licensing problem. Since auctions of intermediate links are not required by statute, the Commission should avoid this result.

III. The Narrowband PCS Auction Rules

20. When the Commission adopted the Narrowband PCS Order in July, it deferred establishing a detailed licensing mechanism, noting that "[i]ssues regarding licensee selection procedures and the regulatory status of the [narrowband] service are the subject of legislation actively being considered by the Congress."^{40/} The Commission therefore deferred establishing a detailed licensing plan for narrowband PCS until the advent of this competitive bidding proceeding. However, the overwhelming task of establishing auction procedures for so many diverse services has, in the Joint Commenters' view, caused inadequate attention to be paid to the many unique aspects of the narrowband allocation that require special attention in the auction process. Consequently, this section of these comments provides a detailed discussion of the major elements of the competitive bidding process with specific reference to the narrowband proceeding.

^{40/} Narrowband PCS Order at ¶ 1.

a bidding mechanism must be developed to permit simultaneous bidding for all licenses of like kind in a common area by the entire pool of interested applicants.^{42/} Serious consideration should be given to utilizing an electronic bidding process in order to permit the simultaneous auctioning of multiple licenses to become automated to the maximum extent possible.^{44/} Of course, oral auctions could be used provided that the Commission held all bids open until all channels have received no higher bids. This would require all channels to be auctioned in the same room to facilitate dissemination of bid information.^{45/}

22. **Sequence of Bidding.** The Commission should commence by auctioning off all of the nationwide licenses, starting with the largest bandwidths (the symmetrically paired channels), moving on to the medium bandwidths (the asymmetrically paired channels) and ending with the narrowest bandwidths (the unpaired channels). Then the Commission should auction off the regional licenses, starting again with the largest bandwidths and

^{42/} (...continued)

paired MTA channels in a particular MTA would be largely indistinguishable.

^{43/} See discussion infra.

^{44/} The potential number of narrowband licenses that will be issued in view of the varying bandwidths, pairings and geographic areas specified in the Narrowband Order is 5594 (11 nationwide licenses plus 51 MTAs times 13 licenses in each, plus 492 BTAs times 10 licenses each). Automating the bidding process to permit the simultaneous bidding on multiple homogeneous licenses ultimately will expedite the process.

^{45/} This is similar to the way securities are currently traded on the major stock exchanges.

moving to the smallest bandwidths in each regional area.^{46/} Ideally, an electronic bidding process would enable all MTAs to be auctioned simultaneously so that a party could increase its chances of garnering a common channel in multiple markets.^{47/} Similarly, all of the BTAs^{48/} in a single MTA should be auctioned off simultaneously to facilitate aggregation, starting first with the group comprising the largest MTA.^{49/}

23. Generally, the Joint Commenters support the conclusion that sealed combinatorial bidding not be an element of

^{46/} Regional licenses are allocated in the Narrowband Order on the basis of MTAs. However, some petitioners for reconsideration have asked the Commission to revisit this issue and consider substituting a handful of large regions for the 47 MTAs in order to conform the areas more closely to existing regional service areas of wide area paging systems. See Comments of Pactel Paging in Support of the Petition For Reconsideration and Clarification of Paging Network, Inc., filed October 25, 1993 in ET Docket No. 92-100. The licensing scheme proposed by the Joint Petitioners would work with larger regions as well.

^{47/} If simultaneous bidding of all regions is not contemplated, bidding should start with the largest MTA (by population) and continue through to the smallest MTA.

^{48/} The Commission proposes that the local licenses be issued on a BTA basis. Some petitioners for reconsideration have requested that MTAs be the smallest geographic area licensed for narrowband PCS. See note 46, supra.

^{49/} Because of the unique nature of the unpaired 12.5 kHz channels, the eligibility for these channels should be limited to existing 900 MHz paging licensees. The Joint Commenters understand that manufacturers are only now working on developing equipment which will work on 900 MHz paging channels. To the extent that these channels were licensed to non-900 MHz paging licensees, these channels would lay fallow for many years. It makes no sense to license channels in a way which promotes their non-use.

the narrowband licensing process.^{50/} The fact that there are so many narrowband licenses of different bandwidths being allocated for use in diverse areas ranging from BTAs to nationwide reduces the likelihood that an applicant will be forced to aggregate channels or territories to meet its business plan. In addition, one of the underlying reasons for combinatorial bidding was to allow for aggregation of MTAs into nationwide licenses. Since narrowband PCS has been allocated such that there are a variety of geographic areas, combinatorial bidding is not necessary. Furthermore, the aforementioned simultaneous bidding method will accommodate some aggregation efforts without resort to sealed combinatorial bids.

24. **Financial Matters.** The Joint Commenters find themselves in substantial agreement with the Commission on a number of the issues involving the financial aspects of the competitive bidding process. First, because there will likely be a large number of bidders for narrowband PCS licenses, it does not seem appropriate to set minimum bid requirements.^{51/} In addition, since there are no existing parallel services which have been auctioned and because narrowband PCS is expected to encompass a family of services, it is difficult if not impossible to set a reasonable minimum bid requirement. Second, the Joint Commenters generally support the idea that the Commission should utilize a combination of upfront payments, bid deposits and lump

^{50/} Notice, ¶ 120.

^{51/} Accord Notice, ¶ 67.

sum payments to assure that the bidding is limited to serious, financially-capable participants.^{52/} However, the payment procedures must be carefully considered in order to avoid complicating the narrowband licensing process too much since literally thousands of auctions will be conducted. Third, the Joint Commenters support prompt lump sum payments for narrowband PCS channels.^{53/}

25. The Joint Commenters endorse the Commission's proposal that narrowband bidders be subject to an upfront payment equal to 2 cents per megahertz per population in the service territory.^{54/} The Joint Commenters support requiring each applicant to submit the upfront payment in advance of the auction.^{55/} The Joint Commenters, however, believe that the upfront payment should be tendered within 5 business days after acceptance of the short form application.^{56/} This would ensure

^{52/} Accord Notice, ¶ 102.

^{53/} Accord Notice, ¶ 68. As a general rule, the Joint Commenters believe all applicants should have the same payment options in order to create a level playing field. The Joint Commenters oppose giving a select group of applicants preferred treatment in the form of installment payments, royalties, and bidding credits. If, nonetheless, these mechanisms are employed for some, they should be available for all.

^{54/} See Notice, ¶ 103.

^{55/} Id.

^{56/} The Joint Commenters do not support the use of letter perfect application standards. Too often, these requirements can be traps for the unwary and the adverse consequences of even clerical errors can be severe. Also, the Commission should strive to have as many qualified

(continued...)

that only applicants with a genuine interest in participating in the auction participate in the auction.^{57/}

26. The Narrowband PCS Order sets a per licensee limit of three 50 kHz channels, paired or unpaired, per geographic area.^{58/} Consequently, the maximum upfront payment required from any narrowband applicant would be based upon a 300 kHz calculation.^{59/} An applicant who makes an upfront payment based upon this maximum would be allowed in a simultaneous auction of fungible channels to submit up to three bids at a time.^{60/} This

^{58/} (...continued)

bidders as possible participate in the auctions in order to foster an economically efficient assignment of spectrum. Consequently, those who have their short form applications dismissed as an initial matter due to a letter perfect defect should have a very brief period (perhaps 10 days) to resubmit a corrected application.

^{57/} If the payment is required only at the time of the auction and the payment is not taken from each applicant, the Commission can expect to encounter devices to circumvent the Commission's intent to eliminate insincere bidders. For instance, applicants could secure cashier's checks with the understanding from the bank that if the applicant is a successful bidder the cashier's check would convert into a loan. These arrangements could be done on a widespread basis, thus allowing significant speculation.

^{58/} Narrowband PCS Order, ¶¶ 32-34.

^{59/} A grant of three symmetrically paired 50 kHz channels would result in total bandwidth of 300 kHz.

^{60/} Similarly, an applicant making an upfront payment on the basis of 200 kHz of spectrum, would only be allowed to submit two bids at the same time for symmetrically paired channels. If this bidder was unsuccessful in garnering two paired channels, the upfront payment would qualify them to bid on channels of lesser spectrum amounts (i.e. an asymmetrically paired or an unpaired channel.)

bidding mechanism would ensure that an applicant does not bid for and win more spectrum than it can lawfully acquire.^{61/}

27. The Commission proposes to require a prompt deposit of 20% of the winning bid from the successful applicant, and seeks comment on when this deposit should be due.^{62/} The Joint Commenters agree with the Commission that immediately collecting an additional payment of uncertain size presents procedural problems. Therefore, the Joint Commenters suggest that the successful bidder be required to pay the difference between the upfront payment and the 20% deposit payment within 5 business days after the auction is conducted.^{63/} The balance of the auction payment should be due in a lump sum within 30 days after the auction, as suggested by the Commission. If the successful bidder fails to make any required payment, the Joint Commenters suggest that all narrowband PCS licenses held by the successful bidder, and all amounts currently held by the Commission from the successful bidder, be deemed forfeited.^{64/}

^{61/} This also ensures that the Commission does not have to deal with bid retraction mechanisms for Narrowband PCS which, given the total number of possible licenses, would be difficult to implement.

^{62/} Notice, ¶ 105.

^{63/} Each Joint Petitioner has experienced unexpected delays in the transfer of funds by banks despite diligent efforts to avoid them. The five-business-day payment schedule is designed to allow for contingencies and thus avoid the litigation that will certainly ensue if a shorter time period is missed due to a bank error.

^{64/} This would create a "death penalty" for successful bidders who fail to make the required deposits. The Joint

(continued...)