(A) the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays;

(B) promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women;

(C) recovery for the public of a portion of the value of the public spectrum resource made available for commercial use and avoidance of unjust enrichment through methods employed to award uses of that resource; and

(D) efficient and intensive use of the electromagnetic spectrum.[404]

144. In the *Competitive Bidding Second Report and Order*, we concluded that SMR as a class of service, including 800 MHz SMR, would satisfy the Section 309(j) criteria for auctionability.[405] We noted that our rules explicitly contemplate and expect that SMR licensees will provide service to eligible subscribers for compensation.[406] Based on this experience and the record in PP Docket No. 93-253, we concluded that the principal use of SMR spectrum, considered as a class, was reasonably likely to involve licensees receiving compensation from subscribers in return for enabling those subscribers to transmit or receive communications.[407] We further concluded that the use of competitive bidding will speed the development and rapid deployment of SMR service, including service in rural areas, with minimal administrative or judicial delays, as required by Section 309(j)(3)(A). We also determined that competitive bidding would promote the objectives of Section 309(j)(3)(C) in the SMR service by recovering for the public a portion of the value of SMR spectrum made available for commercial use, and avoiding unjust enrichment.[408]

145. In the *CMRS Third Report and Order*, we concluded that we generally should

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[404]47 U.S.C. § 309(j)(3).

[405]Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-252, *Second Report and Order*, 9 FCC Rcd 2348, 2359, ¶ 63 (1994) (*Competitive Bidding Second Report and Order*).

[406]*Id.*

[407]*Id.*

[408]*Id.* at 2359-2360, ¶ 64.

use competitive bidding procedures to select among mutually exclusive CMRS applications where we have the authority to do so and where we find such processing to be in the public interest.[409] We specifically concluded that competitive bidding procedures should be used to select between mutually exclusive initial applications in the 800 MHz SMR service.[410] We also concluded that, because the number of mutually exclusive applications in future licensing in the 800 MHz SMR service may be considerable, the use of competitive bidding will ensure that the qualified applicants who place the highest value on the available spectrum will prevail in the selection process.[411]

146. Comments. Numerous commenters oppose use of competitive bidding procedures in the 800 MHz SMR service.[412] These commenters oppose auctions here because: (1) the competitive bidding authority extended to the Commission in the Budget Act applies only to issuance of new authorizations in newly allocated services;[413] (2) auctions would favor larger entities to the detriment of small businesses and existing licensees, because larger entities will have more financial resources to draw upon for bidding;[414] (3) auctions are inappropriate for an extensively licensed service, because there are few vacant channels and little, if any, "white space" to be filled;[415] and, (4) auctions would give a competitive

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[409]*CMRS Third Report and Order*, 9 FCC Rcd at 8135, ¶ 328.

[410]*Id.* at 8140, ¶ 341.

[411]*Id.*

[412]AMTA Comments at 7-8; CCI Comments at 1; CICS Comments at 6; Courtesy Comments at 1; Dial Call Comments at 5; Don Clark Radio Comments at 2; Ericsson Comments at 4-5; Lagorio Comments 14-15; Lausman Comments at 3; NTCA Comments at 4; Parkinson, *et al.* Comments at 11; PCIA Comments at 18; Pierre Radio Comments at 1; Pro-Tec Comments at 8; Coalition Comments at 8-9; SMR WON Comments at 30-31; T&K Comments at 4; Total Com Comments at 11; DCL Associates Reply Comments at 2, 6: Dial Call Reply Comments at 12-13; Fisher Reply Comments at 11; Joint Commenters Reply Comments at 15-16; Kay Reply Comments at 2; Lachowicz Reply Comments at 2; Phipps Reply Comments at 2; Russ Miller Reply Comments at 10-11; SBA Reply Comments at 2-3; D & G Communications *Ex Parte* Comments at 1; PEC Mobile *Ex Parte* Comments at 3; FedEx *Ex Parte* Comments at 3; Galesburg *Ex Parte* Comments at 1.

[413]AMTA Comments at 7-8; CCI Comments at 1; Dial Call Comments at 11-13; Parkinson, *et al.* Comments at 11; PCIA Comments at 18-19; Coalition Comments at 8-9; T&K Comments at 4; DCL Associates Reply Comments at 2, 6; Fisher Reply Comments at 11; Joint Commenters Reply Comments at 15-16; Lachowicz Reply Comments at 2; Phipps Reply Comments at 3; Russ Miller Reply Comments at 10-11; SBA Reply Comments at 2-3; Louisville *Ex Parte* Comments at 5; Group of 66 *Ex Parte* Comments at i-ii; RACOM *Ex Parte* Comments at 5; Operators 3 *Ex Parte* Comments at 2; California Trucking *Ex Parte* Comments at 2; Operators 2 *Ex Parte* Comments at 2.

[414]CICS Comments at 6; Courtesy Comments at 1; Don Clark Radio Comments at 2; Ericsson Comments at 4-5; Pierre Radio Comments at 1; Pro-Tec Comments at 8; Kay Reply Comments at 2; Lachowicz Reply Comments at 2.

[415]NTCA Comments at 4.

advantage to one group of licensees over another, because the authorization which is auctioned would provide the successful bidder with additional operational rights.[416]

147. Nextel, on the other hand, argues that auctioning 800 MHz SMR spectrum is within the Commission's competitive bidding authority under the Communications Act. Nextel notes that Congress specified those categories of licenses which were not auctionable and that 800 MHz SMR licenses are not included in such categories.[417] Nextel further argues that auctioning of wide-area 800 MHz SMR licenses would be the most efficient means of licensing such spectrum and would ensure prompt delivery of new services to the public.[418]

148. Discussion. We reiterate our conclusion that competitive bidding is an appropriate licensing tool for the 800 MHz SMR service. We agree with Nextel that auctioning of 800 MHz SMR spectrum is within our statutory authority. We emphasize that the use of auctions will apply only to issuance of initial licenses in the upper 10 MHz block, the EA licenses. These EA licenses previously have not been issued by the Commission, and include certain rights and obligations that previously were not granted to or required of licensees. Significantly, our granting of these EA licenses does not affect rights afforded to licensees under existing authorizations, because incumbent licensees will be able to continue to operate their systems. Even though incumbents will be subject to mandatory relocation under certain circumstances, their existing operations will be protected, as discussed *supra*. Furthermore, auctions will be used only in the event that there are competing applications for the same EA license.

149. We conclude that use of competitive bidding in the upper 10 MHz block, as described *supra,* is authorized by Section 309(j) of the Communications Act. We affirm our previous conclusion that 800 MHz SMR, as a service, satisfies the criteria set forth by Congress for determining when competitive bidding should be used. SMR licenses are used to provide service to subscribers for compensation, so a precondition to competitive bidding under Section 309(j)(2)(A) is met. Moreover, competitive bidding will further the public interest requirements of Section 309(j)(3), by promoting rapid development of service, fostering competition, recovering a portion of the value of the spectrum for the public, and encouraging efficient spectrum use. Where competitive bidding is utilized, a diverse group of entities, including incumbent licensees and potential new entrants, will be able to participate in the auction process, because we have decided not to restrict eligibility for these EA licenses. In addition, we have proposed special provisions for small businesses seeking EA licenses. Thus, we disagree with those commenters who contend that use of competitive bidding in the 800 MHz SMR service would favor particular licensees. Rather, we believe that it will result in a more diverse pool of applicants for 800 MHz SMR licenses, an outcome

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[416]SMR WON Comments at 30-31; Total Com Comments at 11.

[417]Nextel Reply Comments at 16-17.

[418]Nextel Reply Comments at 22.

which furthers the goals of Section 309(j)(3)(B) of the Communications Act.

150. Additionally, we believe that competitive bidding procedures will minimize administrative or judicial delays in licensing, particularly when compared to other licensing alternatives -- comparative hearings, lotteries (which specifically are prohibited since the 800 MHz SMR service is auctionable), or first-come, first-served procedures. We employed first-come, first-served procedures in the 800 MHz SMR service prior to our implementation of the Budget Act. Our experience is that such procedures have resulted in processing delays. By contrast, we expect that use of competitive bidding will allow interested parties to obtain expeditious access to 800 MHz SMR spectrum and to use such spectrum efficiently. We conclude that this result furthers both Section 309(j)(3)(A) and Section 309(j)(3)(D) of the Communications Act.

151. Although we believe that several commenters' objections to the use of competitive bidding procedures in the 800 MHz SMR service are untimely petitions to reconsider our decision in the *Competitive Bidding Second Report and Order* that the 800 MHz SMR service is auctionable, we will address them nonetheless. We disagree with those commenters that argue that the Commission's competitive bidding authority does not extend to existing services. Section 309(j) of the Communications Act does not distinguish between new services (such as PCS) and existing services in terms of whether initial licenses in a given service should be subject to competitive bidding. Accordingly, we conclude that our determination that the 800 MHz SMR service is auctionable is fully consistent with Section 309(j) of the Communications Act.

B. Competitive Bidding Methodology for Upper 10 MHz Block

1. Competitive Bidding Design

a. Simultaneous Multiple Round Auctions

152. Background. In the *Competitive Bidding Second Report and Order*, we established the criteria for selecting from among auction methodologies for each service.[419] In the *Further Notice*, we indicated that simultaneous multiple round auctions would be appropriate for the upper 10 MHz block, given the interdependence of licenses based on the desirability of aggregation across spectrum blocks and geographic regions.[420] We further indicated that simultaneous multiple round bidding would allow bidders to consider the full value of the interdependency among licenses and provide bidders with the opportunity to pursue back-up strategies that enable them most efficiently to obtain the license combinations which satisfy their service needs. As a result, we tentatively concluded that simultaneous multiple round bidding would be most likely to award wide-area licenses to bidders who are

[419] *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2360-2367, ¶¶ 68-115.

[420] *Further Notice*, 10 FCC Rcd at 8008, ¶ 75.

most likely to deploy new 800 MHz SMR technologies and services rapidly.[421]

153. Comments. Numerous commenters concur that a simultaneous multiple round auction is the most appropriate competitive bidding design for wide-area 800 MHz SMR licenses.[422] Dial Call, AMTA, and Nextel support simultaneous multiple round auctions partly due to the high degree of interdependence between the wide-area licenses.[423] CellCall, however, opposes the use of competitive bidding, including simultaneous multiple round auctions.[424] CellCall further believes that the Commission should not be required to auction all wide-area licenses at once.[425] Instead, CellCall suggests that we auction all licenses in a particular license area and conduct individual auctions for each license area.[426] SBA, on the other hand, believes that single round sealed bidding should be used because it is a relatively easy method for small businesses to understand, and will allow them to use their own knowledge of the market to determine their bids.[427] Genesee disagrees that a single round of sealed bids would be fair to all potential bidders, and suggests that at least two rounds be conducted with 30-day intervals.[428]

154. Discussion. Based on the record in this proceeding and our successful experience conducting simultaneous multiple round auctions for other CMRS services (*e.g.*, narrowband and broadband PCS), we believe a simultaneous multiple round auction is the most appropriate competitive bidding design for the 10 MHz upper block of 800 MHz SMR spectrum. We have developed and successfully conducted auctions with software capable of handling numerous licenses in a simultaneous multiple round auction. Thus, this methodology will afford us administrative convenience and enable us to hold an auction quickly and efficiently. For certain bidders, the value of these licenses will be significantly interdependent because of the desirability of aggregation across geographic regions. Given this high degree of interdependency among licenses, we reject SBA's suggestion that single round sealed bidding is a more appropriate competitive bidding design for licensing the upper 10 MHz SMR spectrum blocks. We believe that simultaneous multiple round bidding will generate more information about license values during the course of the auction and provide bidders

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[421] *Id.*

[422] AMI Comments at 9; Genesee Comments at 4; Morris Comments at 5; Nextel Comments at 59; Dial Call Reply Comments at 14; Motorola Reply Comments at 11; AMTA Reply Comments at 29-30.

[423] Dial Call Reply Comments at 14; AMTA Reply Comments at 30; Nextel Reply Comments at 55.

[424] CellCall Comments at 28.

[425] CellCall Comments at 28-29.

[426] *Id.*

[427] SBA Comments at 20.

[428] Genesee Comments at 4.

with more flexibility to pursue back-up strategies, than if the licenses were auctioned separately or through sealed bidding. As we decided in the 900 MHz SMR service, the Bidder Information Package for the 10 MHz upper block licenses will provide all the information about incumbent licensees that is available in our licensing records as of 60 days prior to the filing deadline for participation in the auction.[429] In this connection, upon release of the Public Notice announcing the date of the auction for the upper 10 MHz block of 800 MHz SMR spectrum, all pending applications for frequencies within this spectrum will be returned without prejudice to the applicants. These applicants then will be able to seek licenses for these frequencies through the competitive bidding process. In addition, we encourage all potential bidders to examine these records carefully and do their own independent investigation regarding existing licensees' operations in each EA in which they intend to bid in order to maximize their success in the auction. In response to SBA's concern about small businesses being able to understand the competitive bidding design which we employ, as we have done in other services, we will hold a seminar for prospective bidders to acquaint them with this competitive bidding design. We will announce the date and location for such seminar by Public Notice. We conclude, therefore, that simultaneous multiple round bidding is most likely to award licenses to the bidders who value them the most highly and to provide bidders with the greatest likelihood of obtaining the license combinations that best satisfy their service needs.

b. Stopping Rules

155. Background. In a multiple round auction, a stopping rule must be established to determine when the auction is over.[430] Three types of stopping rules exist that could be employed in simultaneous multiple round auctions: markets may close individually, simultaneously, or a hybrid approach may be used.[431] In the *Further Notice*, we proposed that if simultaneous multiple round auctions are used for the upper 10 MHz block, we would use stopping rules the same as or similar to those used in simultaneous multiple round bidding for MTA-based broadband PCS licenses.[432] In the *Competitive Bidding Fifth Report and Order*, we adopted a simultaneous stopping rule for broadband PCS.[433] In addition, we retained the

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[429]Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89-553, Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, Implementation of Sections 3(n) and 322 of the Communications Act, GN Docket No. 93-252, *Second Order on Reconsideration and Seventh Report and Order*, 60 Fed. Reg. 48,913 (Sept. 21, 1995), ¶¶ 152-153 (*900 MHz Reconsideration Order/7th R&O*).

[430]*Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2369, ¶ 127.

[431]*Competitive Bidding Fifth Report and Order*, 9 FCC Rcd at 5552, ¶ 49.

[432]*Id.*

[433]*Id.*, 9 FCC Rcd at 5551, ¶ 47

discretion to declare at any point after the 40 rounds in a simultaneous multiple round auction that the auction will end after some specified number of additional rounds.[434]

156. Comments. The only commenter addressing this issue, Morris, supports using multiple round auctions for wide-area 800 MHz SMR licenses, and it proposes limiting the auctions to five rounds.[435]

157. Discussion. We will adopt a simultaneous stopping rule for the upper 10 MHz block 800 MHz SMR auction. The simultaneous stopping rule is designed to allow bidders to decide how long the auction will run, based on bidding strategy and demand for each license. Under a simultaneous stopping rule, bidding will remain open on all licenses in an auction until bidding stops on every license. We conclude that the substitutability between licenses within the same EA and the ability to pursue back-up strategies support the use of a simultaneous stopping rule.

158. As a result, the upper 10 MHz block 800 MHz SMR auction will close after one round passes in which no new valid bids or proactive activity rule waivers (as defined in ¶ 162, *infra*) are submitted. We retain the discretion to keep the auction open even if no new acceptable bids and no proactive waivers are submitted in a single round. In the event that we exercise this discretion, the effect will be the same as if a bidder has submitted a proactive waiver. We also retain the discretion to announce market-by-market closings.

159. We further retain the discretion to declare after 40 rounds that the auction will end after some specified number of additional rounds. We reject Morris's proposal to conduct a five-round auction, based on our experience in previous auctions that 40 rounds will assure that the auction will not close prematurely, while providing bidders with fair assurance that the auction will be conducted as intended. Bids will be accepted only on licenses where the high bid has increased in the last three rounds. This will deter bidders from continuing to bid on a few low value licenses solely to delay the closing of the auction. It also will enable the Commission to end the auction when it determines that the benefits of terminating the auction and issuing licenses exceed the likely benefits of continuing to allow bidding. The Commission will announce by Public Notice the number of remaining rounds and other final bidding procedures. We hereby delegate authority to the Bureau to issue such Public Notices.

160. As we have recognized with previous auctions, the disadvantage of declaring an imminent end to an auction is that this may result in a less efficient allocation of licenses than if the auction remained open as long as new bids were received. Thus, we will declare the imminent end of the auction only in the case of extremely dilatory bidding, as we favor other methods to hasten the end of an auction -- shortening the bidding rounds, raising the minimum bid increments, and proceeding to a later auction stage. We believe that this

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[434] *Id.* at 5551, ¶ 48.

[435] Morris Comments at 5.

approach will facilitate the rapid completion of the auction by permitting the Commission to use larger bid increments, thereby speeding the auction pace without risking a premature auction close.

c. Activity Rules

161. Background. In order to ensure that simultaneous auctions with simultaneous stopping rules close within a reasonable period of time and to increase the information conveyed by bid prices during the auction, it is necessary to impose an activity rule to prevent bidders from waiting until the end of the auction before participating.[436] We have used the Milgrom-Wilson activity rule to award broadband and narrowband PCS licenses.[437] Under the three-stage Milgrom-Wilson approach, bidders are encouraged to participate in early rounds by limiting their maximum participation to some multiple of their minimum participation level. Bidders are required to declare their maximum eligibility in terms of MHz-pops, and make an upfront payment equal to $0.02 per activity unit. In the *Further Notice*, we proposed that if simultaneous multiple round auctions are used for the upper 10 MHz block, we would use activity rules the same as or similar to those used in simultaneous multiple round bidding for MTA-based PCS licenses.[438]

162. In the *Competitive Bidding Fifth Report and Order*, we permitted broadband PCS bidders one "automatic" waiver from the activity rule during each stage of an auction.[439] An automatic waiver is exercised by the Commission if a bidder fails to bid and fails to submit a "proactive" waiver, unless the bidder chooses to override the automatic waiver process to intentionally decrease eligibility: a "proactive" waiver is one which can be submitted by the bidder when it chooses not to bid in a round and wishes to maintain its current eligibility level. With respect to broadband PCS auctions, we initially determined that only proactive waivers, and not automatic waivers, would keep an auction open.[440] In that context, however, we later modified the rule by retaining the discretion to keep an auction open even if no new acceptable bids and no proactive waivers are submitted in a single round.[441] We observed that this would facilitate the rapid completion of the auction, by

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[436]*Competitive Bidding Third Report and Order*, 9 FCC Rcd at 2955, ¶ 36.

[437]*See, e.g., Competitive Bidding Third Report and Order*, 9 FCC Rcd at 2956, ¶ 40.

[438]*Further Notice,* 10 FCC Rcd at 8009-8010, ¶ 79.

[439]*Competitive Bidding Fifth Report and Order*, 9 FCC Rcd at 5556, ¶ 56. A waiver permits a bidder to maintain eligibility at the same level as in the round for which the waiver is submitted, regardless of the bidder's level of bidding activity in that round.

[440]*Competitive Bidding Fourth Memorandum Opinion and Order*, 9 FCC Rcd at 6861, ¶ 15.

[441]Implementation of Section 309(j) - Competitive Bidding, *Memorandum Opinion and Order*, PP Docket No. 93-253, 9 FCC Rcd 7684, 7685, ¶ 3 (1994).

permitting the Commission to use larger bid increments, thereby speeding the auction pace without risking a premature auction close.[442]

163. Comments. No commenters addressed this issue.

164. Discussion. We will employ the Milgrom-Wilson activity rule in conjunction with the simultaneous stopping rule. Under the Milgrom-Wilson approach, the minimum activity level, measured as a fraction of the bidder's eligibility in the current round, increases during the course of the auction. The three-stage Milgrom-Wilson approach encourages bidders to participate in early rounds by limiting their maximum participation to some multiple of their minimum participation level.

165. Absent waivers (discussed *supra* ¶ 162), a bidder's eligibility (in terms of activity units) in the current round is determined by the bidder's activity level and eligibility in the previous round. In the first round, however, eligibility is determined by the bidder's upfront payment and is equal to the upfront payment divided by $0.02 per activity unit.

166. In each round of Stage I, a bidder who wishes to maintain its current eligibility must be active on licenses encompassing at least one-half (50 percent) of the activity units for which it currently is eligible. Failure to maintain the requisite activity level will result in a reduction in the amount of activity units upon which a bidder will be eligible to bid in the next round of bidding (unless an activity rule waiver, as defined in ¶ 160, *supra*, is used). During Stage I, if bidding activity is below the required minimum level, eligibility in the next round will be calculated by multiplying the current round activity by two. Eligibility for each applicant in the first round of the auction is determined by the amount of the upfront payment received and the licenses identified in its auction application. In each round of Stage II, a bidder who wishes to maintain its current eligibility in the next round is required to be active on at least 75 percent of the activity units for which it is eligible in the current round. During Stage II, if activity is below the required minimum level, eligibility in the next round will be calculated by multiplying the current round activity by four-thirds (4/3). In each round of Stage III, a bidder who wishes to maintain its current eligibility must be active on licenses encompassing at least 95 percent of the activity units for which it is eligible in the current round. In Stage III, if activity in the current round is below 95 percent of current eligibility, eligibility in the next round will be calculated by multiplying the current round activity by twenty nineteenths (20/19). We reserve the discretion to set and, by announcement before or during the auction, vary the requisite minimum activity levels (and associated eligibility calculations) for each auction stage. Retaining this flexibility will improve the Commission's ability to control the pace of the auction and help ensure that the auction is completed within a reasonable period of time.

167. As in prior auctions, we will determine the transition from one stage to the next in the 800 MHz SMR auction by the aggregate level of bidding activity, subject to our

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discretion. The transition rule also may be defined in terms of the "auction activity level" -- the sum of activity units of those licenses whose high bid increased in the current round, as a percentage of the total activity units of all licenses in that auction. The auction will start in Stage I and move to Stage II when the auction activity level is below ten percent for three consecutive rounds in Stage I. The auction will move from Stage II to Stage III when the auction activity level is below five percent for three consecutive rounds in Stage II. In no case can the auction revert to an earlier stage. We retain the discretion, however, to determine and announce during the course of an auction when, and if, to move from one auction stage to the next. These determinations will be based on a variety of measures of bidder activity including, but not limited to, the auction activity level defined above, the percentage of licenses (measured in terms of activity units) on which there are new bids, the number of new bids, and the percentage increase in revenue.

168. To avoid the consequences of clerical errors and to compensate for unusual circumstances that might delay a bidder's bid preparation or submission on a particular day, we will provide bidders with five activity rule waivers that may be used in any round during the course of the auction. If a bidder's activity level is below the required activity level a waiver automatically will be applied. That is, if a bidder fails to submit a bid in a round, and its activity level from any "standing" high bids (*i.e.*, high bids at the end of the bid withdrawal period in the previous round) falls below its required activity level, a waiver automatically will be applied. A waiver will preserve current eligibility in the next round, but cannot be used to correct an error in the bid amount. An activity rule waiver applies to an entire round of bidding and not to a particular EA service area.

169. Bidders will be afforded an opportunity to override the automatic waiver mechanism when they place a bid, if they wish to reduce their bidding eligibility and do not want to use a waiver to retain their eligibility at its current level. If a bidder overrides the automatic waiver mechanism, its eligibility permanently will be reduced (according to the formulas specified above), and it will not be permitted to regain its bidding eligibility from a previous round. An automatic waiver invoked in a round in which there are no valid bids will not keep the auction open. Bidders will have the option to enter a "proactive" waiver during the bid submission period. If a bidder submits a proactive waiver in a round in which no other bidding activity occurs, the auction will remain open.

170. The Commission retains the discretion to issue additional waivers during the course of an auction for circumstances beyond a bidder's control. The Commission also retains the flexibility to adjust, by Public Notice prior to an auction, the number of waivers permitted, or to institute a rule that allows one waiver during a specified number of bidding rounds or during specified stages of the auction. We hereby delegate to the Bureau the discretion to issue additional waivers or restrict the use of such waivers under the circumstances described *supra*.

d. License Grouping

171. Background. In the *Competitive Bidding Third Report and Order,* the Commission determined that choosing which licenses to auction simultaneously requires a judgment about the degree of interdependence of the licenses, *i.e.*, the extent to which the amount bidders are willing to pay for one license depends on the price of another.[443] In the *Further Notice*, we tentatively concluded that if simultaneous multiple round auctions were used for the 800 MHz SMR wide-area spectrum blocks, the wide-area licenses covering these spectrum blocks should be auctioned simultaneously, because of the relatively high value and significant interdependence of the licenses.[444]

172. Comments. CellCall, the sole commenter addressing this issue, suggests that the Commission auction all block licenses within a particular geographic area at the same time, but auction each geographic area individually.[445]

173. Discussion. As we discussed *supra*, we believe that the licenses for the upper 10 MHz band are significantly interdependent. We believe that grouping interdependent licenses and putting them up for bid at the same time will facilitate awarding licenses to bidders who value them most highly by providing bidders with information about the prices of complementary and substitutable licenses during the course of an auction. Because potential bidders may be interested in aggregating spectrum across geographic areas as well as across spectrum blocks, we disagree with CellCall's suggestion to auction each geographic area individually. As a result, we conclude that all EA licenses for the upper 10 MHz block should be auctioned simultaneously. We further conclude that holding a single auction for all 175 EAs in the 800 MHz SMR band will be the fairest, fastest, and most efficient means of distributing these licenses.

2. Bidding Issues for Upper 10 MHz Block of 800 MHz SMR spectrum

a. Bidding Procedures

174. Background. In the *Competitive Bidding Second Report and Order*, we adopted several bidding procedures and determined that we would incorporate certain of these procedures into the service-specific rules adopted in the future Reports and Orders for each auctionable service.[446] In the *Further Notice*, we proposed that if simultaneous multiple round auctions are used for wide-area SMR licenses, we would use the same or similar bidding procedures to those used in simultaneous multiple round bidding for broadband PCS

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[443] *Competitive Bidding Third Report and Order*, 9 FCC Rcd at 2951, ¶ 26.

[444] *Further Notice*, 10 FCC Rcd at 8008-8009, ¶ 76.

[445] CellCall Comments at 28.

[446] *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2367, ¶ 116.

licenses.[447]

175. Comments. No commenters addressed this issue.

176. Discussion. We will adopt the same bidding procedures used for MTA-based PCS licenses. Under these procedures, bidders will be able to submit bids via remote bidding, using special bidding software, or via telephone. We have established a schedule of fees that participants in the competitive bidding process will be assessed for certain on-line computer services, bidding software, and for Bidder Information Packages.[448] In addition, bidders will be permitted to bid electronically only if they have filed a short-form application electronically. Bidders who file their short-form manually may bid only telephonically. When submitting bids telephonically, bidders may utilize the Internet to learn the round-by-round results of the auction. Online services such as CompuServe, Prodigy, and America Online provide Internet access at a reasonable cost. Bidders also may, at negligible cost, use a computerized bulletin board service, accessible by telephone lines, from which auction results can be downloaded to a personal computer.[449] The Commission intends to hold a seminar for prospective bidders to acquaint them with these bidding procedures.

b. Bid Increments

177. Background. In the *Competitive Bidding Fifth Report and Order*, we determined that it is important to specify minimum bid increments when using simultaneous multiple round auctions to award licenses.[450] The bid increment is the amount or percentage by which the bid must be raised above the previous round's high bid in order to be accepted as a valid bid in the current bidding round.[451] The application of a minimum bid increment speeds the progress of the auction, and, along with activity and stopping rules, helps to ensure that the auction closes within a reasonable period of time.[452] With broadband PCS, we started the

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[447] *Further Notice*, 10 FCC Rcd at 8009, ¶ 79.

[448] *See* Assessment and Collection of Charges for FCC Proprietary Remote Software Packages, On-Line Communications Services Charges, and Bidder's Information Packages in Connection With Auctionable Services, WT Docket No. 95-69, FCC 95-308, 60 Fed. Reg. 38,276 (July 26, 1995). Specifically, the Commission has adopted a fee schedule for obtaining access to the Commission's database and remote bidding software packages. The remote access bidding software package is available for $175. The charge for on-line remote access via a 900 number is $2.30 per minute. Bidders also may bid via telephone for no additional charge.

[449] *See* Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, MM Docket No. 94-131, PP Docket No. 93-253, *Report and Order*, FCC 95-230, released June 30, 1995, ¶ 107.

[450] *Competitive Bidding Fifth Report and Order*, 9 FCC Rcd at 5548, ¶ 41.

[451] *Id.*

[452] *Id.*

auction with large bid increments, and reduced the increments as bidding activity fell.[453] The minimum bid increment in Stage I (stages discussed *supra* at ¶¶ 164-166) of the auction was set at 5 percent of the high bid in the previous round or $0.02 per activity unit, whichever was greater.[454] We determined to reduce the minimum bid increment as the auction progressed, with a minimum bid increment of the greater of 2 percent or $0.01 per activity unit in Stage II, and the greater of 1 percent of $0.005 per activity unit in Stage III.[455] At the same time, we retained the discretion to vary the minimum bid increments for individual licenses or groups of licenses over the course of an auction.[456] In the *Further Notice*, we proposed that if simultaneous multiple round auctions are used for the upper 10 MHz block, we would use the same or similar procedures for bid increments as those used in simultaneous multiple round bidding for MTA-based PCS licenses.[457]

178. Comments. No commenters addressed this issue.

179. Discussion. The Commission will announce, by Public Notice prior to the auction, the general guidelines for bid increments. The Commission retains the discretion to set and, by announcement before or during the auction, vary the minimum bid increments for individual licenses or groups of licenses over the course of the auction.

c. Duration of Bidding Rounds

180. Background. In the *Competitive Bidding Second Report and Order,* we stated that duration of bidding rounds and the interval between rounds in simultaneous multiple round auctions will be announced in service-specific Reports and Orders, and may be varied by announcement during the course of an auction.[458] We concluded in the *Competitive Bidding Fifth Report and Order* that at the early stages of the auction, prices will be low and contain relatively little information, so bidders will need less time to deliberate.[459] In the final stages of the auction, however, when the consequences of bidding decisions are greatest, bidders will need more time to deliberate.[460] In the *Further Notice*, we proposed that if

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[453] *Id.* at 5549, ¶ 44.

[454] *Id.*

[455] *Id.*

[456] *Id.*

[457] *Further Notice*, 10 FCC Rcd at 8009, ¶ 79.

[458] *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2368, ¶ 123.

[459] *Competitive Bidding Fifth Report and Order*, 9 FCC Rcd at 5553, ¶ 50.

[460] *Id.*

simultaneous multiple round auctions are used for the upper 10 MHz block, we would use the same or similar procedures regarding duration of bidding rounds as those used in simultaneous multiple round bidding for MTA-based broadband PCS licenses.[461]

181. Comments. No commenters addressed this issue.

182. Discussion. In simultaneous multiple round auctions, we recognize that bidders may need a significant amount of time to evaluate back-up strategies and develop their bidding plans. We hereby delegate to the Bureau the discretion to vary the duration of the bidding rounds or the interval at which bids are accepted (*e.g.*, to run more than one round per day) in order to move the auction to closure more quickly. The Bureau will announce any changes to the duration of and intervals between bidding rounds, either by Public Notice prior to the auction or by announcement during the auction.

3. Procedural and Payment Issues

a. Pre-Auction Application Procedures

183. Background. In the *Competitive Bidding Second Report and Order*, we determined that we should require only a short-form application (FCC Form 175) prior to auction, and that only winning bidders should be required to submit a long-form license application (FCC Form 600) after the auction.[462] In this connection, we determined that such a procedure would fulfill the statutory requirements and objectives and adequately protect the public interest.[463] In the *Further Notice*, we proposed to treat all wide-area applicants as initial applicants for public notice, application processing, and competitive bidding purposes, regardless of whether they already are incumbent licensees in the 800 MHz band.[464] In addition, in the *Further Notice*, we proposed to require applicants for wide-area SMR licenses to file an initial "short-form" application in order to qualify for competitive bidding.[465]

184. Comments. PCIA recommends that the Commission accept applications in two phases. In Phase 1, existing licensees would have the opportunity to request a wide-area license for purposes of converting existing operations into wide-area operations as a modification of their license. In Phase 2, the Commission could accept applications for areas and frequencies which were not assigned wide-area licenses in Phase 1. Under PCIA's proposal, a Phase 2 license would be considered a "new" license, and, thus, subject to

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[461] *Further Notice*, 10 FCC Rcd at 8009, ¶ 79.

[462] *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2376, ¶ 165.

[463] *Id.* at 2375-2377, ¶¶ 161-166.

[464] *Further Notice*, 10 FCC Rcd at 8001, ¶ 58.

[465] *Further Notice*, 10 FCC Rcd at 8001, ¶ 59.

mutually exclusive applications and petitions to deny. PCIA opines that its proposal will minimize the number of mutually exclusive applications and result in the least disruption possible for existing licensees. Several commenters support PCIA's proposal.[466] Commenters premise their support of the proposal on the basis that it presents incumbents with an opportunity to participate in geographic licensing[467] and minimizes incidents of mutual exclusivity.[468]

185. Discussion. We will extend the pre-auction application procedures established in the *Competitive Bidding Second Report and Order* to the competitive bidding process for the upper 10 MHz block. With respect to the definition of "initial" application in the upper 10 MHz block of 800 MHz SMR spectrum, we believe that the most appropriate basis for this determination is an evaluation of the nature of the EA license. As EA licensees will gain use of a large geographic area and the freedom to locate base stations anywhere within that larger geographic region, they differ from the existing 800 MHz SMR licensees that essentially are confined to smaller geographic areas, are site-specific, and do not encompass a large number of frequencies. Accordingly, we will treat all EA applicants as initial applicants for public notice, application processing, and auction purposes, regardless of whether they already are incumbent operators.

186. Prior to the start of the 800 MHz SMR auction, the Commission will release an initial Public Notice announcing the auction. The initial Public Notice will specify the licenses to be auctioned and the time and place of the auction in the event that mutually exclusive applications are filed. The Public Notice will specify the method of competitive bidding to be used, applicable bid submission procedures, stopping rules, activity rules, the deadline by which short-form applications must be filed, and the amounts and deadlines for submitting upfront payments. We will not accept applications filed before or after the dates specified in the Public Notice. Applications submitted before the release of the Public Notice will be returned as premature. Likewise, applications submitted after the deadline specified by the Public Notice will be dismissed, with prejudice, as untimely.

187. Soon after the release of the initial Public Notice, a Bidder Information Package will be made available to prospective bidders. As discussed at ¶ 154, *supra*, the Bidder Information Package for the 800 MHz SMR service will contain information on the incumbents occupying blocks on which bidding will be available.

188. Section 309(j)(5) provides that no party may participate in an auction "unless such bidder submits such information and assurances as the Commission may require to

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[466]Parkinson Electronics, *et al.* Comments at 10; DCL Associates Reply Comments at 5; Phipps Reply Comments at 3; Russ Miller Reply Comments at 4.

[467]Parkinson Electronics *et al.* Comments at 10.

[468]*Id.*

demonstrate that such bidder's application is acceptable for filing."[469] Moreover, "[n]o license shall be granted to an applicant selected pursuant to this subsection unless the Commission determines that the applicant is qualified pursuant to Section 309(a), Section 308(b), and Section 310" of the Communications Act.[470] As the legislative history of Section 309(j) makes clear, the Commission may require that bidders' applications contain all information and documentation sufficient to demonstrate that the application is not in violation of the Commission's rules, and we will dismiss applications not meeting those requirements prior to the auction.[471]

189. Thus, all bidders will be required to submit short-form applications on FCC Form 175 (and FCC Form 175-S, if applicable), by the date specified in the initial Public Notice.[472] Applicants are encouraged to file FCC Form 175 electronically. Detailed instructions regarding electronic filing will be contained in the Bidder Information Package. Those applicants filing manually will be required to submit one paper original and one diskette original of their application, as well as two diskette copies. In addition, applicants filing manually will not be permitted to bid electronically. The short-form applications will require applicants to provide the information required by Section 1.2105(a)(2) of the Commission's rules. Specifically, each applicant will be required to specify on its FCC Form 175 application certain identifying information, including its status as a designated entity, its classification (*i.e.*, individual, corporation, partnership, trust, or other), the EAs and spectrum blocks for which it is applying, and, assuming that the licenses will be auctioned, the names of persons authorized to place or withdraw a bid on its behalf. Although we are not proposing special provisions for designated entities on the upper 10 MHz block, we nonetheless request applicants to indicate their designated entity status in order to assist us in analyzing the applicant pool and the auction results to determine whether we have accomplished substantial participation by minorities, women, small businesses, and rural telephone companies. In this connection, we note that Section 309(j) of the Communications Act requires us to prepare a report on the participation of designated entities in the auction and in the provision of spectrum-based services.[473]

190. As we indicated in the *Competitive Bidding Second Report and Order*, if we receive only one application that is acceptable for filing for a particular license, and thus there is no mutual exclusivity, we will issue a Public Notice cancelling the auction for this license and establishing a date for the filing of a long-form application, the acceptance of which will

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[469]47 U.S.C. § 309(j)(5).

[470]47 U.S.C. § 309(i)(2).

[471]*See Competitive Bidding Second Report and Order,* 9 FCC Rcd at 2375, ¶ 161.

[472]The short-form application (FCC Form 175) recently has been revised, and the form used for auctions prior to October 1995 no longer will be accepted.

[473]*See* 47 U.S.C. § 309(j)(12)(D).

trigger the procedures permitting petitions to deny (as discussed at ¶¶ 209-212, *infra*).[474] If no petitions to deny are filed, the application will be grantable after 30 days. The rules we adopt are structured to ensure that bidders and licensees are qualified and will be able to construct systems quickly and offer service to the public. By ensuring that bidders and license winners are serious, qualified applicants, these rules will minimize the need to re-auction licenses and will prevent delays in the provision of 800 MHz SMR service to the public. In response to those commenters concerned about the ability of unsuccessful bidders to participate in geographic area licensing, we reiterate our decision in the *First Report and Order* that incumbents, post-auction, will be able to trade-in their multiple licenses for a single authorization in a particular area, provided certain conditions are satisfied.[475]

b. Amendments and Modifications

191. Background. To encourage maximum bidder participation, we proposed in the *Competitive Bidding Second Report and Order* to provide applicants with an opportunity to correct minor defects in their short-form applications prior to the auction.[476] We stated that applicants whose short-form applications are substantially complete, but contain minor errors or defects, would be provided an opportunity to correct their applications prior to the auction.[477] In the broadband PCS context, we modified our rules to permit ownership changes that result when consortium investors drop out of bidding consortia, even if control of the consortium changes due to this restructuring.[478] In the *CMRS Third Report and Order*, we decided to adopt the same or similar definitions for initial applications and major and minor amendments and modifications for all CMRS in Parts 22 and 90, in order to facilitate similar system proposals and modifications for equal treatment of substantially similar services.[479]

192. Comments. No commenters addressed this issue.

193. Discussion. We will adopt the following procedures for amendments to and modifications of short-form applications in the 800 MHz SMR service. Upon reviewing the short-form applications, we will issue a Public Notice listing all defective applications. Applicants with minor defects will be given an opportunity to cure them and resubmit a corrected version. By the resubmission date, all applicants will be required to submit an upfront payment to the Commission, as discussed below, to the Commission's lock-box by the

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[474] *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2376, ¶ 165.

[475] *See* discussion at ¶ 88, *supra*.

[476] *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2377, ¶¶ 167-168.

[477] *Id.*

[478] *Competitive Bidding Fourth Memorandum Opinion and Order*, 9 FCC Rcd at 6868, ¶ 57.

[479] *CMRS Third Report and Order*, 9 FCC Rcd at 8144, ¶ 354.

date specified in the Public Notice, which should be no later than 14 days before the scheduled auction. After the Commission receives from its lock-box bank the names of all applicants who have submitted timely upfront payments, the Commission will issue a second Public Notice announcing the names of all applicants that have been determined to be qualified to bid. An applicant who fails to submit a sufficient upfront payment to qualify it to bid on any license being auctioned will not be identified on this Public Notice as a qualified bidder. Each applicant listed on this Public Notice will be issued a bidder identification number and further information and instructions regarding auction procedures.

194. On the date set for submission of corrected applications, applicants that on their own have discovered minor errors in their applications (*e.g.*, typographical errors, incorrect license designations, *etc.*) will be permitted to file corrected applications. We also will waive the *ex parte* rules as they apply to the submission of amended short-form applications for the 800 MHz SMR auctions, to maximize applicants' opportunities to seek Commission staff advice on making such amendments.[480] Applicants will not be permitted to make any major modifications to their applications, including, but not limited to, changes in license areas and changes in control of the applicant, or additions of other bidders into the bidding consortia, until after the auction. Applicants also may modify their short-form applications to reflect formation of consortia or changes in ownership at any time before or during an auction, provided such changes will not result in a change in *de jure* or *de facto* control of the applicant, and provided that the parties forming consortia or entering into ownership agreements have not applied for licenses in any of the same geographic license areas, *i.e.*, EAs. In addition, applications that are not signed will be dismissed as unacceptable for filing, as will applications in which no market designations are made.

195. In addition, a single member of a bidding consortium may withdraw from a consortia only in a particular EA(s), but otherwise remain in the consortium for purposes of bidding on all other markets specified on the short-form application. However, such arrangements to assign the member's interests in particular licenses to other consortium members after the auction must be disclosed on an original or amended short-form application, and a request to transfer or assign the license also must be filed in conjunction with the long-form application.

c. Upfront Payments

196. Background. In the *Competitive Bidding Second Report and Order*, we established a minimum upfront payment of $2,500 and stated that this amount could be

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[480] *See* Public Notice, "Commission Announces that Mutually Exclusive Short Form Applications (Form 175) to Participate in Competitive Bidding Process (Auctions) are Treated as Exempt for *Ex Parte* Purposes," 9 FCC Rcd 6760 (1994). The Commission also has waived the *ex parte* rules as they apply to the submission of amended short-form applications in order to maximize applicants' opportunities to seek Commission staff advice on making such amendments.

modified on a service-specific basis.[481] In the *Further Notice*, we proposed to require 800 MHz SMR auction participants to tender in advance to the Commission a substantial upfront payment. Specifically we proposed to require an upfront payment of $0.02 per activity unit for the largest combination of activity units on which a bidder anticipates bidding in any round, as a condition of bidding in order to ensure that only serious, qualified bidders participate in auctions and to ensure payment of the monetary assessment (discussed *infra*) in the event of bid withdrawal or default.[482] We also sought comment on the upfront payment formula and minimum upfront payment most appropriate for the 800 MHz SMR service.[483]

197. Comments. AMTA, Motorola and Nextel support the Commission's proposal to require bidders to tender a substantial upfront payment.[484] Dru Jenkinson, *et al.* express concern that upfront payments not be structured so as to limit bidders solely to those with vast financial resources.[485]

198. In terms of an appropriate upfront payment formula for the 800 MHz SMR service, Dru Jenkinson, *et al.* express concern that using the standard upfront payment formula of $0.02 per activity unit for the largest combination of activity units a bidder anticipates bidding on in any single round may limit the pool of bidders to those with the "deepest pockets."[486] Pittencrief believes that the Commission's standard upfront payment formula should not apply here, given that the EA licensee likely will be required to negotiate with many incumbents. As a result, Pittencrief recommends an upfront payment of $0.002 per activity unit.[487] Nextel, on the other hand, proposes that the Commission require a larger upfront payment, such as an upfront payment based on bidding for all wide-area spectrum blocks in a particular geographic area, even if the bidder intends to bid only on one wide-area spectrum block.[488] SBA does not support the proposed upfront payment, because it believes that the $0.02 per pop factor is not a relevant figure in the SMR context, where the amount of population served in a given area is less important than the number of actual customers.[489]

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[481] *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2379, ¶ 180.

[482] *Further Notice*, 10 FCC Rcd at 8010, ¶ 81.

[483] *Id.*

[484] AMTA Reply Comments at 31; Motorola Reply Comments at 13; Nextel Reply Comments at 55.

[485] Dru Jenkinson, *et al.* Comments at 11.

[486] *Id.*

[487] Pittencrief Comments at 19.

[488] Nextel Comments at 57.

[489] SBA Comments at 20.

199. With respect to an appropriate upfront minimum payment, Genesee agrees with the proposed minimum upfront payment of $2,500.[490] SBA believes that the minimum upfront payment should be $2,500 for local licensees and $5,000 for EA licensees.[491] However, Dru Jenkinson, *et al.* believe that a $2,500 upfront payment is too low, and express concern that it may not operate as a sufficient deterrent to speculators.[492] Telecellular suggests that the Commission not use the same upfront payment standard it used in the PCS context. Rather, Telecellular suggests that the Commission, at a minimum, refrain from establishing an upfront payment for SMR auctions until after comparable auctions (*e.g.*, Block F PCS licenses) have been completed, so that a meaningful point of reference can be established.[493]

200. Discussion. We disagree with Nextel that the $0.02 per activity unit formula is too low to deter speculation in the 800 MHz SMR service. The upfront payment for PCS was calculated to be approximately five percent of the final price to approximate one bid increment. In both the narrowband and broadband PCS auctions, in which we used the $0.02 per activity unit upfront payment, all bid withdrawal payments were paid in full and all winning bidders have paid all amounts due. Thus, our experience demonstrates that the upfront payment also will be sufficient to deter speculation in this auction.

201. We also are unpersuaded by Pittencrief's argument that an upfront payment formula utilizing a smaller per activity unit multiplier is required because EA licensees will need to negotiate with incumbents. Broadband PCS licensees also had negotiation and relocation costs associated with their accommodation of existing microwave licensees operating in the 2 GHz PCS band. The record here does not indicate that such costs in the 800 MHz SMR context are so great that they will prevent successful bidders from being able to satisfy their upfront payment obligations. However, potential bidders should take into account the number of incumbents located on a block before they bid, and use this information to adjust their bidding strategies accordingly.

202. Accordingly, we adopt the standard $0.02 per activity unit formula to calculate the upfront payment. We also adopt a minimum upfront payment of $2,500 for the 800 MHz SMR service. In the initial Public Notice issued prior to the auction, we will announce population information corresponding to each license and the upfront payment amount for each EA license. In general, population coverage for each channel block in each EA will be based on a formula that takes into account the presence of incumbent licensees.

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[490]Genesee Comments at 4.

[491]SBA Comments at 21.

[492]Dru Jenkinson, *et al.* Comments at 11.

[493]Telecellular Comments at 14.

203. Upfront payments will be due by a date specified by Public Notice, but generally no later than 14 days before a scheduled auction. Each qualified bidder will be issued a bidder identification number and further information and instructions regarding the auction procedures. During the auction, bidders will be required to provide their bidding identification numbers when submitting bids.

d. Down Payments and Full Payments

i. Down Payments

204. Background. In the *Competitive Bidding Second Report and Order*, we generally required successful bidders to tender a 20 percent down payment on their bids to discourage default between the auction and licensing, and to ensure payment of the monetary assessment if such default occurs.[494] In the *Further Notice*, we proposed to require the winning bidders for 800 MHz SMR licenses to supplement their upfront payments with a down payment sufficient to bring their total deposits up to 20 percent of their winning bid(s).[495]

205. Comments. Genesee, Pittencrief, AMTA, and Nextel support the Commission's proposal.[496] SBA believes that the 20 percent figure adopted in the PCS context is appropriate for the 800 MHz SMR service.[497]

206. Discussion. We conclude that winning bidders must supplement their upfront payments with a down payment sufficient to bring their total deposits up to 20 percent of their winning bid(s). If the upfront payment already tendered by a winning bidder, after deducting any bid withdrawal and default payments due, amounts to 20 percent or more of its winning bids, no additional deposit will be required. If the upfront payment amount on deposit is greater than 20 percent of the winning bid amount after deducting any bid withdrawal and default payments due, the additional monies will be refunded. If a bidder has withdrawn a bid or defaulted, but the amount of the payment cannot yet be determined, the bidder will be required to make a deposit of 20 percent of the amount bid on such licenses. When it becomes possible to calculate and assess the payment, any excess deposit will be refunded. Upfront payments will be applied to such deposits, and to bid withdrawal and default assessments due, before being applied toward the bidder's down payment on licenses the bidder has won and seeks to acquire.

207. We also will require winning bidders to submit the required down payment by

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[494] *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2381, ¶ 190.

[495] *Further Notice*, 10 FCC Rcd at 8010, ¶ 82.

[496] Genesee Comments at 4; Pittencrief Comments at 19; AMTA Reply Comments at 31; Nextel Reply Comments at 55.

[497] SBA Comments at 20.

cashier's check or wire transfer to our lock-box bank by a date and time to be specified by Public Notice, generally within five business days following the close of bidding. The Commission will hold the down payment until the high bidder is awarded the license and has paid the remaining balance due on such license, or until the winning bidder is found unqualified to be a licensee or has defaulted, in which case it will be returned, less applicable monetary assessments. All auction winners generally will be required to make full payment of the balance of their winning bids within five business days following Public Notice that the Commission is prepared to award the license. The Commission generally will grant uncontested licenses within ten business days after receiving full payment. During the period that deposits are held pending the ultimate award of the license, the interest that accrues, if any, will be retained by the U.S. Treasury.

ii. Long-Form Applications

208. Background. In the *Competitive Bidding Second Report and Order*, we established rules that require a winning bidder to submit a long-form application.[498] The long-form application is required to be filed by a specific date, generally within ten (10) business days after the close of the auction.[499] We stated that after we received the high bidder's down payment and the long-form application, we would review the long-form application to determine if it is acceptable for filing.[500] Once the long-form application is accepted for filing, we stated that we would release a Public Notice announcing this fact, triggering the filing window for petitions to deny.[501] We also stated that if, pursuant to Section 309(d), we deny or dismiss all petitions to deny, if any are filed, and we otherwise are satisfied that the applicant is qualified, we would grant the license(s) to the auction winner.[502] In the *Further Notice*, we proposed to use application procedures similar to those used for licensing PCS.[503] Consistent with our approach in PCS, we proposed to require only the winning bidder to file a long-form application.[504]

209. Comments. No commenters addressed this issue.

210. Discussion. We will follow these procedures if the winning bidder makes the

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[498] *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2383, ¶ 199.

[499] *Id.*

[500] *Id.*

[501] *Id.*

[502] *Id.*

[503] *Further Notice*, 10 FCC Rcd at 8001, ¶ 58.

[504] *Id.* at 8001, ¶ 59.

down payment in a timely manner. A long-form application filed on FCC Form 600 must be filed by a date specified by Public Notice, generally within ten business days after the close of bidding. After the Commission receives the winning bidder's down payment and long-form application, we will review the long-form application to determine if it is acceptable for filing. Upon acceptance for filing of the long-form application, the Commission will issue a Public Notice announcing this fact, triggering the filing window for petitions to deny. If the Commission denies all petitions to deny, and otherwise is satisfied that the applicant is qualified, the license(s) will be granted to the auction winner.

iii. Petitions to Deny and Limitations on Settlements

211. Background. We determined in the *Competitive Bidding Second Report and Order* that the procedures concerning petitions to deny found in Section 309(j)(2) of the Communications Act should apply to competitive bidding.[505] We determined that we would adopt expedited procedures to resolve substantial and material issues of fact concerning qualifications.[506] We stated that we would entertain petitions to deny the application of the auction winner if the petitions to deny otherwise are provided for, under the Communications Act or our rules.[507] We then determined that we would not conduct a hearing before denial if we determined that an applicant is not qualified and no substantial and material issue of fact exists concerning that determination.[508] We also stated that if we identified substantial and material issues of fact in need of resolution, Sections 309(j)(5) and 309(j)(2) of the Communications Act permit submission of all or part of evidence in written form, and also allow employees other than administrative law judges to preside at the taking of written evidence. Additionally, in the *Competitive Bidding Fourth Memorandum Opinion and Order*, we stated that our anti-collusion and settlement procedures were designed to avoid the problem of entities filing applications solely for the purpose of demanding payment from other bidders in exchange for settlement or withdrawal.[509]

212. Comments. No commenters addressed this issue.

213. Discussion. A party filing a petition to deny against an 800 MHz SMR application will be required to demonstrate standing and meet all other applicable filing requirements. The restrictions in Section 90.162 were established to prevent the filing of speculative applications and pleadings (or threats of the same) designed to extract money from

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[505] *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2383, ¶ 200.

[506] *Id; see also*, 47 U.S.C. § 309(j)(5).

[507] *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2383, ¶ 200; *see also* 47 U.S.C. § 309(b), (d)(1).

[508] *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2383, ¶ 202.

[509] *Competitive Bidding Fourth Memorandum Opinion and Order*, 9 FCC Rcd at 6867, ¶ 50.

800 MHz SMR applicants. Thus, we will limit the consideration that an applicant or petitioner is permitted to receive for agreeing to withdraw an application or petition to deny to the legitimate and prudent expenses of the withdrawing applicant or petitioner.

214. With respect to petitions to deny, the Commission need not conduct a hearing before denying an application if it determines that an applicant is not qualified and no substantial and material issue of fact exists concerning that determination.[510] In the event the Commission identifies substantial and material issues of fact, Section 309(i)(2) of the Communications Act permits the submission of all or part of evidence in written form in any hearing and allows employees other than administrative law judges to preside over the taking of written evidence.[511]

e. Bid Withdrawal, Default, and Disqualification

215. Background. In the *Further Notice*, we proposed to adopt bid withdrawal, default, and disqualification rules for the 800 MHz SMR service, based on the procedures established in our general competitive bidding rules.[512] In the *Competitive Bidding Second Report and Order,* we noted that it is critically important to the success of our competitive bidding process that potential bidders understand that there will be a substantial monetary assessment imposed if they withdraw a high bid, are found not to be qualified to hold licenses, or default on payment of a balance due.[513] If a bidder withdraws a high bid before the Commission closes bidding or defaults by failing to timely remit the required down payment, it would be required to reimburse the Commission for any differences between its high bid and the amount of the winning bid, if the winning bid is lower.[514] A defaulting auction winner also would be assessed three percent of either the subsequent winning bid or the amount of the defaulting bid, whichever is less.[515]

216. Comments. AMTA, Genesee, and Pittencrief agree with the Commission's proposal.[516] Nextel proposes that the Commission impose a larger punitive penalty on

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[510] 47 U.S.C. § 309(i)(2)(C).

[511] 47 U.S.C. § 309(i)(2)(B).

[512] *Further Notice*, 10 FCC Rcd at 8011, ¶ 83.

[513] *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2373, ¶ 151.

[514] *Id.*

[515] *Id.*

[516] AMTA Reply Comments at 31; Genesee Comments at 4; Pittencrief Comments at 19.

applicants withdrawing their bids, such as forfeiture of the upfront payment.[517] Southern argues that proposals which increase withdrawal penalties would further assure that auction participation is limited.[518]

217. Discussion. We disagree with Nextel's recommendation, because we believe that forfeiture of the entire upfront payment is too extreme for the bidder who withdraws only one bid. Since commenters have not stated why the 800 MHz SMR service differs in this respect from the narrowband and broadband PCS services, there is no justification for departing from the already tested narrowband and broadband PCS withdrawal, default, and disqualification assessments. Therefore, we believe applying Section 1.2104(g)(1) to the 800 MHz SMR auction is more equitable and is consistent with our practice in prior auctions. Section 1.2104(g)(1) provides that any bidder that withdraws a high bid during an auction before the Commission declares bidding closed will be required to reimburse the Commission in the amount of the difference between its high bid and the amount of the winning bid the next time the license is offered by the Commission, if this subsequent winning bid is lower than the withdrawn bid.[519]

218. If a license is re-offered by auction, the "winning bid" refers to the high bid in the auction in which the license is re-offered. If a license is re-offered in the same auction, the winning bid refers to the high bid amount, made subsequent to the withdrawal, in that auction. If the subsequent high bidder also withdraws its bid, that bidder will be required to pay an assessment equal to the difference between its withdrawn bid and the amount of the subsequent winning bid the next time the license is offered by the Commission. If a license which is the subject of withdrawal or default is not re-auctioned, but instead is offered to the highest losing bidders in the initial auction, the "winning bid" refers to the bid of the highest bidder who accepts the offer. Losing bidders will not be required to accept the offer, *i.e.*, they may decline without penalty. We wish to encourage losing bidders in simultaneous multiple round auctions to bid on other licenses, and therefore we will not hold them to their losing bids on a license for which a bidder has withdrawn a bid or on which a bidder has defaulted.

219. After bidding closes, we will apply Section 1.2104(g)(2) to assess a defaulting auction winner an additional payment of three percent of the subsequent winning bid or three percent of the amount of the defaulting bid, whichever is less.[520] The additional three percent payment is designed to encourage bidders who wish to withdraw their bids to do so before bidding ceases. We will hold deposits made by defaulting or disqualified auction winners

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[517]Nextel Comments at 59.

[518]Southern Reply Comments at 35.

[519]47 C.F.R. § 1.2104(g)(1).

[520]47 C.F.R. § 1.2104(g)(2).