

Schoenbohm's former Amateur Radio Service Station License, call sign KV4FZ, and Amateur Radio Service Operator License were not renewed after it was determined, after an August 8, 1995, hearing before an administrative law judge, that Mr. Schoenbohm's previous criminal behavior, misrepresentation and lack of candor warranted denial of his renewal application. Mr. Schoenbohm is a convicted felon and was found to have misrepresented facts and lacked candor in his testimony in that hearing.

2. The facts leading to Mr. Schoenbohm's disqualification are *res judicata*; they have been thoroughly explored and the determination was made that, at the time of hearing, Mr. Schoenbohm was not qualified to be a Commission licensee. We may not revisit that determination here. However, in evaluating Mr. Schoenbohm's instant application, we must determine if, since the time of his disqualifying behavior in 1982-89 and 1995, Mr. Schoenbohm has been sufficiently rehabilitated that the Commission could be confident that he could be relied upon to observe our rules and policies and deal with the Commission in an honest and forthright manner. There are no facts now before us that would support a finding of rehabilitation. Hence, because we are unable to make a determination that grant of Mr. Schoenbohm's applications would serve the public interest, convenience, and necessity, we hereby designate the applications for hearing, as required by section 309(e) of the Communications Act of 1934, as amended.

#### A. Ordering Clauses

3. Pursuant to sections 4(i) and 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i); 309(e), the above captioned applications are *designated for hearing* in a proceeding before an FCC Administrative Law Judge, at a time and place to be specified in a subsequent *Order*, upon the following issues:

a. To determine whether Herbert Schoenbohm possesses the requisite character qualifications to be a Commission licensee.

b. To determine in light of the evidence adduced under issue (a), whether the captioned applications should be granted.

4. Pursuant to section 4(i) of the Communications Act of 1934, as amended, and section 1.221(c) of our rules, in order to avail himself of the opportunity to be heard, Mr. Schoenbohm, in person or by his attorney, *shall file* with the

Commission, within twenty days of the mailing of this *Hearing Designation Order* to him, a written appearance stating that he will appear on the date fixed for hearing and present evidence on the issue specified herein.

5. Pursuant to section 1.221(c) of our rules, if Mr. Schoenbohm fails to file a written appearance within the twenty-day period, or has not filed prior to the expiration of the twenty-day period a petition to dismiss without prejudice, or a petition to accept, for good cause shown, a written appearance beyond the expiration of the twenty-day period, the presiding Administrative Law Judge *shall dismiss* the captioned applications with prejudice for failure to prosecute.

6. Pursuant to sections 4(i) and 309(e) of the Communications Act of 1934, as amended, the burden of proceeding with the introduction of evidence and the burden of proof with respect to all of the issues specified above *shall be* on Mr. Schoenbohm.

7. The Commission's Reference Operations Division of the Consumer Information Bureau *shall send* a copy of this *Order*, via Certified Mail—Return Receipt Requested, to Herbert L. Schoenbohm, at the address shown in his captioned applications: Post Office Box 4419, Kingshill, Virgin Islands, 00851.

8. The Secretary of the Commission *shall cause* to have this *Hearing Designation Order* or a summary thereof published in the **Federal Register**.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 02-2552 Filed 2-1-02; 8:45 am]

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#### FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC-02-44-A (Auction No. 44); DA 02-200]

#### Auction No. 44 Fixed, Mobile, and Broadcasting Services Auction Scheduled for June 19, 2002; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedural Issues

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the auction of licenses in fixed, mobile, and broadcast services to commence on June 19, 2002, and seeks comment on auction procedural issues.

**DATES:** Comments are due on or before February 6, 2002 and reply comments are due on or before February 13, 2002.

**ADDRESSES:** The Wireless Telecommunications Bureau ("Bureau") requires that all comments and reply comments be sent by electronic mail to the following address:

*auction44@fcc.gov*. The electronic mail containing the comments or reply comments must include a subject or caption referring to Auction No. 44 Comments. The Bureau requests that parties format any attachments to electronic mail as ADOBE® Acrobat® (pdf) or Microsoft® Word documents. Copies of comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY-A257, 445 12th Street, SW, Washington, DC 20554.

#### FOR FURTHER INFORMATION CONTACT:

Legal questions: Howard Davenport (202) 418-0660 or e-mail *hdavenport@fcc.gov*. For general auction questions: Craig Bomberger (202) 418-0660 or e-mail *cbomberg@fcc.gov* or Kathy Garland (717) 338-2888 or e-mail *kgarland@fcc.gov*.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction No. 44 Comment Public Notice* released January 24, 2002. The complete text of the *Auction No. 44 Comment Public Notice*, including attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC, 20554. The *Auction No. 44 Comment Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail *qualexint@aol.com*.

#### I. General Information

1. By the *Auction No. 44 Comment Public Notice*, the Bureau announces the auction of licenses for Fixed, Mobile, and Broadcasting services in the 698-746 MHz ("Lower 700 MHz") band scheduled to commence on June 19, 2002 ("Auction No. 44"). The Lower 700 MHz band consists of 758 licenses. Two 12-megahertz blocks consisting of a pair of 6 megahertz segments and two 6-megahertz blocks of contiguous, unpaired spectrum will be offered in each of six regions known as the 700 MHz band economic area groupings (700 MHz band EAGs). Additionally, one 12-megahertz block consisting of a pair of 6 megahertz segments will be offered in each of 734 Metropolitan Statistical Areas ("MSAs") and Rural Service Areas ("RSAs"). The

Commission adopted the MSA and RSA definitions originally adopted for the cellular radiotelephone service, with the following modifications: (i) The service areas of cellular markets that border the U.S. coastline of the Gulf of Mexico extend 12 nautical miles from the U.S. Gulf coastline; and (ii) the service area of cellular market 306 that comprises the water area of the Gulf of Mexico extends from 12 nautical miles off the U.S. Gulf coast outward into the Gulf. See Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59), *Report and Order*, FCC 01–364, paragraph 90, note 258 (rel. January 18, 2002). A complete list of licenses available for Auction No. 44 and their descriptions is included as Attachment A of the *Auction No. 44 Comment Public Notice*.

2. The Balanced Budget Act of 1997 requires the Commission to “ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed \* \* \* before issuance of bidding rules, to permit notice and comment on proposed auction procedures \* \* \*.” Consistent with the provisions of the Balanced Budget Act and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction. The Bureau therefore seeks comment on the following issues relating to Auction No. 44.

## II. Auction Structure

### A. Auction Inventory

3. The Bureau offers two options for grouping the 758 licenses in the Lower 700 MHz band. The Bureau seeks comment on the following:

i. Group all 758 licenses together in Auction No. 44, which the Bureau proposes to structure as a simultaneous multiple round (SMR) auction as described further.

ii. Include only the 734 MSA/RSA Lower 700 MHz band licenses in Auction No. 44 and group the 24 licenses based on 700 MHz EAGs with the 12 licenses in the 747–762 and 777–792 MHz bands (“Upper 700 MHz” bands) currently scheduled to be auctioned in Auction No. 31. Should we group according to this option, the 36 700 MHz EAG licenses from the Upper and Lower bands would be auctioned according to the procedures established for Auction No. 31, including any

modifications to the procedures that the Bureau may establish before the auction begins.

### B. Simultaneous Multiple Round (SMR) Auction Design

4. The Bureau proposes to award all licenses included in Auction No. 44 in a single, simultaneous multiple-round auction. As described further, this methodology offers every license for bid at the same time with successive bidding rounds in which bidders may place bids. The Bureau seeks comment on this proposal.

### C. Upfront Payments and Initial Maximum Eligibility

5. The Bureau has been delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned, taking into account such factors as the population in each geographic license area, and the value of similar spectrum. As described further, the upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on licenses. Upfront payments related to the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. With these guidelines in mind for Auction No. 44, the Bureau proposes to calculate upfront payments on a license-by-license basis using the following formula:

\$0.0125 \* MHz \* License Area  
Population with a minimum of \$1,000 per license.

6. Accordingly, the Bureau lists all licenses, including the related license area population and proposed upfront payment for each, in Attachment A of the *Auction No. 44 Comment Public Notice*. The Bureau seeks comment on this proposal.

7. The Bureau further proposes that the amount of the upfront payment submitted by a bidder will determine the number of bidding units on which a bidder may place bids. This limit is a bidder’s “maximum initial eligibility.” Each license is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 44 Comment Public Notice*, on a bidding unit per dollar basis. This number does not change as prices rise during the auction. A bidder’s upfront payment is not attributed to specific licenses. Rather, a bidder may place bids on any combination of licenses as long as the total number of bidding units associated with those licenses does not exceed its

maximum initial eligibility. Eligibility cannot be increased during the auction. Thus, in calculating its upfront payment amount, an applicant must determine the *maximum* number of bidding units it may wish to bid on (or hold high bids on) in any single round, and submit an upfront payment covering that number of bidding units. The Bureau seeks comment on this proposal.

8. With respect to the 700 MHz EAG licenses, the Bureau notes that the populations for the various regions are very similar. That being the case, the Bureau seeks comment on whether, instead of applying the formula, the upfront payments should be the same for licenses of the same bandwidth. That is, each of the A block and B block licenses would have the same upfront payment amount and associated number of bidding units, and each of the D block and E block licenses would have the same upfront payment amount and associated number of bidding units.

### D. Activity Rules

9. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively on a percentage of their maximum bidding eligibility during each round of the auction rather than waiting until the end to participate. A bidder that does not satisfy the activity rule will either lose bidding eligibility in the next round or must use an activity rule waiver (if any remain).

10. The Bureau proposes to divide the auction into three stages, each characterized by an increased activity requirement. The auction will start in Stage One. The Bureau proposes that the auction generally will advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is approximately twenty percent or below for three consecutive rounds of bidding. However, the Bureau further proposes that it retain the discretion to change stages unilaterally by announcement during the auction. In exercising this discretion, the Bureau will consider a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentage of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Bureau seeks comment on these proposals.

11. For Auction No. 44, the Bureau proposes the following activity requirements:

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

*Stage Two:* In each round of the second stage, a bidder desiring to maintain its current eligibility is required to be active on 90 percent of its current bidding eligibility. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the current round activity by ten-ninths (10/9).

*Stage Three:* In each round of the third stage, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. In this final stage, reduced eligibility for the next round will be calculated by multiplying the current round activity by fifty/forty-ninths (50/49).

12. The Bureau seeks comment on these proposals. If commenters believe that these activity rules should be changed, they should explain their reasoning and comment on the desirability of an alternative approach. Commenters are advised to support their claims with analyses and suggested alternative activity rules.

#### *E. Activity Rule Waivers and Reducing Eligibility*

13. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Activity waivers are principally a mechanism for auction participants to avoid the loss of auction eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

14. The FCC auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any bidding period where a bidder's activity level is below the minimum required unless: (1) there are no activity rule waivers available; or (2) the bidder overrides the

automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

15. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding period by using the reduce eligibility function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described previously. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

16. A bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding system) during a bidding period in which no bids or withdrawals are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open.

17. The Bureau proposes that each bidder be provided with five activity rule waivers that may be used at the bidder's discretion during the course of the auction as set forth previously. The Bureau seeks comment on this proposal.

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

18. For Auction No. 44, the Bureau proposes that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureau seeks comment on this proposal.

### **III. Bidding Procedures**

#### *A. Round Structure*

19. The Commission will conduct Auction No. 44 over the Internet. Telephonic Bidding will also be available. As a contingency, the FCC Wide Area Network, which requires access to a 900 number telephone service, will be available as well. Full information regarding how to establish such a connection, and related charges, will be provided in the public notice announcing details of auction procedures.

20. In past auctions, the Bureau has used the timing of bids to select a high bidder when multiple bidders submit identical high bids on a license in a given round. Given that bidders will access the Internet at differing speeds, the Bureau will not use this procedure in Auction No. 44. For Auction No. 44, the Bureau proposes to use a random number generator to select a high bidder from among such bidders. As with prior auctions, remaining bidders will be able to submit higher bids in subsequent rounds.

21. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction, and will be included in the registration mailings. The simultaneous multiple round format will consist of sequential bidding rounds, each followed by the release of round results. Details regarding the location and format of round results will be included in the same public notice.

22. The Bureau has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors. The Bureau seeks comment on this proposal.

#### *B. Reserve Price or Minimum Opening Bid*

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

24. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which *no bids* are accepted. It is generally used to accelerate the competitive bidding process. Also, the auctioneer often has the discretion to lower the minimum opening bid amount later in the auction. It is also possible for the minimum opening bid and the reserve price to be the same amount.

25. In light of the Balanced Budget Act's requirements, the Bureau proposes to establish minimum opening bids for Auction No. 44. The Bureau believes a minimum opening bid, which has been utilized in other auctions, is an effective bidding tool.

26. Specifically, for Auction No. 44, the Commission proposes the following license-by-license formula for calculating minimum opening bids:

$\$0.0250 \text{ * MHz * License Area}$   
Population with a minimum of \$1,000 per license.

27. The specific minimum opening bid for each license available in Auction No. 44 is set forth in Attachment A of the *Auction No. 44 Comment Public Notice*. Comment is sought on this proposal.

28. If commenters believe that these minimum opening bids will result in substantial numbers of unsold licenses, or are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. In establishing the minimum opening bids, we particularly seek comment on such factors as the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the 698–746 MHz spectrum. Alternatively, comment is sought on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

29. With respect to the 700 MHz EAG licenses, the Bureau notes that the populations for the various regions are very similar. That being the case, the Bureau seeks comment on whether,

instead of applying the formula, the minimum opening bids should be the same for licenses of the same bandwidth. That is, the minimum opening bid would be the same for each of the A block and B block licenses, and the minimum opening bid would be the same for each of the D block and E block licenses.

#### *C. Minimum Acceptable Bids and Bid Increments*

30. In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts. The Auctions Bidding System interface will list the nine acceptable bid amounts for each license. Once there is a standing high bid on a license, the Auctions Bidding System will calculate a minimum acceptable bid for that license for the following round, as described further. The difference between the minimum acceptable bid and the standing high bid for each license will define the *bid increment*. The nine acceptable bid amounts for each license consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, *etc.*).

31. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. The additional bid amounts for licenses that have not yet received a bid will be calculated differently, as explained further.

32. For Auction No. 44, the Bureau proposes to calculate minimum acceptable bids by using a smoothing methodology, as the Bureau has done in several other auctions. The smoothing formula calculates minimum acceptable bids by first calculating a *percentage increment*, not to be confused with the *bid increment*, for each license based on a weighted average of the activity received on that particular license in all previous rounds. This methodology tailors the percentage increment for each license based on activity, rather than setting a global increment for all licenses.

33. In a given round, the calculation of the percentage increment for each license is made at the end of the previous round. The computation is based on an activity index, which is calculated as the weighted average of the activity in that round and the activity index from the prior round. The activity index at the start of the auction (round 0) will be set at 0. The current

activity index is equal to a weighting factor times the number of new bids received on the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The activity index is then used to calculate a percentage increment by multiplying a minimum percentage increment by one plus the activity index with that result being subject to a maximum percentage increment. The Commission will initially set the weighting factor at 0.5, the minimum percentage increment at 0.1 (10%), and the maximum percentage increment at 0.2 (20%).

#### *Equations*

$A_i = (C * B_i) + ((1 - C) * A_{i-1})$   
 $I_{i+1} = \text{smaller of } ((1 + A_i) * N) \text{ and } M$   
 $X_{i+1} = I_{i+1} * Y_i$  where,  
 $A_i$  = activity index for the current round (round  $i$ )  
 $C$  = activity weight factor  
 $B_i$  = number of bids in the current round (round  $i$ )  
 $A_{i-1}$  = activity index from previous round (round  $i - 1$ ),  $A_0$  is 0  
 $I_{i+1}$  = percentage increment for the next round (round  $i + 1$ )  
 $N$  = minimum percentage increment or percentage increment floor  
 $M$  = maximum percentage increment or percentage increment ceiling  
 $X_{i+1}$  = dollar amount associated with the percentage increment  
 $Y_i$  = high bid from the current round

34. Under the smoothing methodology, once a bid has been received on a license, the minimum acceptable bid for that license in the following round will be the high bid from the current round plus the dollar amount associated with the percentage increment, with the result rounded to the nearest thousand if it is over ten thousand or to the nearest hundred if it is under ten thousand.

#### *Examples*

##### *License 1*

$C = 0.5$ ,  $N = 0.1$ ,  $M = 0.2$

*Round 1 (2 new bids, high bid = \$1,000,000)*

i. Calculation of percentage increment for round 2 using the smoothing formula:

$A_1 = (0.5 * 2) + (0.5 * 0) = 1$   
 $I_2 = \text{The smaller of } ((1 + 1) * 0.1) = 0.2$   
or 0.2 (the maximum percentage increment)

ii. Calculation of dollar amount associated with the percentage increment for round 2 (using  $I_2$ ):

$X_2 = 0.2 * \$1,000,000 = \$200,000$

iii. Minimum acceptable bid for round 2 = \$1,200,000.

*Round 2 (3 new bids, high bid = \$2,000,000)*

i. Calculation of percentage increment for round 3 using the smoothing formula:

$$A2 = (0.5 * 3) + (0.5 * 1) = 2$$

I3 = The smaller of  $((1 + 2) * 0.1) = 0.3$  or 0.2 (the maximum percentage increment)

ii. Calculation of dollar amount associated with the percentage increment for round 3 (using I3):

$$X3 = 0.2 * \$2,000,000 = \$400,000$$

iii. Minimum acceptable bid for round 3 = \$2,400,000.

*Round 3 (1 new bid, high bid = \$2,400,000)*

i. Calculation of percentage increment for round 4 using the smoothing formula:

$$A3 = (0.5 * 1) + (0.5 * 2) = 1.5$$

I4 = The smaller of  $((1 + 1.5) * 0.1) = 0.25$  or 0.2 (the maximum percentage increment)

ii. Calculation of dollar amount associated with the percentage increment for round 4 (using I4):

$$X4 = 0.2 * \$2,400,000 = \$480,000$$

iii. Minimum acceptable bid for round 4 = \$2,880,000.

35. As stated previously, until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. The additional bid amounts are calculated using the difference between the minimum opening bid times one plus the minimum percentage increment, rounded as described previously, and the minimum opening bid. That is,  $I = (\text{minimum opening bid})(1 + N)\{\text{rounded}\} - (\text{minimum opening bid})$ . Therefore, when N equals 0.1, the first additional bid amount will be approximately ten percent higher than the minimum opening bid; the second, twenty percent; the third, thirty percent; etc.

36. In the case of a license for which the standing high bid has been withdrawn, the minimum acceptable bid will equal the second highest bid received for the license. The additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid.

37. The Bureau retains the discretion to change the minimum acceptable bids and bid increments if it determines that circumstances so dictate. The Bureau will do so by announcement in the Auctions Bidding System. The Bureau seeks comment on these proposals.

#### *D. Information Regarding Bid Withdrawal and Bid Removal*

38. For Auction No. 44, the Bureau proposes the following bid removal and bid withdrawal procedures. Before the close of a bidding period, a bidder has the option of removing any bid placed in that round. By using the remove selected bids function in the bidding system, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid.

39. A high bidder may withdraw its standing high bids from previous rounds using the withdraw function in the bidding system. A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payment provisions of the Commission rules. The Bureau seeks comment on these bid removal and bid withdrawal procedures.

40. In the *Part 1 Third Report and Order*, 63 FR 2315 (January 15, 1998) the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of efficient backup strategies as information becomes available during the course of an auction. The Commission noted, however, that, in some instances, bidders may seek to withdraw bids for improper reasons. The Bureau, therefore, has discretion, in managing the auction, to limit the number of withdrawals to prevent any bidding abuses. The Commission stated that the Bureau should assertively exercise its discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if the Bureau finds that a bidder is abusing the Commission's bid withdrawal procedures.

41. Applying this reasoning, the Bureau proposes to limit each bidder in Auction No. 44 to withdrawing standing high bids in no more than two rounds during the course of the auction. To permit a bidder to withdraw bids in more than two rounds would likely encourage insincere bidding or the use of withdrawals for anti-competitive purposes. The two rounds in which withdrawals are utilized will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's rules. There is no limit on the number of standing high bids that may be withdrawn in either of the rounds in which withdrawals are utilized. Withdrawals will remain subject to the bid withdrawal payment

provisions specified in the Commission's rules. The Bureau seeks comment on this proposal.

#### *E. Stopping Rule*

42. The Bureau has discretion "to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time." For Auction No. 44, the Bureau proposes to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all licenses remain open until bidding closes simultaneously on all licenses.

43. Bidding will close simultaneously on all licenses after the first round in which no new acceptable bids, proactive waivers, or withdrawals are received. Thus, unless circumstances dictate otherwise, bidding will remain open on all licenses until bidding stops on every license.

44. However, the Bureau proposes to retain the discretion to exercise any of the following options during Auction No. 44:

i. Utilize a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this modified stopping rule. The Bureau further seeks comment on whether this modified stopping rule should be used at any time or only in stage three of the auction.

ii. Keep the auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. The activity rule, therefore, will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver.

iii. Declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) only for licenses on which the high bid increased in at least one of a specified preceding number of rounds. The Bureau seeks comment on these proposals.

#### **IV. Conclusion**

45. Comments are due on or before February 6, 2002, and reply comments

are due on or before February 13, 2002. Because of the disruption of regular mail and other deliveries in Washington, DC, the Bureau requires that all comments and reply comments be filed electronically. Comments and reply comments must be sent by electronic mail to the following address: [auction44@fcc.gov](mailto:auction44@fcc.gov). The electronic mail containing the comments or reply comments must include a subject or caption referring to Auction No. 44 Comments. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Copies of comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY-A257, 445 12th Street, SW, Washington, DC 20554.

46. In addition, the Bureau requests that commenters fax a courtesy copy of their comments and reply comments to the attention of Kathryn Garland at (717) 338-2850.

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

Federal Communications Commission.

**Margaret Wiener,**

*Chief, Auctions and Industry Analysis Division, WTB.*

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BILLING CODE 6712-01-P

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice and request for comment.

**SUMMARY:** The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or

continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled "Certification of Compliance with Mandatory Bars to Employment."

**DATES:** Comments must be submitted on or before April 5, 2002.

**ADDRESSES:** Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898-7453, Office of the Executive Secretary, Room F-4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. All comments should refer to "Certification of Compliance with Mandatory Bars to Employment." Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. [FAX number (202) 898-3838; Internet address: [comments@fdic.gov](mailto:comments@fdic.gov)]. Comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Tamara R. Manly, at the address identified above.

### SUPPLEMENTARY INFORMATION:

#### Proposal To Renew the Following Currently Approved Collection of Information:

*Title:* Certification of Compliance with Mandatory Bars to Employment.  
*OMB Number:* 3064-0121.

*Frequency of Response:* On occasion.

*Affected Public:* Persons interested in being employed or providing services to the FDIC.

*Estimated Number of Respondents:* 200.

*Estimated Time per Response:* 20 minutes.

*Estimated Total Annual Burden:* 66.6 hours.

*General Description of Collection:* Prior to an offer of employment, job applicants to the FDIC must sign a certification that they have not been convicted of a felony or been in other circumstances that prohibit persons from becoming employed by or providing services to the FDIC.

### Request for Comment

*Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of

the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, DC, this 29th day of January, 2002.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 02-2556 Filed 2-1-02; 8:45 am]

BILLING CODE 6714-01-P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Notice of Adjustment of Statewide Per Capita Threshold for Recommending a Cost Share Adjustment

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** FEMA gives notice that we are increasing the statewide per capita threshold for recommending cost share adjustments for disasters declared on or after January 1, 2002 through December 31, 2002.

**EFFECTIVE DATE:** January 16, 2002.

### FOR FURTHER INFORMATION CONTACT:

Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705, or [madge.dale@fema.gov](mailto:madge.dale@fema.gov).

**SUPPLEMENTARY INFORMATION:** According to 44 CFR 206.47, FEMA will annually adjust the statewide per capita threshold that is used to recommend an increase of the Federal cost share from seventy-five percent (75%) to not more than ninety percent (90%) of the eligible cost of permanent work under section 406 and emergency work under section 403 and section 407 of the Stafford Act. The