



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
445 12th STREET, S.W.
WASHINGTON, D.C. 20554

News Media Information: (202) 418-0500
Fax-On-Demand: (202) 418-2830
Internet: <http://www.fcc.gov>
<ftp.fcc.gov>

DA 00-1069
May 12, 2000

AUCTION OF CONSTRUCTION PERMIT FOR NEW TELEVISION STATION CHANNEL 52 AT BLANCO, TEXAS SCHEDULED FOR JULY 12, 2000

COMMENT SOUGHT ON RESERVE PRICE OR MINIMUM OPENING BID AND OTHER AUCTION PROCEDURAL ISSUES

Report No. AUC-00-80-A (Auction No. 80)

By this Public Notice, the Mass Media Bureau ("MMB") and the Wireless Telecommunications Bureau ("WTB") (collectively, "Bureaus") announce the auction ("Auction No. 80") of the construction permit for a new television station on Channel 52 at Blanco, Texas, to commence on July 12, 2000. This new television station is the subject of pending, mutually exclusive short form applications (FCC Form 175) as identified in Attachment A. Pursuant to the *Broadcast First Report and Order*,¹ participation in the auction will be limited to those applicants identified in Attachment A.

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 . . ."² 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

¹ The Commission adopted service and competitive bidding rules for mass media services, including standard broadcast (AM), frequency modulation (FM), full service commercial television (TV) and Instructional Television Fixed Service (ITFS). Also adopted were rules for the secondary services of low power television (LPTV), FM translator and television translator. See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, *First Report and Order* in MM Docket No. 97-234, GC Docket No. 92-52 and GEN Docket No. 90-264, 13 FCC Rcd 15920 (1998) ("*Broadcast First Report and Order*"); Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, *Memorandum Opinion and Order*, FCC Rcd 8724 (1999) ("*Broadcast Reconsideration Order*").

² Section 3002(a)(E)(i), Balanced Budget Act of 1997, Pub. L. 105-33, 111 Stat. 251 (1997) ("Balanced Budget Act"), amending Section 309(j) of the Communications Act, 47 U.S.C. § 309(j).

authority,³ to seek comment on a variety of auction-specific procedures prior to the start of each auction.⁴ We therefore seek comment on the following issues relating to Auction No. 80.

I. Auction Structure

A. Multiple Round Auction Design

We propose to award this construction permit in a multiple-round, ascending auction. As described further below, this methodology offers bids to be placed on the construction permit in successive rounds of bidding. We seek comment on this proposal.

B. Upfront Payments and Initial Maximum Eligibility

The Bureaus have delegated authority and discretion to determine an appropriate upfront payment for the construction permit being auctioned taking into account such factors as the efficiency of the auction and the value of similar spectrum.⁵ As described further below, the upfront payment is a refundable deposit made by each bidder to determine and establish eligibility to bid on the permit. An upfront payment related to the specific spectrum subject to auction protects against frivolous or insincere bidding and provides the Commission with a source of funds from which to collect payments owed at the close of the auction.⁶ With these guidelines in mind, we propose an upfront payment of \$420,000. We seek comment on this proposal.

We further propose that the amount of the upfront payment submitted by a bidder will determine eligibility (as measured in bidding units) for participation in Auction No. 80.

C. Activity Rules

In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to either place a valid bid and/or be the standing high bidder during each round of the auction rather than waiting until the end to participate. A bidder that does not satisfy the

³ See Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures, WT Docket No. 97-82, *Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making*, 12 FCC Rcd 5686, 5697, ¶ 16 (1997) (“*Part 1 Order*”) (“We also clarify that pursuant to Section 0.131 of our rules, the Chief, Wireless Telecommunications Bureau, has delegated authority to implement all of the Commission's rules pertaining to auctions procedures”).

⁴ See Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz, WT Docket No. 97-82, ET Docket No. 94-32, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 448, ¶ 124 (1998) (“*Part 1 Third Report and Order*”). The Commission directed the Bureau to seek comment on specific mechanisms related to day-to-day auction conduct including, for example, the structure of bidding rounds and stages, establishment of minimum opening bids or reserve prices, minimum accepted bids, initial maximum eligibility for each bidder, activity requirements for each stage of the auction, activity rule waivers, criteria for determining reductions in eligibility, information regarding bid withdrawal and bid removal, stopping rules, and information relating to auction delay, suspension or cancellation. *Id.* at ¶ 125.

⁵ See *Part 1 Order*, 12 FCC Rcd at 5697-98, ¶ 16 (1997).

⁶ See Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348, 2378-79, ¶¶ 171-176 (1994).

activity rule will either use an activity rule waiver, if any remain, or lose bidding eligibility in the auction.

We propose a single stage auction with the following activity requirement: In each round of the auction, a bidder desiring to maintain its eligibility to participate in the auction is required to be active on one hundred (100) percent of its bidding eligibility. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's bidding eligibility, thus eliminating the bidder from the auction. We seek comment on this proposal.

D. Activity Rule Waivers

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. 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.

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. If there are no activity rule waivers available, the bidder’s eligibility will be reduced, eliminating them from the auction.

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 software) during a bidding period in which no bids 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 will not keep the auction open.

We propose that each bidder in Auction No. 80 be provided with three activity rule waivers that may be used at the bidder’s discretion during the course of the auction as set forth above. We seek comment on this proposal.

E. Information Relating to Auction Delay, Suspension or Cancellation

For Auction No. 80, we propose 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 competitive conduct of competitive bidding.⁷ 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. We emphasize 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. We seek comment on this proposal.

⁷ See 47 C.F.R. § 1.2104(i).

II. Bidding Procedures

A. Round Structure

The Commission will use its Automated Auction System to conduct the electronic multiple round, ascending auction format for Auction No. 80. 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 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.

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. 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. We seek comment on this proposal.

B. Reserve Price or Minimum Opening Bid

The Balanced Budget Act calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses or construction permits are subject to auction (*i.e.*, because the Commission has accepted mutually exclusive applications for those licenses), unless the Commission determines that a reserve price or minimum bid is not in the public interest.⁸ Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of minimum opening bids and/or reserve price prior to the start of each auction.⁹

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, in a minimum opening bid scenario, the auctioneer generally has the discretion to lower the amount later in the auction. It is also possible for the minimum opening bid and the reserve price to be the same amount.

In light of the Balanced Budget Act, the Bureau proposes to establish a minimum opening bid for Auction No. 80 of \$420,000. The Bureau believes a minimum opening bid, which has been utilized in other auctions, is an effective bidding tool.¹⁰ A minimum opening bid, rather than a reserve price, will help to regulate the pace of the auction and provides flexibility.

⁸ See Balanced Budget Act, Section 3002(a). The Commission's authority to establish a reserve price or minimum opening bid is set forth in 47 C.F.R. § 1.2104(c) and (d).

⁹ See *Part 1 Third Report and Order*, 13 FCC Rcd at 454-455, ¶ 141 (1998).

¹⁰ See, *e.g.*, Auction of 800 MHz SMR Upper 10 MHz Band, Minimum Opening Bids or Reserve Prices, DA 97-2147, *Order*, 12 FCC Rcd 16354 (1997); Auction of the Phase II 220 MHz Service Licenses, Auction Notice and Filing Requirements for 908 Licenses Consisting of Economic Area (EA), Economic Area Grouping (EAG), and Nationwide Licenses, Scheduled for September 15, 1998, Minimum Opening Bids and Other Procedural Issues, *Public Notice*, 13 FCC Rcd 16445 (1998).

For Auction No. 80, the proposed minimum opening bid of \$420,000 was determined by taking into account various factors related to the efficiency of the auction and the potential value of the spectrum, including the type of service, market size, industry cash flow data and recent broadcast transactions. We seek comment on this proposal.

If commenters believe that this minimum opening bid will result in an unsold construction permit, or is not a reasonable amount, or should instead operate as a reserve price, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claim with valuation analyses and a suggested reserve price or minimum opening bid level or formula. 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.

C. Minimum Accepted Bids and Bid Increments

Once there is a standing high bid on the construction permit, a bid increment will be applied to establish a minimum acceptable bid for the following round. For Auction No. 80, we propose to set a minimum 10% increment. This means that a new bid placed by a bidder must be at least 10% greater than the previous bid received on the construction permit. The Bureaus retain the discretion to change the methodology for determining the minimum bid increment if they determine the circumstances so dictate. Advanced notice of the Bureaus decision to do so will be announced via the Automated Auction System.

Bidders will enter their bid as multiples of the bid increment (*i.e.*, with a 10% bid increment, a bid of 1 increment will place a bid 10% above the previous high bid, a bid of 2 increments will place a bid 20% above the previous high bid). We seek comment on this proposal.

D. Information Regarding Bid Withdrawal and Bid Removal

For Auction No. 80, we propose 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 bid function in the software, 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. We seek comment on this bid removal procedure.

In the *Part 1 Third Report and Order*, 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. In Auction No. 80, however, aggregation of licenses will not be possible because only a single license will be auctioned. Accordingly, for this auction, we propose that bidders not be permitted to withdraw bids in any round. We seek comment on this proposal.

E. Stopping Rule

For Auction No. 80, the Bureau proposes to employ a stopping rule approach. The Bureau has discretion “to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time.”¹¹ A stopping rule means that the auction remains open until the first round in which no new acceptable bids or proactive waivers are received. After the first such round, bidding closes. Thus, unless circumstances dictate otherwise, bidding would remain open until bidding stops on the construction permit.

The Bureau seeks comment on a modified version of the stopping rule. The modified stopping rule would close the auction after the first round in which no bidder submits a proactive waiver or a new bid on the construction permit when it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on the construction permit when it is the standing high bidder would not keep the auction open under this modified stopping rule. The Bureau seeks comment on whether this modified stopping rule should be used.

The Bureau proposes to retain the discretion to keep an auction open even if no new acceptable bids or proactive waivers are submitted. 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.

Finally, we propose that the Bureau reserve the right to declare that the auction will end after a specified number of additional rounds (“special stopping rule”). If the Bureau invokes the special stopping rule, the auction may nevertheless close in the first round in which no new acceptable bids or proactive waivers are submitted. The Bureau proposes to exercise this option only in certain circumstances, such as, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increment. We seek comment on these proposals.

III. Conclusion

Comments are due on or before May 22, 2000, and reply comments are due on or before May 30, 2000. An original and four copies of all pleadings must be filed with the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., TW-A325, Washington, DC 20054, in accordance with Section 1.51(c) of the Commission's rules. See 47 C.F.R. § 1.51(c). In addition, one copy of each pleading must be delivered to each of the following locations: (1) the Commission's duplicating contractor, International Transcription Service, Inc. (ITS), 1231 20th Street, N.W., Washington, DC 20036; (2) Office of Media Relations, Public Reference Center, 445 Twelfth Street, S.W., Suite CY-A257, Washington, DC 20554; (3) Rana Shuler, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 445 Twelfth Street, S.W., Suite 4-A628, Washington, DC 20554; (4) Shaun Maher, Video Services Division, Mass Media Bureau, 445 Twelfth Street,

¹¹ 47 C.F.R. § 1.2104(e).

S.W., Suite 2-A820, Washington, DC 20554. 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, S.W., Washington, D.C. 20554.

For further information concerning this proceeding, contact Shaun Maher, Video Services Division, Mass Media Bureau at (202) 418-1600 or Lisa Stover, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (717) 338-2888.

-FCC-

Attachment A

Applicants for Primary Service Television Construction Permit (Channel 52) in Blanco, Texas

MX Group	Location	Channel	Bidding Units	Upfront Payment	Minimum Opening Bid	Applicants	FCC Account No.
PST1	Blanco, Texas	52	420,000	\$420,000.00	\$420,000.00	Aaron Communications, L.P.	2000095612
						Alliance Trust	2000114840
						BK Radio	2000003451
						Blanco Television, LLC	2000180847
						Blue Mountain Communications, Inc.	2000153547
						Channel 52, LLC	2000162115
						Christian Television Media, Inc.	2000182234
						ComCorp Broadcasting, Inc.	2000112943
						Council Tree Communications, L.L.C.	2000183246
						Douglas Johnson	2000145457
						Elgin FM Limited Partnership	2000144046
						George S. Flinn, Jr.	2000162318
						James L. Oyster	2000090206
						KT Broadcasting, Inc.	2000193749
						Mountain Communications, Inc.	2000143537
						Pappas Telecasting of El Paso-Juarez	2000112016
						Pegasus Broadcast Television, Inc.	2000112618
						Post-Newsweek Stations, Inc.	2000154547
						Rodriguez Communications, L.L.C.	2000155133
						S L Communications, Inc.	2000172606
						Star Broadcasting, Inc.	2000120144
						Univision Television Group, Inc.	2000123701
						Venture Technologies Group LLC	2000142650
						WF Broadcasting, LLC	2000131115