

final stage, if activity in the current round is below ninety-five percent of current eligibility, eligibility in the next round will be calculated by multiplying the current round activity by twenty-nineteenths (20/19).

85. In the PCS auction, we specified transition guidelines for deciding when the auction would move from Stage One to Stage Two to Stage Three. Those guidelines are based on the "auction activity level," the sum of the MHz-pops of PCS licenses for which the high bid increased in the current round as a percentage of the total MHz-pops of all licenses offered in the auction. See, e.g., Fifth Report and Order at 5555. However, we also retained the discretion to move the PCS auctions from one stage to another at a rate different from that set out in the guidelines. See Fourth Memorandum Opinion and Order in PP Docket No. 93-253, 9 FCC Rcd 6858, 6860 (1994), 59 Fed. Reg. 53364 (Oct. 24, 1994).

86. For the MDS auction, we shall employ an analogous procedure. The "auction activity level" for a given round of the MDS auction will be defined as the sum of the activity units associated with the BTA service areas for which the high bid increases in that round, divided by the sum of activity units associated with all of the BTAs being auctioned. The following transition guidelines apply. The MDS auction will begin in Stage One and move from Stage One to Stage Two when the auction activity level is below ten percent for three consecutive rounds in Stage One. The auction will move from Stage Two to Stage Three when the auction activity level is below five percent for three consecutive rounds in Stage Two. In no case can the auction revert to an earlier stage. The Commission retains the discretion to determine and announce during the course of an MDS auction when, and if, to move from one auction stage to the next, based on a variety of measures of bidder activity, including, but not limited to, the auction activity level as defined above, the percentage of BTA service areas on which there are new bids, the percentage of activity units on which there are new bids, the number of new bids, and the percentage increase in revenue.

87. To avoid the consequences of clerical errors and to compensate for unusual circumstances that might delay a bidder's bid preparation or submission in a particular round, we will provide bidders with a limited number of waivers of the above-described activity rule. We believe that some waiver procedure is needed because the Commission does not wish to reduce a

bidder's eligibility due to an accidental act or circumstances not under the bidder's control. See Second Report and Order at 2372.

88. In MDS auctions, bidders will be provided five activity rule waivers that may be used in any round during the course of the auction. See Second Report and Order at 2373. If a bidder's activity level is below the required activity level, a waiver will automatically be applied. That is, if a bidder fails to submit a bid in a round, and its activity level from any standing high bids (high bids at the end of the bid withdrawal period in the previous round) falls below its required activity level, a waiver will be automatically applied. A waiver will preserve current eligibility in the next round. An activity rule waiver applies to an entire round of bidding and not to a particular BTA service area. Bidders will be afforded an opportunity to override the automatic waiver mechanism when they place a bid if they intentionally wish to reduce their bidding eligibility and do not want to use a waiver to retain their eligibility at its current level. See Fourth Memorandum Opinion and Order in PP Docket No. 93-253, 9 FCC Rcd 6858, 6861 (1994), 59 Fed. Reg. 53364 (Oct. 24, 1994). If a bidder overrides the automatic waiver mechanism, its eligibility will be permanently reduced (according to the formulas specified in ¶84), 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 new valid bids will not keep the auction open. Bidders will have the option of pro-actively entering an activity rule waiver during the bid submission period.⁴³ If a bidder submits a proactive waiver in a round in which no other bidding activity occurs, the auction will remain open.

89. The Commission retains the discretion to issue additional waivers during the course of an auction for circumstances beyond a bidder's control. We also retain the flexibility to adjust 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. See Second Report and Order at 2373. We will announce by public notice before the MDS auction the number of waivers that will be allowed in that particular auction.

90. As with other auctions, we reserve the right to impose for the MDS auction

an activity rule less complex than the Milgrom-Wilson rule. See Second Report and Order at 2372; Fifth Report and Order at 5556. We will announce by public notice before the MDS auction the activity rule that will be employed in that particular auction.

91. We noted in the Second Report and Order that, with multiple round auctions, a stopping rule must be established for determining when the auction is over. *Id.* at 2369. In an MDS simultaneous multiple round auction, bidding could close separately on individual BTA service areas, simultaneously on all BTA service areas, or a hybrid approach could be used. Under an individual approach, bidding would close on each BTA service area after one round passed in which no new acceptable bids were submitted for that particular service area. With a simultaneous stopping rule, bidding would remain open on all BTA service areas until there was no new acceptable bid on any service area. This approach would have the advantage of providing bidders full flexibility to bid for any BTA service area as more information became available during the course of the MDS auction, but it could lead to a very long auction, unless an activity rule were imposed. See *id.* at 2370. A hybrid approach would combine the individual and the simultaneous approaches.⁴⁴

92. For MDS auctions, we intend to utilize a simultaneous stopping rule, as we have successfully used in previous simultaneous multiple round auctions. Bidding will accordingly remain open on all BTA service areas until bidding stops on every BTA service area. The auction will close after one round passes in which no new valid bids or proactive waivers are submitted. The Commission retains the discretion, however, to keep the MDS auction open even if no new valid bids and no proactive waivers are submitted. In the event that the Commission exercises this discretion, the effect will be the same as if a bidder had submitted a proactive waiver.⁴⁵ Since we are also imposing an activity rule (as discussed

⁴⁴ For example, in a hybrid approach, we could use a simultaneous stopping rule (along with an activity rule designed to expedite closure) for higher valued BTA service areas. For lower valued BTA service areas, where the loss from eliminating some back-up strategies would be less, bidding on BTAs could be allowed to close individually. See Second Report and Order at 2370.

⁴⁵ This will help ensure that the MDS auction is completed within a reasonable period of time, because it will enable the Commission to utilize larger bid increments, which speed the pace of the auction, without risking premature closing of the auction. See Memorandum Opinion and Order in PP Docket No. 93-253, 9 FCC Rcd 7684, 7685 (1994), 59 Fed. Reg. 64159 (Dec. 13, 1994).

⁴³ Thus, a "proactive" waiver, as distinguished from the automatic waiver described above, is one requested by the bidder.