

D. Procedural and Payment Issues

Application Procedures, Permittee Qualifications, and Payment for Construction Permits Awarded by Competitive Bidding. The Commission's general procedural and payment rules for auctions will be applied to the DBS service, along with certain modifications. Applicants for DBS auctions will be required to file a short-form application, FCC Form 175, prior to the auction in which they wish to participate. Filing deadlines will be announced by Public Notice. If administratively feasible, electronic filing of FCC Form 175 for the auction of spectrum available at 110° and 148° will be allowed; filing procedures will be announced by Public Notice. For subsequent DBS auctions, the Commission will also announce by Public Notice how such forms should be filed.

As discussed below, every DBS auction participant will be required to submit to the Commission an upfront payment prior to commencement of the auction. In addition, every auction winner will be required to submit an amount sufficient to bring its total deposit up to 20 percent of its winning bid within 10 business days of the announcement of winning bidders. Winning bidders will be required to file information in conformance with Part 100 of the Commission's Rules within 30 days of the announcement of winning bidders. Winning bidders must submit, as part of this post-auction application process, a signed statement describing their efforts to date and future plans to come into compliance with any applicable spectrum limitations, if they are not already in compliance.

After reviewing a winning bidder's information supplied in conformance with Part 100 and determining that the bidder is qualified to be a permittee, and after verifying receipt of the bidder's 20 percent down payment, the Commission will announce the application's acceptance for filing, thus triggering the filing window for petitions to deny. If the Commission dismisses or denies any and all petitions to deny, the Commission will issue an announcement to this effect, and the winning bidder will then have five (5) business days to submit the balance of its winning bid. If the bidder does so, the permit will be granted subject to a condition, if necessary, that the permittee come into compliance with any applicable spectrum limitations within twelve (12) months of the final grant. The permittee may come into compliance with applicable spectrum

caps by either surrendering to the Commission its excess channels or filing an application that would result in divestiture of the excess channels. If the bidder fails to submit the balance of the winning bid or the permit is otherwise denied, the Commission will assess a default payment as set forth below and re-auction the permit.

Upfront Payment. The Commission's approach to upfront payments varies from auction to auction depending on a balancing of the goal of encouraging bidders to submit serious bids with the desire to simplify the bidding process and minimize implementation costs imposed on bidders. In the *Second Report and Order* in the Competitive Bidding proceeding, the Commission outlined a rationale for setting upfront payments at roughly five percent of the estimated value of a winning bid. *Second Report and Order*, PP Docket No. 93-253, 59 FR 22980 (May 4, 1994). A year ago, Tempo would have paid ACC \$45 million for its channels at 110° and 148°. In view of the fact that MCI has stated it would bid \$175 million for the channels at 110°, and in the absence of any specific expression of interest in bidding on the channels at 148°, it seems clear that the channels at 110° are more valuable than those at 148°. Moreover, the Commission strongly believes that the value of the channels has increased over the past year. These considerations lead the Commission to set an upfront payment of \$10 million for the channels at 110° and \$2 million for the channels at 148°. The figure of \$10 million is well above five percent of \$45 million (it is actually 22.2 percent). This reflects a balancing of the assumed increase in value of the spectrum with the fact that the channels at 110° and 148° were included in the Tempo-ACC arrangement.

The magnitude of the upfront payment also reflects the Commission's concern that, if the upfront payment is too low, there is a risk of encouraging insincere bidding. Moreover, a \$10 million payment should not be an excessive burden for bidders because it will not be held for a significant amount of time. In addition, \$10 million is the lowest of the specific upfront payment suggestions in the comments. With respect to procedures for collecting upfront payments, the Commission will accept only wire transfers for the auction of the channels available at 110° and 148°.

Bid Withdrawal, Default and Disqualification. Any bidder who 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 construction permit is offered by the Commission, if this subsequent winning bid is lower than the withdrawn bid. No withdrawal payment will be assessed if the subsequent winning bid exceeds the withdrawn bid. To prevent multiple withdrawals by the same party, the Commission will bar a bidder who withdraws a bid from continued participation in the auction of the withdrawn construction permit.

In the event of a bid withdrawal, the Commission will reoffer the construction permit in the next round. The offer price will be the highest price at or above which bids were made in previous rounds by three or more bidders. The Commission may at its discretion reduce this price in subsequent rounds if it receives no bids at this price. Prior to restarting the auction, the Commission will also restore the eligibility of all bidders who have not withdrawn. After a withdrawal the Commission will also issue each eligible bidder one activity rule waiver in addition to any remaining waivers to provide additional time for bid preparation and to avoid accidental disqualification.

A default payment will be assessed if a winning bidder fails to pay the full amount of its 20 percent down payment or the balance of its winning bid in a timely manner, or is disqualified after the close of an auction. The amount of this default payment will be equal to the difference between the defaulting auction winner's "winning" bid and the amount of the winning bid the next time the construction permit is offered for auction by the Commission, if the latter bid is lower. In addition, the defaulting auction winner will be required to submit a payment of three (3) percent of the subsequent winning bid or three (3) percent of its own "winning" bid, whichever is less. If withdrawal, default or disqualification involves gross misconduct, misrepresentation or bad faith by an applicant, the Commission retains the option to declare the applicant and its principals ineligible to bid in future auctions, or take any other action the Commission deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant.

E. Regulatory Safeguards

Transfer Disclosure Provisions. In order to accumulate data to evaluate whether DBS authorizations are being issued for bids that fall short of market value, the Commission will require any entity that acquires a DBS license through competitive bidding and seeks