

Auction 96 - Federal Communications Commission (FCC) Prepares for Upcoming H Block Spectrum Auction

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The FCC – pursuant to a 2012 Congressional mandate – will be prepared to auction the recently-cleared H-block spectrum as early as January 14, 2014. The spectrum will be auctioned as 5 MHz pairs, with each license having a total of 10 MHz of bandwidth; 1915-1920 MHz for mobile and low power fixed (uplink) operations and 1995-2000 MHz for base station and fixed (downlink) operations. As a result of the significant expenses incurred by UTAM, Inc. and Sprint Nextel, Inc. in clearing incumbents from this band, all future H-block licensees will be subject to cost-sharing allocations apportioned on a pro rata basis against the relocation costs attributable to that particular band. For a graphical illustration, see the H-block band plan below:

In its Public Notice announcing the upcoming auction (DA 13-1540), the FCC proposed to use a simultaneous multiple-round (SMR) auction format, in which every license is offered for bid at the same time and consists of successive rounds of bidding. Bidding generally remains open on all licenses until bidding stops on every license. This is similar to the procedures the FCC has used in its previous spectrum auctions. In addition, the FCC also proposed to use a form of package bidding called hierarchical package bidding (HPB) in which, in addition to being able to bid on individual licenses, bidders would also be able to bid on certain tiered, non-overlapping packages of licenses.

The “basic” bidding tier under HPB bidding would be individual Economic Area (EA) licenses. However, the FCC sought comment on the use of several types of predefined, non-overlapping packages, including increasingly larger packages such as major economic areas (MEAs), Regional Economic Area Groupings (REAGs), and a nationwide package. The FCC believes that by offering these differing, predefined packages, significant economies of scale will be created that could correspond to a variety of business plans.

The auction would proceed with an initial tier of the “basic” EA and MEA packages. Any subsequent tiers could consist of non-overlapping packages of the licenses in the initial tier and all subsidiary tiers. The winning set of bids could therefore consist of bids from various tiers, as long as each license is included in only one winning bid. In theory, the winning set could potentially include individual licenses in one part of the country, MEA packages in other areas, and also REAG packages, provided that the value of all of these individual and package bids exceeds a bid on a

nationwide package. In lieu of the format described above, the FCC also sought comment on a simpler, single round sealed bid auction. Lastly in terms of the process, the FCC also proposed that all bidding be anonymous until after the close of bidding.

In terms of upfront payments, the FCC proposed to make the amounts equal to the proposed minimum opening bids, which are described in Section 4 of the Public Notice. Essentially, each license will be assigned a specific number of bidding units, equal to one bidding unit per dollar of the upfront payment proposed for the license. A bidder's upfront payment is not attributed to specific licenses or packages of licenses. Instead, a bidder may place bids on any combination of the licenses it selected on its short-form Application (FCC Form 175), provided that the total number of bidding units associated with those licenses does not exceed its current eligibility.

To ensure that the auction closes within a reasonable amount of time, the FCC proposed an activity rule requiring bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. In the first "stage" of the auction, a bidder must be active on bidding units associated with licenses representing at least 80% of its current bidding eligibility, with that threshold rising to 95% in the second stage. However, bidders will be given 3 "activity rule waivers" which may be used in the event that bidders do not meet these thresholds.

Comments on these proposed auction rules were due August 5th, with reply comments due August 16th. Interestingly, the area of focus for most commenters seemed to be on the proposed HPB bidding; most of the smaller and rural carriers opposed the proposal, while some larger carriers – including both AT&T and T-Mobile – expressed support. With the finalized auction rules still to come, many stakeholders will be watching closely for possible clues as to how the finalized rules in the H-block auction may (or may not) reappear in the upcoming 600 MHz incentive auctions.

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