Community Involvement

Public participation activities for Release Blocks D and H have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and Section 117, 42 U.S.C. 9617. As part of the Mound 2000 Process, DOE routinely solicited public comment on the Core Team's recommended response at each Potential Release Site (PRS) and on the residual risk assessments. The final remedy decisions for Release Blocks D and H were each preceded by the issuance of a proposed plan, a notice in the local newspapers commencing a 30-day public comment period, and a public meeting where citizens could ask questions and make comments. All documents DOE relied upon in making its remedy decisions were available for public inspection at the The CERCLA Public Reading Room, Miamisburg Senior Adult Center, 305 Central Avenue, Miamisburg, OH 45342. When it issued its remedy decisions, DOE included a written response to all significant comments.

Current Status

DOE has implemented the RODs for Release Blocks D and H by placing restrictions in the deeds for each property. DOE conveyed Release Block D to the Miamisburg Mound Community Improvement Corporation on March 18, 1999. DOE conveyed Release Block H to the Miamisburg Mound Community Improvement Corporation on August 5, 1999. Because the remedies for Release Blocks D and H do not allow unlimited use of and unrestricted exposure to each property, DOE, in consultation with EPA, OEPA, and the Ohio Department of Health, will review the remedial actions each year to assure that human health and the environment are being protected by the remedial actions being implemented.

While EPA does not believe that any future response actions for Release Blocks D and/or H will be needed, if future conditions warrant such action, these areas of the Mound Site would be eligible for future Fund-financed response actions. This partial deletion does not alter the status of the remainder of the Mound Site, which is not proposed for deletion and remains on the NPL.

V. Action

EPA, with concurrence from the State of Ohio, has determined that all appropriate CERCLA response actions have been completed at Release Blocks D and H, and that protection of human health and the environment has been achieved in these areas. Therefore, EPA is deleting Release Blocks D and H of the Mound Superfund Site from the NPL.

This action will be effective April 16, 2001. However, if EPA receives dissenting comments by March 19, 2001, EPA will publish a document that withdraws this action.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties; Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: January 19, 2001.

David A. Ullrich,

Acting Regional Administrator, U.S. EPA, Region 5.

Part 300, title 40 of chapter 1 of the Code of Federal Regulations is amended as follow:

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Appendix B—[Amended]

2. Table 2 of appendix B to Part 300 is amended by revising the entry for ''Mound Plant (USDOE)'' Miamisburg, Ohio to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 2.—FEDERAL FACILITIES SECTION

State	Sitename	City/County	(Notes) [1]
*	*	*	*
OH	Mound Plant (USDOE)	Miamisburg	P
*	*	*	*

[1] P=Sites with partial deletion(s).

* * * * *

[FR Doc. 01–3612 Filed 2–14–01; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[WT Docket No. 99–168; FCC 00–330]

Service Rules for the 746–764 and 776–794 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this document, the Commission dismisses a petition for reconsideration as moot and adopts a special rule on default payments for auctions of licenses in the 746–764 and 776–794 MHz Bands using a package bidding design.

DATES: February 15, 2001.

FOR FURTHER INFORMATION CONTACT: Howard Davenport, Attorney, Auctions Legal Branch at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of a Second Memorandum Opinion and Order (Second MO&O) in the Amendment of the Commission's Rules Regarding Service Rules for the 746–764 and 776–794 MHz Bands. The complete text of the *Second MO&O* is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800. It is also available on the Commission's web site at *http://www.fcc.gov/wtb/auctions*.

Synopsis of the Second Memorandum Opinion and Order

I. Introduction

1. In this Second Memorandum Opinion and Order (*Second MO&O*), we address a petition for reconsideration

asking that in the auction of licenses in the 747–762 and 777–792 MHz bands (''Auction No. 31''), we apply to bidders that seek a 20 MHz nationwide aggregation any limits on bid withdrawal payments made available to bidders that seek a nationwide 30 MHz aggregation. We also address the question whether the competitive bidding rules, particularly the default payment rule, need to be modified for Auction No. 31 in light of the decision of the Wireless Telecommunications Bureau (''the Bureau'') to offer combinatorial (package) bidding for this auction.

2. In an earlier ruling in this docket, we found that in designing the procedures for Auction No. 31, we should not use a combinatorial (package) bidding design because of the time required to further develop such an auction design. *See 700 MHz First Report and Order*, 65 FR 3139 (January 20, 2000). Instead, we directed the Bureau to adopt, if operationally feasible, a special nationwide bid withdrawal procedure to limit the exposure of bidders seeking a 30 megahertz nationwide aggregation. In response to this ruling, one party filed a petition for reconsideration. In the *700 MHz MO&O*, 65 FR 42879 (July 12, 2000), we deferred ruling on the petition and stated that the Bureau may implement a combinatorial bidding design for Auction No. 31, if appropriate. In that regard, the Bureau issued a *Auction No. 31 Package Bidding Comment Public Notice*, 65 FR 35636 (June 5, 2000), that sought comment on procedures for implementing combinatorial (package) bidding for Auction No. 31. The *Auction No. 31 Package Bidding Comment Public Notice* also sought comment on application to a package bidding auction of the general competitive bidding rules regarding default. After careful review of the comments, the Bureau issued a *Auction No. 31 Package Bidding Procedures Public Notice*, 65 FR 43361 (July 13, 2000), that set forth specific procedures for conducting a simultaneous multiple round auction with combinatorial or package bids. For the reasons set forth, we dismiss the petition as moot and adopt a special default payment rule for Auction No. 31.

II. US West Petition for Reconsideration

A. Background

3. In the *700 MHz First Report and Order*, we adopted service and auction rules for the commercial use of the 746–764 MHz and 776–794 MHz bands. These bands had been reallocated from use solely for broadcast service. The new service rules established 12 licenses (six regional licenses of 10 MHz each and six regional licenses of 20 MHz each) for the 30 megahertz of spectrum in the 747–762 MHz and 777–792 MHz bands. In that ruling, we noted that there may be bidders that do not wish to acquire any licenses if they cannot acquire a nationwide aggregation of 30 MHz licenses. We further noted that the bid withdrawal provisions of our general competitive bidding rules at part 1, subpart Q, might discourage bidders from attempting a nationwide aggregation. To address this concern, we directed the Bureau to adopt, if operationally feasible, a nationwide bid withdrawal procedure to limit the exposure of bidders that seek a 30 MHz aggregation. The Bureau adopted such a procedure. *See* Auction No. 31 Procedures Public Notice 65 FR 12251 (March 8, 2000). The petition asks that we apply the same nationwide bid withdrawal provisions to any bidder that seeks a 20 MHz nationwide aggregation, as may be applied to a bidder seeking a 30 MHz nationwide aggregation.

B. Discussion

4. In the *Auction No. 31 Package Bidding Procedures Public Notice*, the Bureau determined that bidders may place bids on individual licenses and may also place bids on up to twelve different packages of each bidder's choosing. By providing for package bidding, the Bureau has addressed the problem that may exist for a bidder that desires all or none of the licenses in a particular aggregation. For example, a bidder that seeks a 20 MHz or a 30 MHz nationwide aggregation can now bid on a package that includes these licenses and thus avoid the risk of winning only some of the desired licenses. Because, under package bidding, bidders that seek a 30 MHz nationwide aggregation no longer run the risk of being left with unwanted licenses in a failed nationwide aggregation, we conclude that the 30 MHz nationwide bid withdrawal procedure established by the Bureau at our direction is no longer necessary and the Bureau need not apply the procedure in Auction No. 31. Because the Bureau stated that, upon Commission approval, it will not apply the nationwide bid withdrawal procedure in Auction No. 31, the request that we implement a similar bid withdrawal procedure for 20 MHz aggregation is moot. Accordingly, we dismiss the petition.

III. Default

A. Introduction

5. In the *700 MHz MO&O*, we stated that we would adopt any necessary rule changes after the Bureau had determined whether to implement package bidding for Auction No. 31. In the *Auction No. 31 Package Bidding Comment Public Notice*, the Bureau sought comment on application of the Commission's rules regarding bidder defaults. We received three comments and one reply comment on this issue.

B. Licenses Subject to Auction After a Default

6. Under our part 1 auction rules, if a bidder defaults on a bid (or bids), we may sell the license(s) for the spectrum in a new auction. For Auction No. 31, the Bureau proposed that if a bidder defaults on a package bid, it would auction the licenses making up the package on which the party defaulted, and only those licenses. The Bureau would do this even if, under the package bidding procedures, a different set of packages would have won had the defaulting bidder not bid. For example, if the winning set of bids contains a 20 MHz nationwide package and a 10 MHz nationwide package, and the 20 MHz winner then defaults, the Bureau would auction only the six licenses making up the nationwide 20 MHz package. The 10 MHz package would be unaffected. The Bureau proposed to take this approach even if, had the 20 MHz winner not submitted its winning bid, the licenses would have been sold in a different set of packages (for example, the six 30 MHz regional packages).

7. Two parties file joint comments objecting to this proposal. They are concerned that bidders may strategically default, and argue that we should not award any licenses after a default unless the non-defaulting winners clearly would have won absent the default. They instead propose that we ''rewind'' the auction to before the round where it is clear the defaulting bidder was attempting to manipulate the outcome.

8. While we recognize the possibility that a bidder may attempt to strategically default, we are not inclined to adopt the proposal that we ''rewind'' the auction. We believe that attempting to ''rewind'' an auction would be largely unworkable and unreasonable. First, bidders may default for other reasons, and determining when a bidder began ''manipulating'' the outcome, if indeed it was attempting to do so, could be extremely difficult. Second, if the auction were subject to being ''rewound'' in the event of a default, the prevailing bidders would be only

contingent winners until all long form applications were approved and all money was paid, possibly some months after the auction closed. For each winner, the contingency would not be under the winner's control, but rather would depend on the actions of others. Moreover, all bidders, both those that prevailed and those that did not, would have to be at the ready during this time to continue the auction from the point to where it was unwound. We therefore do not believe that this proposal is feasible.

9. We also believe that these joint commenters underestimate the deterrence value of the current default rule. We believe that the better course is to increase the additional default payment rather than attempt to ''rewind'' the auction.

10. No other commenter supports the proposal to rewind the auction, nor does any other commenter object to this portion of the proposal. Moreover, these joint commenters note that any alternative following a default (including its own) is problematic. Accordingly, we adopt the procedure proposed in the *Auction No. 31 Package Bidding Comment Public Notice* to hold another auction only for the license(s) on which bidders default.

C. Calculation of Default Payments

11. The Commission's rules provide that if a bidder defaults, it is liable for a default payment that contains a deficiency portion, equal to the difference between the amount it bid and the amount of the winning bid the next time the Commission offers the license, plus an additional payment, equal to three percent of the subsequent winning bid (or three percent of the bidder's bid, whichever is less). Default payments are calculated on a license-by-license basis; that is, where a bidder that defaults has more than one winning bid, the payments are calculated separately for each bid. Gains realized from the subsequent auction of licenses for which the subsequent winning bid is higher than the defaulter's bid are not used to offset losses incurred on those licenses for which the winning bid is lower than the defaulter's bid.

12. In an auction with package bidding, a bidder that bids on a package is not placing separate bids on the individual licenses making up that package. Thus, in an auction with package bidding, it is not possible to apply the default rules in the same manner as they are applied in a simultaneous multiple round auction without package bidding. The Bureau therefore proposed to modify the default rules for Auction No. 31 as follows. Where a bidder defaults on a package bid(s), the payment would be calculated on a bid-by-bid basis, rather than on a license-by-license basis. The deficiency portion would be equal to the difference between the amount bid for the package and the amount of the subsequent winning bid for the same package or the aggregate of the subsequent winning bids for the licenses that make up the package. The Bureau also proposed that, similar to the rule for individual licenses, if a bidder defaults on two or more packages, the default payment due for each defaulted package would be calculated separately and would not be not offset against one another. If one package was subsequently auctioned for more than the original package bid amount and the other package subsequently was auctioned for less, the excess bid price from the first package would not be used to reduce the amount owed on the second package.

13. We will not alter the rule for calculating default payments when a bidder has defaulted on more than one license or package. For the reasons we expressed in the *BDPCS MO&O*, 15 FCC Rcd. 17590 (2000), we believe that the rule is a correct one. However, the rule needs to be modified with respect to how we will calculate default payments when, after default(s) by one or more bidders, the affected licenses are won in different packages or groupings in the subsequent auction, particularly in light of the Bureau's package bidding procedures which allow bidders in Auction No. 31 to design their own packages. Our procedures do not currently provide a method for calculating a default payment when defaulted licenses are subsequently won in a package(s). While we would prefer to use our current rule for calculating default payments and not aggregate default payments or apportion payments among defaulting bidders, where licenses are won in different packages in a subsequent auction there is no choice but to do so. Thus, we set forth a rule for Auction No. 31 that will allow the calculation of default payments in those situations where the subsequent auction results in a completely different set of winning packages. Where, however, we are able to apply the current method for calculating default payments, or apply an analogous rule, we will do so.

14. Accordingly, we modify § 27.501 of the Commission's rules for calculating the deficiency portion of default payments in Auction No. 31 when a package bidding design is employed.

D. Additional Default Payment

15. Because of the widespread implications of default under package bidding, two commenters recommend that we modify our rules to provide a stronger deterrent against default. One commenter recommends that we raise the additional payment portion of the default payment from three percent to 25 percent to discourage strategic defaults and avoid potentially inefficient auction results. The other recommends that: (i) Bidders be required to deposit 50 percent of their winning bids within eight business days after the close of the auction; (ii) each defaulter and the real party in interest be jointly and severally responsible for the entire revenue shortfall; (iii) each defaulter and its real party in interest be jointly and severally responsible for a default penalty of 25 percent of the total revenue on all licenses that are placed in different hands because of the default; and (iv) to the extent allowable, all of a bidder's lines of business and those of its real party in interest be subject to suspension during the time a default penalty remains uncollected.

16. We agree that the effects of a default in a package bidding auction require a strong deterrent against insincere bidding and strategic default. In an auction without package bidding, a default on a license mostly affects only the bidders for that license; if the defaulting bidder had not bid, the other licenses in the auction likely still would have been won by the same bidders. In an auction with package bidding, however, a default may reasonably be expected to affect multiple licenses (and perhaps every license in the auction); if the defaulting bidder had not bid, the licenses may well have been sold in different packages. We believe, however, that the protections proposed by one commenter are too stringent. We believe that another commenter offers a more measured approach in recommending that the additional default payments of three percent be raised to 25 percent of the defaulted bid or the subsequent bid, whichever is smaller. We agree that a 25 percent additional default payment will adequately discourage defaults and prevent strategic skewing of our auction and we believe that it is not so high as to be punitive. We are also concerned that in this auction a lesser amount would be inadequate to deter bidders from insincere bidding or strategically defaulting. Finally, we believe that increasing the default payment is an appropriate response to this risk, as the very purpose of the default payment rule, *inter alia*, is to deter frivolous or

insincere bidding and generally protect the integrity of the auction process. Therefore, for Auction No. 31, bidders that default on their bids will be subject to an additional payment of 25 percent of the subsequent winning bid(s) or the defaulting bids, whichever is less.

IV. Procedural Matters and Ordering Clauses

17. This action is taken pursuant to sections 1, 4(i), 301, 303, 308, 309(j), and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 301, 303, 308, 309(j), and 337, and the Consolidated Appropriations Act, 2000, Public Law 10–113, 113 Stat. 1501, section 213.

18. Accordingly, it is ordered that part 27 of the Commission's rules is amended to modify the default payment rule for an auction of licenses in the 747–762 and 777–792 MHz Bands using a package bidding design, and that, in accordance with section 213 of the Consolidate Appropriations Act, 2000, Public Law 106–113, 113 Stat. 1501 (1999), this rule shall be effective February 15, 2001.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 27 as follows:

PART 27—WIRELESS COMMUNICATIONS SERVICE

1. The authority citation for part 27 is revised to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

2. Section 27.501 is amended by redesignating the undesignated text as paragraph (a) and adding new paragraph (b) to read as follows:

§ 27.501 746–764 MHz and 776–794 MHz bands subject to competitive bidding.

* * * * *

(b) For auctions of licenses in the 747–762 and 777–792 MHz Bands using a package bidding design, the payments imposed on bidders who default on payments due after an auction closes or who are disqualified, set forth in § 1.2104(g) of this chapter, shall be calculated as follows. The default payment consists of a deficiency portion and an additional payment. The additional payment shall be 25 percent of the subsequent winning bid or the defaulted bid, whichever is less. In the case that either the subsequent winning bid or the defaulted bid is subject to bidding credits, the additional payment will be calculated in an analogous manner to that used in § 1.2104(g)(2) of this chapter. The deficiency portion of the default payment shall be calculated as set forth in § 27.501(b)(1) through (b)(4). In the case that any of the relevant bids are subject to bidding credits, the default payment will be adjusted in an analogous manner to that used in § 1.2104(g)(1) of this chapter.

(1) Where a defaulting bidder won licenses individually (*i.e.,* not as part of a package), and in a subsequent auction the licenses are also won individually, we will calculate the deficiency portion as we do in our simultaneous multiple round auctions, and on a license-by-license basis (*i.e.,* the differences between the amount originally bid and the amount subsequently bid will not be aggregated to determine a net amount owed). Where a license is sold individually and not as part of a package, we find no reason to modify the calculation of the deficiency portion of the default payment.

(2) Where a defaulting bidder won licenses in package(s), and in a subsequent auction the licenses are won either in the same package(s), or in smaller packages or as individual licenses that correlate to the defaulted package(s), the deficiency portion will be determined on a package-by-package basis, and the differences between the amount originally bid and the amount(s) subsequently bid will not be aggregated to determine a net amount owed. Thus, in this situation, we will calculate the deficiency portion in a manner analogous to where the licenses are sold individually. However, because a bid on a package does not imply any specific allocation of the total amount to the individual licenses making up that package, where the licenses are subsequently sold individually or as part of smaller packages, we believe we should aggregate the amounts received in the subsequent auction in order to determine any deficiency.

(3) Where a defaulting bidder or bidders won licenses either individually or as part of packages, and in a subsequent auction the licenses are won as larger packages or different packages (not including the situation described in § 27.501(b)(2)), the deficiency portion will be calculated by subtracting the aggregate amount originally bid for the licenses from the aggregate amount bid in the subsequent auction for the licenses. As stated in § 27.501(b)(2), a bid on a package does not imply any specific allocation of the total amount to the licenses making up that package. We believe that in this situation we should aggregate the amounts bid on the various packages in order to calculate the deficiency portion owed.

(4) When in the situation described in § 27.501(b)(3), there are multiple defaulting bidders, the default payment (both the deficiency portion and the additional amount portion) will be allocated to the defaulting bidders in proportion to the amount they originally bid. For example, if Bidder 1 defaults on Package ABC for $200, and Bidder 2 defaults on Package DE for $400, and in a subsequent auction the licenses are won in Package AB for $150 and Package CDE for $350, Bidder 1 would be liable for ⅓ of the default payment and Bidder 2 would be responsible for ⅔. The total default payment would be equal to the difference between the total of the original bids ($600) and the total of the subsequent amounts bid ($500) plus an additional amount of 25 percent of the total of the subsequent amounts bid. The total default payment therefore would equal $100 ($600–$500) plus 25 percent of $500 ($125), for a total default payment of $225.

[FR Doc. 01–3786 Filed 2–14–01; 8:45 am]

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