

procedures to choose from among two or more mutually exclusive applications for initial licenses for use of the radio spectrum. Pursuant to this authority, the Commission has conducted three simultaneous multiple round auctions for Personal Communications Service ("PCS") licenses (*i.e.*, the Nationwide Narrowband PCS auction, held from July 25 through July 29, 1994; the Regional Narrowband PCS auction, held October 26, through November 8, 1994; and the Broadband A and B block PCS auction, held December 5, 1994, through March 13, 1995). In each PCS auction, bids were placed electronically using a computer bidding system designed and developed by the FCC in conjunction with its auction contractors.

The Commission and its auction contractors incurred significant costs in developing the on-site electronic bidding systems used in the PCS auctions and the remote electronic bidding system used in two of the PCS auctions. The Commission recovered its development costs for the electronic bidding system for the first three auctions from the proceeds of those auctions. Additionally, the FCC's auction contractor was allowed to charge bidders electing to use on-line remote bidding system a \$200.00 fee for the proprietary remote bidding software package and an on-line access charge. The FCC has determined, based on its auction experience, that remote electronic bidding provides bidders with an important and valuable service as it enables them to place and withdraw bids, access auction round results and other FCC announcements during the auction from their offices using their personal computer. Thus, bidders are not required to be physically present at the auction site for the duration of the auction. Because the Commission will provide these services directly to bidders, the Commission proposes to recover the Federal Government's costs by charging bidders a fee for the remote electronic bidding software and an on-line access charge via a 900 telephone service ("900 service"). Bidders will continue to have the option of placing their bids telephonically from remote locations via an 800 telephone service at no charge. Round results information is also available to remote access bidders over the Internet and the Commission's Bulletin Board at no charge.

The significant costs and expenses incurred by the Federal Government in developing the remote electronic auction system have included infrastructure design and implementation, software development, software testing, and administrative and

personnel costs associated with this process. The Commission has developed its own remote on-line bidding system to be offered as a convenience to bidders in future auctions, enabling bidders to participate in auctions from their offices using their personal computers, submit and review applications, and access auction round results information from remote locations using a 900 service. The Notice of Proposed Rulemaking ("NPRM") proposes to recover the costs to the Government by charging bidders who elect to bid electronically from remote locations a fee for the remote bidding software and for remote access to the bidding system via the 900 service. The Commission's remote electronic bidding system will enable bidders to participate in Commission auctions, review applications, and access auction round results information from remote locations using a Wide Area Network to connect with the bidding system via a 900 telephone service. The proposed rule would recover future costs from bidders who directly benefit from the services and products offered by the Commission in conjunction with holding the auctions. Imposing such fees on bidders who actually use the remote electronic bidding system is the fairest and most equitable manner for the Government to recover its costs in developing, maintaining, enhancing, and upgrading the remote bidding system.

In proposing the fees, the Commission has followed OMB guidance and relevant court cases in calculating the costs of the 900 service, remote access bidding software, and bidder's information packages, utilizing "market price" instead of "full cost" because it is simpler, more practical, more efficient, and more readily ascertainable. As a result, based upon market surveys for 900 service, remote access bidding software, and bidder's information packages, the NPRM proposes the following fees: \$4.00 per minute for 900 service; \$200.00 per package for remote bidding software, one free bidder's information package and \$16.00 for each additional bidder's information package requested by that same person or entity.

The proposed fee of \$4.00 per minute for 900 service is based on the FCC's survey of the charges for similar on-line services. The services surveyed were mainly on-line reference and research services operating in the open market with sufficient competition to establish a market-based price. FCC sampling revealed that prices currently range from \$4.05 per minute to \$4.42 per minute (plus monthly account maintenance fees). Even though the

average price for this type of services \$4.23 per minute, \$4.00 per minute is proposed. The proposed \$200.00 fee for the remote access bidding software packages was based upon the open market prices for similar software packages. FCC research indicated that the most comparable software package currently available is \$200.00 per package and offered by only one supplier. Due to highly specialized nature of the remote access software, the Commission could not identify other comparable software packages for which it could obtain additional market price information. The proposed \$16.00 fee for each additional bidder's information package was developed by comparing the average cost of producing bidder's information packages in the open market amount commercial printing firms. The previous prices ranged from \$13.50 to \$18.50 (both figures include postage), and \$16.00 is the average of this range. Payment procedures to collect the fees are proposed as follows: the fee for the 900 service will appear as a charge on the user's monthly telephone bill; the fees for the software packages and bidder's information packages will be collected by the Commission's auction contractor. Funds received from the sale of auction materials, software, or services, pursuant to the IOAA, must go directly to the U.S. Treasury.

This action is taken pursuant to Sections 4(i), 7(a), 302, 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 157(a), 302, 303(c), 303(f), 303(g), and 303(r).

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

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47 CFR Part 20

[GN Docket No. 93-252, FCC 95-156]

Regulatory Treatment of Mobile Services

AGENCY: Federal Communications Commission.

ACTION: Further notice of proposed rulemaking.

SUMMARY: The Commission adopted a *Third Further Notice of Proposed Rulemaking* proposing to amend its 45

MHz spectrum cap for cellular telephone service, Specialized Mobile Radio (SMR) service, and broadband Personal Communications Service (PCS). While the spectrum cap currently applies only to licensees in these services who are classified as Commercial Mobile Radio Service (CMRS) providers, the Commission proposes to extend the cap to all cellular, SMR, and broadband PCS providers regardless of their regulatory classification. The *Third Further Notice of Proposed Rulemaking* also seeks comment on applying the spectrum cap to those "grandfathered" SMR licensees who continue to be regulated as Private Mobile Radio Service (PMRS) providers until August 10, 1996. The intended effect of the proposed rule for cellular, SMR and PCS providers is to ensure regulatory symmetry in the regulation of competing commercial mobile radio services.

DATES: Comments are to be filed on or before June 5, 1995. Reply Comments are to be filed on or before June 26, 1995.

ADDRESSES: Comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Lisa Warner, (202) 418-0620, Wireless Telecommunications Bureau.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Third Further Notice of Proposed Rulemaking*, adopted April 10, 1995, and released May 5, 1995. The complete text of this *Further Notice of Proposed Rulemaking* is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 239, 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Synopsis of the Third Further Notice of Proposed Rulemaking

Adopted: April 10, 1995.

Released: May 5, 1995.

1. The Commission initially proposed the spectrum cap in the *Further Notice of Proposed Rulemaking*, GN Docket No. 93-252, 59 Fed. Reg. 28,042 (May 31, 1994), in this proceeding. The Commission framed the spectrum cap issue in terms of CMRS spectrum, and did not address the aggregation of PMRS spectrum. On August 9, 1994, in the *Third Report and Order* in this proceeding, GN Docket No. 93-252, 59 Fed. Reg. 59945 (Nov. 21, 1994), the Commission applied the spectrum cap

only to cellular, SMR, and broadband PCS services. The cap only applied to cellular, SMR, and broadband PCS licensees whose activities are regulated as CMRS.

2. The Commission notes in the *Third Further Notice of Proposed Rulemaking* that there is potential for a licensee to reduce the number of competitors by aggregating spectrum regardless of whether the licensee is providing CMRS or PMRS. Moreover, the services provided by PMRS providers may well be viewed as competitive alternatives to CMRS by customers; thus, excluding them from the cap could provide PMRS providers with an unfair competitive advantage over CMRS providers. In addition, even if most cellular, SMR, and broadband PCS providers provide CMRS services, as is likely to be the case, determining the precise amount of CMRS spectrum that should be attributed for spectrum cap purposes is likely to be difficult, particularly in the case of PCS, SMR, and possibly cellular licensees who provide both CMRS and PMRS offerings under a single authorization.

3. For all of these reasons, the Commission proposes that the 45 MHz spectrum cap be revised to apply to cellular, SMR, and broadband PCS licensees regardless of regulatory classification. The Commission believes that such a revision will greatly simplify the application of the cap and will provide greater certainty regarding its effect to cellular, SMR, and broadband PCS applicants and licensees.

Initial Regulatory Flexibility Analysis

4. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and rules proposed in this *Further Notice of Proposed Rulemaking*. Written public comments are requested on the IRFA.

5. *Reason for Action:* This rule making proceeding was initiated to secure comment on proposals for revising the 45 MHz spectrum cap for cellular telephone service, SMR, and PCS. The spectrum cap currently applies to CMRS providers. The Commission proposes to extend the cap to all cellular, SMR, and broadband PCS providers regardless of their regulatory classification. The proposals advanced in the *Third Further Notice of Proposed Rulemaking* are designed to implement Congress's goal of regulatory symmetry in the regulation of competing commercial mobile radio services as described in Section 3(n) and 332 of the

Communications Act, 47 U.S.C. §§ 153(n), 332, as amended.

6. *Objective:* The Commission proposed to adopt a rule for cellular, SMR and PCS providers that is intended to ensure regulatory symmetry in the regulation of competing commercial mobile radio services.

7. *Legal Basis:* The proposed action is authorized under Sections 3(n), 4(i), 332(a), 332(c) and 332(d) of the Communications Act of 1934, 47 U.S.C. §§ 153(n), 154(i), 332(a), 332(c) and 332(d), as amended.

8. *Reporting, Recordkeeping, and Other Compliance Requirements:* Under the proposal contained in the *Third Further Notice of Proposed Rulemaking* there are no additional reporting or recordkeeping requirements.

9. *Federal Rules Which Overlap, Duplicate or Conflict With These Rules:* None.

10. *Description, Potential Impact, and Number of Small Entities Involved:* The *Third Further Notice of Proposed Rulemaking* does not potentially affect small entities. After evaluating comments filed in response to the *Third Further Notice of Proposed Rulemaking*, the Commission will examine further the impact of all rule changes on small entities and set forth its findings in the Final Regulatory Flexibility Analysis.

11. *IFRA Comments:* The Commission requests written public comment on the foregoing Initial Regulatory Flexibility Analysis. Comments must have a separate and distinct heading designating them as responses to IRFA and must be filed by the deadlines provided above.

Ex Parte Rules—Non-Restricted Proceeding

12. This is a non-restricted notice and comment rule-making proceeding. *Ex Parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 C.F.R. Sections 1.1202, 1.1203, and 1.1206(a).

List of Subjects in 47 CFR Part 20

Commercial mobile radio services.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

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