

FCC Proposes Bidding Rules for 3,400 MHz of Spectrum

April 29, 2019

Setting the stage for the largest spectrum sale in US history, the FCC has released [proposed procedures](#) for the auction of 3,400 MHz of spectrum in the 37, 39 and 47 GHz bands. This follows the FCC's April 12 [decision on how to manage use](#) of the 37 GHz band and [FCC Chairman Ajit Pai's announcement](#) that the auction will begin on December 10, 2019.

These are the key elements of the proposal:

- The FCC will sell up to 34 100 MHz blocks of spectrum in each of 416 license areas (known as Partial Economic Areas or PEAs) and will use some of the proceeds to pay incumbent licensees to relinquish their rights. The number of 100 MHz blocks available in a PEA will depend on how many incumbent licenses remain in the PEA.
- The auction will be conducted in two phases – one to determine which bidders will win the spectrum blocks in each PEA and one to determine the specific blocks that will be assigned to winning bidders. In the first phase of the auction, the FCC will set a minimum revenue requirement. If the total bid amounts at the end of this phase do not reach this minimum, the auction will end with no licenses awarded.
- The first phase will be a "clock auction" for generic spectrum blocks within each PEA. The FCC will set opening minimum bids, and bidders will specify the PEAs where they wish to bid and the number of blocks they are bidding on at prices set by the FCC in each round. There will be simultaneous bidding in each PEA, with separate bidding for the 37/39 GHz blocks and the 47 GHz blocks. This phase of the auction will end when bidders stop placing higher bids for any blocks in all PEAs.
- The number of bids each bidder can place in the clock phase will be based on "upfront payments" made before the auction begins.
- The second phase will be a sealed bid, single round auction. Any winning bidder that wins two or more blocks in one of the bands (either 37/39 GHz or 47 GHz) in a PEA will be assigned a contiguous block of spectrum, and the sealed bids will be used to determine which bidders get their preferred blocks.
- Bidding credits will be available to small businesses and rural entities. Small businesses with average gross revenues over the last three years of \$55 million or less and of \$20 million or less would be entitled to credits of 15% and 25%, respectively. This small business bidding credit is capped at \$25 million per bidding company, of which no more than \$10 million may be applied in markets with populations of 500,000 or less. Entities that provide commercial communications services to fewer than 250,000 customers and primarily serve rural areas would be entitled to a 15% bidding credit. This credit would be capped at \$10 million per bidding company. The small business and rural credits cannot be combined.
- As in all other FCC auctions, entities that file applications to participate in the auction – even if they do not bid – will be subject to anti-collusion rules that severely limit communication with other auction applicants from the time the applications are filed to the time the FCC announces the winning bidders. The FCC also will apply the anti-collusion rules to any communications with AT&T, Sprint, T-Mobile and Verizon, and to communications with incumbent licensees that have agreed to give up their spectrum.

Comments on the proposed procedures are due at the FCC on May 15 and reply comments are due on May 30. The FCC is expected to adopt final auction rules in late summer, and the deadline to apply to participate in the auction will be in the fall.

Cooley experts can assist in evaluating how these proposed procedures will affect potential bidders and investors, in preparing auction applications and in preparation for participation in the December spectrum auction.

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