

included in Auction No. 52. Thus, the auction will assign licenses for DBS satellites that can provide almost exclusively national service, with only incidental coverage outside the U.S. borders.

6. *DISCO I* removed FCC regulatory prohibitions on the provision of DBS service, as well as other types of satellite service, beyond the borders of the United States. However, *DISCO I* did not change the fact that the ITU Region 2 Band Plan provides for only an incidental signal outside U.S. borders. The technical parameters established under the ITU Region 2 Band Plan provide for national service to the United States, with incidental service to neighboring territories. DBS providers who operate under licenses for the eight orbital locations assigned to the United States under the Plan must comply with these technical parameters.

7. The incidental provision of transborder service does not convert an otherwise auctionable license to an unauctionable one. The legislative history of the ORBIT Act auction exemption, which consists of a House Commerce Committee Report on an earlier, unenacted bill containing an auction exemption identical to that of section 647 of the ORBIT Act, expresses concern for the effect that auctions could have on the viability and availability of global and international satellite services. The Committee indicated that an auctions exemption could help such service providers avoid financial burdens they might otherwise face if a U.S. auction regime precipitated a succession of auctions in numerous countries in which the operators might seek to provide service. The auctioning of U.S. DBS licenses that comply with the ITU Region 2 Band Plan does not implicate these concerns, given the fact that the Plan was designed to maintain the distinctly national character of the DBS service. We seek comment on these conclusions.

8. We also note that the Commission has not adopted any blanket eligibility restrictions on the licenses included in this auction. In the *Part 100 R&O*, 67 FR 51110 (August 7, 2002), proceeding, the Commission had the opportunity to address issues relating to ownership restrictions and implementation of services. The Commission considered comments filed raising such eligibility and ownership issues and declined to adopt any specific restrictions. In this regard, we note that, in some services, the Commission has used a standard for determining whether an eligibility restriction is warranted. In those cases, we have determined that an eligibility restriction may be imposed only when there is significant likelihood of substantial harm to competition in specific markets and when the restriction will be effective in eliminating that harm. This approach results in reliance on competitive market forces to guide license assignment absent a compelling showing that regulatory intervention to exclude potential participants is necessary. We seek comment as to the use of that standard for this service.

9. Nonetheless, one of the four licenses scheduled for auction authorizes the use of only two channels. The Commission has previously noted that with so few authorized channels it may be difficult for a DBS licensee to provide sufficient capacity to operate a viable system. Generally, does this concern warrant any modification of our existing open eligibility regime? We request comment on whether we should adopt any specific eligibility criteria for licenses at the 61.5° W.L. location such as: (i) Whether the applicant should be an existing permittee at the 61.5° W.L. location; (ii) whether the channels should be assigned to an applicant that holds no other DBS channel resources capable of serving the continental United States; and (iii) whether the

applicant should be required to demonstrate an ability to launch in the near future. Should the Commission consider eligibility restrictions on particular orbital locations based on entities' market position in the provision of terrestrial multichannel video programming? Finally, we seek comment on any other proposed eligibility requirements for each of the orbital locations, including the rationale for any such requirements.

## II. Auction Structure

### A. Simultaneous Multiple Round (SMR) Auction Design

10. The Commission proposes to award all licenses included in Auction No. 52 in a simultaneous multiple-round auction. As described further, this methodology offers every license for bid at the same time with successive bidding rounds in which bidders may place bids. We seek comment on this proposal.

### B. Upfront Payments and Initial Maximum Eligibility

11. The Bureau has delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned, taking into account such factors as the population in each geographic license area, and the value of similar spectrum. The upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on licenses. Upfront payments related to the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. With these guidelines in mind for Auction No. 52, the Commission proposes to set upfront payments on a license-by-license basis as follows:

### UPFRONT PAYMENTS

Orbital Location .....	175° W.L. ....	166° W.L. ....	157° W.L. ....	61.5° W.L. ....
Per Channel .....	\$50,000 .....	\$50,000 .....	\$100,000 .....	\$400,000 .....
No. of Channels .....	32 .....	32 .....	32 .....	2 .....
Upfront Payment .....	\$1,600,000 ..	\$1,600,000 ..	\$3,200,000 ..	\$800,000 ..

Additionally, we list all licenses and the proposed upfront payment for each in Attachment A of the *Auction No. 52 Comment Public Notice*. We seek comment on this proposal.

12. The Commission further proposes that the amount of the upfront payment submitted by a bidder will determine the number of bidding units on which

a bidder may place bids. This limit is a bidder's "maximum initial eligibility." Each license is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 52 Comment Public Notice*, on a bidding unit per dollar basis. This number does not change as prices rise during the auction. A

bidder's upfront payment is not attributed to specific licenses. Rather, a bidder may place bids on any combination of licenses as long as the total number of bidding units associated with those licenses does not exceed the bidder's eligibility. Eligibility cannot be increased during the auction. Thus, in calculating its upfront payment amount,