12,000 foot standard and the 18,000 foot standard: Florida, Georgia, Maryland, Missouri, and Montana.

E. Proprietary or Confidential Information

In light of the Commission's requirement in the *Order* that ''all underlying data, formulae, computations, and software associated with the model must be available to interested parties for review and comment,'' the Bureau recommends that each model proponent submit detailed descriptions of all information or software alleged to be confidential, proprietary, or otherwise unavailable to the public that is used either in the model or in a preprocessing module. The descriptions should include estimates of the costs and procedures that may be associated with making the information or software available to the Commission and to the administrator of the universal service support mechanisms.

III. Follow-Up Requirements

The Commission established criteria for its forward-looking economic cost mechanism in the *Order.* The Bureau recommends that model proponents ensure that their modules for determining the location of customers and estimating outside plant investment comply with all of the criteria set out in the *Order,* in addition to the recommendations in this Public Notice.

The Bureau recognizes that proponents of models may need to make certain changes to their models to bring them into conformity with the guidance provided in this public notice. Within four weeks from the release date of this public notice, any proponents of models should submit their models for consideration by the Commission. To facilitate that process and the Commission's review, models should be accompanied by a cover letter providing: (1) A list of the items discussed above with which their model already is in conformity and a description of how their model is in conformity with those items, and; (2) a listing of the items with which their model is not yet in conformity. The Bureau anticipates that the models submitted at that time will be evaluated by the Commission in selecting the platform for the federal mechanism.

IV. Procedural Matters

Within four weeks of the release date of this Public Notice, proponents of a model should file an original and three (3) copies of their submission, referencing CC Dockets Nos. 96–45 and 97–160, with the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, DC 20554. Proponents should also provide four (4) copies of their submission to Chuck Keller of the Universal Service Branch, 2100 M Street, N.W., Room 8918, Washington, D.C. 20554.

Federal Communications Commission.

Timothy A. Peterson,

Deputy Division Chief, Common Carrier Bureau.

[FR Doc. 97–31117 Filed 12–11–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MM Docket No. 97–234; GC Docket No. 92–52; GEN Docket No. 90–264, FCC 97–397]

Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses; Comparative Broadcast Hearings

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission (FCC) seeks comment on proposed competitive bidding procedures that will apply to mutually exclusive applications for licenses to provide commercial AM radio, FM radio, analog television, low power television, and FM or TV translator service. The proposed auction procedures implement the Balanced Budget Act of 1997, which expanded the FCC's auction authority to require that it use auctions to award virtually all licenses. The FCC also proposes to use auctions to resolve certain pending commercial broadcast applications filed before July 1, 1997, which under the statute may be resolved by either auction or comparative hearings. Auctions allow the FCC to award licenses more efficiently than comparative hearings, and using auctions to decide the pre-July 1, 1997 applications for new commercial radio or television broadcast stations allows the FCC to end the stay in effect since 1994 on comparative broadcast initial licensing cases. But the FCC seeks comment on whether there are special equitable considerations that warrant using comparative hearings to decide some of the pre-July 1 applications. Comment is also sought on whether the FCC must or should use auctions to award licenses in the Instructional Television Fixed Service, and on how to resolve pending comparative renewal cases, which are beyond the FCC's auction authority.

DATES: Comments are due January 26, 1998; Reply Comments are due February 17, 1998. Written comments by the public on the proposed and/or modified information collections are due January 26, 1998. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before February 10, 1998.

ADDRESSES: Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Room 222, 1919 M Street, N.W., Washington, D.C. 20554. Copies of these pleadings should also be sent to the Mass Media Bureau, Video Services Division (Room 702) and Audio Services Division (Room 302), 1919 M St., N.W., Washington, D.C. 20554, and the Office of General Counsel, Room 610, 1919 M St., N.W., Washington, D.C. 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: John Riffer and S. Lee Martin, Office of General Counsel, (202) 418–1720, Jerianne Timmerman, Video Services Division, Mass Media Bureau, (202) 418–1643, and Lisa Scanlan, Audio Services Division, Mass Media Bureau, (202) 418–2720. For additional information concerning the information collections contained in this Notice contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, in MM Docket No. 97–234, GC Docket No. 92–52, and GEN Docket No. 90–264, adopted November 25, 1997 and released November 26, 1997. The complete text of this Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., N.W., Washington, D.C. 20554, and may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800 (phone), (202) 857–3805 (facsimile), 1231 20th Street, N.W., Washington, D.C. 20036.

Paperwork Reduction Act

This Notice contains either a proposed or modified information collection, subject to the Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13. It has been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding. Public and agency comments are due at the same time as other comments on this Notice; OMB comments are due February 10, 1998. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: New.

Title: Notice of Proposed Rulemaking, Implementation of Section 309(j) of the Communications Act of 1934 (Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses) (MM Docket No. 97–234).

Form No.: FCC Form 175, FCC Form 301, FCC Form 346, FCC Form 349.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 7,289.

Estimated Time Per Response: Ranges from 45 minutes to 95 hours depending on the type of application filed.

Total Annual Burden: 20,051 hours.

Needs and Uses: The information contained on FCC Form 175, as well as any supplemental engineering information from FCC Forms 301, 346, or 349 required for various non-Table services (including new AM stations), will be used to determine mutual exclusivity for purposes of using competitive bidding procedures to award commercial broadcast licenses. And, in the event the Commission adopts bidding preferences or other measures to foster participation by small businesses, rural telephone companies, businesses owned by minority group members or women, and non-group owners, the proposed annual certification of continuing eligibility for such special measures will be used to prevent unjust enrichment resulting from the use of competitive bidding to award licenses.

Synopsis of Notice of Proposed Rulemaking

Background

1. The Commission has traditionally used comparative hearings to resolve mutually exclusive applications for new commercial full service broadcast stations. In 1992, the Commission initiated a rulemaking to reexamine the comparative criteria for resolving such applications, and two further notices of proposed rulemaking were adopted after the court in *Bechtel* v. *FCC*, 10 F.3d 875 (D.C. Cir. 1993) (*Bechtel II*), invalidated the central criterion used to decide such cases.

2. As part of the Balanced Budget Act of 1997, Congress: (1) amended section 309(j) of the Communications Act (Act) to require that the Commission award virtually all spectrum licenses, including commercial broadcast licenses, by competitive bidding proceedings if mutually exclusive applications are accepted; (2) amended section 309(i) of the Act to terminate Commission's authority to award commercial broadcast licenses by random selection after July 1, 1997; and (3) adopted new section 309(l) which authorizes (but does not require) the Commission to use auctions to resolve pending comparative licensing cases involving applications for new commercial radio or television stations filed before July 1, 1997.

Proposals to Resolve Comparative Initial Licensing Cases

3. Citing the advantages of using auctions to award spectrum licenses in terms of expediting service to the public, the Commission tentatively found that using auctions to resolve the narrow group of pending cases in which auctions are not statutorily required would better serve the public interest than comparative hearings. It asked commenters advocating continued use of comparative hearings for these cases to explain how their proposed criteria would be implemented in an administratively workable and judicially sustainable manner and how the proposed criteria would predict good or better service or serve some independent public interest goal. The Commission also sought comment on whether, even if auctions are used to resolve mutual exclusivity among most pre-July 1, 1997 applications, equitable concerns warrant comparative hearings in the few cases that had progressed to either a decision by an Administrative Law Judge, the former Review Board or the Commission before the court in *Bechtel II* found that the integration criterion was unlawful. Commenters should describe the equitable considerations that they believe would support the use of comparative hearings and the specific criteria they believe should be used, and explain how these criteria would further the equitable interests they have identified.

4. The Commission proposes to refund, upon request, hearing fees actually paid by applicants for applications that are ultimately decided by competitive bidding; and, as a matter of fairness, it proposes to refund, upon request, filing fees paid by applicants that do not participate in the auction.

Auction Procedures for Pending Applications Subject to Section 309(l)

5. Section 309(l) provides that, if the Commission decides to use auctions to resolve competing applications for commercial radio or television stations filed before July 1, 1997, it shall treat such persons as the only eligible bidders qualified to participate in the auction. The Commission tentatively found that this provision applies only if two or more mutually exclusive applications were filed before July 1, 1997. Thus, auctions are mandated by section 309(j) if all pending applications were filed after June 30, 1997, or if only one of a group of mutually exclusive applications was filed before July 1, 1997. Where two or more competing applications are filed before July 1, 1997, however, the Commission tentatively interpreted the provision to prohibit the opening of an additional filing window for new mutually exclusive applications or including, as eligible bidders, applicants who filed mutually exclusive applications after June 30, 1997. Recognizing that this could lead to a harsh result, particularly if it requires the dismissal of timely filed applications, the Commission asked for comment on whether there is any other legally permissible interpretation of the statute.

6. The Commission also concluded that only pre-July 1, 1997 applicants could take advantage of the provision requiring waiver of certain regulations for settlements filed within 180 days after enactment of the statute (i.e., by February 1, 1998). It indicated that it was also inclined to waive certain settlement policies, such as the prohibition against third party settlements set forth in *Rebecca Radio of Marco*, 5 FCC Rcd 937 (1990).

7. Following the expiration of the settlement period on February 1, 1998 and once the auction rules are effective, the Commission tentatively proposed to

announce those competing pre-July 1 applications eligible for resolution by competitive bidding procedures under section 309(l). It tentatively proposed to terminate the hearing proceeding if there are unresolved basic qualifying issues against any applicant. It further proposed to allow pending applicants to participate in the auction despite any unresolved qualifying issues, and to do so by filing a short-form application. But it asked whether it would be more efficient to decide basic qualifying issues before the auction for the small number of hearing cases. Also, the Commission would accept amendments to the long-form applications after the auction and then only if filed by the winning bidders. It proposed to accept petitions raising new issues only after a Public Notice announced any amendments to the winning bidder's application. It tentatively proposed to afford the winning bidder 30 days to file any amendments to its long-form application and 15 days to respond to any new petitions raising new issues.

8. After submission of the required down payment by the winning bidder in accordance with the general auction procedures and any special rules adopted for broadcast auctions in this proceeding, the ALJ or the Commission (in cases pending before the Commission) would resolve any unresolved issues in hearing cases, and if appropriate, grant the application and dismiss the long-form applications filed by the unsuccessful bidders. Where the hearing proceeding has terminated (because there are no outstanding hearing issues against any pending applicant), the Mass Media Bureau would rule on any new issues raised in petitions filed after termination of the hearing proceeding and either grant the application or designate it for hearing.

9. In non-hearing cases, the Commission proposed that all questions as to a pending applicant's basic qualifications, including questions involving the acceptability and tenderability of the application, would be resolved after the auction and only with respect to the winning bidder. If pending applicants fail to file short-form applications, the Commission proposed to dismiss their previously filed long-form applications. It proposed to accept petitions to deny or amendments to the long-form application after the auction, and asked for comment on affording the winning bidder 30 days to file any amendment to its long-form application. After the amendment period, it proposed to place the winning bidders' long-form applications on public notice, which would trigger the filing window for petitions to deny and to dismiss the previously filed long-form applications of the unsuccessful competing bidders following the grant of the winning bidder's construction permit. And, for these non-hearing comparative initial licensing proceedings it proposed to follow all other post-auction rules and procedures set forth in part 1 of the Commission's Rules and any service-specific rules adopted in this proceeding.

Auction Procedures for Other Pending Applications

10. Based upon the broad language of section 309(j) requiring the use of competitive bidding procedures to award initial licenses whenever mutually exclusive applications are accepted, the Commission tentatively found that section 309(l) is limited to mutually exclusive applications for new commercial full service radio or television stations filed before July 1, 1997. Thus, it tentatively concluded that auctions were required under section 309(j) for pending mutually exclusive applications for various secondary commercial broadcast services, even if filed before July 1, 1997, and for mutually exclusive applications for full service commercial radio and television stations filed after June 30, 1997.

11. Under this tentative interpretation, none of these pending applicants may take advantage of the provision requiring waiver of regulations for settlements filed before February 1, 1998. The Commission noted that these pending applicants could enter into settlements that comply with the statute and all applicable Commission rules, but it tentatively concluded that such agreements must predate the filing of any short-form applications because of the anti-collusion rules (which restrict communications among auction participants). The Commission asked for comment on whether it should further restrict settlement agreements, given that Congress, through the Balanced Budget Act, may have established auctions as the preferred method of awarding licenses where mutually exclusive applications are filed.

12. The Commission tentatively concluded that it was not required to restrict the class of bidders qualified to participate in auctions involving these other pending commercial broadcast applicants that are not subject to section 309(l). It asked for comment on how it should exercise its discretion under the statute, i.e., whether it should open a new filing window for additional applications that could be mutually exclusive with pending applications or whether it should keep the window closed.

13. The Commission proposed to conduct auctions in accordance with its general auction procedures and any service-specific procedures adopted in this proceeding. It proposed to announce by Public Notice the groups of pending mutually exclusive (long-form) broadcast applications eligible for resolution by competitive bidding, and the date by which those applicants must file short-form applications in order to participate in the auction. It proposed to dismiss the previously-filed, long-form application of any pending applicant who fails to file a short-form application. In the interest of efficiency, it tentatively proposed to conduct a single auction of all pending mutually exclusive broadcast applications that are not subject to the special provisions of new section 309(l) (and any application for any of these services filed in response to the Public Notice that is mutually exclusive with previously filed long-form applications). It asked for comment on this proposal, and on whether any changes are warranted in the proposed post-auction procedures for these applicants.

General Auction Procedures

14. The Commission did not propose to modify its existing licensing procedures, under which it grants a construction permit and the permittee subsequently applies for a license after constructing the broadcast facility. It cautioned that a permittee, who obtains a construction permit through an auction, must still satisfy the requirements for a license. Prospective bidders for various secondary broadcast services (i.e., low power television stations, television translators, FM translators) were also warned that a licensee does not have increased rights vis-a-vis any full service broadcaster because it received its authorization through an auction.

15. It asked for comments on whether to treat applications for modifications of existing broadcast facilities as ''initial'' applications that are subject to auction if mutually exclusive applications are filed, and on whether there are any legal, equitable or other considerations that would militate against using competitive bidding procedures for certain types of modification applications. Comment is also sought on whether to adopt any special procedures, such as bidding credits, for applicants proposing significant service to unserved or underserved areas, to accommodate section 307(b), 47 U.S.C. 307(b), of the Communications Act.

16. The Commission tentatively proposed to conduct broadcast auctions in conformity with the general competitive bidding rules set forth in part 1, subpart Q of the Commission's rules, subject to any changes that it ultimately makes in those rules in the ongoing part 1 rulemaking (or this proceeding), and substantially consistent with the bidding procedures used in previous Commission auctions. It proposed that such general competitive bidding rules should govern all future auctions. *Amendment of Part 1 of the Commission's Rules—Competitive Bidding Proceeding (Notice of Proposed Rulemaking*), 62 FR 13570, 13570–71, March 21, 1997, 12 FCC Rcd 5686, 5698 ¶ 18 (1997). Commenters should review the proposed rules changes, as well as the issues raised there, and propose alternatives to any rules or proposed rules they believe to be inappropriate in the context of broadcast auctions. Comment is specifically sought on the advisability in the broadcast context of applying the Commission's anti-collusion rule, which strictly limits communications between competing bidders once a short-form application is filed, *see* 47 CFR 1.2105(c), and the bid withdrawal/default payment rules, which penalize the post-auction withdrawal of a high bid and the failure to submit a long form application or to pay a winning bid. *See* 47 CFR 1.2104(g); 1.2109.

17. The Commission tentatively proposed to use the simultaneous multiple-round competitive bidding design for broadcast auctions successfully used in previous auctions. But it seeks comment on alternate bidding designs that might be appropriate in the broadcast context, such as (1) sequential multiple-round auctions, using either oral ascending, remote or on-site electronic bidding; and (2) sequential or simultaneous single round auctions, using either remote and/or on site electronic bidding, or sealed bids. *See generally* 47 CFR 1.2103, as amended by *Amendment of Part 1 of the Commission's Rules—Competitive Bidding Proceeding (Order)*, 62 FR 13540, March 21, 1997, 12 FCC Rcd 5686, 5691 ¶ 6 & nn.9–12 (1997). It also noted the possibility of using combinatorial bidding, which permits bidders to bid on combinations or groups of licenses in a single bid and to enter multiple alternative bids within a single bidding round. Comment is also sought on whether different bidding methodologies are warranted for auctions that, pursuant to section 309(l), must be restricted to pre-July 1 applications, than for auctions that may be open to all qualified bidders, and whether the type of auction should vary depending on the type of service involved, the number of licenses at stake, how many bidders are likely to participate, and the degree to which interdependence may be important to qualified bidders. The Commission does not propose on-site bidding, and it seeks comment on whether to require bidders to bid electronically via computer, on whether this would be a hardship for certain bidders, and on whether bidders should have the option of bidding by telephone.

18. The Commission proposed that the Mass Media Bureau work in conjunction with the Wireless Telecommunications Bureau in setting the upfront payment, which will be announced by Public Notice before the time for filing short-form applications. It proposed to adhere to the part 1 rules on upfront payments, but sought comment on the appropriate amount, and method for determining the appropriate amount, of the upfront payment for bidders in broadcast auctions. It also proposed that the Mass Media Bureau work in conjunction with the Wireless Telecommunications Bureau to consider the use of reserve prices or minimum opening bids to be announced prior to the time for filing short-form applications for auctionable commercial broadcast services, unless it is determined, based on comments filed in this proceeding, that reserve prices or minimum opening bids would not serve the public interest. The Commission also sought comment on the appropriate methodology for establishing each of these mechanisms, and on alternative methods for estimating the value of the license, such as (1) using data on station transactions that are comparable in terms of station class and market characteristics, and (2) utilizing a financial model derived from data on the performance of operating stations (a) in the market that an applicant hopes to serve or (b) from a relevant comparable market.

19. The Commission also seeks comment on how it should deal with any ''daisy chains'' presented in auctions of AM radio, LPTV, or television or FM translator applications. Daisy chains occur when an application is mutually exclusive (*i.e.*, would cause interference) with a second application, which is mutually exclusive with a third application in the same or adjacent community, and so on, even though the first application may not be directly mutually exclusive with any application except the second. Depending on which applicant is the winning bidder among a mutually exclusive group, another application (in addition to the auction winner) may become grantable, or another smaller mutually exclusive group may still exist and need to be resolved. Comment is requested on the appropriate methods, such as combinatorial bidding, to resolve any daisy chains in the auction context.

20. To promote the orderly filing of applications for different services and to facilitate the determination of mutually exclusive groups for auction purposes, the Commission tentatively proposes to establish a specific time period or auction window during which applicants for AM, FM, television, LPTV, and television or FM translators must file applications in order to participate in an upcoming auction. Comment is sought on this more uniform window filing approach, which would replace the current disparate filing procedures for applications in all of these services.

21. Under the proposed auction procedures, prior to the auction applicants would file short-form applications (FCC Form 175), supplemented by any engineering data necessary to determine mutual exclusivity in non-table services, and only winning bidders would file long-form applications. To relieve prospective applicants of the time and expense associated with filing long-form applications (which would be reviewed only if an applicant were the high bidder), the Commission announced a temporary freeze, effective November 26, 1997, on the filing of all commercial broadcast and secondary broadcast applications pursuant to our existing procedures. Applications timely filed in response to an outstanding AM (or FM translator) cut-off list or an open FM window are exempt from the freeze. During the freeze, the Commission would continue to accept and process petitions for rulemaking requesting the allotment of new FM channels to the FM Table of Allotments, and applicants could apply for any such allotments during subsequently announced FM auction filing windows. Minor modification applications, and all applications for the reserved portion of the FM broadcasting band (Channels 200–220) are not subject to the freeze.

22. The Commission tentatively proposes to announce the auction and the window for filing short-form applications in a Public Notice. It also proposes to announce the window at least 30 days in advance, and to keep it open for at least five business days. Comment is sought on this proposal and on whether to have a combined filing window or separate filing windows for each type of broadcast or secondary

broadcast service. Except for the FM service, where applicants may only file for vacant FM channels reflected in the Commission's Table of Allotments, the Commission does not propose to limit filing windows on a geographic basis. It proposes to open filing windows for applications for commercial broadcast and secondary broadcast services as often as its resources allow, and may include certain auctions of construction permits for commercial broadcast facilities in the Commission's proposed quarterly auctions process. *See Amendment of Part 1 of the Commission's Rules—Competitive Bidding Proceeding (Order*), 62 FR 13540, March 21, 1997, 12 FCC Rcd 5686, 5691–92 ¶ 7 (1997). But it did not make a commitment to include auctionable broadcast licenses in every quarterly auction.

23. Under the proposed window filing approach, applicants would file short-form applications (FCC Form 175), along with any engineering data necessary to determine mutual exclusivity in a particular service, only during an announced filing window. This procedure would apply to all applications for AM, FM, television, low power television, and FM or television translator stations, except for minor change applications. Thus, prospective applicants could no longer tender new FM applications on a ''first come/first serve'' basis, as they may do under current procedures. Minor modification applicants in these services would not be subject to the window filing requirement even if the Commission ultimately decides to use auctions to resolve mutually exclusivity among major change applications. But two or more FM, AM, television or LPTV minor modification applications can be mutually exclusive under current rules. The Commission seeks comment on how to resolve such applications.

24. The Commission proposes that FM applicants would apply by submitting during the announced filing window an FCC Form 175 application for any vacant allotment specified in the public notice announcing the opening of the window. Applications specifying the same vacant FM allotment(s) would be mutually exclusive, and no supplemental engineering data would be necessary to make this determination. Applicants for new AM stations, LPTV stations, and television and FM translators would file short-form applications specifying a frequency or channel upon which the applicant could operate in accordance with the Commission's existing interference standards for these services, *see* 47 CFR 73.37, 73.182 and 73.187 (AM interference rules); 47 CFR 74.703, 74.705, 74.707 and 74.709 (LPTV and television translator interference rules); and 47 CFR 74.1203 and 74.1204 (FM translator interference rules). The Commission does not propose to change these interference standards. To determine which AM, LPTV, and television and FM translator applications are mutually exclusive for auction purposes, the Commission expects to require applicants for these services to file, in addition to their short-form applications, the engineering data contained in the pertinent FCC Form (*i.e.*, FCC Form 301, FCC Form 346 or FCC Form 349). And, if the Commission ultimately decides to auction mutually exclusive applications for major modifications of existing facilities, analog television licensees filing such applications would be required to file both an FCC Form 175 and the engineering data contained in an FCC Form 301.

25. The Commission proposes to require that all FCC Form 175 applications for broadcast auctions be filed electronically, and asks for comment on whether this would be burdensome for applicants for the secondary broadcast services. It also seeks comment on its proposal to require, as necessary to determine mutual exclusivity in non-table services, the filing of the engineering data contained in the FCC Form 301, FCC Form 346 or FCC Form 349, at the same time that the short-form is filed.

26. *Pre-Auction Processing:* The Commission seeks comment on whether to limit its pre-acceptance review of any engineering data submitted with the FCC Form 175 to only what is necessary to determine which applications are mutually exclusive with each other, or whether to engage in more extensive pre-auction processing, whereby it would return as unacceptable applications with technical problems that cannot be resolved by amendment. It noted that the first approach would save considerable Commission resources, but had a significant downside in that it may result in technically unacceptable applicants participating and perhaps prevailing in the auction. This, in turn, could require that the Commission reauction the license and afford new parties an opportunity to file applications. It noted that a more extensive pre-auction review could slow the auction, but that the auction could proceed with the understanding that the rights of any winning bidders would be subject to the outcome of any petitions for reconsideration of the return of unacceptable applications.

27. Once it determines mutual exclusivity among the short-form applications filed in response to a window, the Commission would identify by public notice(s) the applicants in each group of mutually exclusive applications who are eligible to bid on construction permits for the allotments or channels identified in their short-form applications. Such public notices would provide more detail on the time, place and method of competitive bidding to be used, as well as applicable bid submission and payment procedures, the deadline for submitting the upfront payments, the amounts of the upfront payments and any minimum opening bid or reserve price, all pursuant to the auction rules then in place. A Public Notice would also identify any applications submitted in response to an announced window not subject to auction (because such applications were not mutually exclusive with any other application in the same service), and the date by which such applicants must file their long-form applications (FCC Form 301, FCC Form 346 or FCC Form 349). The Commission tentatively proposes to afford such applicants 30 days to file their complete long-form applications, and seeks comment on that proposal.

28. *Post-Auction Procedures:* The Commission proposes to follow as closely as possible its general post-auction procedures and payment requirements set forth in part 1 of the rules, and seeks comment on their applicability to auctions of mutually exclusive broadcast applications. Specifically, it would announce the high bidder by Public Notice and afford it 10 business days to make the required down payment and 30 days to file a complete FCC Form 301, FCC Form 346 or FCC Form 349 long-form application for each construction permit for which it was the high bidder. Comment is sought on these proposals and on whether it should follow 47 CFR 1.1207, which requires that the down payment (plus the upfront payment) must be at least 20% of the winning bid. The Commission also seeks comment on whether it would be appropriate to establish a period, such as 5 days, for the filing of petitions to deny against the winning bidder's long-form application, as is permitted by section 3008 of the Balanced Budget Act of 1997. It also proposes to require full payment of the balance of the winning bid within 10 business days of the Public Notice announcing the grant of the construction permit. It seeks comment on this proposal and on whether to modify any existing service-specific

rules relating to the processing and reviewing of FCC Form 301, FCC Form 346 and FCC Form 349 applications.

29. To facilitate the auction process, the Commission proposes to relax certain rules limiting the number and the timing of filing of curative amendments to long-form applications, *see* 47 CFR 73.3522, 73.3564, but it does not propose to change the definition of ''major amendment'' in the various services. *See* 47 CFR 73.3571 (AM radio), 47 CFR 73.3572 (television, LPTV, television translators), 47 CFR 73.3573 (FM radio), or propose that deficiencies in long-form applications would be curable by major amendment. Thus, it proposes that winning bidders must file major amendments to long-form applications within an announced filing window.

30. To avoid new instances of mutually exclusivity, which may arise if a long-form FM application proposes a site other than one protected pursuant to the Table of Allotments, the Commission proposes that applicants not be allowed to file FM long-form applications in conflict with any previously filed commercial or non-commercial application. It proposes further that long-form FM applications would have ''cut-off'' protection as of the date they are filed with the Commission, and that commercial FM modification applications must protect any previously or simultaneously filed application in the reserved band, in order to eliminate the possibility of creating a cross-band mutually exclusive situation. In addition, the Commission seeks comment on how the auction process for FM translators would work in relation to the specific provisions of 47 CFR 74.1203(a) & (b) and 74.1232(h), and other rules providing for the cancellation of a construction permit under certain circumstances and affording FM broadcasters the right to object to proposed FM translators likely to interfere with the reception of a regularly received existing service, even if there is no prohibited contour overlap.

31. The Commission requests comment on whether any existing requirements contained in the FCC Form 301, FCC Form 346 and FCC Form 349 applications may be eliminated. It proposes to delete the ''reasonable assurance'' of site certification from the FCC Forms 301, 346 and 349, and to rely on strict enforcement of the existing construction requirements to ensure that winning bidders in future broadcast auctions construct their facilities in a timely manner, *see* 47 CFR 73.3598 (establishing two-year construction period for television stations and 18-month construction period for AM, FM and LPTV stations, as well as television and FM translators).

Designated Entities

32. *Small Businesses/Rural Telephone Companies.* To fulfill its statutory responsibilities under section 309(j)(4)(D), the Commission seeks comments on whether it should adopt bidding credits or other tools to ensure the participation of small businesses and rural telephone companies in the provision of these services, and on how we should define small business for any special provisions we may adopt. It specifically seeks comment on which of the small business size standards based on gross revenue ceilings of $3 million, $15 million, or $40 million used in other services is most applicable to auctions of commercial broadcast licenses, or whether an alternative size standard would be more appropriate.

33. *Minority Ownership.* The Commission is concerned about the underepresentation of minorities as owners of broadcast stations and the implications for program diversity, and tentatively concludes that, to the extent that it complies with applicable constitutional standards, it should take steps to further the longstanding goal of increasing minority ownership of broadcast stations, as well as implementing the designated entity provisions of section 309(j)(4) of the Act. *See Metro Broadcasting, Inc.* v. *FCC,* 497 U.S. 547 (1990), finding that broadcast diversity is an important governmental objective and upholding our treatment of minority ownership in comparative proceedings under an intermediate scrutiny standard. It asks for comment on how to do this, consistent with the standards set forth in *Adarand Constructors, Inc.* v. *Pena,* 515 U.S. 200 (1995), a subsequent Supreme Court decision establishing that policies that take race into account are reviewed under a strict (as opposed to intermediate) scrutiny standard.

34. In the event special provisions are adopted for businesses owned by minorities, the Commission must develop eligibility standards to ensure that the scope of its program is appropriate. It thus seeks comment on appropriate eligibility standards to further its goal specifically. The alternatives include (1) requiring that minorities have *de facto* and *de jure* control of the applicant, own more than 50 percent of the equity on a fully diluted basis, and meet the eligibility standards set forth in 47 CFR 1.2110(b)(2); and (2) a standard similar to what was adopted but never implemented for the broadband PCS auctions (i.e., minorities must have the right to receive at least 50.1 percent of the annual distribution of any dividends paid on the voting stock and the right to receive dividends, profits and other distributions from the business in proportion to their equity interests). The Commission also seeks comment on whether, to determine eligibility, it should attribute fully (a) options or conversion rights held by non-minorities unless the decision to exercise the option or conversion rights is beyond the control of the ostensibly passive non-minority owner; (b) the interests of any individual or entity that played a significant role as a promoter in forming the applicant; and (c) any non-voting stockholder unless the corporate documents unequivocally require insulation of the non-voting stockholder from participation in the licensee's affairs to the same extent that a limited partner must be insulated.

35. *Female Ownership:* The Commission also asks for comments on whether special policies are warranted for female-owned applicants, and whether there is sufficient evidence to justify special provisions for women-owned businesses under applicable constitutional standards. *See United States* v. *Virginia Military Institute,* 116 S.Ct 2264, 2274–76 (1996) requiring an ''exceedingly persuasive justification'' to support a state program that made distinctions based upon gender.

36. *Diversification of Ownership.* Diversification of ownership is one of the two primary objectives of the Commission's current licensing system and remains a viable public interest consideration. Given the significant advantage that group owners are likely to have over newcomers in auctions, the Commission seeks comment on whether to adopt some measure in the competitive bidding process that is specifically designed to promote diversification of ownership.

37. To the extent bidding credits are adopted for small businesses, minorities, women, non-group owners or others, the Commission asks for comment on what those credits should be and whether, and to what extent, any such bidding credits should be tiered, as it has done in other auction contexts.

38. To fulfill its statutory obligation to prescribe rules to ''prevent unjust enrichment as a result of the methods employed to issue licenses and permits,'' 47 U.S.C. 309(j)(4)(E), the Commission tentatively proposes to require that, for a period of five years following Program Test Authority, broadcast licensees granted a new license through any designated entity or

diversification bidding credits or other special provision must certify annually their continuing eligibility for such credit or provision, under the rules in effect at the time the license was awarded, and report within 30 days any change affecting such eligibility. It seeks comment on this proposal. Alternatively, the Commission seeks comment on granting a one-time bidding credit, requiring the licensee to hold the station for five years but allowing licensees to bid for additional licenses during the five-year period.

39. And, as a condition for Commission approval for the transfer or assignment of the license to an entity ineligible for the bidding credit or other special provision obtained by the licensee, or for other ownership changes rendering the licensee ineligible for a previously awarded bidding credit or other provision during that five-year period, the Commission tentatively proposes to require a monetary reimbursement to the Treasury for the previously awarded bidding credit. It seeks comment on how to calculate the unjust enrichment payment, on whether there are any mitigating circumstances that would justify excusing altogether or reducing the unjust enrichment payment, and on whether measures other than monetary penalties and reporting requirements are necessary.

Auction Authority for Instructional Television Fixed Service

40. The Instructional Television Fixed Service (ITFS) is a point-to-point microwave service whose licensees have certain characteristics in common with the noncommercial educational and public broadcast stations which are specifically exempted from our section 309(j) auction authority. There is, however, no express exemption for ITFS licenses from the requirement that the Commission must use competitive bidding procedures to award licenses if mutually exclusive applications are filed, and the Commission seeks comment on whether it must, and if not, whether it should, apply competitive bidding to mutually exclusive ITFS applications. If it concludes that it must, or should, auction mutually exclusive ITFS applications, the Commission tentatively proposes to apply the general auction rules adopted in this proceeding for broadcast applications to ITFS applications as well. Comment is sought on this proposal.

Proposals for Pending Broadcast Comparative Renewal Proceedings

41. The Commission does not believe that auctions are a legally available option in pending comparative renewal proceedings, and it seeks comment on how to resolve pending comparative renewal cases. It tentatively proposes that, if it decides to use auctions to resolve the pending comparative initial licensing cases and if the few remaining comparative licensing cases do not settle, it will adopt the two-step renewal procedure previously developed for comparative cellular renewal proceedings. Commenters should address whether this approach, which would be analogous to the procedures for new renewal cases set forth in section 309(k), which eliminates comparative renewal proceedings for renewal applications filed after May 1995, is judicially sustainable. The Commission also asks for comment on whether, as an alternative to the two-step procedure, or in conjunction with the two-step hearing that reaches the second stage, it should consider any comparative factors raised by the applicants on a case-by-case basis.

Procedural Matters

42. This is a permit-but-disclose notice and comment rulemaking. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed, as specified in the Commission's rules.

43. Authority for this rulemaking is contained in 47 U.S.C. 154(i), 154(j), 303(r), 309(g), 309(i), 309(j), 309(l), 403.

Initial Regulatory Flexibility Analysis

44. As required by the Regulatory Flexibility Act (RFA),[1] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and procedures proposed in this Notice of Proposed Rulemaking. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice. The Secretary shall send a copy of the Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the Notice and IRFA (or summaries thereof) will be published in the **Federal Register**. *See id*.

I. Need for and Objectives of the Proposed Rules

45. This rulemaking is initiated to implement the Balanced Budget Act of 1997, Pub. L. 105–33, 111 Stat. 251 (1997), which amended section 309(j) and adopted new section 309(l) of the Communications Act. Comments are sought on: (1) proposed auction procedures to award initial licenses in the broadcast services and secondary broadcast services; (2) whether the Commission should use auctions or comparative hearings to resolve pending comparative initial licensing proceedings involving competing applications for commercial radio and television stations filed before July 1, 1997, as authorized by new section 309(l); (3) whether amended section 309(j) requires the use of auctions to award initial licenses for Instructional Television Fixed Services; and (4) how to resolve pending comparative renewal proceedings, which cannot be resolved by auction pursuant to amended section 309(j).

II. Legal Basis

46. This Notice is authorized under the Balanced Budget Act of 1997, Pub. L. 105–33, 111 Stat. 251, Title III, Section 3002, and Sections 4(i), 4(j), 303 (r), 309(g), 309(i), 309(j), 309(l), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 309(g), 309(i), 309(j) 309(l), and 403.

III. Description and Estimate of the Number of Small Entities To Which the Proposed Rule Will Apply

47. Under the RFA, small entities include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA''). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''[2]

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Act of 1996 (SBREFA).

[2] We tentatively believe that the SBA's definition of ''small business'' greatly overstates the number of radio and television broadcast stations that are small businesses and is not particularly suitable for our purposes, and we specifically seek comment on how we should define small business for this

48. The SBA defines a radio broadcasting station that has no more than $5 million in annual receipts as a small business.[3] A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.[4] Included in this industry are commercial, religious, educational, and other radio stations.[5] Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.[6] The 1992 Census indicates that 96 percent of radio station establishments (5,861 of 6,127) produced less than $5 million in revenue in 1992.[7] Official Commission records indicate that 11,334 individual radio stations were operating in 1992.[8] As of September 30, 1997, official Commission records indicate that 12,227 radio stations and 2836 FM translator/booster stations were licensed.[9]

49. Additionally, the Small Business Administration defines a television broadcasting station that is independently owned and operated, is not dominant in its field of operation, and has no more than $10.5 million in annual receipts as a small business.[10] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.[11] Included in this industry are commercial, religious, educational, and other television stations.[12] Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.[13] There were 1,509 television stations operating in the nation in 1992.[14] That number has remained fairly constant, as indicated by the approximately 1,563 full power television stations, 2027 low power television stations, and 4994 television translator stations licensed as of September 30, 1997.[15] In 1992,[16] there were 1,155 television station establishments that produced less than $10.0 million in revenue.[17]

50. In addition, there are presently 2032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions may be included in the definition of a small entity. ITFS is a non-pay, non-commercial educational microwave service that, depending on SBA categorization, has, as small entities, entities generating either $10.5 million or less, or $11.0 million or less, in annual receipts. However, we do not collect, nor are we aware of other collections of, annual revenue data for ITFS licensees. Thus, we tentatively conclude that up to 1932 of these licensees are small entities. We seek comment on this conclusion.

51. In the event the Commission decides, for equitable considerations or other reasons, to hold comparative hearings to resolve certain mutually exclusive pending applications for new commercial radio and television stations filed before July 1, 1997 or for a subset of such pending cases, any new comparative criteria developed in this proceeding will apply to these pending pre-July 1, 1997 applications. We estimate that there are approximately 1475 pending applicants for a new commercial radio or full power television station filed before July 1, 1997 that might be decided by comparative hearing rather than by auctions.

52. Any auction procedures developed in this proceeding for all licenses to provide commercial broadcast service or secondary broadcast service that are presently subject to auction will affect: (1) any entity with a pending application for a construction permit for a new commercial radio or full power television broadcast station, if all mutually exclusive applications were filed after June 30, 1997; (2) any entity with a pending application for a construction permit for a new commercial radio or full power television station filed before July 1, 1997, if mutually exclusive applications were filed and none of the competing applications is a renewal application and if the Commission decides that such initial license applications should be subject to auction; (3) any entity that files an application in the future for a new commercial radio or full power analog television station if mutually exclusive applications are accepted; (4) any entity having a pending application on file, or filing an application in the future, for a new low power television station, or a television or FM translator station, if mutually exclusive applications are accepted; (5) any entity that has a pending or future application to make a major change in an existing facility in any commercial broadcast or secondary broadcast service, if mutually exclusive applications are accepted and if the Commission decides to auction such major change applications; and (6) any entity that has a pending or future ITFS application, if mutually exclusive applications are accepted and if the Commission decides that it must, or should, auction mutually exclusive ITFS applications.

53. If auction procedures are adopted in this proceeding, all entities that file applications for construction permits to provide commercial broadcast service before the effective date of any such auction procedures must submit a completed short-form application (FCC Form 175) and any engineering information necessary to determine mutual exclusivity, if resolution of their applications is subject to competitive

purpose. However, for purposes of this Notice we are utilizing the SBA's definition in determining the number of small businesses to which any auction procedures or revised comparative criteria would apply. In this regard, we reserve the right to adopt a more suitable definition of ''small business'' as applied to radio and television broadcast stations. *See Fifth Report and Order* in MM Docket No. 87–268 (*Advanced Television Systems and their Impact upon the Existing Television Broadcast Service*), FCC 97–116 at 62 (April 27, 1997), 62 FR 26996, May 16, 1997 ; *Report and Order* in MM Docket No. 93–48 (*Children's Educational and Informational Programming*), 61 FR 43981, 43992 (August 27, 1996), citing 5 U.S.C. 601 (3). *See also Order and Notice of Proposed Rulemaking* in MM Docket No. 96–16 (*Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines*), 61 FR 9964, March 12, 1996, 11 FCC Rcd 5154 (1996), requesting comment as to whether relief should be afforded to the stations: (1) based on staff size and what size should be considered sufficient for relief (e.g., 10 or fewer full-time employees); (2) based on operation in a small market; or (3) based on operation in a market with a small minority work force.

[3] 13 CFR 121.201, Standard Industrial Code (SIC) 4832 (1996).

[4] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 78, Appendix A–9.

[5] *Id*.

[6] *Id*.

[7] The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

[8] FCC News Release No. 31327, Jan. 13, 1993.

[9] FCC News Release No. 80286, Nov. 6, 1997.

[10] 13 CFR 121.201, SIC 4833.

[11] Economics and Statistics Administration, Bureau of Census, U.S. Dep't of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92–S–1, Appendix A–9 (1995).

[12] *Id*.

[13] *Id*.

[14] FCC News Release No. 31327, Jan. 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Dep't of Commerce, supra note , Appendix A–9.

[15] FCC News Release 80286, Nov. 6, 1997.

[16] Census for communications establishments are performed every five years, during years that end with a ''2'' or ''7''. *See* Economics and Statistics Administration, Bureau of Census, U.S. Dep't of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92–S–1, Appendix A–9, III (1995).

[17] The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

bidding procedures. This requirement would also apply to entities that file applications for construction permits to make major changes in existing commercial broadcast stations during this period if the Commission ultimately decides to resolve mutual exclusivity among competing major change applications by competitive bidding. In the event that an applicant is the winning bidder, it must submit a long-form application that would then be reviewed by the agency. We estimate that, as of October 31, 1997 there are approximately 1475 pending applicants for a new commercial radio or full power television station filed before July 1, 1997; approximately 315 pending applications for new radio and full power television stations filed after June 30, 1997 that are mutually exclusive with permit applications filed after that date; approximately 100 pending applications for new low power television stations/television translator stations; and approximately 24 pending applications for translator stations. All of these pending mutually exclusive applications will be subject to any auction procedures for analog broadcast service adopted in this proceeding.

54. Applicants for construction permits are required to demonstrate sufficient financing to construct and initially operate the proposed station. However, we do not require the filing of financial information concerning the entity seeking a construction permit. Thus, except for those applicants already owning a broadcast station that seek a permit to construct additional stations, we have no data on file as to whether entities with pending permit applications, which are subject to the new auction rules for analog broadcast service, meet the Small Business Administration's definition of small business concern. We assume for the purposes of this IRFA that most of the entities formed for the purpose of applying for a permit to construct a new radio broadcast station or a television station are small entities, as defined by the SBA rules.

55. In addition to the pending applicants that may be affected by the proposed auction procedures for analog broadcast service, any entity that applies for a construction permit for a new radio or television station in the future will be subject to the proposed auction procedures if mutually exclusive applications are filed. The number of entities that in the future may seek a construction permit for a new analog broadcast station is unknown. We anticipate, however, that due to the passage of the Telecommunications Act of 1996 and corresponding changes in our multiple ownership and attribution rules, the characteristics of future broadcast applicants may be somewhat different from those of pending applicants. We invite comment as to the number and characteristics of future applicants for new commercial analog broadcast stations, and for commercial facilities in the various secondary broadcast services.

56. The new auction procedures would not apply to entities that filed applications for construction permits after June 30, 1997 for new commercial radio and full power television stations that are mutually exclusive with two or more pending initial license applications filed before July 1, 1997. We estimate that as of October 31, 1997, there were approximately 7 such applications (5 radio and 2 TV) that will be ineligible to participate in an auction to choose among mutually exclusive pre-July 1 applications for new commercial broadcast stations.

57. In addition, any competitive bidding procedures developed for analog broadcast service will not apply to the few pending comparative renewal cases. Resolution of these cases will depend on any comparative criteria, two-step renewal process or other basis adopted in this proceeding for deciding these comparative renewal cases. This will affect broadcast station licensees that filed their applications for renewal of license on or before May 1, 1995 and any pending initial license applications that are mutually exclusive with such renewal applications. We estimate that there are approximately 9 initial license applications that are mutually exclusive with 8 pending renewal applications. This includes approximately 15 television applicants and 2 radio applicants.

IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

58. Comment is sought on what filing and compliance requirements should be associated with any competitive bidding procedures consistent with the Commission's statutory obligations to require such transfer disclosures and other measures necessary to prevent unjust enrichment and the court's concerns in *Bechtel* regarding reliance on purely ephemeral licensing considerations. The Notice tentatively proposes that, if bidding credits or other special provisions are adopted for any designated entities and/or non-group owners, licensees benefitting from such special provisions must annually certify for five years their continuing eligibility for such bidding credit or special provision under the rules in effect at the time the license was awarded, and report any changes in such eligibility within 30 days. In addition, applications for construction permits, short-form auction applications, and other submissions will be required of those falling within any proposed competitive bidding procedures, as described in Section III of this analysis.

V. Significant Alternatives To Proposed Rule Which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives

59. This Notice contains no significant alternatives because amended section 309(j) requires that the Commission use competitive bidding procedures to award virtually all licenses, including construction permits for new commercial broadcast facilities, and this requirement applies to most pending broadcast applications, except for comparative licensing cases that involve applications for new full service radio and television stations filed before July 1, 1997. *See* ¶¶39–82. As to that narrow category of applications, *see* ¶¶23–28, in which the Commission has the authority to resolve mutually exclusivity by comparative hearings rather than by competitive bidding procedures, the Commission's discretion is nevertheless constrained by the court's decision in *Bechtel* v. *FCC,* 10 F.3d 875 (D.C. Cir. 1993), and the potential difficulty of devising judicially sustainable comparative criteria. Although the Notice tentatively concludes that, from a public interest standpoint competitive bidding procedures are preferable in these cases, *see* ¶¶ 13–20, it asks for comment on whether there are equitable reasons to decide these cases, or a subset of these cases, by comparative hearings. Moreover, we believe that the proposed competitive bidding procedures for all future, and, potentially, all pending, applications for construction permits to provide commercial broadcast service that are presently auctionable under the statute will have a minimal impact on small entities who apply for and obtain broadcast licenses. Also, to minimize any possible impact on small businesses, the Notice asks for comment on whether bidding credits or other special provisions are warranted for small businesses, including those owned by members of a minority group or women and for rural telephone companies. The Notice further concludes that, to the extent that it is permissible under applicable constitutional standards, the Commission should take steps to further its longstanding goal of increasing minority ownership of broadcast

stations and implementing the designated entity provisions of section 309(j)(4) of the Act.

VI. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

60. None.

Ordering Clauses

61. *Accordingly, It is Ordered, That Notice is Hereby Given of the proposed regulatory changes described above, and that Comment is Sought* on these proposals.

62. It Is Further Ordered, That pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, comments *Shall Be Filed* on or before January 26, 1998 and reply comments *Shall Be filed* on or before February 17, 1998. To file formally in this proceeding, commenters must file an original and four copies of all comments, reply comments, and supporting documents filed in this proceeding. If commenters want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Room 222, 1919 M Street, N.W., Washington, D.C. 20554. In addition, commenters should file copies of any such pleadings with the Mass Media Bureau, Video Services Division, Room 702, and Audio Services Division, Room 302, 1919 M St., N.W., Washington, D.C. 20554, and with the Office of General Counsel, Room 610, 1919 M St., N.W., Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M St., N.W., Washington, D.C. 20554.

63. It Is Further Ordered, That written comments by the public on the proposed and/or modified information collections are due January 26, 1998. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before February 10, 1998. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain—t@al.eop.gov.

64. It is Further Ordered, That, effective upon the close of business on the date of release of this Notice of Proposed Rulemaking, the Commission *Will Not Accept* applications for construction permits for new stations or for major changes to existing facilities in any commercial broadcast or secondary broadcast service. However, the Commission *Will Accept* applications timely filed in response to an outstanding cut-off list or an open filing window.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 97–32520 Filed 12–11–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 213

[Docket No. RST–90–1, Notice No. 7]

RIN 2130–AA75

Track Safety Standards; Miscellaneous Proposed Revisions

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking, request for additional comments.

SUMMARY: This notice contains information about a document entitled, ''Evaluation of Proposed High Speed Track Surface Geometry Specification'' which addresses proposed track safety standards for high speed rail and was submitted to FRA by the Volpe National Transportation Systems Center (VNTSC). The document was submitted after the close of the comment period for the Notice of Proposed Rulemaking to revise the Federal track safety standards, published July 3, 1997 at 62 FR 36138. Because the contents of the submission may affect the outcome of the final rule in this proceeding, this notice solicits comments on the document.

DATES: The deadline for submission of comments to the VNTSC document is December 22, 1997.

ADDRESSES: To view the VNTSC document: The VNTSC document for which FRA is soliciting comments may be reviewed in Room 7051 of FRA headquarters at 1120 Vermont Avenue, N.W., Washington, D.C.

Written comments: Written comments should identify the docket number and the notice number and should be submitted in triplicate to: Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Mail Stop 10, Washington, D.C. 20590. Persons desiring to be notified that their written comments have been received by FRA should include with their comments a stamped, self-addressed postcard. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination during regular business hours in Room 7051 of FRA headquarters at 1120 Vermont Avenue, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: David W. Jamieson, Office of Safety Enforcement, Federal Railroad Administration, 400 Seventh Street, S.W., Mail Stop 25, Washington, D.C. 20590 (telephone: 202–632–3341), or Nancy Lummen Lewis, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Mail Stop 10, Washington, D.C. 20590 (telephone: 202–632–3174).

SUPPLEMENTARY INFORMATION: This notice summarizes a working paper issued recently by the VNTSC entitled, ''Evaluation of Proposed High Speed Track Surface Geometry Specification,'' dated December 1, 1997. The working paper has been placed in the docket for this proceeding. The working paper evaluates the response of different high speed locomotive designs to track profile geometry variations. It focuses on a comparative analysis of high speed locomotive designs with carbody-mounted traction motors and locomotive designs with truck-mounted traction motors. The minimum amplitudes of track profile variations required to cause excessive vertical accelerations in the operator's cab and to cause suspension bottoming are compared with the maximum amplitudes prescribed in the proposed high speed track safety standards published in a Notice of Proposed Rulemaking on July 3, 1997. The analysis shows that a locomotive designed with truck-mounted traction motors requires an approximately 33 percent smaller track profile variation amplitude to cause excessive vertical accelerations than a locomotive designed with carbody-mounted traction motors.

The analysis contained in the VNTSC working paper may affect the outome of the final rule for this proceeding. Therefore, FRA invites comments relevant to the information included in the working paper.