

Number of Respondents: 50.
Estimated Time Per Response: 5 mins.
(50 responses/yr.).

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 250 hours.

Total Annual Cost: None.

Needs and Uses: The Commission established an ABIP that permits broadcast stations to arrange for a voluntary inspection of their facility by an entity, usually a state broadcast association, and to have the entity notify the Commission's local field office that the broadcast station has passed an inspection. The information collection requires such entities to file a statement with the FCC field office, in whose geographic area of responsibility the broadcast station is located, that the broadcast station has passed an ABIP inspection. The Commission will use the information collected to determine which broadcast stations are exempted from routine, random inspections by the local FCC field office during a two or three year period.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99-18762 Filed 7-22-99; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[DA 99-1346; Report No. AUC-99-25-A (Auction No. 25)]

Auction of AM, FM, TV, LPTV, and FM and TV Translator Construction Permits Scheduled for September 28, 1999; Minimum Opening Bids and Other Procedural Issues

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On July 9, 1999, the Mass Media Bureau ("MMB") and the Wireless Telecommunications Bureau ("WTB") (collectively, "Bureaus") released a Public Notice announcing the minimum opening bids and other auction procedures for the Closed Broadcast Auction of AM, FM, TV, LPTV, and FM and TV Translator Construction Permits.

DATES: The auction will begin on September 28, 1999.

ADDRESSES: See text of the Public Notice and related attachments for information regarding important addresses.

FOR FURTHER INFORMATION CONTACT: Wireless Telecommunications Bureau; Auctions and Industry Analysis

Division: Bob Allen, Legal Branch at (202) 418-0660; Jeff Garrettson, Auctions Operations Branch at (202) 418-0660 or Bob Reagle, Auctions Operations Branch at (717) 338-2807.

Mass Media Bureau: Shaun Maher, Video Services Division at (202) 418-2324; Lisa Scanlan, Audio Services Division at (202) 418-2700.

Media Contact: Meribeth McCarrick at (202) 418-0654.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice that was released on July 9, 1999. The complete text of this Public Notice is available in its entirety, including all Attachments, for inspection and copying during normal business hours in the Reference Information Center, Room CY A-257, 445 12th Street, S.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, fax (202) 857-3805, 1231 20th Street, N.W., Washington, D.C. 20036. It is also available on the Commission's website at <http://www.fcc.gov>.

Synopsis of the Public Notice

A. Introduction

1. This Public Notice announces the procedures and minimum opening bids for the upcoming Closed Broadcast Auction. On May 17, 1999 the Bureaus released a Public Notice (See "Closed Broadcast Auctions Scheduled for September 28, 1999; Comment Sought on Minimum Opening Bids and Other Auction Procedures," *Public Notice*, DA 99-940 (rel. May 17, 1999) ("Closed Broadcast Auction Public Notice"), 64 FR 29312 (June 1, 1999), seeking comment on the establishment of reserve prices or minimum opening bids for the auction of AM, FM, TV, LPTV, and FM and TV Translator Construction Permits (Auction No. 25), in accordance with the Balanced Budget Act of 1997. In addition, the Bureaus sought comment on a number of procedures to be used in Auction No. 25. The Bureaus received 39 comments and 7 reply comments in response to the *Closed Broadcast Auction Public Notice*.

2. Pursuant to the *Broadcast First Report and Order*, 63 FR 48615 (September 11, 1998), (See Implementation of Section 309(j) of the Communications Act—Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, *First Report and Order*, MM Docket No. 97-234, GC Docket No. 92-52 and GEN Docket No. 90-264, ("Broadcast First Report and Order") and *Memorandum Opinion and Order*, 64 FR 24523 (May 7, 1999),

("Memorandum Opinion and Order on Reconsideration"), participation in this auction is limited to those applicants identified in the *Closed Broadcast Auction Public Notice*.

3. Auction Date: The auction will begin on September 28, 1999. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding will be conducted each business day and will continue until bidding has stopped on all licenses.

4. Auction Title: Auction No. 25 (Closed Broadcast Auction).

5. Bidding Methodology: Simultaneous multiple round bidding. Bidding will be permitted only from remote locations, either electronically (by computer) or telephonically.

6. Pre-Auction Deadlines:

- Auction Seminar—August 3, 1999.
- Short Form Application (FCC Form 175)—August 20, 1999; 5:30 p.m. ET.
- Orders for Remote Bidding Software—August 20, 1999.
- Upfront Payments (via wire transfer)—September 13, 1999; 6:00 p.m. ET.
- Mock Auction—September 24, 1999.

7. Telephone Contacts:

- Auctions Hotline—(888) CALL-FCC ((888) 225-5322), press Option #2 or (717) 338-2888 (direct dial). (*For General Auction Information, and Seminar Registration. Hours of service: 8 a.m.-5:30 p.m. ET, Monday-Friday.*)
- FCC Technical Support Hotline—(202) 414-1250 (voice); (202) 414-1255 (text telephone (TTY)). (*Hours of service: 8 a.m.-6 p.m. ET, Monday-Friday.*)

8. List of Attachments:

- Attachment A—Summary of Construction Permits to be Auctioned, Upfront Payments, Minimum Opening Bids.
- Attachment B—Guidelines for Completion of FCC Forms 175 and Exhibits.
- Attachment C—Auction-Specific Instructions for FCC Remittance Advice FCC Form 159.
- Attachment D—Electronic Filing and Review of FCC Form 175.
- Attachment E—Accessing the FCC Network Using Windows 95/98.
- Attachment F—FCC Remote Bidding Software Order Form.
- Attachment G—Summary Listing of Documents from the Commission and the Wireless Telecommunications Bureau Addressing the Application of the Anti-Collusion Rules.
- Attachment H—Auction Seminar Registration Form.

9. Background: All spectrum to be auctioned is the subject of pending,

mutually exclusive applications for construction permits for the AM, FM, TV, LPTV, and FM and television translator services, for which the Commission has not approved a settlement agreement that obviates the need for an auction. This includes mutually exclusive applications for full service FM, AM and television stations that were subject to the comparative freeze, instituted after the decision of the U.S. Court of Appeals for the District of Columbia in *Bechtel v. FCC*. The auction will also include pending mutually exclusive applications for LPTV, FM translator and television translator, as well as certain mutually exclusive LPTV and television translator DTV displacement relief applications. Pursuant to the *Broadcast First Report and Order*, participation in the auction will be limited to those applicants identified in this Public Notice and applicants will be potentially eligible to bid on only those construction permits for which they filed an appropriate long-form application and the Bureaus will dismiss the previously-filed long-form application of any pending applicant failing to timely file a short-form application to participate in the Closed Broadcast Auction.

10. Due Diligence: Potential bidders are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the facilities on which they intend to bid.

11. The FCC makes no representation or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become a FCC permittee in these services, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC construction permit or license constitute a guarantee of business success.

12. Participation: Those wishing to participate in the auction must:

- Submit a short form application (FCC Form 175) by 5:30 p.m. Eastern Time, August 20, 1999.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. Eastern Time, September 13, 1999.
- Comply with all provisions outlined in this Public Notice and applicable rules of the Commission.

13. Prohibition of Collusion: To ensure the competitiveness of the auction process, the Commission's Rules prohibit mutually exclusive applicants within a group from

communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition becomes effective at the short form filing deadline and ends on the down payment due date. Bidders competing for the same construction permit(s) are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he/she is authorized to represent in the auction. Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or engineering consulting firm), a violation could similarly occur. At a minimum, in such a case, applicants should certify that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule. The Bureaus, however, caution that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted. However, applicants may enter into bidding agreements *before* filing their FCC Form 175 short-form applications, as long as they disclose the existence of the agreement(s) in their Form 175 short-form applications. By electronically submitting their FCC Form 175 short form applications, applicants are certifying their compliance with Sections 1.2105(c) and 73.5002. In addition, Section 1.65 of the Commission's Rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, Section 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders are therefore required to make such notification to the Commission immediately upon discovery.

14. Bidder Information Package: Given the closed nature of Auction No. 25 and the fact that the pool of potential bidders is limited to those that had previously filed long-form applications, no Bidder Information Package will be provided. All information necessary to participate in the Closed Broadcast

Auction is contained in this Public Notice, the *Closed Broadcast Auction Public Notice*, the *Broadcast First Report and Order*, the *Memorandum Opinion and Order on Reconsideration* and the Commission's rules. Applicants may access updated information about Auction No. 25 at the following address on WTB's web site:

<http://www.fcc.gov/wtb/auctions/auc25/auc25.html>

15. Future Releases: Further information regarding sequencing and length of bidding rounds and other procedural issues will be released in a future public notice.

16. Relevant Authority: Prospective bidders must familiarize themselves thoroughly with the Commission's Rules relating to broadcast auctions, contained in Title 47, Part 73 of the Code of Federal Regulations.

17. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions contained in this Public Notice, the *Closed Broadcast Auction Public Notice*, the *Broadcast First Report and Order*; the *Memorandum Opinion and Order on Reconsideration* and Part 1, Subpart Q of the Commission's Rules concerning Competitive Bidding Proceedings.

18. The terms contained in the Commission's Rules, relevant orders, public notices and bidder information package are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission Rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Internet node via anonymous ftp @ftp.fcc.gov or the FCC World Wide Web site at <http://www.fcc.gov/wtb/auctions>.

Additionally, documents may be obtained for a fee by calling the Commission's copy contractor, International Transcription Service, Inc. (ITS), at (202) 314-3070. When ordering documents from ITS, please provide the appropriate FCC number (e.g., FCC 98-194 for the *Broadcast First Report and Order*, 63 FR 48615 (September 11, 1998) and FCC 99-234 for the *Memorandum Opinion and Order for Reconsideration* 64 FR 24523 (May 7, 1999).

19. Bidder Alerts: All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically,

financially and otherwise qualified to hold a license, and not in default on any payment for Commission construction permits or licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency.

Applicants should be aware that by filing their FCC Form 175 applications, they are certifying that they have long-form applications on file and that there has been no change of control of their long-form applications that would render them ineligible to participate in the auction under 47 U.S.C. 309(1) or any applicable Commission rule. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

20. Although applicants have had an extensive opportunity to conduct due diligence due to the length of time ensuing since the filing of their long-form applications, the following reminder is provided: As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use the broadcast spectrum to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a "cold call" from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of the minimum investment is less than \$25,000.
- The sales representative makes verbal representations that: (a) the Internal Revenue Service ("IRS"), Federal Trade Commission ("FTC"), Securities and Exchange Commission ("SEC"), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

21. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326-2222 and from the SEC at (202) 942-7040. Complaints about specific

deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876-7060. Consumers who have concerns about specific proposals may also call the FCC National Call Center at (888) CALL-FCC ((888) 225-5322).

22. National Environmental Policy Act (NEPA) Requirements: Licensees must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a broadcast antenna facility is a federal action and licensees must comply with the Commission's NEPA rules for each such facility. See 47 CFR 1.1305-1.1319.

B. Eligibility For New Entrant Bidding Credit

23. For the Closed Broadcast Auction the Commission adopted the New Entrant Bidding Credit to promote and facilitate the diversification of ownership in the mass media. The bidder's attributable interests shall be determined as of the short form (FCC Form 175) filing deadline—August 20, 1999. Bidders intending to divest a media interest or make any other ownership changes, such as resignation of positional interests, in order to avoid attribution for purposes of qualifying for the New Entrant Bidding credit must have consummated such divestment transactions or have completed such ownership changes by no later than the short-form filing deadline—August 20, 1999.

24. *Determination of Eligibility for Bidding Credit.* The interests of the bidder, and of any individuals or entities with an attributable interest in the bidder in other media of mass communications shall be considered when determining a bidder's eligibility for the New Entrant bidding credit.

25. For purposes of determining which entities qualify for a New Entrant Bidding Credit, the following information should be considered: the interests of the bidder, and of individuals or entities with an attributable interest in the bidder, in other media of mass communications at the time of the short-form application filing deadline. These interests should be considered to the extent that they are considered attributable under the broadcast multiple ownership rules. Further, any bidder asserting new entrant status must have *de facto* as well as *de jure* control of the entity claiming the bidding credit.

26. Under traditional broadcast attribution rules, those entities or individuals with an attributable interest in a bidder include: all officers and

directors of a corporate bidder; any owner of 5% or more of the voting stock of a corporate bidder; all partners and limited partners of a partnership bidder, unless the limited partners are sufficiently insulated from exercising management and control of the partnership; and all members of a limited liability company, unless sufficiently insulated. In cases where a bidder is an individual and his or her spouse or other close family member holds interests in other media, such interests are not automatically attributable to the bidder, rather the Commission decides attribution issues in this context based on certain factors that it has traditionally considered to be relevant. Bidders are also reminded that, in the *Memorandum Opinion and Order on Reconsideration*, the Commission determined to consider, in a future order, whether to attribute the mass media interests of any individual or entity who holds a significant equity and/or debt interest in a broadcast auction bidder claiming New Entrant status, even if such an interest is nonvoting. Specifically, the *Memorandum Opinion and Order on Reconsideration* stated that this further order would consider the appropriateness of attributing the mass media interests held by substantial investors in a bidder claiming a credit as a New Entrant and the threshold at which a nonvoting equity and/or debit interest in a New Entrant should be attributable. While the Commission has not yet released its further order resolving these issues, it stated in the *Memorandum Opinion and Order on Reconsideration* that the further order would be released "expeditiously" and its release would not delay the commencement of broadcast service auctions. Therefore, bidders should be aware of these outstanding issues when considering their qualifications for the New Entrant bidding credit. The eligibility standards will be governed by the rule in effect on the short-form filing for the New Entrant bidding credit.

27. *Consortia and Joint Bidding Arrangements.* A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest, form a consortium with, or enter into a joint bidding arrangement with other applicants for construction permits in the same MX Group provided that: (1) the attributable interest holder certify that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, has

formed a consortium, or has entered into a joint bidding arrangement; and (2) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rule does not prohibit non-auction related business negotiations among auction applicants, bidders are reminded that certain discussion or exchanges could broach on impermissible subject matters because they may convey pricing information and bidding strategies. Such subject areas include, but are not limited to, issues such as management, sales, local marketing agreements, broadcast agreements and other transactional arrangements.

28. *Application Showing.* Applicants should note that they will be required to file supporting documentation as Exhibits A and C to their FCC Form 175 short form applications to establish that they satisfy the eligibility requirements to qualify for a New Entrant Bidding Credit. Ownership information must also be provided in the Closed Broadcast Auction in order for us to verify eligibility to participate in the auction. Specifically, for the Closed Broadcast Auction, applicants will be required to file (in Exhibit A to their FCC Form 175 short form applications) a full and complete statement of the ownership of the bidding entity, to include all attributable interest holders. If the information reflects that here has been a change of control, the related long-form application will be dismissed and the applicant will be ineligible to participate in the auction. The applicant must provide the ownership information for itself and its attributable interest-holders, as defined by Section 73.3555 and Note 2 of that section, including: all officers and directors of a corporate bidder; any owner of 5% or more of the voting stock of a corporate bidder; all partners and limited partners of a partnership bidder, unless the limited partners are sufficiently insulated from the management or operation of the partnership; and all members of a limited liability company, except those sufficiently insulated from its management or operation. Bidders must certify (in Exhibit A) compliance with the Commission's policies relating to media interests of immediate family members. In addition, in those cases where a New Entrant Bidding credit is being sought, a certification under penalty of perjury must be set forth in Exhibit C attesting to the eligibility of the bidder for the level of credit claimed. If the applicant is applying to bid as a consortium of applicants eligible for the New Entrant bidding credit, this information must be

provided for each consortium member. In cases where a joint bidding arrangement is contemplated, an Exhibit B must be filed. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(b)(2), may attach an exhibit (Exhibit D) regarding this status.

29. *Bidding Credits.* Applicants that qualify for the New Entrant Bidding Credit, as set forth in 47 CFR 73.5007, are eligible for a bidding credit that represents the amount by which a bidder's winning bids are discounted. The size of a New Entrant Bidding Credit depends on the number of ownership interests in other media of mass communications that are attributable to the bidder-entity and its attributable interest-holders:

- A 35 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has no attributable interest in any other media of mass communications, as defined in 47 CFR 73.5008 and
- A 25 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has no attributable interest in no more than three media of mass communications, as defined in 47 CFR 73.5008; and
- No bidding credit will be given if any of the commonly owned mass media facilities would serve the same area as the proposed broadcast or secondary broadcast station, as defined in 47 CFR 73.5007, or if the winning bidder, and/or any individual or entity with an attributable interest in the winning bidder, have attributable interests in more than three mass media facilities.

30. Attributable interests held by a winning bidder in existing low power television, television translator or FM translator facilities will not be counted among the bidders' other mass media facilities. Bidding credits are not cumulative: qualifying applicants receive either the 25 percent or the 35 percent bidding credit, but not both.

31. Closed Broadcast Auction bidders should note that unjust enrichment provisions apply to winning bidders that use bidding credits and subsequently assign or transfer control of their licenses to an entity not qualifying for the same level of bidding credit. Finally, Closed Broadcast Auction bidders should also note that there are no installment payment plans in the Closed Broadcast Auction.

C. Pre-Auction Procedures

32. *Short-Form Application (FCC Form 175)*—Due August 20, 1999, 5:30 p.m. ET. In order to be eligible to bid in this auction, applicants must first electronically submit an FCC Form 175 application. This application must be received at the Commission by 5:30 p.m. ET on August 20, 1999. Late applications will not be accepted.

33. There is no application fee required when filing an FCC Form 175. However, to purchase bidding eligibility, an applicant must submit an upfront payment. See Paragraph 40 below.

34. *Electronic Filing.* As of January 1, 1999, applications to participate in FCC auctions must be filed electronically, unless it is not operationally feasible. See 47 CFR 1.2105(a). Applicants will be permitted to file their FCC Form 175 applications in paper form only in the event the FCC experiences technical difficulties with its electronic systems. In such an event, the FCC will announce the procedure for submitting paper applications.

35. For Auction No. 25, applicants may file applications electronically beginning August 3, 1999. The system will generally be open for filing on a 24-hour basis. The Form 175 filing window will remain open until 5:30 p.m. ET on August 20, 1999. Applicants are strongly encouraged to file early, and applicants are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on August 20, 1999. Information about the electronic filing of the FCC Form 175 application is included in Attachment D. Technical support is available at (202) 414-1250 (voice) or (202) 414-1255 (text telephone (TTY)); the hours of service are 8 a.m.—6 p.m. ET, Monday—Friday.

36. *Completion of the FCC Form 175.* Applicants should carefully review 47 CFR 1.2105 and 73.5002 and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment B to the Public Notice. Applicants should not consider their form submitted to the FCC until they press the "Submit Form 175" button on the "Submit" page and receive confirmation from the filing system that the form has been received by the Commission.

37. *Electronic Review of FCC Form 175.* The FCC Form 175 review software may be used to review and print applicants' FCC Form 175 applications. Applicants may also view other applicants' completed FCC Form 175

after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. For this reason, it is important that applicants do not include their Taxpayer Identification Numbers (TINs) on any Exhibits to their FCC Form 175 applications. There are no fees for accessing this system or for submitting an FCC Form 175. See Attachment D of the Public Notice for details.

38. *Application Processing and Minor Corrections.* After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted short-form applications to determine which are acceptable for filing, and will subsequently issue a public notice identifying: (1) those short-form applications which are mutually exclusive and are acceptable for filing (including FCC file numbers and the construction permits for which they applied); (2) those applications rejected; and (3) those short-formed applications that have minor defects that may be corrected, and the deadline for filing such corrected applications.

39. As described more fully in the Commission's Rules, after the August 20, 1999, short form filing deadline, applicants may make only minor non-technical corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (e.g., change their construction permit selections or proposed service areas, change the certifying official, or change bidding credits). See 47 CFR 1.2105.

40. *Upfront Payments—Due September 13, 1999.* In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). Applicants may access an electronic version of the FCC Form 159 (August 1998 version) after completing the electronic FCC Form 175; however, the FCC Remittance Advice Form (FCC Form 159) is to be submitted by facsimile transmission to Mellon Bank in accordance with the instructions below. Earlier versions of this form will not be accepted. All upfront payments must be received at Mellon Bank in Pittsburgh, PA, by 6:00 p.m. ET on September 13, 1999.

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 25 go to a lockbox number different from the ones used in previous FCC auctions, and are different from the

lockbox number to be used for post-auction payments.

- Failure to deliver the upfront payment by the September 13, 1999 deadline will result in no bidding eligibility being accorded the applicant.

41. *Making Auction Payments by Wire Transfer.* Wire transfer payments must be received by 6:00 p.m. ET on September 13, 1999. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261
Receiving Bank: Mellon Pittsburgh
BNF: FCC/ 910-0171

OBI Field: (Skip one space between each information item)
"AUCTIONPAY"

TAXPAYER IDENTIFICATION NO.
(same as FCC Form 159, block 26)
PAYMENT TYPE CODE (enter "A25U")
FCC CODE 1 (same as FCC Form 159, block 23A: "25")
PAYER NAME (same as FCC Form 159, block 2)
LOCKBOX NO. #358430

Note: The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

42. Applicants must fax a completed FCC Form 159 to Mellon Bank at (412) 236-5702 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer—Auction Payment for Auction Event No. 25." Bidders may confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

43. *FCC Form 159.* Each upfront payment must be accompanied by a completed FCC Remittance Advice Form (FCC Form 159). Proper completion of FCC Form 159 is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment C to the Public Notice.

44. *Amount of Upfront Payment.* In the *Broadcast First Report and Order* the Commission delegated to the Bureaus the authority and discretion to determine an appropriate upfront payment for each construction permit being auctioned. In the *Closed Broadcast Auction Public Notice*, the Bureaus proposed certain upfront payments. We received comments from

a number of parties, including the National Translator Association ("NTA"). NTA states that any organization which is exempt from annual regulatory fees should be exempted from the requirement of filing upfront payments. However, Section 73.5003 of the Commission's rules requires that every bidder in every broadcast service shall submit an upfront payment prior to the commencement of bidding. Therefore, we shall not adopt NTA's suggestion and all bidders will be required to submit an upfront payment.

45. Applicants potentially eligible to participate in competitive bidding in more than one MX Group should note that upfront payments are not attributed to specific licenses, but instead will be translated to bidding units to define a bidder's maximum bidding eligibility. For Auction No. 25, the amount of the upfront payment will be translated into bidding units on a one-to-one basis, e.g., a \$25,000 upfront payment provides the bidder with 25,000 bidding units. The total upfront payment defines the maximum amount of bidding units on which the applicant will be permitted to bid (including standing high bids) in any single round of bidding. Thus, an applicant does not have to make an upfront payment to cover all construction permits which the applicant has selected on FCC Form 175, but rather to cover the maximum number of bidding units that are associated with construction permits on which the bidder wishes to place bids and hold high bids at any given time. Bidders are reminded that failure to submit an upfront payment of sufficient size to provide bidding eligibility for every MX Group in which an applicant has a pending long-form application will limit the bidding eligibility of that applicant.

46. In order to be able to place a bid on a construction permit, in addition to having specified that permit on the FCC Form 175, a bidder must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits applied for on the FCC Form 175, or else the applicant will not be eligible to participate in the auction.

47. In calculating the upfront payment amount, an applicant should determine the *maximum* number of bidding units it may wish to bid on in any single round, and submit an upfront payment covering that number of bidding units. Bidders should check their calculations carefully as there is no provision for

increasing a bidder's maximum eligibility after the upfront payment deadline.

48. An applicant potentially eligible to bid in more than one MX group may, on its FCC Form 175, indicate an intent to bid on every construction permit for which an underlying long-form has been filed, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment.

49. *Applicant's Wire Transfer Information for Purposes of Refunds.* Because experience with prior auctions has shown that in most cases wire transfers provide quicker and more efficient refunds than paper checks, the Commission will use wire transfers for all Auction No. 25 refunds. To avoid delays in processing refunds, applicants should include wire transfer instructions with any refund request they file; they may also provide this information in advance by faxing it to the FCC Billings and Collections Branch, ATTN: Linwood Jenkins or Geoffrey Idika, at (202) 418-2843. Please include the following information:

Name of Bank
ABA Number
Account Number to Credit
Correspondent Bank (if applicable)
ABA Number
Account Number
Contact and Phone Number

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.)

50. *Auction Registration.* Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for Auction No. 25. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and that have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the construction permits for which a long-form application was previously accepted.

51. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, each containing part of the confidential identification codes required to place bids. These mailings will be sent only to the contact person at the applicant address listed in the FCC Form 175.

52. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received

both mailings by noon on September 23, 1999 should contact the FCC National Call Center at (888) CALL-FCC ((888) 225-5322, press option 2 at the prompt). Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

53. Qualified bidders should note that lost login codes, passwords or bidder identification numbers can be replaced only by appearing in person at the FCC Auction Headquarters located at 445—12th Street, S.W., Washington, D.C. 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacement codes. Bidders needing replacement codes must call technical support at 202-414-1250 prior to arriving at the FCC.

54. *Remote Electronic Bidding Software.* Qualified bidders that file or amend the FCC Form 175 electronically are strongly encouraged to bid electronically. Due to the fact that each of the potential bidders has already paid substantial fees to the Commission in connection with the filing of their long-form applications, the software packages required to participate in remote electronic bidding will be provided on request at no charge to the bidders in the Closed Broadcast Auction. These software packages must be ordered by August 20, 1999. (Auction software is tailored to a specific auction, so software from prior auctions will not work for Auction No. 25.) A software order form is included in the Public Notice.

55. *Auction Seminar.* On August 3, 1999, the FCC will sponsor a free, informational seminar for the Closed Broadcast Auction at the Main Meeting Room on the first floor of the Headquarters Building of the Federal Communications Commission located at 445—12th Street, S.W., Washington, DC 20554. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC remote bidding software, and the Closed Broadcast Auction service and auction rules.

56. To register, refer to the registration materials form included as Attachment H with the Public Notice. Registrations are accepted on a first-come, first-served basis.

57. *Mock Auction.* All qualified bidders will be eligible to participate in a mock auction on September 24, 1999. The mock auction will enable applicants to become familiar with the

electronic software prior to the auction. Free demonstration software will be available for use in the mock auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

D. Auction Event

58. The first round of the auction will begin on September 28, 1999. The initial round schedule will be announced in a Public Notice listing the qualified bidders, to be released approximately 10 days before the start of the auction.

59. *Auction Structure—Simultaneous Multiple Round Auction.* In the *Closed Broadcast Auction Public Notice*, we proposed to award the construction permits in a single, simultaneous multiple round auction. On this proposal, Community Broadcasters Association ("CBA") filed comments, stating that auctions for LPTV displacement applications should be set up to run seriatim. CBA stresses the importance of the auction for displaced LPTV licensees and notes that this category of bidder consists of small operators who cannot afford the time or staff to stay on-line indefinitely. However, contrary to CBA's expressed concerns, bidders in the Closed Broadcast Auction are not compelled by our procedures to stay online indefinitely, or for extensive periods of time. Only a periodic presence will be required during each round of the auction: first to place a bid; then later to check round results.

60. The Bureau concludes that the construction permits in the Closed Broadcast Auction will be awarded through a single, simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all construction permits in each round of the auction. This approach allows for a more efficient auction process and, in cases where bidders are eligible to participate in multiple markets, allows them to take advantage of any synergies that exist among construction permits.

61. *Maximum Eligibility and Activity Rules.* In the *Closed Broadcast Auction Public Notice*, the Bureau proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder. We received comments from Fant Broadcasting Company ("Fant"). Fant believes that the 100% eligibility rule is too high for a multiple market bidder and will force such bidders to either exercise a waiver or to bid, producing artificially low bid amounts for markets with smaller bidding units. Fant suggests a 50% eligibility requirement in stage one of the auction.

62. We note that in the Closed Broadcast Auction, only a very small percentage of bidders are potentially eligible to bid on more than one market. For that reason, even if valid, we do not see the factors stated by Fant as having a significant impact on the conduct of the Closed Broadcast Auction. Further, no other commenter raises similar concerns and none of the reply comments express support for this position.

63. We adopt the maximum eligibility and activity rule proposal for the Closed Broadcast Auction. The amount of the upfront payment submitted by a bidder determines the initial maximum eligibility (in bidding units) for each bidder. Note again that upfront payments are not attributed to specific construction permits, but instead will be translated into bidding units to define a bidder's initial maximum eligibility. The total upfront payment defines the maximum number of bidding units on which the applicant will initially be permitted to bid.

64. To ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until the end before participating. Bidders are required to be active on 100 percent of their maximum eligibility during each round of the auction.

65. A bidder is considered active on a construction permit in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits an acceptable bid in the current round. A bidder's activity level in a round is the sum of the bidding units associated with construction permits on which the bidder is active. Required minimum activity levels ensure that an auction will proceed expeditiously and efficiently. Because such procedures have proven successful in maintaining the pace of previous auctions, we adopt them for the Closed Broadcast Auction.

66. *Activity Rule Waivers, Reducing Eligibility and Stopping Rules.* In the *Closed Broadcast Auction Public Notice*, we proposed that each bidder in the auction would be provided five activity rule waivers that may be used in any round during the course of the auction. We also proposed to employ a simultaneous stopping rule in Auction No. 25, meaning that all construction permits would remain open until the first round in which no new acceptable bids, proactive waivers or withdrawals were received. Finally, we proposed a special stopping rule, meaning that the Bureaus would accept bids in the final

round(s) only for construction permits on which the high bid increased in at least one of the preceding specified number of rounds. We received numerous comments on our activity rule, eligibility reduction and stopping rule proposals.

67. Based upon our experience in previous auctions, the Bureau adopts its proposal and each bidder will be provided five activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit.

68. The FCC auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any round where a bidder's activity level is below the minimum required unless: (1) there are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

69. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the reduce eligibility function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

70. A bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open.

71. Bidding will remain open on all construction permits until bidding stops on every construction permit. Thus, the auction will close for all construction permits when one round passes during which no bidder submits a new acceptable bid on any construction permit, applies a proactive waiver, or

withdraws a previous high bid. The Bureaus retain the discretion to close the auction for all construction permits after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing highest bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the standing high bidder would not keep the auction open under this modified stopping rule.

72. The Bureaus retain the discretion to keep an auction open even if no new acceptable bids or proactive waivers are submitted, and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use an activity rule waiver (if it has any left).

73. The Bureaus reserve the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the FCC invokes this special stopping rule, it will accept bids in the final round(s) only for construction permits on which the high bid increased in at least one of the preceding specified number of rounds. The FCC intends to exercise this option only in extreme circumstances, such as where the auction is proceeding very slowly, where there is minimal overall bidding activity, or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the FCC is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day.

74. *Auction Delay, Suspension, or Cancellation.* In the *Closed Broadcast Auction Public Notice*, the Bureau proposed that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. The Commission received no comments on this proposal.

75. Because this approach has proven effective in resolving exigent circumstances in previous auctions, the Bureau will adopt its proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureau may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach,

unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to: resume the auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of this authority is solely within the discretion of the Bureaus, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

76. *Bidding Procedures—Round Structure.* The initial bidding schedule will be announced by public notice at least one week before the start of the auction, and will be included in the registration mailings. The round structure for each bidding round contains a single bidding round followed by the release of the round results.

77. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The FCC may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

78. *Reserve Price or Minimum Opening Bid.* In the *Closed Broadcast Auction Public Notice*, the Bureaus proposed to establish minimum opening bids and to retain discretion to lower the minimum opening bids. In the alternative, the Bureaus sought comment on whether, consistent with the Budget Act, the public interest would be served by having no minimum opening bid or reserve price. Numerous comments addressed the issue of minimum opening bids and reserve prices.

79. Except as disclosed below, the Bureaus will adopt the minimum opening bids proposed for each of the construction permits in the Closed Broadcast Auction and which are reducible at the discretion of the Bureaus, if circumstances warrant. This discretion will be exercised sparingly and early in the auction, i.e. before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureaus will not entertain any bidder requests to reduce the minimum opening bid on specific construction permits.

80. A number of commenters submitted comments requesting that certain minimum opening bids be lowered for specific primary service television markets, due to disproportionate differences in the sizes of the markets, the number of households in the proposed markets and the average price of stations in the market. We find merit in these commenters suggesting that minimum opening bids be lowered due to differences in the size of the markets and the revisions are contained in Attachment A of the Public Notice.

81. *Minimum Accepted Bids and Bid Increments.* In the *Closed Broadcast Auction Public Notice*, the Bureaus proposed a minimum bid increment of 10 percent. Biltmore Forest submitted comments stating that 10 percent bidding increments are too high to maintain in the later stages of an auction. However, our past experience has shown us that a 10 percent bid increment is not excessive and will not significantly affect the amounts of prospective bids or the rate at which bidding occurs. Furthermore, we do have discretion to lower the bid increment during the progress of an auction, if we deem that circumstances so dictate.

82. The Bureaus adopt the proposal contained in the *Closed Broadcast Auction Public Notice*. The Bureau retains the discretion to change the minimum bid increment if it determines that circumstances so dictate, such as raising the minimum bid increment toward the end of the auction to speed the pace at which bids reach their final values. The Bureaus will do so by announcement in the Automated Auction System. Under its discretion, the Bureau may also implement an absolute dollar floor for the bid increment to further facilitate a timely close of the auction.

83. Once there is a standing high bid on a construction permit, there will be a bid increment associated with that bid indicating the minimum amount by which the bid on that license can be raised. For the Closed Broadcast Auction, we will use a flat, across-the-board increment of 10 percent to calculate minimum bid increments and retain the discretion to compute the minimum bid increment through other methodologies if circumstances so dictate.

84. Please note that all bidding will take place either through the automated bidding software or by telephonic bidding. (Telephonic bid assistants are required to use a script when handling bids placed by telephone. Telephonic bidders are therefore reminded to allow

sufficient time to bid, by placing their calls well in advance of the close of a round, because four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 25.

85. A bidder's ability to bid on specific construction permits in the first round of the auction is determined by two factors: (1) the construction permits applied for on FCC Form 175; and (2) the upfront payment amount deposited. The bid submission screens will be tailored for each bidder to include only those licenses for which the bidder applied on its FCC Form 175.

86. The bidding software requires each bidder to login to the FCC auction system during the bidding round using the FCC account number, bidder identification number, and the confidential security codes provided in the registration materials.

87. The bid entry screen of the Automated Auction System software for the Closed Broadcast Auction allows bidders to place multiple increment bids which will let bidders increase high bids from one to nine bid increments. A single bid increment is defined as the difference between the standing high bid and the minimum acceptable bid for a construction permit.

88. *Bid Removal and Bid Withdrawal—Procedures.* Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bid" function in the software, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed. This procedure will enhance bidder flexibility and serve to expedite the course of the auction. Therefore, the Bureaus will adopt these procedures for the Closed Broadcast Auction.

89. Once a round closes, a bidder may no longer remove a bid. However, in the next round, a bidder may withdraw standing high bids from previous rounds using the "withdraw bid" function (assuming that the bidder has not exhausted its withdrawal allowance). A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g) and 1.2109.

90. In previous auctions, the Bureaus have detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While the Bureaus continue to recognize the important

role that bid withdrawals play in an auction, *i.e.*, reducing risk associated with efforts to secure various construction permits or licenses in combination, the Bureaus concludes that, for the Closed Broadcast Auction, adoption of a limit on their use to two rounds is the most appropriate outcome. By doing so the Bureaus believe they strike a reasonable compromise that will allow bidders to use withdrawals. Our decision on this issue is based upon our experience in prior auctions, particularly the PCS D, E and F block auction, 800 MHz SMR auction, and LMDS auction, and is in no way a reflection of our view regarding the likelihood of any speculation or "gaming" in this Closed Broadcast Auction.

91. The Bureaus will therefore limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals will still be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g), and 1.2109. Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market.

92. If a high bid is withdrawn, the construction permit will be offered in the next round at the second highest bid price, which may be less than, or equal to, in the case of tie bids, the amount of the withdrawn bid, without any bid increment. The FCC will serve as a "place holder" on the construction permit until a new acceptable bid is submitted on that permit.

93. *Calculation.* Generally, a bidder that withdraws a standing high bid during the course of an auction will be subject to a payment equal to the lower of: (1) the difference between the net withdrawn bid and the subsequent net winning bid; or (2) the difference between the gross withdrawn bid and the subsequent gross winning bid for that construction permit. In the case of multiple withdrawals on a construction permit, the payment for the final withdrawer will be computed as above. The payment for all other withdrawers will be computed as the lower of: (1) either the difference between the net withdrawn bid and the highest of the subsequent net winning bids or the difference between the net withdrawn bid and the subsequent net winning bid, whichever is less; or (2) either the difference between the gross withdrawn bid and the highest of the subsequent gross withdrawn bids or the difference between the gross withdrawn bid and

the subsequent gross winning bid, whichever is less. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent gross or net winning bid or if any of the subsequent gross or net withdrawn bids exceed the gross or net amount of the withdrawn bid. In the event that a construction permit for which there have been withdrawn bids is not won in that auction, then those bidders with outstanding withdrawals will have 3 percent of their withdrawn bid withheld until such time as the construction permit can be reauctioned and a final payment assigned.

94. *Round Results.* The bids placed during a round are not published until the conclusion of that bidding period. After a round closes, the FCC will compile reports of all bids placed, bids withdrawn, current high bids, new minimum accepted bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access.

95. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 25 will be available before and during the auction. Thus, bidders will know in advance the identities of the bidders against which they are bidding.

96. *Auction Announcements.* The FCC will use auction announcements to announce items such as schedule changes and round sequences and length. All FCC auction announcements will be available on the FCC remote electronic bidding system, as well as the Internet and the FCC Bulletin Board System.

97. *Other Matters—Deletions and Corrections.* Commenters Association of American Public Television Stations (APTS) and Rocky Mountain Public Broadcasting Network, Inc. (Rocky Mountain) request that so-called "noncommercial educational" applicants for secondary television facilities not be included in the auction. We decline the requests of APTS and Rocky Mountain and disagree that they are exempt from auction. In this case, applicants in the secondary television services are not eligible to be licensed as noncommercial educational, a key element in the Communications Act, Section 309(j)(2)(c) statutory exemption. Accordingly, the Commission must subject these applications to auction.

98. *Pre-auction Procedures for Pending Applications.* Several commenters urge the Commission to remove their particular MX Group from the September 28, 1999 Closed Broadcast Auction, alleging that their only competitor within the group is unacceptable and should be dismissed.

In the *First Report and Order*, the Commission decisively rejected this argument and unequivocally stated that it would "not consider petitions to deny already filed, or accept additional petitions against pending applications, nor consider any questions raised in such petitions relating to the tenderability or acceptability of the pending long form applications." Rather, petitions to deny will be entertained only with respect to the auction winning bidder. The Commission concluded that the interests of the group of pending applicants is best served by this approach and, to do otherwise would significantly delay the commencement of competitive bidding and ultimate service to the public. Accordingly, we reject commenters' requests to examine issue pleadings at this time.

99. *Conflict Removal.* One applicant for an MX FM translator facility contends that there is no need for an auction because alternative frequencies exist and either one of the competing applicants could amend to specify a different frequency and remove the conflict. The applicant argues that the Commission's failure to open a filing window, however, precludes the filing of such amendment and forces the parties into an unnecessary auction. The applicant's assessment of its settlement options is misguided. As explicitly stated in the *First Report and Order*, pending secondary service applicants may still avoid an auction through a settlement agreement that complies with all Commission regulations, including the resolution of mutual exclusivity through various engineering means.

100. *Minor Modifications to FCC Form 175 Applications.* After the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. Filers should make these changes on-line, submit a letter to Amy Zoslov, Chief Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Suite 4-A760 Washington, DC 20554, briefly summarizing the changes. Questions about other changes should be directed to Bob Allen of the FCC Auctions and Industry Analysis Division at (202) 418-0660.

101. *Maintaining Currency of Information in FCC Form 175 Applications.* Applicants have an obligation under Section 1.65 of the Commission's Rules, 47 CFR 1.65, to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible decisional significance in information

contained in FCC Form 175 applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

E. Post-Auction Procedures

102. *Down Payments and Withdrawn Bid Payments.* After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bids and bidders for each construction permit and listing withdrawn bid payments due.

103. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any applicable bidding credits). See 47 CFR 1.2107(b). In addition, by the same deadline, all bidders must pay any withdrawn bid amounts due under 47 CFR 1.2104(g). (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

104. *Default and Disqualification.* Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the construction permit to the next highest bidder (in descending order) at their final bids. See 47 CFR 1.2109(b) and (c). In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing construction permits or licenses held by the applicant. See 47 CFR 1.2109(d).

105. *Refund of Remaining Upfront Payment Balance.* All applicants that submitted upfront payments but were not winning bidders for a Closed Broadcast Auction construction permit may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that

applicant after any applicable bid withdrawal payments have been paid.

106. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. However, bidders that reduce their eligibility and remain in the auction are not eligible for partial refunds of upfront payments until the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request which includes wire transfer instructions, a Taxpayer Identification Number ("TIN"), and a copy of their bidding eligibility screen print, to: Federal Communications Commission, Billings and Collections Branch, Attn: Regina Dorsey or Linwood Jenkins, 445 12th Street, S.W., Room 1-A824, Washington, D.C. 20554.

107. Bidders can also fax their request to the Billings and Collections Branch at (202) 418-2843. Once the request has been approved, a refund will be sent to the address provided on the FCC Form 159. Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Linwood Jenkins or Geoffrey Idika at (202) 418-1995.

Federal Communications Commission.

Mark R. Bollinger,

Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.

[FR Doc. 99-18834 Filed 7-22-99; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, July 27, 1999, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda. Disposition of minutes previous Board of Directors' meetings. Summary reports, status reports, and reports of actions taken pursuant to

authority delegated by the Board of Directors.

Memorandum and resolution re: Revision to Memorandum of Understanding Between the Federal Deposit Insurance Corporation and the Financing Corporation regarding the Collection of Assessments. Memorandum and resolution re: Repayment of Resolution Trust Corporation Appropriations.

Discussion Agenda

Memorandum and resolution re: Amendment to Part 361—Minority and Women Outreach Program—Contracting and Withdrawal of Proposed Rule entitled "Formal Minority—and Women-Owned Business and Law Firm Certification Program."

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416-2449 (Voice); (202) 416-2004 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. James D. LaPierre, Deputy Executive Secretary of the Corporation, at (202) 898-6757.

Dated: July 20, 1999.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 99-18937 Filed 7-21-99; 10:40 am]

BILLING CODE 6714-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1279-DR]

North Dakota; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Dakota, (FEMA-1279-DR), dated June 8, 1999, and related determinations.

EFFECTIVE DATE: July 6, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of North