

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-8248-7]

**Proposed Agreement and Covenant Not To Sue for the Portland Harbor Superfund Site, Triangle Park Removal Area, and the McCormick & Baxter, Inc. Superfund Site, Portland, Multnomah County, OR****AGENCY:** Environmental Protection Agency.**ACTION:** Notice of proposed agreement; request for public comment.

**SUMMARY:** In accordance with the Comprehensive Environmental Response Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.* ("CERCLA"), notice is hereby given of the proposed Agreement between the U.S. Environmental Protection Agency ("EPA") and the University of Portland ("University"), subject to the final review and approval of the EPA and the U.S. Department of Justice. The proposed Agreement relates to the University's plan to expand its campus by purchasing two adjacent properties, one currently owned by Triangle Park LLC at 5828 N. Van Houten Place, Portland, and the other currently owned by McCormick & Baxter, Inc. at 6900 Edgewater, Portland (the "Properties"). The Properties are contiguous with the Willamette River. The University is certifying that it did not cause or contribute to the contamination at either the Portland Harbor or McCormick & Baxter Sites. The Agreement provides for the University to spend \$3 million conducting a non-time critical removal action on the Triangle Park property. The University seeks to continue to pursue and expand its educational and service mission by relocating certain athletic facilities, freeing up its existing land for construction of academic buildings. The University's plan includes public access to the Properties, and recreational opportunities, including a planned riverfront trail. In addition to conducting the \$3 million removal action, the University will pay EPA's costs of overseeing that removal action. In exchange for this consideration, the proposed Agreement contains the United States' conditional covenant not to sue the University for existing contamination at the Sites. The covenant is subject to certain reservations set forth in the Agreement. In addition, the proposed Agreement provides protection from third-party law suits for contribution. In order for the University to purchase the Triangle Park property by the closing date in the agreement for the purchase of that

property (December 31, 2006), EPA is allowing just over fifteen (15) days for public comment on the Agreement.

**DATES:** Comments must be submitted by December 18, 2006. EPA and the Department of Justice will consider all comments received and may modify or withdraw the Agreement if comments received or any other information indicates that such action is appropriate.

**ADDRESSES:** The proposed agreement is available for public inspection at the U.S. Environmental Protection Agency, Region 10 Office located at 1200 Sixth Avenue, in Seattle, Washington 98101. A copy of the proposed Agreement may be obtained from Carol Kennedy, Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Mail Code ORC-158 Seattle, Washington 98101; (206) 553-0242. Comments should refer to the Portland Harbor Superfund Site, Triangle Park Removal Area, & McCormick & Baxter Superfund Site, Portland, Oregon, and should be addressed to Jennifer G. MacDonald, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Mail Code ORC-158 Seattle, Washington 98101; fax: (206) 553-0163; e-mail: [MacDonald.Jennifer@epa.gov](mailto:MacDonald.Jennifer@epa.gov).

**FOR FURTHER INFORMATION CONTACT:** Jennifer G. MacDonald, Assistant Regional Counsel, U.S. Environmental Protection Agency-Region 10, Mail Code ORC-158, 1200 Sixth Avenue, Seattle, Washington 98101; phone: (206) 553-8311.

Dated: November 20, 2006.

**Elin D. Miller,**

*Regional Administrator, U.S. Environmental Protection Agency, Region 10.*

[FR Doc. E6-19989 Filed 11-24-06; 8:45 am]

**BILLING CODE 6560-50-P**

**EXPORT-IMPORT BANK OF THE UNITED STATES****Sunshine Act Meeting**

**ACTION:** Notice of an Open Meeting of the Board of Directors of the Export-Import Bank of the United States.

**TIME AND PLACE:** Thursday, November 30, 2006 at 9:30 a.m. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

**OPEN AGENDA ITEM:** PEFCO Standard Operating Procedures.

**PUBLIC PARTICIPATION:** The portion of the meeting, which relates to the above item, will be open to public

participation. Attendees who are not employees of the Executive Branch will be required to sign in prior to the meeting.

**FURTHER INFORMATION:** For further information, contact: Office of the Secretary, 811 Vermont Avenue, NW., Washington, DC 20571 (Telephone No. 202-565-3957).

**Howard A. Schweitzer,**

*General Counsel (Acting).*

[FR Doc. 06-9424 Filed 11-22-06; 11:42 am]

**BILLING CODE 6690-01-M**

**FEDERAL COMMUNICATIONS COMMISSION**

[AU Docket No. 06-170; Report No. AUC-06-70-B (Auction No. 70); DA 06-2248]

**Auction of FM Broadcast Construction Permits Scheduled for March 7, 2007; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 70**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the procedures and minimum opening bids for the upcoming auction of certain FM broadcast construction permits. This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for this auction.

**DATES:** Applications to participate in FM Auction No. 70 must be filed before 6 p.m. on December 19, 2006. Bidding for Auction No. 70 is scheduled to begin on March 7, 2007.

**FOR FURTHER INFORMATION CONTACT:** Wireless Telecommunications Bureau, Auctions Spectrum and Access Division: For legal questions: Lynne Milne at (202) 418-0660. For general auction questions: Jeff Crooks at (202) 418-0660 or Linda Sanderson at (717) 338-2868. Media Bureau, Audio Division: For service rule questions: Lisa Scanlan or Thomas Nessinger at (202) 418-0660. To request materials in accessible formats (Braille, large print, electronic files, audio format) for people with disabilities, send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction No. 70 Procedures Public Notice* released on November 2, 2006. The complete text of

the *Auction No. 70 Procedures Public Notice*, including attachments, as well as related Commission documents are available for public inspection and copying from 8 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8 a.m. to 11:30 a.m. on Friday at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The *Auction No. 70 Procedures Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone 202-488-5300, facsimile 202-488-5563, or Web site: <http://www.BCPIWEB.com>. When ordering documents from BCPI, please provide the appropriate FCC document number, for example, DA 06-2248 for the *Auction No. 70 Procedures Public Notice*. The *Auction No. 70 Procedures Public Notice* and related documents are also available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/70/>.

## I. General Information

### A. Introduction

1. The Media and Wireless Telecommunications Bureaus (collectively the Bureaus) announce the procedures and minimum opening bid amounts for the upcoming auction of certain FM broadcast construction permits scheduled to begin on March 7, 2007 (Auction No. 70). On September 21, 2006, the Bureaus released a public notice seeking comment on reserve prices or minimum opening bid amounts and the procedures to be used in Auction No. 70. Interested parties submitted seven comments and one reply comment in response to the *Auction No. 70 Comment Public Notice*, 71 FR 56977, September 28, 2006.

#### i. Construction Permits To Be Auctioned

2. Auction No. 70 will offer 121 construction permits in the FM broadcast service as listed in Attachment A of the *Auction No. 70 Procedures Public Notice*. The construction permits to be auctioned are 121 new FM allotments. These construction permits are for vacant FM allotments, reflecting FM channels assigned to the FM Table of Allotments, pursuant to the Commission's established rulemaking procedures, and are designated for use in the indicated communities.

3. Pursuant to the policies established in the *Broadcast Competitive Bidding First Report and Order*, 63 FR 48615,

September 11, 1998, applicants may apply for any vacant FM allotment listed in Attachment A of the *Auction No. 70 Procedures Public Notice*. When two or more short-form applications (FCC Form 175) specifying the same FM allotment are accepted for filing, mutual exclusivity (MX) exists for auction purposes, and thus, that construction permit for the FM allotment will be awarded by competitive bidding procedures. Once mutual exclusivity exists for auction purposes, even if only one applicant for a particular construction permit submits an upfront payment, that applicant is required to submit a bid in order to obtain the construction permit. Any applicant that submits a short-form application that is accepted for filing but fails to timely submit an upfront payment will retain its status as an applicant in Auction No. 70 and will remain subject to the Commission's anti-collusion rules, but will not be eligible to bid, having purchased no bidding eligibility.

### B. Rules and Disclaimers

#### i. Relevant Authority

4. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules, including recent amendments and clarifications, as well as Commission decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees. Broadcasters should also familiarize themselves with the Commission's rules relating to the FM broadcast service contained in 47 CFR 73.201-73.333 and 73.1001-73.5009. Prospective bidders must also be familiar with the rules relating to broadcast auctions and competitive bidding proceedings contained in 47 CFR 1.2001-1.2112 and 73.5000-73.5009. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions contained in this public notice, the *Auction No. 70 Comment Public Notice*, the *Broadcast Competitive Bidding First Report and Order*, the *Broadcast Competitive Bidding First Reconsideration Order* 64 FR 24523, May 7, 1999, and the *New Entrant Bidding Credit Reconsideration Order*, 64 FR 44856, August 18, 1999, and the *NCE Second Report and Order*, 68 FR 26220, May 15, 2003.

5. The procedures, terms and conditions contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained

in its public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction.

#### ii. Prohibition of Collusion; Compliance with Antitrust Laws

6. To ensure the competitiveness of the auction process, 47 CFR 1.2105(c) prohibits applicants competing for construction permits in any of the same geographic license areas from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications (FCC Forms 175) as parties with whom they have entered into agreements pursuant to § 1.2105(a)(2)(viii). Thus, unless they have identified each other on their short-form applications as parties with whom they have entered into agreements under § 1.2105(a)(2)(viii), applicants for construction permits in any of the same geographic license areas must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy. In some instances, this prohibition extends to communications regarding the post-auction market structure. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.

7. The geographic license area is the market designation of the particular service. For the FM service, the market designation is the particular vacant FM allotment (e.g., New Hope, Alabama, Channel 278A, Market FM502-A). In Auction No. 70, for example, the rule would apply to applicants designating on the short-form application any of the same FM allotments. Therefore, applicants that apply to bid for an FM construction permit for the same allotment would be precluded from engaging in prohibited communications during the period from the short-form application deadline until the down payment deadline following the close of the auction. In addition, even if auction applicants each designate on its application only one common FM allotment, they may not discuss with each other their bids or bidding strategies relating to any FM allotment that either designates on its short-form application.

8. For purposes of this prohibition, § 1.2105(c)(7)(i) defines applicant as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application.

9. Applicants for construction permits for any of the same allotments must not communicate directly or indirectly about bids or bidding strategy. Accordingly, such applicants 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 such applicants. Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or engineering firm or consulting firm), a violation similarly could occur. In such a case, at a minimum, applicants should certify on their applications 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. A violation of the anti-collusion rule could occur in other contexts, such as an individual serving as an officer for two or more applicants. Moreover, the Commission has found a violation of the anti-collusion rule where a bidder used the Commission's bidding system to disclose its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets, and has placed auction participants on notice that the use of its bidding system to disclose market information to competitors will not be tolerated and will subject bidders to sanctions. Bidders are cautioned that the Commission remains vigilant about prohibited communications taking place in other situations. For example, the Commission has warned that prohibited communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly. Bidders should use caution in their dealings with other individuals, such as

members of the press, financial analysts, or others who might become a conduit for the communication of prohibited bidding information.

10. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form application. If parties agree in principle on all material terms prior to the short-form filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under § 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the short-form filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiations, discussions or communications with any other applicants after the short-form filing deadline.

11. By electronically submitting its short-form application, each applicant certifies its compliance with 47 CFR 1.2105(c) and 73.7002. However, the Bureau cautions 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. The Commission has stated that it intends to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring. Any applicant found to have violated the anti-collusion rule may be subject to sanctions.

12. Applicants are also reminded that, regardless of compliance with the Commission's rules, they remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. Compliance with the disclosure requirements of the Commission's anti-collusion rule will not insulate a party from enforcement of the antitrust laws. For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submits a short form application. The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws: for example, actual or potential competitors may not agree to divide territories horizontally in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another for the other. Similarly, the Bureau has long reminded potential applicants

and others that even where the applicant discloses parties with whom it has reached an agreement on the short-form application, thereby permitting discussions with those parties, the applicant is nevertheless subject to existing antitrust laws. To the extent the Commission becomes aware of specific allegations that may give rise to violations of the federal antitrust laws, the Commission may refer such allegations to the United States Department of Justice for investigation. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.

13. As required by 47 CFR 1.65, an applicant must maintain the accuracy and completeness of information furnished in its pending application and must notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, § 1.65 requires an auction applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. Applicants are therefore required by § 1.65 to report to the Commission any communications they have made to or received from another applicant after the short-form filing deadline that affect or have the potential to affect bids or bidding strategy unless such communications are made to or received from parties to agreements identified under § 1.2105(a)(2)(viii). In addition, § 1.2105(c)(6) requires that any applicant that makes or receives a communication prohibited by § 1.2105(c) must report such communication to the Commission in writing immediately, and in no case later than five business days after the communication occurs.

14. As required by 47 CFR 1.1207, applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in any bidding consortia, joint venture, partnership, or agreement or other arrangement entered into relating to the competitive bidding process.

15. A summary listing of documents issued by the Commission and the Bureau addressing the application of the anti-collusion rule may be found in Attachment E of the *Auction No. 70 Procedures Public Notice*. These documents are available on the

Commission's auction anti-collusion web page.

iii. Due Diligence

16. Potential applicants are reminded that they are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the broadcast facilities in this auction. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC permittee in the broadcast service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

17. In particular, potential applicants are strongly encouraged to review all underlying Commission orders, such as the specific report and order amending the FM Table of Allotments and allotting the FM channel(s) on which they plan to bid. Orders adopted in FM allotment rulemaking proceedings often include anomalies, such as, site restrictions or expense reimbursement requirements. Bidders are also responsible for reviewing all pending rulemaking petitions and open proceedings that might affect the FM allotment(s) on which they plan to bid in order to make reasoned, appropriate decisions about their participation in Auction No. 70 and their bidding strategy. Additionally, potential bidders should perform technical analyses sufficient to assure themselves that, should they prevail in competitive bidding for a given FM allotment, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements.

18. Potential applicants are also strongly encouraged to conduct their own research prior to the beginning of bidding in Auction No. 70 in order to determine the existence of any pending administrative or judicial proceedings that might affect their decision to participate in the auction. Participants in Auction No. 70 are strongly encouraged to continue such research throughout the auction.

19. Applicants should also be aware that certain pending and future proceedings, including applications (including those for modification),

petitions for rulemaking, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal objections, and applications for review, before the Commission may relate to particular applicants or incumbent permittees, or incumbent licensees, or the construction permits available in Auction No. 70. In addition, pending and future judicial proceedings may relate to particular applicants or incumbent permittees, or incumbent licensees, or the construction permits available in Auction No. 70. Prospective applicants are responsible for assessing the likelihood of the various possible outcomes, and considering their potential impact on construction permits available in this auction.

20. Applicants should perform due diligence to identify and consider all proceedings that may affect the construction permits being auctioned and that could have an impact on the availability of spectrum for Auction No. 70. In addition, although the Commission may continue to act on various pending applications, informal objections, petitions, and other requests for Commission relief, some of these matters may not be resolved by the beginning of bidding in the auction.

21. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the construction permits available in Auction No. 70. Potential applicants are strongly encouraged to physically inspect any prospective sites located in, or near, the service area for which they plan to bid, and also to familiarize themselves with the environmental review obligations.

22. Applicants may research the licensing database for the Media Bureau on the Internet in order to determine which channels are already licensed to incumbent licensees or previously-authorized to construction permittees. Licensing records for the Media Bureau are contained in the Media Bureau's Consolidated Data Base System (CDBS) and may be researched on the Internet at <http://www.fcc.gov/mb>.

23. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, applicants may obtain or verify such information from independent sources or assume the risk of any

incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

24. A commenter lists eleven conflicted channels that it contended that certain permits must be removed from the auction. Upon further review, three permits were removed from the auction, specifically FM-619-C3, Crandon, Wisconsin, FM-527-A, Channel 247A, Lake City, Colorado, and FM-299-A, Diamond Lake, Oregon.

iv. Use of Integrated Spectrum Auction System

25. The Commission will make available a browser-based bidding system to allow bidders to participate in Auction No. 70 over the Internet using the Commission's Integrated Spectrum Auction System (ISAS or FCC Auction System). The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning or use of the FCC Auction System that is accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming or other advice or service provided in connection with the FCC Auction System.

v. Bidder Alerts

26. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 70 to deceive and defraud unsuspecting investors. Information about deceptive telemarketing investment schemes is available from the Commission, as well as the Federal Trade Commission (FTC) and the Securities and Exchange Commission (SEC).

vi. Environmental Review Requirements

27. Permittees or licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act (NEPA) and other federal environmental statutes. The construction of a broadcast facility is a federal action and the permittee or licensee must comply with the Commission's environmental rules for each such facility. The Commission's

environmental rules require, among other things, that the permittee or licensee consult with expert agencies having environmental responsibilities, including the U.S. Fish and Wildlife Service, the relevant State Historic Preservation Office, the Army Corps of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). In assessing the effect of facilities construction on historic properties, the permittee or licensee must follow the provisions of the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process. The permittee or licensee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas,

wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The permittee or licensee also must prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

#### C. Auction Specifics

##### i. Auction Date

28. Bidding in Auction No. 70 will begin on Wednesday, March 7, 2007. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction.

29. Unless otherwise announced, bidding on construction permits will be

conducted on each business day until bidding has stopped on all construction permits.

##### ii. Auction Title

30. Auction No. 70—FM Broadcast

##### iii. Bidding Methodology

31. The bidding methodology for Auction No. 70 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet using the FCC Auction System, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically via the Internet or by telephone. All telephone calls are recorded.

##### iv. Dates and Deadlines

Auction Seminar .....	December 6, 2006.
Short-Form Application (FCC Form 175) Filing Window Opens .....	December 6, 2006; 12:00 noon ET.
Short-Form Application (FCC Form 175) Filing Window Deadline .....	December 19, 2006; before 6:00 p.m. ET.
Upfront Payments (via wire transfer) .....	February 5, 2006; 6:00 p.m. ET.
Mock Auction .....	March 5, 2007.
Auction Begins .....	March 7, 2007.

#### v. Requirements for Participation

32. Those wishing to participate in the auction must: (1) Submit a short-form application (FCC Form 175) electronically prior to 6 p.m. Eastern Time (ET), on December 19, 2006, following the electronic filing procedures set forth in Attachment C of the *Auction No. 70 Procedures Public Notice*; (2) submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) before 6:00 p.m. ET, on February 5, 2007; and (3) comply with all provisions outlined in the *Auction No. 70 Procedures Public Notice and applicable Commission rules*.

#### II. Short-Form Application (FCC Form 175) Requirements

33. An application to participate in an FCC auction, referred to as a short-form application or FCC Form 175, provides information used in determining whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or permits. The short-form application is the first part of the Commission's two-phased auction application process. In the first phase of this process, parties desiring to participate in the auction file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on the applicants' short-form applications and certifications, as well

as their upfront payments. In the second phase of the process, winning bidders file a more comprehensive long-form application.

34. Entities and individuals seeking construction permits available in Auction No. 70 must file a short-form application electronically via the FCC Auction System prior to 6 p.m. ET on December 19, 2006, following the procedures prescribed in Attachment C of the *Auction No. 70 Procedures Public Notice*. If an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 will be used in determining whether the applicant is eligible for the claimed bidding credit. Applicants bear full responsibility for submitting accurate, complete and timely short-form applications. All applicants must certify under penalty of perjury on their short-form applications that they are legally, technically, financially and otherwise qualified to hold a license. Applicants should read the instructions set forth in Attachment C of the *Auction No. 70 Procedures Public Notice* carefully and should consult the Commission's rules to ensure that all the information that is required under the Commission's rules and relevant public notices is included with their short-form applications.

35. An entity may not submit more than one short-form application for a single auction. In the event that a party submits multiple short-form applications, only one application will be accepted for filing.

36. Applicants also should note that submission of a short-form application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true, complete and correct. Applicants are not permitted to make major modifications to their applications; such impermissible changes include a change of the certifying official to the application. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

#### A. Noncommercial Educational Facilities

37. The opening of a window for nonreserved vacant FM allotments provides a filing opportunity for an applicant to apply for both noncommercial educational (NCE) and commercial facilities. However, while non-mutually exclusive NCE applications will not be resolved through competitive bidding, any applications specifying NCE facilities that are mutually exclusive with any applications specifying commercial facilities will be returned as unacceptable for filing pursuant to 47 CFR 73.5002(b).

38. As with the previous two FM auction proceedings, applicants for NCE broadcast stations will be allowed to submit Form 175 applications for the specific non-reserved spectrum to be auctioned in Auction No. 70 in the forthcoming filing window. The instant public notice recognizes the opportunity for NCE applicants to participate in the upcoming auction process and amply addresses the process for participation.

#### B. New Entrant Bidding Credit

39. The Commission has adopted a tiered New Entrant Bidding Credit for broadcast auction applicants with no, or very few, other media interests.

40. The interests of the applicant, and of any individuals or entities with an attributable interest in the applicant, in other media of mass communications, including both NCE and commercial full-power broadcast stations, shall be considered when determining an applicant's eligibility for the New Entrant Bidding Credit. The bidder's attributable interests shall be determined as of the short-form application (FCC Form 175) filing deadline—December 19, 2006. Thus, the applicant's maximum new entrant bidding credit eligibility will be determined as of the short-form application filing deadline. Applicants 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—December 19, 2006. Prospective bidders are reminded, however, that events occurring after the short-form filing deadline, such as the acquisition of attributable interests in media of mass communications, may cause diminishment or loss of the bidding credit, and must be reported immediately.

41. Under traditional broadcast attribution rules, including 47 CFR 73.3555 Note 2, those entities or individuals with an attributable interest in a bidder include: (1) All officers and directors of a corporate bidder; (2) any owner of 5 percent or more of the voting stock of a corporate bidder; (3) all partners and limited partners of a partnership bidder, unless the limited partners are sufficiently insulated; and (4) all members of a limited liability company, unless sufficiently insulated.

42. In cases where an applicant's spouse or close family member holds other media interests, such interests are

not automatically attributable to the bidder. The Commission decides attribution issues in this context based on certain factors traditionally considered relevant. Applicants should note that the mass media attribution rules were revised in 1999.

43. Bidders are also reminded that, by the *New Entrant Bidding Credit Reconsideration Order*, the Commission further refined the eligibility standards for the New Entrant Bidding Credit, judging it appropriate to attribute the media interests held by very substantial investors in, or creditors of, an applicant claiming new entrant status. Specifically, the attributable mass media interests held by an individual or entity with an equity and/or debt interest in an applicant shall be attributed to that bidder for purposes of determining its eligibility for the New Entrant Bidding Credit, if the equity and debt interests, in the aggregate, exceed 33 percent of the total asset value of the applicant, even if such an interest is non-voting.

44. Generally, media interests will be attributable for purposes of the New Entrant Bidding Credit to the same extent that such other media interests are considered attributable for purposes of 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 pursuant to 47 CFR 73.5007. Typically, *de jure* control is evidenced by ownership of at least 50.1 percent of an entity's voting stock or equivalent level of interest in cases where the bidder is not a corporate entity. *De facto* control is determined on a case-by-case basis.

45. However, attributable interests held by a winning bidder in existing low power television, television translator or FM translator facilities will not be counted among the bidder's other mass media interests in determining its eligibility for a New Entrant Bidding Credit. A medium of mass communications is defined in 47 CFR 73.5008(b). Full service noncommercial educational stations, on both reserved and nonreserved channels, are included among media of mass communications as defined in § 73.5008(b).

#### C. Application Requirements

46. In addition to the ownership information required pursuant to 47 CFR 1.2112, applicants are required to establish on their short-form applications that they satisfy the eligibility requirements to qualify for a New Entrant Bidding Credit. In those cases where a New Entrant Bidding Credit is being sought, a certification under penalty of perjury must be

provided in completing the applicant's short-form application. An applicant claiming that it qualifies for a 35 percent new entrant bidding credit must certify that neither it nor any of its attributable interest holders have any attributable interests in any other media of mass communications. An applicant claiming that it qualifies for a 25 percent new entrant bidding credit must certify that neither it nor any of its attributable interest holders have any attributable interests in more than three media of mass communications, and must identify and describe such media of mass communications.

#### i. Bidding Credits

47. Applicants that qualify for the New Entrant Bidding Credit, as specified in 47 CFR 73.5007, are eligible for a bidding credit that represents the amount by which a bidder's winning bid is 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: (1) 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; (2) 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 an attributable interest in no more than three mass media facilities, as defined in 47 CFR 73.5008; (3) no bidding credit will be given if any of the commonly owned mass media facilities serve the same area as the proposed broadcast station, as defined in 47 CFR 73.5007(b), or if the winning bidder, and/or any individual or entity with an attributable interest in the winning bidder, has attributable interests in more than three mass media facilities.

48. Bidding credits are not cumulative; qualifying applicants receive either the 25 percent or the 35 percent bidding credit, but not both. Attributable interests are defined in 47 CFR 73.3555 and Note 2 of that section. Applicants should note that unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license or construction permit to an entity not qualifying for the same level of bidding credit.

49. The Bureaus are unable to adopt for Auction No. 70 the suggestions by commenters to revise the criteria for and

the amount of the new entrant bidding credit, and to adopt new bidding credits based on other criteria. Implementation of these proposals would require amendment of the Commission's competitive bidding and broadcast service rules, which can only be accomplished through a rulemaking proceeding. The Bureaus' process for seeking comment on auction procedures is not the appropriate forum in which to raise such rule changes. Such rule change suggestions should have been raised in the context of the rulemaking proceeding establishing bidding credits for the FM broadcast service.

#### ii. Installment Payments

50. Installment payment plans will not be available in Auction No. 70.

#### D. Permit Selection

51. In Auction No. 70, applicants must select the construction permits on which they want to bid from the Eligible Permits list. There will be no opportunity to change construction permit selection after the short-form filing deadline. It is critically important that an applicant confirm its construction permit selections before submitting its short-form application because the FCC Auction System will not accept bids on construction permits that an applicant has not selected on its short-form application.

#### E. Disclosure of Bidding Arrangements

52. Applicants will be required to identify in their short-form applications all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the construction permits being auctioned, including any agreements relating to post-auction market structure. Applicants also will be required to certify under penalty of perjury in their short-form applications that they have not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application, regarding the amount of their bids, bidding strategies, or the particular construction permits on which they will or will not bid. If an applicant has had discussions, but has not reached a joint bidding agreement by the short-form application filing deadline, it would not include the names of parties to the discussions on its application and may not continue such discussions with any applicants after the deadline.

53. After the filing of short-form applications, the Commission's rules do not prohibit a party holding a non-

controlling, attributable interest in one applicant from acquiring an ownership interest in or entering into a joint bidding arrangement with other applicants provided that: (i) The attributable interest holder certifies 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, or with which it has entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction-related business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matter 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, rebroadcast agreements, and other transactional agreements. Further, as discussed above, compliance with the disclosure requirements of the Commission's anti-collusion rule will not insulate a party from enforcement of the antitrust laws.

#### F. Ownership Disclosure Requirements

54. The Commission specified in the *Broadcast Competitive Bidding First Report and Order* that, for purposes of determining eligibility to participate in a broadcast auction, all applicants must comply with the uniform part 1 ownership disclosure standards and provide information required by 47 CFR 1.2105 and 1.2112. Specifically, in completing the short-form application, applicants will be required to fully disclose information on the real party- or parties-in-interest and ownership structure of the applicant. The ownership disclosure standards for the short-form application are prescribed in 47 CFR 1.2105 and 1.2112. Each applicant is responsible for information submitted in its short-form application being complete and accurate.

55. In certain circumstances, an applicant's most current ownership information on file with the Commission, if in an electronic format compatible with the short-form application (FCC Form 175) (such as information submitted in an on-line FCC Form 602 or in an FCC Form 175 filed for a previous auction using ISAS) will automatically be entered into the applicant's short-form application. Applicants are responsible for ensuring that the information submitted in their short-form application for Auction No. 70 is complete and accurate.

Accordingly, applicants should carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for filing the short-form application. Applicants can update directly in the short-form application any information that was entered automatically and needs to be changed.

#### G. Provisions Regarding Former and Current Defaulters

56. Each applicant must state under penalty of perjury on its short-form application whether or not the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by 47 CFR 1.2110, have ever been in default on any Commission construction permit or license or have ever been delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must certify under penalty of perjury on its short-form application that as of the short-form filing deadline, the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by 47 CFR 1.2110, are not in default on any payment for a Commission construction permit or license (including a down payment) and that they are not delinquent on any non-tax debt owed to any Federal agency. Prospective applicants 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.

57. *Former defaulters*—i.e., applicants, including any of their affiliates, any of their controlling interests, or any of the affiliates of their controlling interests, that in the past have defaulted on any Commission construction permit or license or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—are eligible to bid in Auction No. 70, provided that they are otherwise qualified. However, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

58. *Current defaulters*—i.e., applicants, including any of their affiliates, any of their controlling interests, or any of the affiliates of their controlling interests, that are in default on any payment for any Commission construction permit or license (including a down payment) or are



delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for applications to participate in this auction—are not eligible to bid in Auction No. 70.

59. Applicants are encouraged to review the Wireless Telecommunications Bureau's previous guidance on default and delinquency disclosure requirements in the context of the short-form application process. For example, it has been determined that to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for purposes of 47 CFR 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline. Therefore, with respect to regulatory or application fees, the provisions of 47 CFR 1.2105(a) and 1.2106(a) regarding default and delinquency in connection with competitive bidding are limited to circumstances in which the relevant party has not complied with a final Commission payment deadline. However, even where Commission rules expressly permit late payment subject to payment of an additional late fee, and do not impose a final payment deadline, the Commission may in some cases issue a demand for payment by a certain date. Failure to comply with the terms of a particular demand letter in the time period provided may render the subject debt delinquent, notwithstanding rules generally permitting late payments.

60. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the red light rule, that implement the Commission's obligations under the Debt Collection Improvement Act of 1996, which governs the collection of claims owed to the United States. Under the red light rule, the Commission will not process applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission. In the same rulemaking order, the Commission explicitly declared, however, that the Commission's competitive bidding rules are not affected by the red light rule. As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of the Commission's competitive bidding rules, including the provisions and certifications of 47 CFR 1.2105 and 1.2106, with regard to current and former defaults or delinquencies. Applicants are reminded, however, that the Commission's Red Light Display

System, which provides information regarding debts owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of 47 CFR 1.2105. Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant's red light status is not necessarily determinative of its eligibility to participate in this auction or of its upfront payment obligation.

61. Prospective applicants in Auction No. 70 should note that any long-form applications filed after the close of competitive bidding will be reviewed for compliance with the Commission's red light rule, and such review may result in the dismissal of a winning bidder's long-form application. Applicants that have their long-form application dismissed will be deemed to have defaulted and will be subject to default payments under 47 CFR 1.2104(g) and 1.2109(c).

#### *H. Other Information*

62. Applicants owned by members of minority groups and/or women, as defined in 47 CFR 1.2110(c)(3), may identify themselves in filling out their short-form applications regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation in its auctions of designated entities, which include rural telephone companies.

#### *I. Minor Modifications to Short-Form Applications (FCC Forms 175)*

63. After the deadline for filing short-form applications (FCC Forms 175) at 6 p.m. ET on December 19, 2006, applicants are permitted to make only minor changes to their applications. Applicants are not permitted to make major modifications to their applications (e.g., change their construction permit selections, change control of the applicant, change the certifying official, claim eligibility for a higher percentage of bidding credit or change their identification of the application's proposed facilities as noncommercial educational). Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons.

64. Any application amendment and related statements of fact must be certified by: (1) The applicant, if the applicant is an individual, (2) one of the partners if the applicant is a

partnership, (3) an officer, director, or duly authorized employee, if the applicant is a corporation, (4) by a member who is an officer, if the applicant is an unincorporated association, (5) the trustee if the applicant is an amateur radio service club, or (6) a duly elected or appointed official who is authorized to make such certifications under the laws of the applicable jurisdiction, if the applicant is a governmental entity.

65. An applicant must make permissible minor changes to its short-form application, as such changes are defined by 47 CFR 1.2105(b), electronically, using the FCC Auction System. Applicants must click on the SUBMIT button in the FCC Auction System for the changes to be submitted and considered by the Commission. After the revised application has been submitted, a confirmation page will be displayed that states the submission time and date, along with a unique file number. Applicants should note, however, that after the filing window has closed, the FCC Auction System will not permit applicants to make certain changes, such as legal classification or NCE identification.

66. In addition, an applicant should submit a letter briefly summarizing the changes and subsequently update their short-form applications in ISAS as soon as possible. Any letter describing changes to an applicant's short-form application must be submitted by electronic mail to the following address: [auction70@fcc.gov](mailto:auction70@fcc.gov). The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 70 and the name of the applicant. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

67. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System (ECFS), which was used for submitting comments regarding Auction No. 70 procedures.

#### *J. Maintaining Current Information in Short-Form Applications (FCC Form 175)*

68. 47 CFR 1.65 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. Changes that cause a loss of or reduction in the percentage of bidding credit specified on the originally submitted Form 175 application must be reported



immediately. If an amendment reporting substantial changes is a major amendment as defined by 47 CFR 1.2105, the major amendment will not be accepted and may result in the dismissal of the short-form application.

69. After the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications, for example, deletion and addition of authorized bidders (to a maximum of three). Applicants must click on the SUBMIT button in the FCC Auction System for the changes to be submitted and considered by the Commission. In addition, applicants must submit a letter, briefly summarizing the changes, by electronic mail at the following address: [auction70@fcc.gov](mailto:auction70@fcc.gov). The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 70 and the name of the applicant. The Bureaus requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

70. Applicants must not submit application-specific material through the Commission's electronic comment filing system (ECFS) into the record of the proceeding concerning Auction No. 70 procedures.

### III. Pre-Auction Procedures

#### A. Auction Seminar

71. On Wednesday, December 6, 2006, the FCC will sponsor a free seminar for parties interested in participating in Auction No. 70 at the FCC headquarters, located at 445 12th Street, SW., Washington, DC. The seminar will provide attendees with information about pre-auction procedures, completing FCC Form 175, auction conduct, the FCC Auction System, auction rules, and the FM broadcast service rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff concerning the auction, auction procedures, filing requirements and other matters related to this auction.

72. To register, complete the registration form in Attachment B of the *Auction No. 70 Procedures Public Notice* and submit it by Monday, December 4, 2006. Registrations are accepted on a first-come, first-served basis. For individuals who are unable to attend, an Audio/Video webcast of this seminar will be available from the FCC's Auction No. 70 web page at <http://wireless.fcc.gov/auctions/70/>.

#### B. Short-Form Application (FCC Form 175)—Due Before 6:00 p.m. ET on December 19, 2006

73. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application electronically via the FCC Auction System. This application must be received at the Commission prior to 6 p.m. ET on December 19, 2006. Late applications will not be accepted. There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment.

74. Applications may generally be filed at any time beginning at noon ET on December 6, 2006, and the filing window will close at 6 p.m. ET on December 19, 2006. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their applications multiple times until the filing deadline on December 19, 2006.

75. An applicant must always click on the SUBMIT button on the Certify & Submit screen of the electronic form to successfully submit its FCC Form 175 or modifications. Any form that is not submitted will not be reviewed by the FCC. Information about accessing, completing, and viewing the FCC Form 175 is included in Attachment C of the *Auction No. 70 Procedures Public Notice*.

#### C. Application Processing and Minor Corrections

76. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (1) Those applications accepted for filing; (2) those applications rejected; and (3) those applications which have minor defects that may be corrected, and the deadline for resubmitting corrected applications.

77. Non-mutually exclusive applications will be listed in a subsequent public notice to be released by the Bureaus. Such applications will not proceed to auction, but will proceed in accordance with instructions set forth in that public notice. All mutually exclusive applications will be considered under the relevant procedures for conflict resolution. Mutually exclusive commercial applications will proceed to auction. Applications for NCE FM stations on nonreserved spectrum, filed during an FM filing window, will be returned as unacceptable for filing if mutually

exclusive with any application for a commercial station. Accordingly, if an FCC Form 175 filed during the Auction No. 70 filing window identifying the applicant as noncommercial educational is mutually exclusive with any application filed during that window by an applicant for a commercial station, the former will be returned as unacceptable for filing. However, if stations are not identified as NCE by applicants on the short-form application, the applications will be considered, as a matter of law, as applications for commercial broadcast stations.

78. After the short-form filing deadline on December 19, 2006, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications.

#### D. Upfront Payments—Due February 5, 2007

79. 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). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and sent by facsimile to Mellon Bank in Pittsburgh, PA. All upfront payments must be received in the proper account at Mellon Bank before 6 p.m. ET on February 5, 2007.

##### i. Making Auction Payments by Wire Transfer

80. 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.

81. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must send by facsimile a completed FCC Form 159 (Revised 2/03) to Mellon Bank, using the specified telephone number. In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account before the deadline. Applicants are responsible for obtaining confirmation from their financial institution that Mellon Bank has timely received their upfront payment and deposited it in the proper account.

82. Please note that: (1) All payments must be made in U.S. dollars; (2) all payments must be made by wire transfer; (3) upfront payments for Auction No. 70 go to a lockbox number

different from the lockboxes used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments; and (4) failure to deliver the upfront payment by the specified deadline on February 5, 2007 will result in dismissal of the application and disqualification from participation in the auction.

ii. FCC Form 159

83. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be sent by facsimile to Mellon Bank to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/03) is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment D of the *Auction No. 70 Procedures Public Notice*. An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payers using a pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

iii. Upfront Payments and Bidding Eligibility

84. In the *Auction No. 70 Comment Public Notice*, the Bureaus proposed that the amount of the upfront payment would determine a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids. In order to bid on a construction permit, otherwise qualified bidders that selected that construction permit on FCC Form 175 must have a current eligibility level that meets or exceeds the number of bidding units assigned to that construction permit. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits selected on its FCC Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all construction permits the applicant selected on its 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 provisionally winning bids at any given time. Provisionally winning bids are bids that would become final winning bids if the auction were to close after the given round.

85. In the *Auction No. 70 Comment Public Notice*, the Bureaus proposed upfront payments for each construction permit taking into account various factors related to the efficiency of the auction process and the potential value of similar spectrum and sought comment on this proposal. The Bureaus received no comments in response to the proposed upfront payments. The specific upfront payments and bidding units for each construction permit are set forth in Attachment A of the *Auction No. 70 Procedures Public Notice*.

86. Applicants must make upfront payments sufficient to obtain bidding eligibility on the construction permits on which they will bid. In calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all construction permits on which it seeks to be active in any given round. Applicants should check their calculations carefully, because it is not possible to increase a bidder's eligibility after the upfront payment deadline. In some cases, a qualified bidder's maximum eligibility may be less than the amount of its upfront payment because the qualified bidder, pursuant to 47 CFR 1.1206(a), has either previously been in default on a Commission license or delinquent on a non-tax debt owned to a Federal agency, or has submitted an upfront payment that exceeds the total amount of bidding units associated with the construction permits the applicant selected on its FCC Form 175 application.

87. Applicants that are former defaulters are required to pay upfront payments 50 percent greater than non-former defaulters. For purposes of this calculation, the applicant includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interest, as defined by 47 CFR 1.2110. Accordingly, former defaulters should calculate their upfront payment for all construction permits by multiplying the number of bidding units on which they wish to be active by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit. If a former defaulter fails to submit a sufficient upfront payment to establish eligibility to bid on at least one of the construction permits for

which the applicant applied on its FCC Form 175, the applicant will not be eligible to participate in the auction.

iv. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

88. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information specified in the *Auction No. 70 Procedures Public Notice* be supplied to the FCC. For example, the Commission must be provided with a Taxpayer Identification Number (TIN) before it can disburse refunds. Applicants can provide the information electronically during the initial short-form application filing window after the application has been submitted. (Applicants are reminded that information submitted as part of an FCC Form 175 will be available to the public; for that reason, wire transfer information should not be included in an FCC Form 175.) Wire Transfer Instructions can also be manually sent by facsimile to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Gail Glasser, using the specified telephone number. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise.

E. Auction Registration

89. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the construction permits for which they applied.

90. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID® cards that will be required to place bids, the Integrated Spectrum Auction System (ISAS) Bidder's Guide, and the Auction Bidder Line phone number.

91. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder that has not received this mailing by noon on Thursday, March 1, 2007, should call (717) 338-2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for

ensuring it has received all of the registration material.

92. In the event that SecurID® cards are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacement registration material. Qualified bidders requiring the replacement of these items must call Technical Support.

#### *F. Remote Electronic Bidding*

93. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically and telephonically. Each applicant should indicate its bidding preference—electronic or telephonic—on the FCC Form 175. In either case, each authorized bidder must have its own SecurID® card, which the FCC will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® cards, while applicants with two or three authorized bidders will be issued three cards. For security purposes, the SecurID® cards, the telephonic bidding telephone number, and the Integrated Spectrum Auction System (ISAS) Bidder's Guide are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID® card is tailored to a specific auction; therefore, SecurID® cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 70.

#### *G. Mock Auction—March 5, 2007*

94. All qualified bidders will be eligible to participate in a mock auction on Monday, March 5, 2007. The mock auction will enable applicants to become familiar with the FCC Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

### **IV. Auction Event**

95. The first round of bidding for Auction No. 70 will begin on Wednesday, March 7, 2007. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is to be released approximately 10 days before the start of the auction.

#### *A. Auction Structure*

##### *i. Simultaneous Multiple Round Auction*

96. In the *Auction No. 70 Comment Public Notice*, the Bureaus proposed to auction all construction permits in

Auction No. 70 in a single auction using the Commission's standard simultaneous multiple-round (SMR) auction format. This type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual construction permits. A bidder may bid on, and potentially win, any number of construction permits. Typically, bidding remains open on all construction permits until bidding stops on every construction permit, unless a modified stopping rule is invoked.

97. Despite the suggestions made by one commenter, the Bureaus therefore concluded that it is operationally feasible and appropriate to auction these FM broadcast stations construction permits through a simultaneous multiple round auction and the Bureaus declined to adopt the commenter's proposal. Unless otherwise announced, bids will be accepted on all construction permits in each round of the auction until bidding stops on every construction permit.

##### *ii. Eligibility and Activity Rules*

98. In the *Auction No. 70 Comment Public Notice*, the Bureaus 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. The Bureaus received no comments concerning the eligibility rule.

99. Accordingly, the Bureaus adopted the proposed use of upfront payments to determine initial (maximum) eligibility (as measured in bidding units) for Auction No. 70. The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. As noted earlier, each construction permit is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 70 Procedures Public Notice* on a bidding unit per dollar basis. Bidding units for a given construction permit do not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific construction permits. Rather, a bidder may place bids on any of the construction permits selected on its FCC Form 175 as long as the total number of bidding units associated with those construction permits does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the

maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. The total upfront payment does not affect the total dollar amount a bidder may bid on any given construction permit.

100. In order to ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction.

101. 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. A bidder is considered active on a construction permit in the current round if it is either the provisionally winning bidder at the end of the previous bidding round or if it submits a bid in the current round. The minimum required activity is expressed as a percentage of the bidder's current eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions, the Bureaus adopted them for Auction No. 70. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place bids in the auction.

##### *iii. Auction Stages*

102. In the *Auction No. 70 Comment Public Notice*, the Bureaus proposed to conduct the auction in two stages and employ an activity rule. The Bureaus further proposed that, in each round of Stage One, a bidder desiring to maintain its current bidding eligibility would be required to be active on construction permits representing at least 75 percent of its current bidding eligibility. Finally, the Bureaus proposed that in each round of Stage Two, a bidder desiring to maintain its current bidding eligibility would be required to be active on at least 95 percent of its current bidding eligibility. The Bureaus also invited comment on conducting the auction with a single stage that would use an activity requirement of 100 percent. The Bureaus received no comments on any of these proposals.

103. The Bureaus adopted their proposals for the activity rules and stages, while reserving the discretion to further alter the activity percentages

before and/or during the auction. As explained further in the *Auction No. 70 Procedures Public Notice*, during Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by four-thirds ( $\frac{4}{3}$ ). During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by twenty-nineteenths ( $\frac{20}{19}$ ). Because the procedures have proven successful in maintaining the proper pace in previous auctions, the Bureaus adopted them for Auction No. 70.

104. Failure by a bidder to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding unless an activity rule waiver is used, if any remain. Because activity requirements increase in Stage Two, bidders must carefully check their activity during the first round following a stage transition to ensure that they are meeting the increased activity requirement. This is especially critical for bidders that have provisionally winning bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required activity level by logging in to the FCC Auction System.

#### iv. Stage Transitions

105. In the *Auction No. 70 Comment Public Notice*, the Bureaus proposed that the auction would generally advance to the next stage (*i.e.*, from Stage One to Stage Two) when the auction activity level, as measured by the percentage of bidding units receiving new provisionally winning bids, is approximately 20 percent or lower for three consecutive rounds of bidding. The Bureaus further proposed that the Bureaus would retain the discretion to change stages unilaterally by announcement during the auction. This determination, the Bureaus proposed, would be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of construction permits (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The

Bureaus received no comments on this issue.

106. The Bureaus believed that these stage transition rules, having proven successful in prior auctions, are appropriate for use in Auction No. 70. Thus, the Bureaus adopted their proposal. The auction will start in Stage One and will generally advance to Stage Two when, in each of three consecutive rounds of bidding, the provisionally winning bids have been placed on 20 percent or less of the construction permits being auctioned (as measured in bidding units). In addition, the Bureaus will retain the discretion to regulate the pace of the auction by announcement.

#### v. Activity Rule Waivers

107. In the *Auction No. 70 Comment Public Notice*, the Bureaus proposed that each bidder in the auction be provided with three activity rule waivers. The Bureaus received no comments on this issue. The Bureaus adopted their proposal that each bidder be provided three activity rule waivers.

108. Bidders may use an activity rule waiver 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 activity level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit. Activity rule waivers can be either applied proactively by the bidder (a proactive waiver) or applied automatically by the FCC Auction System (an automatic waiver) and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

109. The FCC Auction System assumes that bidders with insufficient activity would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding 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. If a bidder has no waivers remaining and does not satisfy the activity requirement, the FCC Auction System will permanently reduce the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

110. 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 bidding round by using the REDUCE ELIGIBILITY function in the FCC Auction System. 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 even if the round has not yet closed.

111. Finally, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity waiver (using the APPLY WAIVER function in the FCC Auction System) during a bidding round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver applied by the FCC Auction System in a round in which there are no new bids or proactive waivers will not keep the auction open. A bidder cannot submit a proactive waiver after submitting a bid in a round, and submitting a proactive waiver will preclude a bidder from placing any bids in that round. Applying a waiver is irreversible; once a proactive waiver is submitted that waiver cannot be unsubmitted, even if the round has not yet closed.

#### vi. Auction Stopping Rules

112. For Auction No. 70, the Bureaus proposed to employ a simultaneous stopping rule approach. The Bureaus also sought comment on a modified version of the simultaneous stopping rule (modified stopping rule). The modified stopping rule would close the auction for all construction permits after the first round in which no bidder applies a waiver or submits any new bids on any construction permit on which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule.

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

114. In addition, the Bureaus proposed that the Bureaus reserve the right to declare that the auction will end

after a specified number of additional rounds (special stopping rule). If the Bureaus invoke this special stopping rule, they will accept bids in the specified final round(s) and the auction will close.

115. The Bureaus proposed to exercise these options only in 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. The Bureaus noted that before exercising these options, the Bureaus are likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of construction permits where there is still a high level of bidding activity.

116. The Bureaus received no comments on the proposals about stopping rules. The Bureaus found that the proposed stopping rules are appropriate for Auction No. 70, because experience in prior auctions demonstrates that these stopping rules balance interests of administrative efficiency and maximum bidder participation. Therefore, the Bureaus adopted the stopping rule proposals made in the *Auction No. 70 Comment Public Notice*. Auction No. 70 will begin under the simultaneous stopping rule approach, and the Bureaus will retain the discretion to employ the other versions of the stopping rule. Moreover, the Bureaus will retain the discretion to use the modified stopping rule with or without prior announcement during the auction.

#### vii. Auction Delay, Suspension, or Cancellation

117. Because the Bureaus approach to notification of delay during an auction has proven effective in resolving exigent circumstances in previous auctions, the Bureaus adopted their proposal that, by public notice or by announcement during the auction, the Bureaus 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 conduct of competitive bidding. Network interruption may cause the Bureaus to delay or suspend the auction. The Bureaus, in their 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. The Bureaus emphasized 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.

#### B. Bidding Procedures

##### i. Round Structure

118. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted in a given day.

119. The Bureaus have the 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 Bureaus 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.

##### ii. Reserve Price and Minimum Opening Bids

120. In the *Auction No. 70 Comment Public Notice*, the Bureaus proposed to establish minimum opening bids for Auction No. 70, reasoning that a minimum opening bid, successfully used in other broadcast auctions, is a valuable tool, effectively regulating the pace of the auction. Specifically, a minimum opening bid was proposed for each construction permit listed in Attachment A of the *Auction No. 70 Procedures Public Notice*. The minimum opening bid was determined by taking into account various factors relating to the efficiency of the auction and the potential value of the spectrum, including the type of service and class of facility offered, market size, population covered by the proposed FM broadcast facility, industry cash flow data, and recent broadcast transactions. The Bureaus sought comment on the proposed minimum opening bids. In the alternative, the Bureaus sought comment on whether, consistent with 47 U.S.C. 309(j), the public interest would be served by having no minimum opening bid or reserve price.

121. A commenter sought to reduce the minimum opening bid amount for MM-FM 620-A, Ephraim, Wisconsin, Channel 295A. The Bureaus were persuaded that lowering the minimum opening bid amount for Ephraim, Wisconsin, Channel 295A, to \$5,000

would serve the public interest, and adopted this change.

122. The Bureaus concluded that the proposed minimum opening bid amounts with the exception of Ephraim, Wisconsin, are appropriate, and the Bureaus adopted those proposed amounts. The Bureaus did not receive any comments in response to the proposal in the *Auction No. 70 Comment Public Notice* that the Bureaus would retain the discretion to lower the minimum opening bid amounts. Thus, the Bureaus adopted this proposal. The minimum opening bid amounts the Bureaus adopted for Auction No. 70 are reducible at the discretion of the Bureaus. The Bureaus emphasized, however, that such discretion will be exercised, if at all, 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 requests to reduce the minimum opening bid amount on specific construction permits. The Bureaus noted that effectively the minimum opening bid amounts operate as reserve prices.

123. The specific minimum opening bid amounts for each construction permit available in Auction No. 70 are set forth in Attachment A of the *Auction No. 70 Procedures Public Notice*.

##### iii. Bid Amounts

124. In the *Auction No. 70 Comment Public Notice*, the Bureaus proposed that in each round, eligible bidders be able to place a bid on a given construction permit in any of nine different amounts. Under the proposal, the FCC Auction System interface will list the nine acceptable bid amounts for each construction permit. Contrary to the suggestion of one commenter that, as an alternative to using large minimum opening bids, the Commission increase the number of acceptable bid amounts so that the maximum acceptable bid amount is three times higher than the current bid, the Bureaus decided that the minimum opening bid amounts and the number of additional bid amounts that the Bureaus have established for this auction should help ensure that the bidding moves at a sufficient pace and will help promote an efficient outcome. Based on experience in prior auctions, the Bureaus adopted this proposal.

125. The first of the nine acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid for the construction permit. After there is a

provisionally winning bid for a permit, the minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount times one plus the minimum acceptable bid percentage. For example, if the minimum acceptable bid percentage is 10 percent, the minimum acceptable bid amount will equal (provisionally winning bid amount) \* (1.10). The Bureaus will round the result using its standard rounding procedures.

126. In the *Auction No. 70 Comment Public Notice*, the Bureaus proposed to use a minimum acceptable bid percentage of 10 percent. The Bureaus did not receive any comments on this proposal. Experience in the previous FM auctions provides assurance that a bid increment percentage of 10 percent is sufficient to ensure active bidding. Therefore, the Bureaus will begin the auction with a minimum acceptable bid percentage of 10 percent.

127. The eight additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded. If, for example, the increment percentage is 10 percent, the calculation is (minimum acceptable bid amount) \* (1 + 0.10), rounded, or (minimum acceptable bid amount) \* 1.10, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) \* 1.20, rounded; the third additional acceptable bid amount equals the minimum acceptable bid amount times one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) \* 1.30, rounded; etc. The Bureaus will round the results of these calculations using its standard rounding procedures. Note that the bid increment percentage need not be the same as the minimum acceptable bid percentage.

128. In the *Auction No. 70 Comment Public Notice*, the Bureaus proposed to use a bid increment percentage of 10 percent. The Bureaus received no comment on this issue. Believing that a bid increment percentage of 10 percent will give bidders the flexibility to speed up the pace of the auction, if appropriate, the Bureaus therefore adopted their proposal, and will begin the auction with a bid increment percentage of 10 percent.

129. The Bureaus did not receive any comments on their proposal to retain the discretion to change the minimum acceptable bid amounts, the minimum

acceptable bid percentage, and the bid increment percentage if they determine that circumstances so dictate. The Bureaus will do so by announcement in the FCC Auction System during the auction.

#### iv. Provisionally Winning Bids

130. At the end of each bidding round, a provisionally winning bid will be determined based on the highest bid amount received for each construction permit. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.

131. In the *Auction No. 70 Comment Public Notice*, the Bureaus proposed to use a random number generator to select a single provisionally winning bid in the event of identical high bid amounts being submitted on a construction permit in a given round (*i.e.*, tied bids). No comments were received on this proposal. Therefore, the Bureaus adopted their proposal.

132. A pseudo-random number generator based on the L'Ecuyer algorithms will be used to assign a random number to each bid. The tied bid with the highest random number wins the tiebreaker, and becomes the provisionally winning bid. The remaining eligible bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the selected provisionally winning bid.

#### v. Bidding

133. During a round, a bidder may submit bids for as many construction permits as it wishes (providing that it is eligible to bid), remove bids placed in the current bidding round, or permanently reduce eligibility. Bidders also have the option of submitting and removing multiple bids during a round. If a bidder submits multiple bids for a single construction permit in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with construction permits for which the bidder has removed its bid do not count towards the bidder's current activity.

134. All bidding will take place remotely either through the FCC Auction System or by telephonic

bidding. There will be no on-site bidding during Auction No. 70. Please note that telephonic bid assistants are required to use a script when entering 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. Normally, five to ten minutes are necessary to complete a telephonic bid submission.

135. A bidder's ability to bid on specific construction permits is determined by two factors: (1) The construction permits selected on the bidder's FCC Form 175 and (2) the bidder's eligibility. The bid submission screens will allow bidders to submit bids on only those construction permits the bidder selected on its FCC Form 175.

136. In order to access the bidding function of the FCC Auction System, bidders must be logged in during the bidding round using the passcode generated by the SecurID® card and a personal identification number (PIN) created by the bidder. Bidders are strongly encouraged to print a round summary for each round after they have completed all of their activity for that round.

137. In each round, eligible bidders will be able to place bids on a given construction permit in any of nine different amounts, if the bidder has sufficient eligibility to place a bid on the particular construction permit. For each construction permit, the FCC Auction System will list the nine acceptable bid amounts in a drop-down box. Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC Auction System also includes an upload function that allows bidders to upload text files containing bid information.

138. Until a bid has been placed on a construction permit, the minimum acceptable bid amount for that construction permit will be equal to its minimum opening bid amount. Once there are bids on a construction permit, minimum acceptable bids for a construction permit for the following round will be determined.

#### vi. Bid Removal

139. In the *Auction No. 70 Comment Public Notice*, the Bureaus proposed bid removal 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 BIDS function in the FCC Auction System, 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, i.e., a bid that is removed does not count toward bidding activity. Once a round closes, a bidder may no longer remove a bid. The Bureaus received no comments on the issue of bid removals. To enhance bidder flexibility during the auction, the Bureaus adopted their proposed procedures concerning bid removals for Auction No. 70.

#### vii. Bid Withdrawal

140. Once a round closes, a bidder may no longer remove a bid. In the *Auction No. 70 Comment Public Notice*, the Bureaus proposed bid withdrawal procedures. The Bureaus proposed to prohibit bidders from withdrawing any bids after the round in which bids were placed has closed. This proposal was made in recognition of the site-specific nature and wide geographic dispersion of the permits available in this auction. As an alternative, the Bureaus sought comment on whether to permit each bidder to withdraw provisionally winning bids in no more than one round during the course of the auction.

141. Experience with auctions generally, and with past FM auctions in particular, convinces the Bureaus that bid withdrawals are unnecessary in FM broadcast auctions. Because of the stand-alone nature of FM facilities, it is not necessary for bidders to aggregate facilities being offered in the same FM auction in order to realize full value from those facilities, or to put the spectrum to effective and efficient use. On the other hand, evidence suggests that some bidders may have used the bid withdrawal mechanism improperly to keep new facilities out of the hands of competitors, thus delaying implementation of new service. Accordingly, the Bureaus adopted their proposal prohibiting bid withdrawals in FM Auction No. 70. Bidders are cautioned to select bid amounts carefully because no bid withdrawals will be allowed in Auction No. 70, even if a bid was mistakenly or erroneously made.

#### viii. Round Results

142. Bids placed during a round will not be made public until the conclusion of that round. After a round closes, the Bureaus will compile reports of all bids placed, current provisionally winning bids, new minimum acceptable bid amounts for the following round, whether the construction permit is FCC held, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders'

identities for Auction No. 70 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

#### ix. Auction Announcements

143. The Commission will use auction announcements to announce items such as schedule changes and stage transitions. All auction announcements will be available by clicking a link in the FCC Auction System.

### V. Post-Auction Procedures

#### A. Down Payments

144. After bidding has ended, the Commission will issue a public notice declaring the auction closed and identifying winning bidders, down payments and final payments due.

145. 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 Commission for Auction No. 70 to 20 percent of the net amount of its winning bids (gross bids less any applicable new entrant bidding credits).

#### B. Final Payments

146. Recognizing the public benefit of maintaining a consistent set of auction procedures across the various auctionable services, in the *CSEA/Part 1 Report and Order*, 71 FR 6214, February 7, 2006, the Commission recently conformed the broadcast final payment procedures to the analogous part 1 requirements. Specifically, the part 1 rules provide that, unless otherwise specified by public notice, auction winners are required to pay the balance of their winning bids in a lump sum within ten business days following the release of a public notice establishing the payment deadline. In recent spectrum auctions, the Commission has required each winning bidder to submit the balance of the net amount of its winning bid(s) within ten business days after the deadline for submitting down payments. Consistent with this approach, in the *Auction No. 70 Comment Public Notice*, the Bureaus announced that for this auction each winning bidder will be required to submit the balance of the net amount of its winning bids within 10 business days after the deadline for submitting down payments.

#### C. Long-Form Application

147. Within thirty days after the release of the auction closing notice, winning bidders must electronically submit a properly completed FCC Form

301, Application for FM Construction Permit, and required exhibits for each construction permit won through Auction No. 70. Winning bidders claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit. Further filing instructions will be provided to auction winners at the close of the auction.

#### D. Default and Disqualification

148. Any winning 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 prescribed in 47 CFR 1.2104(g)(2). The payments include both a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less. Pursuant to recent modifications to the rule governing default payments, the percentage of the applicable bid to be assessed as an additional payment for defaults in a particular auction is established in advance of the auction. Accordingly, in the *Auction No. 70 Comment Public Notice*, the Bureaus proposed to set the additional default payment for the auction of these FM broadcast construction permits at twenty percent (20%) of the applicable bid. The Bureaus sought comment on their proposal. No comments were received on this proposal. Based on experience and the record before the Bureaus, the additional default payment for this auction of FM broadcast construction permits was set at twenty percent (20%) of the applicable bid.

149. Finally, the Bureaus note that in the event of a default, the Commission may re-auction the construction permit or offer it to the next highest bidder (in descending order) at its final bid amount. 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 authorizations held by the applicant.



### *E. Refund of Remaining Upfront Payment Balance*

150. All applicants that submit upfront payments but after the close of the auction are not winning bidders for a construction permit in Auction No. 70 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

151. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers and have no remaining bidding eligibility may also be eligible for a refund of their upfront payment before the close of the auction. Instructions for seeking refunds may be found in the *Auction No. 70 Procedures Public Notice*.

Federal Communications Commission.

**Gary D. Michaels,**

*Deputy Chief, Auctions and Spectrum Access Division, WTB.*

[FR Doc. E6-20006 Filed 11-24-06; 8:45 am]

**BILLING CODE 6712-01-P**

## **FEDERAL ELECTION COMMISSION**

### **Sunshine Act Notices**

**DATE AND TIME:** *Thursday, November 30, 2006 at 10 a.m.*

**PLACE:** 999 E Street, NW., Washington, DC (Ninth Floor).

**STATUS:** This meeting will be open to the public.

#### **ITEMS TO BE DISCUSSED:**

- Correction and Approval of Minutes.
- Best Efforts Notice of Proposed Rulemaking.
- Best Efforts Policy Statement.
- Policy Statement on Probable Cause Hearings.
- Sua Sponte Policy.
- Management and Administrative Matters.

#### **PERSON TO CONTACT FOR INFORMATION:**

Mr. Robert Biersack, Press Officer,  
*Telephone:* (202) 694-1220.

**Mary W. Dove,**

*Secretary of the Commission.*

[FR Doc. 06-9418 Filed 11-22-06; 11:14 am]

**BILLING CODE 6715-01-M**

## **FEDERAL TRADE COMMISSION**

**[File No. 062 3057]**

### **Guidance Software, Inc.; Analysis of Proposed Consent Order To Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before December 15, 2006.

**ADDRESSES:** Interested parties are invited to submit written comments. Comments should refer to “Guidance Software, File No. 062 3957,” to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled “Confidential,” and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).<sup>1</sup> The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov*.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be

<sup>1</sup> The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

#### **FOR FURTHER INFORMATION CONTACT:**

Alain Sheer, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326-2252.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for November 16, 2006), on the World Wide Web, at *http://www.ftc.gov/os/2006/11/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

#### **Analysis of Agreement Containing Consent Order To Aid Public Comment**

The Federal Trade Commission has accepted, subject to final approval, a consent agreement from Guidance Software Inc. (“Guidance”).

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take