

Complete the Channel Deepening Project and to Beneficially Reuse the Dredge Material with the Port of Los Angeles, Los Angeles County, CA.

**Summary:** EPA continues to have environmental concerns about cumulative impacts to air quality and human health, and avoiding ocean disposal of sediments. EPA recommended commitments to reduce air quality impacts and optimize beneficial reuse of dredge material.

*EIS No. 20090063, ERP No. FS-UAF-A10051-MA, Pave PAWS Early Warning Radar Operation Project, Continued Operation of the Solid-State Phased-Array Radar System (SSPARS), also known as Pave, Phased Array Warning Systems (PAWS), Cape Cod Air Force Station, MA.*

**Summary:** No formal comment letter was sent to the preparing agency.

*EIS No. 20090097, ERP No. FS-COE-E11060-NC, Topsail Beach Interim (Emergency) Beach Fill Project—Permit Request, Proposal to Place Sand on 4.7 miles of the Town's Shoreline to Protect the Dune Complex and Oceanfront Development, Onslow and Pender Counties, NC.*

**Summary:** EPA agrees with relocating the sand borrow area slightly seaward in order to lessen impacts to the inlet ebb tidal delta. EPA recommended that corrective actions be identified in the monitoring plan should adverse impacts be greater than expected.

Dated: May 26, 2009.

**Ken Mittelholtz,**

*Environmental Protection Specialist, Office of Federal Activities.*

[FR Doc. E9-12547 Filed 5-28-09; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8911-1]

### Meeting of the Mid-Atlantic/Northeast Visibility Union (MANE-VU) Stakeholder Briefing

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of meeting.

**SUMMARY:** The United States Environmental Protection Agency (EPA) is announcing the Stakeholder Briefing of the Mid-Atlantic/Northeast Visibility Union (MANE-VU). This meeting will deal with matters relative to Regional Haze and visibility improvement in Federal Class I areas within MANE-VU.

**DATES:** The meeting will be held on June 10, 2009 starting at 1 p.m. (EDT).

*Location:* Holiday Inn BWI Airport, 890 Elkridge Landing Road, Linthicum, MD 21090; (410) 859-8400.

**FOR FURTHER INFORMATION CONTACT:** For questions regarding meeting specifics, documents and press inquiries contact: Kromeklia Bryant, Ozone Transport Commission, 444 North Capitol Street, NW., Suite 638, Washington, DC 20001; (202) 508-3840; e-mail:

*ozone@otcair.org*; Web site: *http://www.manevu.org*.

**SUPPLEMENTARY INFORMATION:** The Mid-Atlantic/Northeast Visibility Union (MANE-VU) was formed in 2001, in response to EPA's issuance of the Regional Haze rule. MANE-VU's members include: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, the Penobscot Indian Nation, the St. Regis Mohawk Tribe along with EPA and Federal Land Managers.

*Type of Meeting:* This meeting will be open to the public.

*Agenda:* Copies of the final agenda are available from the OTC office (202) 508-3840; by e-mail: *ozone@otcair.org* or via the MANE-VU Web site at *http://www.manevu.org*.

Dated: May 21, 2009.

**William C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. E9-12552 Filed 5-28-09; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8911-2]

### Meeting of the Ozone Transport Commission

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of meeting.

**SUMMARY:** The United States Environmental Protection Agency is announcing the 2009 Annual Meeting of the Ozone Transport Commission (OTC). This OTC meeting will explore options available for reducing ground-level ozone precursors in a multi-pollutant context.

**DATES:** The meeting will be held on June 10, 2009 starting at 9 a.m. (EDT) and ending at 5 p.m.

*Location:* Holiday Inn BWI Airport, 890 Elkridge Landing Road, Linthicum, MD 21090; (410) 859-8400.

**FOR FURTHER INFORMATION CONTACT:** For documents and press inquiries contact: Ozone Transport Commission, 444

North Capitol Street NW., Suite 638, Washington, DC 20001; (202) 508-3840; e-mail: *ozone@otcair.org*; Web site: *http://www.otcair.org*.

**SUPPLEMENTARY INFORMATION:** The Clean Air Act Amendments of 1990 contain at Section 184 provisions for the "Control of Interstate Ozone Air Pollution." Section 184(a) establishes an "Ozone Transport Region" (OTR) comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia. The purpose of the Ozone Transport commission is to deal with ground-level ozone formation, transport, and control within the OTR.

*Type of Meeting:* Open.

*Agenda:* Copies of the final agenda will be available from the OTC office (202) 508-3840; by e-mail: *ozone@otcair.org* or via the OTC Web site at *http://www.otcair.org*.

Dated: May 21, 2009.

**William C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. E9-12551 Filed 5-28-09; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 09-21; DA 09-810]

### Auction of FM Broadcast Construction Permits Scheduled for September 1, 2009; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 79

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the procedures and minimum opening bids for the upcoming auction of FM broadcast construction permits (Auction 79). This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for the auction.

**DATES:** Applications to participate in Auction 79 must be filed prior to 6 p.m. Eastern Time (ET) on June 25, 2009. Bidding for permits in Auction 79 is scheduled to begin on September 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* For legal questions: Howard Davenport or Lynne Milne at (202) 418-0660. For general auction questions: Debbie Smith

or Linda Sanderson at (717) 338-2868. *Media Bureau, Audio Division*: For licensing information and service rule questions: Lisa Scanlan or Tom Nessinger at (202) 418-2700. To request materials in accessible formats (braille, large print, electronic files or 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 79 Procedures Public Notice*, which was released on April 17, 2009. The complete text of the *Auction 79 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. ET Monday through Thursday and from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The *Auction 79 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>, using document number DA 09-810 for the *Auction 79 Procedures Public Notice*. The *Auction 79 Procedures Public Notice* and related documents are also available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/79/>.

## I. General Information

### A. Introduction

1. By this Public Notice, the Wireless Telecommunications Bureau and the Media Bureau (collectively, the Bureaus) announced the procedures and minimum opening bid amounts for the upcoming auction of certain FM broadcast construction permits. This auction, which is designated as Auction 79, is scheduled to commence on September 1, 2009. On February 27, 2009, the Bureaus released a public notice seeking comment on competitive bidding procedures to be used in Auction 79. Interested parties submitted three comments and four reply comments in response to the *Auction 79 Comment Public Notice*, 74 FR 10578, March 11, 2009.

#### i. Construction Permits To Be Offered in Auction 79

2. Auction 79 will offer 122 construction permits in the FM

broadcast service as listed in Attachment A of the *Auction 79 Procedures Public Notice*. The construction permits to be auctioned are for 122 new FM allotments, and include construction permits for three FM allotments that were defaulted on after a previous auction, and a construction permit for one FM allotment that was offered but not sold in Auctions 37 and 62. These construction permits are for vacant FM allotments, reflecting FM channels assigned to the FM Table of Allotments (Table), pursuant to the Commission's established rulemaking procedures, and are designated for use in the indicated communities.

3. The Bureaus denied one commenter's request that the Bureaus add to the Auction 79 inventory construction permits for two specified vacant allotments, added to the Table October 10, 2008, as well as a second commenter's request to add all new FM allotments approved in a specified rulemaking proceeding. Further, the Bureaus explained that a request for a low power television station allotment or construction permit was beyond the scope of this proceeding, which is confined to developing competitive bidding procedures for an FM auction.

4. Applicants may apply for any vacant FM allotment listed in Attachment A of the *Auction 79 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 submit a timely upfront payment, will retain its status as an applicant in Auction 79 and will remain subject to the Commission's anti-collusion rules, but, having purchased no bidding eligibility, will not be eligible to bid.

### B. Rules and Disclaimers

#### i. Relevant Authority

5. 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 the *Auction 79 Procedures Public Notice* and the Commission's decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees. The Commission may amend or supplement the information contained in its public notices at any time. 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 and Compliance With Antitrust Laws

6. Applicants for Auction 79 are reminded that they remain subject to the provisions of the Commission's anti-collusion rules, 47 CFR 1.2105(c) and 73.5002(d), against any communication, directly or indirectly, about bids, bidding strategy, or the post-auction market structure, until the down payment deadline after the auction, which will be announced in a future public notice. This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid. Applicants are also reminded that, for purposes of this prohibition on certain communications, 47 CFR 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. The *Auctions 79 Procedures Public Notice* contains additional guidance concerning the application of the anti-collusion rules. Potential applicants are strongly encouraged to review that guidance and seek additional information should they have any questions.

7. If an applicant makes or receives a communication that appears to violate the anti-collusion rule, it must report

such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. The applicant's obligation to report any such communication continues beyond the five-day period, even if the report is not made within the five-day period. Parties reporting communications pursuant to 47 CFR 1.2105(a)(2) or 1.2105(c)(6) must take care to ensure that any reports of prohibited communications do not themselves give rise to a violation of the anti-collusion rule. Parties also are encouraged to coordinate with the Auctions and Spectrum Access Division staff if they have any questions about the procedures for submitting such reports.

8. 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.

9. Applicants must be aware that failure to comply with the Commission's rules can result in enforcement action. A summary listing of documents issued by the Commission and the Bureaus addressing the application of the anti-collusion rule may be found in Attachment D of the *Auction 79 Procedures Public Notice*. Most of these documents are available on the Commission's auction anti-collusion Web page.

10. Applicants are also reminded that, regardless of compliance with the Commission's rules, they remain subject to the antitrust laws. Compliance with the disclosure requirements of the Commission's anti-collusion rule will not insulate a party from enforcement of the antitrust laws.

iii. Due Diligence

11. 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. Applicants should perform their individual due diligence before proceeding as they would with any new business venture. The Commission makes no representations or warranties about the use of this spectrum for particular purposes.

12. Applicants are strongly encouraged to conduct their own research prior to the beginning of bidding in Auction 79 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 79 are strongly encouraged to continue such research throughout the auction.

13. Applicants should also be aware that certain pending and future proceedings, including applications, applications 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 79. 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 79. 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. Additionally, potential bidders should perform technical analyses sufficient to assure themselves that, should they prevail in competitive bidding for a specific FM construction permit, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements. 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 79. 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 of Commission permittees and licensees.

iv. Use of Integrated Spectrum Auction System

14. The Commission will make available a browser-based bidding system to allow bidders to participate in

Auction 79 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. Environmental Review Requirements

15. Permittees or licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other Federal environmental statutes.

C. Auction Specifics

i. Auction Start Date

16. Bidding in Auction 79 will begin on Tuesday, September 1, 2009. Although two commenters suggested that bidding be postponed, the Bureaus decided that bidding would begin on the date initially proposed. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Moreover, unless otherwise announced, bidding on all construction permits will be conducted on each business day until bidding has stopped on all construction permits.

ii. Bidding Methodology

17. The bidding methodology for Auction 79 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.

iii. Pre-Auction Dates and Deadlines

18. The following dates and deadlines apply:

Auction Seminar .....	June 16, 2009.
Short-Form Application (FCC Form 175), Filing Window Opens .....	June 16, 2009; 12 noon ET.
Short-Form Application (FCC Form 175), Filing Window Deadline .....	June 25, 2009; prior to 6 p.m. ET.
Upfront Payments (via wire transfer) .....	July 31, 2009; 6 p.m. ET.
Mock Auction .....	August 28, 2009.

Auction Begins ..... September 1, 2009.

## iv. Requirements for Participation

19. Those wishing to participate in this auction must: (1) Submit a short-form application (FCC Form 175) electronically prior to 6 p.m. ET, June 25, 2009, following the electronic filing procedures set forth in Attachment B of the *Auction 79 Procedures Public Notice*; (2) submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. ET, July 31, 2009, following the procedures and instructions set forth in Attachment C of the *Auction 79 Procedures Public Notice*; and (3) comply with all provisions outlined in the *Auction 79 Procedures Public Notice* and applicable Commission rules.

**II. Short-Form Application (FCC Form 175) Requirements****A. Short-Form Applications**

20. Entities and individuals seeking construction permits available in Auction 79 must file a short-form application electronically via the FCC Auction System prior to 6 p.m. ET on June 25, 2009, following the procedures prescribed in Attachment B of the *Auction 79 Procedures Public Notice*. Mailings for Auction 79 will be sent by the Bureaus only to the contact's address listed in the applicant's short-form application.

21. Any application for a noncommercial educational station that is mutually exclusive with any application for a commercial station will be returned as unacceptable for filing. Applications specifying the same FM station construction permit are considered mutually exclusive. A short-form application that does not identify its proposed station(s) as a noncommercial educational station(s) will be considered to be an application for a commercial broadcast station(s).

22. Applicants bear full responsibility for submitting accurate, complete and timely short-form applications. Each applicant should read carefully the instructions provided in the *Auction 79 Procedures Public Notice*, including its Attachment B, and should consult the Commission's rules to ensure that all of the information that is required by the Commission's rules and relevant public notices is included with its short-form application. 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 filing a short-form application are

subject to the Commission's anti-collusion rules beginning at the deadline for filing.

23. Applicants also should note that submission of a short-form application, and any amendments, constitutes a representation by the certifying official that the certifier is an authorized representative of the applicant, that the certifier has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct.

**B. Permit Selection**

24. An applicant must select on its short-form application the construction permits on which it wants to bid from the Eligible Permits list. Applicants will not be able to change their construction permit selections after the short-form application filing deadline.

**C. New Entrant Bidding Credit**

25. Applicants may be able to qualify for either a 35 or 25 percent new entrant bidding credit, the amount by which a bidder's winning bid is discounted, depending on the number of other media of mass communications that are attributable to the applicant and its attributable interest holders. Media of mass communications are defined in 47 CFR 73.5008, and include both commercial and noncommercial educational full-power broadcast stations.

26. Attributable interests are defined in 47 CFR 73.3555 and its Note 2. The media interests held by very substantial investors in, or creditors of, an applicant claiming new entrant status are attributed. 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. In 2008, the Commission relaxed the equity/debt plus attribution standard, to allow for higher investment opportunities in entities meeting the definition of eligible entities. An eligible entity is defined in Note 2(i) of 47 CFR 73.3555. The Commission will allow the holder of an equity or debt interest in the applicant to exceed the 33 percent threshold without triggering attribution provided the combined equity and debt in the eligible entity is less than 50 percent, or the total debt in the eligible entity does not exceed 80 percent of the

asset value, and the interest holder does not hold any equity interest, option, or promise to acquire an equity interest in the eligible entity or any related entity.

27. The applicant's attributable interests, and therefore, its 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 application filing deadline. Thus, an applicant could not qualify for a bidding credit, nor upgrade a previously claimed bidding credit, based upon ownership or positional changes occurring after the short-form filing deadline. Prospective bidders are reminded, however, that events occurring after the short-form application 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.

28. The unjust enrichment provisions of 47 CFR 73.5007(c) apply to a winning bidder who utilizes a bidding credit, and subsequently seeks to assign or transfer its construction permit or license to an entity not qualifying for the same level of bidding credit.

29. The Bureaus were unable to adopt the suggestions of three commenters to revise the criteria for and the amount of the new entrant bidding credit. Commenters sought to re-define new entrant, to limit the number of facilities to which the new entrant bidding credit may be applied, and to impose a holding period for facilities obtained using the new entrant bidding credit. These changes would require amendment of the Commission's competitive bidding and broadcast service rules, which can only be accomplished through a rulemaking proceeding.

30. For the same reasons, the Bureaus were not able to consider one commenter's proposal to adopt a new discount on the filing fees when an application is submitted for a new allocation by anyone who has not owned a Commission licensed station within five years prior to the date of filing or previously filed for a new allocation. This particular proposal is

beyond the scope of the Bureaus developing competitive bidding procedures for Auction 79.

#### *D. Disclosure of Bidding Arrangements*

31. An applicant must identify in its short-form application each party with whom it has entered into any agreement, arrangement, or understanding of any kind relating to the construction permits being auctioned, including any agreement relating to a 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 an agreement by the short-form application filing deadline, it should not include the names of parties to the discussions on its application and may not continue such discussions with any applicants after the deadline. The *Auction 79 Procedures Public Notice* contains further guidance on these disclosure requirements.

#### *E. Provisions Regarding Former and Current Defaulters*

32. Current defaulters are not eligible to participate in Auction 79, but former defaulters can participate so long as they are otherwise qualified and make upfront payments that are fifty percent more than the normal upfront payment amounts. For purposes of this rule, a defaulter (current or former) includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by 47 CFR 1.2110. A default includes any default on any payment for any Commission construction permit or license, as well as any delinquency on any non-tax debt owed to any Federal agency, as of the filing deadline for short-form applications. An applicant, its affiliate, its controlling interest, or an affiliate of its controlling interest is considered a "former defaulter" only if it has remedied all such defaults and cured all of the outstanding non-tax delinquencies before the filing deadline for short-form applications.

#### *F. Minor Modifications to Short-Form Applications*

33. After the deadline for filing short-form applications (FCC Form 175) at 6 p.m. ET on June 25, 2009, applicants are

permitted to make only minor changes to their applications. Applicants are not permitted to make major modifications to their short-form applications. Such impermissible changes include, but are not limited to, a change of certifying official, a change of a construction permit selection, a change of control of the applicant, a claim of eligibility for a higher percentage of bidding credit, or a change of identification of the applicant's proposed facilities from noncommercial educational to commercial.

#### *G. Maintaining Current Information in Short-Form Applications*

34. 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 a bidding credit percentage must be reported immediately.

### **III. Pre-Auction Procedures**

#### *A. Auction Seminar—June 16, 2009*

35. On Tuesday, June 16, 2009, the Commission will conduct a seminar for parties interested in participating in Auction 79 at 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 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. For individuals who are unable to attend, a webcast of this seminar will be available from the Commission's Auction 79 Web page at <http://wireless.fcc.gov/auctions/79/>.

#### *B. Short-Form Applications—Due Prior to 6 p.m. ET on June 25, 2009*

36. In order to be eligible to bid in this auction, applicants must first follow the procedures set forth in Attachment B of the *Auction 79 Procedures Public Notice* to submit a short-form application (FCC Form 175) electronically via the FCC Auction System. This application must be received at the Commission prior to 6 p.m. ET on June 25, 2009. Late applications will not be accepted.

#### *C. Application Processing and Minor Corrections*

37. After the deadline for filing FCC Form 175 applications, the Commission subsequently will issue a public notice identifying: (1) Those applications that are complete; (2) those applications that are rejected; and (3) those applications that are incomplete because of minor defects that may be corrected and the deadline for resubmitting corrected applications.

#### *D. Upfront Payments—Due July 31, 2009*

38. In order to be eligible to bid in this auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing its short-form application, an applicant will have access to an electronic version of the FCC Form 159 that can be printed and sent by fax to U.S. Bank in St. Louis, Missouri. All upfront payments must be made as instructed in this Public Notice and must be received in the proper account at U.S. Bank before 6 p.m. ET on July 31, 2009.

##### *i. Making Upfront Payments by Wire Transfer*

39. Wire transfer payments must be received before 6 p.m. ET on July 31, 2009, consistent with instruction set forth in the *Auction 79 Procedures Public Notice*. The applicant is responsible for obtaining confirmation from its financial institution that U.S. Bank has timely received its upfront payment and deposited it into the proper FCC account. The Commission will not accept checks, credit cards, or automated clearing house (ACH) payments.

##### *ii. FCC Form 159*

40. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be faxed to U.S. Bank to accompany each upfront payment. Proper completion of FCC Form 159 is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment C to the *Auction 79 Procedures Public Notice*. An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payors using the 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 U.S. Bank by fax.

### iii. Upfront Payments and Bidding Eligibility

41. Applicants must make upfront payments to obtain bidding eligibility. The amount of the upfront payment determines a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids. The Bureaus declined to adopt for Auction 79 a commenter's suggestion to impose additional upfront payment requirements on applicants selecting more than ten percent of the FM construction permits in Auction 79.

42. In order to bid on a particular construction permit, a qualified bidder must have selected the construction permit on its FCC Form 175 and 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 only enough 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.

43. 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, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline.

44. Applicants that are former defaulters must 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 interests, as defined by 47 CFR 1.2110. If an applicant is a former defaulter, it must calculate its upfront

payment for all of its selected construction permits by multiplying the number of bidding units on which it wishes 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 selected on its short-form application, the applicant will not be eligible to participate in the auction.

#### *E. Remote Electronic Bidding*

45. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Only qualified bidders are permitted to bid. Each applicant should indicate its bidding preference—electronic or telephonic—on its FCC Form 175.

#### *F. Mock Auction—August 28, 2009*

46. All qualified bidders will be eligible to participate in a mock auction on Friday, August 28, 2009. 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**

47. The first round of bidding for Auction 79 will begin on Tuesday, September 1, 2009. 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*

48. The Bureaus will auction all construction permits in Auction 79 in a single auction using the Commission's standard simultaneous multiple-round 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.

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

49. The Bureaus will use upfront payments to determine initial

(maximum) eligibility (as measured in bidding units) for Auction 79. 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. Each construction permit is assigned a specific number of bidding units as listed in Attachment A of the *Auction 79 Procedures Public Notice*. 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 short-form application 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. At a minimum, an applicant's upfront payment must cover the bidding units for at least one of the construction permits it selected on its short-form application. The total upfront payment does not affect the total dollar amount a bidder may bid on any given construction permit.

50. 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 minimum percentage of their current bidding eligibility during each round of the auction.

51. A bidder's activity level in a round is the sum of the bidding units associated with any construction permits covered by new and provisionally winning bids. 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.

52. 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 additional bids in the auction.

### iii. Auction Stages

53. A bidder desiring to maintain its current bidding eligibility will be required to be active on construction permits representing at least 75 percent of its current bidding eligibility, during each round of Stage One, and at least 95 percent of its current bidding eligibility in Stage Two. The Bureaus have the discretion to further alter the activity requirements before and/or during the auction as circumstances warrant, and also have other mechanisms by which they may influence the speed of an auction.

### iv. Activity Rule Waivers

54. Each bidder in the auction will be provided with three activity rule waivers. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit.

### v. Auction Stopping Rules

55. To reduce the need for a provisionally winning bidder to monitor subsequent bidding rounds for higher bids, two commenters proposed alternative stopping procedures for this auction, which differ from the stopping procedures proposed by the Bureaus by halting bidding on a particular construction permit before bidding closes simultaneously on all construction permits. Because these alternative stopping procedures would reduce the flexibility of bidders to implement backup strategies in response to price information revealed as bidding continues in multiple bidding rounds, the Bureaus will employ a simultaneous stopping rule approach for Auction 79. A simultaneous stopping rule means that all construction permits remain available for bidding until bidding closes simultaneously on all construction permits. More specifically, bidding will close simultaneously on all construction permits after the first round in which no bidder submits any new bids or applies a proactive waiver.

56. Auction 79 will begin under the simultaneous stopping rule approach, and the Bureaus retained the discretion to employ later a modified stopping rule, a special stopping rule, or to keep the auction open even if no bidder places any new bids or applies a waiver in a round. Moreover, the Bureaus may use the modified stopping rule with or without prior announcement during the auction.

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

57. The Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle,

administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding.

### B. Bidding Procedures

#### i. Round Structure

58. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted in a given day.

#### ii. Minimum Opening Bids

59. The specific minimum opening bid amounts for the construction permits available in Auction 79 are set forth in Attachment A of the *Auction 79 Procedures Public Notice*.

#### iii. Bid Amounts

60. In each round, eligible bidders will be able to place a bid on a given construction permit in any of up to nine different amounts. The FCC Auction System interface will list the nine acceptable bid amounts for each construction permit.

#### iv. Provisionally Winning Bids

61. 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.

62. The Bureaus will 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.

#### v. Bidding

63. 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 79. 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. The length of a call to place a telephonic bid may vary; please allow a minimum of ten minutes.

64. 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.

65. If a bidder has sufficient eligibility to place a bid on the particular construction permit, an eligible bidder will be able to place bids in each round on that construction permit in any of nine different bid amounts. 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.

66. 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.

67. During a round, an eligible 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. If a bidder submits multiple bids for the same construction permit in the same round—multiple bids on the exact same construction permit, 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 bids do not count towards the bidder's current activity.

#### vi. Bid Removal and Bid Withdrawal

68. 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.

69. Bidders in Auction 79 are prohibited from withdrawing any bid after the close of a round in which the bid was placed. Bidders are cautioned to select bid amounts carefully because no bid withdrawals will be allowed in Auction 79, even if a bid was mistakenly or erroneously made.

vii. Round Results

70. Reports reflecting bidders' identities for Auction 79 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.

71. 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.

viii. Auction Announcements

72. 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**

73. Shortly after bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, final payments, and the long-form applications (FCC Form 301).

*A. Down Payments*

74. 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 79 to 20 percent of the net amount of its winning bids (gross bids less any applicable new entrant bidding credits).

*B. Final Payments*

75. Each winning bidder will be required to submit the balance of the net amount of its winning bids within ten business days after the applicable deadline for submitting down payments.

*C. Long-Form Application (FCC Form 301)*

76. Within thirty days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 301, Application for FM Construction Permit) and required exhibits, for each construction permit they won through Auction 79. Winning bidders claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit. Further instructions on these and other filing requirements will be provided to winning bidders in the auction closing public notice.

*D. Default and Disqualification*

77. 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 described 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. The Bureaus have set the additional default payment for this auction at twenty percent of the applicable bid.

78. Finally, 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*

79. Applicants that are not winning bidders or are winning bidders whose upfront payment exceeded the total net amount of their winning bids may be entitled to a refund of some or all of their upfront payment. All refunds will be returned to the payor of record, as identified on the FCC Form 159, unless the payor submits written authorization

instructing otherwise. Bidders that drop out of the auction completely (have exhausted all of their activity rule waivers and have no remaining bidding eligibility) may request a refund of their upfront payments before the close of the auction.

Federal Communications Commission.

**Gary D. Michaels,**

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

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**BILLING CODE 6712-01-P**

**FEDERAL HOUSING FINANCE AGENCY**

[No. 2009-N-06]

**Proposed Collection; Comment Request**

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** 60-day Notice of Submission of Information Collection for Approval from the Office of Management and Budget.

**SUMMARY:** In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Agency (FHFA) is seeking public comments concerning a currently approved information collection known as "Community Support Requirements," which has been assigned control number 2590-0005 by the Office of Management and Budget (OMB). The FHFA intends to submit the information collection to OMB for review and approval of a three-year extension of the control number, which is due to expire on September 30, 2009.

**DATES:** Interested persons may submit comments on or before July 28, 2009.

*Comments:* Submit comments to the FHFA using any one of the following methods: *E-mail:* [regcomments@fhfa.gov](mailto:regcomments@fhfa.gov). Please include Proposed Collection; Comment Request; Community Support Requirements (No. 2009-N-06) in the subject line of the message.

*Mail/Hand Delivery:* Federal Housing Finance Agency, Fourth Floor, 1700 G Street NW., Washington, DC 20552, Attention: Public Comments/Proposed Collection; Comment Request: "Community Support Requirements," (No. 2009-N-06). *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

We will post all public comments we receive without change, including any personal information you provide, such