

waiver or reduction of fees is justified when the requirements of paragraphs (b)(2)(i) and (ii) of this section are satisfied and any commercial interest is not the primary interest furthered by the request. GSA ordinarily shall presume that, when a news media requester has satisfied factors in paragraph (b)(1) of this section and this paragraph (b)(2), the request is not primarily in the commercial interest of the requester. Disclosure to data brokers or others who merely compile and market Government information for direct economic return shall not be presumed to primarily serve the public interest.

(c) Where only some of the records to be released satisfy the requirements for a fee waiver, a waiver shall be granted for those records.

### Subpart K—Other Rights and Services

#### § 105–60.900 Coda.

Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1 and 73

[AU Docket No. 19–290; DA 19–1256; DA 19–1265]

#### Auction of FM Broadcast Construction Permits Scheduled for April 28, 2020; Notice of Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 106; Auction 106 Freeze Announced for FM Minor Change Applications

**AGENCY:** Federal Communications Commission.

**ACTION:** Final action; requirements and procedures.

**SUMMARY:** This document summarizes public notices that announce the procedures and upfront payments amounts and minimum opening bids for the auction of certain FM broadcast construction permits as well as a temporary freeze on the filing of minor change applications for FM stations. The *Auction 106 Procedures Public Notice* summarized here is intended to familiarize applicants with the procedures and other requirements for participation in Auction 106.

**DATES:** Applications to participate in Auction 106 must be submitted before 6

p.m. Eastern Time (ET) on February 11, 2020. FM commercial and noncommercial educational minor change applications may not be filed during a period starting on January 29, 2020, and ending on February 11, 2020. Upfront payments for Auction 106 must be received by 6 p.m. ET on March 20, 2020. Bidding in Auction 106 is scheduled to start on April 28, 2020.

**FOR FURTHER INFORMATION CONTACT:** For auction legal questions, Lynne Milne or Daniel Habib in the OEA Auctions Division at (202) 418–0660. For general auction questions, the Auction Hotline at (717) 338–2868. For FM Broadcast service questions, Lisa Scanlan, Thomas Nessinger, or James Bradshaw in the MB Audio Division at (202) 418–2700. To request materials in accessible formats (Braille, large print, electronic files, or audio format) for people with disabilities, send an email 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 106 Procedures Public Notice*, released on December 13, 2019, and the *Auction 106 Freeze Public Notice*, also released on December 13, 2019. The complete text of the *Auction 106 Procedures Public Notice*, including attachments and any related document, and the complete text of the *Auction 106 Freeze Public Notice* are available for public inspection and copying from 8 a.m. to 4:30 p.m. ET Monday through Thursday or 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. These public notices and related documents also are available on the internet at the Commission's website: [www.fcc.gov/auction/106](http://www.fcc.gov/auction/106), or by using the search function for DA 19–1256 or DA 19–1265 on the Commission's EDOCS web page at <http://www.fcc.gov/edocs/>.

### I. General Information

1. *Construction Permits in Auction 106.* Auction 106 will offer 130 construction permits in the FM broadcast service for 130 new FM allotments, including 34 construction permits that were offered but not sold or were defaulted upon in prior auctions. These construction permits are for vacant FM allotments, reflecting FM channels added to the Table of FM Allotments pursuant to the Commission's established rulemaking procedures, and assigned to the indicated communities specified in 47 CFR 73.202(b). Attachment A of the *Auction 106 Procedures Public Notice*

lists the reference coordinates for each vacant FM allotment offered in Auction 106. Each Auction 106 applicant may submit in its FCC Form 175 a set of preferred site coordinates for any of its selected construction permits as an alternative to the reference coordinates for that vacant FM allotment.

2. The set of construction permits listed in Attachment A of the *Auction 106 Procedures Public Notice* is unchanged from the list of construction permits that were proposed for this auction in the *Auction 106 Comment Public Notice*. Two commenters request the addition of specific construction permits in Auction 106. Those requests cannot be granted because the underlying allotments must first be added to the Table of Allotments through separate administrative processes. Likewise, a third commenter's request to delete a specific allocation from the Table of Allotments cannot be granted because it is beyond the scope of this proceeding.

3. Pursuant to the policies established in the *Broadcast Competitive Bidding Order*, applicants may apply for any vacant FM allotment listed in Attachment A. If two or more FCC Forms 175 specify the same FM allotment in Auction 106, mutual exclusivity exists for auction purposes, and that construction permit must be awarded by competitive bidding procedures. Once mutual exclusivity exists for auction purposes, even if only one applicant is qualified to bid for a particular construction permit in Auction 106, that applicant is required to submit a bid in order to obtain the construction permit.

4. *Media Bureau Freeze Public Notice.* Pursuant to the *Auction 106 Freeze Announced for FM Minor Change Applications Public Notice*, DA 19–1265 (Dec. 13, 2019), the Media Bureau (MB) will not accept FM commercial and noncommercial educational (NCE) minor change applications filed during the Auction 106 short-form application (FCC Form 175) filing window. This freeze ensures that there will not be a mutual exclusivity conflict between stations proposed in an Auction 106 Form 175 and a minor change application. Accordingly, this freeze promotes a more certain and speedier auction process.

5. *Auction Dates and Deadlines.* The following dates and deadlines apply: *Auction Tutorial Available (via internet):* by January 22, 2020 *FCC Form 175 Initial Filing Window Opens:* January 29, 2020, 12:00 noon ET *FCC Form 175 Initial Filing Deadline:* February 11, 2020, 6:00 p.m. ET

*Upfront Payments (via wire transfer):*

March 20, 2020, 6:00 p.m. ET

*Mock Auction:* April 24, 2020

*Auction Bidding Begins:* April 28, 2020

#### 6. *Requirements for Participation.*

Those wishing to bid in Auction 106 must: (1) Submit a FCC Form 175 electronically prior to 6:00 p.m. ET, on February 11, 2020, following the procedures set forth in Attachment B to the *Auction 106 Procedures Public Notice*, that complies with the Commission's competitive bidding rules and other requirements set forth in the *Auction 106 Procedures Public Notice*; (2) submit a sufficient upfront payment and a complete and accurate FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET on March 20, 2020, following the procedures and instructions set forth in Attachment C to the *Auction 106 Procedures Public Notice*; and (3) comply with all provisions outlined in the *Auction 106 Procedures Public Notice* and applicable Commission rules.

## II. Applying To Participate in Auction 106

7. *Relevant Authority.* Auction 106 applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules, 47 CFR pt. 1, subpart Q, 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 FM broadcast service competitive bidding requirements contained in 47 CFR pt. 73, as well as Commission orders concerning competitive bidding for broadcast construction permits. Applicants must also be thoroughly familiar with the procedures, terms and conditions contained in the *Auction 106 Procedures Public Notice* and any future public notices that may be released in the proceeding.

8. The terms 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. Copies of most auctions-related Commission documents, including public notices, can be retrieved from the FCC Auctions internet site at [www.fcc.gov/auctions](http://www.fcc.gov/auctions) and at the

Commission's headquarters, Reference Information Center, located at 445 12th Street SW, Washington, DC 20554.

9. *General Information Regarding Short-Form Applications.* An application to participate in Auction 106, referred to as a short-form application or FCC Form 175, provides information that the Commission uses to determine 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, parties desiring to participate in the auction must file a streamlined, short-form application in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on the applicant's short-form application and certifications, and on its upfront payment.

10. If an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 will be used to determine whether the applicant is eligible for the claimed bidding credit. Applicants filing a short-form application are subject to the Commission's rules against prohibited communications beginning at the deadline for filing.

11. An applicant bears full responsibility for submitting an accurate, complete and timely short-form application. Each applicant must certify on its FCC Form 175 under penalty of perjury that it is legally, technically, financially and otherwise qualified to hold a license. Each applicant should read carefully the instructions set forth in Attachment B to the *Auction 106 Procedures Public Notice* and should consult the Commission's rules to ensure that all the information required is included within its short-form application.

12. Each applicant should note that submission of a short-form application (and any amendments thereto) 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 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.

13. Pursuant to 47 CFR 1.2105(a)(3), the same party may not bid on more than one auction application, *i.e.*, as more than one applicant. If a party submits multiple FCC Forms 175 for an auction, only one application may be the basis for that party to become qualified to bid in that auction.

14. Consistent with the Commission's general prohibition of joint bidding agreements, a party is generally permitted to participate in a Commission auction only through a single bidding entity. Accordingly, the filing of applications in Auction 106 by multiple entities controlled by the same individual or set of individuals will generally not be permitted.

15. An applicant should consult the Commission's rules to ensure that all required information is included in its short-form application. To the extent the information in the *Auction 106 Procedures Public Notice* does not address a potential applicant's specific operating structure, or if the applicant needs additional information or guidance concerning the following disclosure requirements, the applicant should review the educational materials for Auction 106 and/or use the contact information provided in the *Auction 106 Procedures Public Notice* to consult with Commission staff to better understand the information it must submit in its short-form application.

16. *Authorized Bidders.* An applicant must designate at least one authorized bidder, and no more than three, in its FCC Form 175. According to 47 CFR 1.2105(a)(2)(iii), an individual is prohibited from serving as an authorized bidder for more than one auction applicant. Accordingly, the same individual may not be listed as an authorized bidder in more than one FCC Form 175 in a given auction.

17. *Permit Selection.* An applicant must select on its FCC Form 175 the construction permit or permits, from the list of available permits in Attachment A, on which it wants to bid. An applicant must carefully review and verify its construction permit selections before the deadline for submitting the FCC Form 175, because those selections cannot be changed after the auction application filing deadline. The FCC auction bidding system will not accept bids on construction permits that were not selected on the applicant's FCC Form 175.

18. *Disclosure of Agreements Relating to Permits Subject to Auction.* As required by 47 CFR 1.2105(a)(2)(viii), an applicant must provide in its FCC Form 175 a brief description of, and identify

each party to, any partnership, joint venture, consortium, or agreement, arrangement, or understanding of any kind relating to the FM construction permits being auctioned, including any agreement that addresses or communicates directly or indirectly bids (including specific prices), bidding strategies (including the specific construction permit(s) or license(s) on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls or is controlled by the applicant, is a party. As defined in 47 CFR 1.2105(a)(4)(i), a controlling interest for purposes of this rule includes all individuals or entities with positive or negative de jure or de facto control of the applicant or licensee. The applicant must certify under penalty of perjury in its FCC Form 175 that it has described, and identified each party to, any such agreement, arrangement, or understanding into which it has entered. An auction applicant that enters into any agreement relating to the permits or licenses being auctioned is subject to the same disclosure obligations it would have for agreements existing at the FCC Form 175 filing deadline, and it must maintain the accuracy and completeness of the information in its pending auction application.

19. The Commission's rules generally prohibit joint bidding and other arrangements involving auction applicants (including any party that controls or is controlled by, such applicants). For purposes of the prohibition on joint bidding arrangements, joint bidding arrangements include arrangements relating to the permits being auctioned that address or communicate, directly or indirectly, bidding at the auction, bidding strategies, including arrangements regarding price or the specific permits on which to bid, and any such arrangements relating to the post-auction market structure.

20. To implement the prohibition on joint bidding arrangements, 47 CFR 1.2105(a)(2)(viii)–(ix) require each auction applicant to certify in its short-form application that it has disclosed any arrangements or understandings of any kind relating to the licenses being auctioned to which it (or any party that controls or is controlled by it) is a party. The applicant must also certify that it (or any party that controls or is controlled by it) has not entered and will not enter into any arrangement or understanding of any kind relating directly or indirectly to bidding at auction with, among others, any other applicant.

21. Although the Commission's rules do not prohibit auction applicants from communicating about matters that are within the scope of an agreement excepted pursuant to 47 CFR 1.2105(a)(2)(ix)(A)–(C) and that has been disclosed in an FCC Form 175, certain discussions or exchanges could nonetheless touch upon impermissible subject matters, and compliance with the Commission's rules will not insulate a party from enforcement of the antitrust laws.

22. A winning bidder will be required to disclose in its long-form application (FCC Form 2100, Schedule 301–FM) following the close of the auction the specific terms, conditions and parties involved in any agreement relating to the permits or licenses being auctioned into which it had entered prior to the time bidding closed. This applies to any joint venture, partnership, or other agreement, arrangement, or understanding of any kind entered into relating to the competitive bidding process, including any agreements relating to the permits being auctioned that address or communicate directly or indirectly bids (including specific prices), bidding strategies (including the specific permits on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls or is controlled by the applicant, is a party.

23. *Ownership Disclosure Requirements.* Each applicant must comply with the ownership and control disclosure requirements and provide information required by 47 CFR 1.2105 and 1.2112, and, where applicable, 47 CFR 1.2110. Specifically, in completing the FCC Form 175, an applicant will be required to fully disclose information on the real party(ies)-in-interest and the ownership structure of the applicant, including both direct and indirect ownership interests of 10% or more.

24. In certain circumstances, an applicant may have previously filed an FCC Form 175 for a previous auction or an FCC Form 602 in which ownership information was disclosed. The most current ownership information contained in any previous FCC Form 175 or FCC Form 602 on file with the Commission that used the same FRN the applicant is using to submit its FCC Form 175 in this auction will automatically be pre-filled into certain ownership sections on the applicant's FCC Form 175, if such information is in an electronic format compatible with FCC Form 175. Each applicant must carefully review any ownership information automatically entered into its FCC Form 175, including any ownership attachments, to confirm that

all information supplied on its FCC Form 175 is complete and accurate as of the application filing deadline in this auction. Any information that needs to be corrected or updated must be changed directly in the FCC Form 175 for this auction.

25. *Foreign Ownership Disclosure Requirements.* The Commission is required by 47 U.S.C. 310 to review foreign investment in radio station licenses and specific restrictions on who may hold certain types of radio licenses. In its FCC Form 175, an applicant must report citizenship or jurisdiction of formation for the applicant and for each disclosable interest holder (DIH). In completing the FCC Form 175, an applicant also will be required to certify that it is in compliance with the foreign ownership provisions contained in section 310 of the Communications Act of 1934, as amended. According to 47 CFR 1.2105(a)(2)(vi), the Commission will accept an auction application certifying that a request for waiver or other relief from the requirements of section 310 is pending. If such a request concerning section 310 is pending or was granted previously, this information needs to be reported in an attachment to the applicant's FCC Form 175.

26. *Prohibited Communications and Compliance with Antitrust Laws.* The rules prohibiting certain communications set forth in 47 CFR 1.2105(c) and 73.5002(d), (e) apply to each applicant that files an FCC Form 175 in Auction 106. Section 1.2105(c)(1) provides that, subject to specified exceptions, after the deadline for filing a short-form application all applicants are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other in any manner the substance of their own, or each other's, or any other applicant's bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after the down payment deadline.

27. *Entities Subject to Section 1.2105.* An applicant for purposes of this rule includes the officers and directors of the applicant, all controlling interests in the entity submitting the FCC Form 175, as well as all holders of interests amounting to 10% or more of that entity. See 47 CFR 1.2105(c)(1). A party that submits an application becomes an applicant under the rule at the application filing deadline, and that status does not change based on later developments. Thus, an auction applicant that does not correct deficiencies in its application, fails to submit a timely and sufficient upfront payment, or does not otherwise become

qualified, remains an applicant for purposes of the rule and remains subject to the prohibition on certain communications until the applicable down payment deadline.

28. *Scope of Prohibition on Communications; Prohibition on Joint Bidding Agreements.* The Commission in 2015 amended section 1.2105(c) to extend the prohibition on communications to cover all applicants for an auction regardless of whether the applicants seek permits or licenses in the same geographic area or market. The Commission's rules now prohibit any joint bidding arrangement, including arrangements relating to the permits being auctioned that address or communicate, directly or indirectly, bidding in the auction, bidding strategies, including arrangements regarding price or the specific permits on which to bid, and any such arrangements relating to the post-auction market structure. The revised rule provides limited exceptions for a communication within the scope of any arrangement consistent with the exclusions from the Commission's rule prohibiting joint bidding specified at 47 CFR 1.2105(a)(2)(ix)(A)–(C), provided such arrangement is disclosed on the applicant's auction application. An applicant may continue to communicate pursuant to any pre-existing agreements, arrangements, or understandings that are solely operational or that provide for transfer or assignment of licenses, provided that such agreements, arrangements or understandings are disclosed on its auction application and do not both relate to the permits at auction and address or communicate bids (including amounts), bidding strategies, or the particular permits or licenses on which to bid or the post-auction market structure.

29. The prohibition against communicating in any manner includes public disclosures as well as private communications and indirect or implicit communications. Consequently, an applicant must take care to determine whether its auction-related communication may reach another applicant. Applicants must determine whether their communications with other parties are permissible under the rule once the prohibition begins at the deadline for submitting applications, even before the public notice identifying applicants is released.

30. Parties subject to section 1.2105(c) should take special care in circumstances where their officers, directors, and employees may receive information directly or indirectly relating to any applicant's bids or

bidding strategies. Such information may be deemed to have been received by the applicant under certain circumstances. For example, Commission staff have determined that, where an individual serves as an officer and director for two or more applicants, the bids and bidding strategies of one applicant are presumed conveyed to the other applicant through the shared officer or director, which creates an apparent violation of the rule.

31. Section 1.2105(c)(1) prohibits applicants from communicating with specified other parties only with respect to their own, or each other's, or any other applicant's bids or bidding strategies. Moreover, a communication conveying bids or bidding strategies (including post-auction market structure) must also relate to the licenses being auctioned to be covered by the prohibition. Thus, the prohibition is limited in scope and does not apply to all communications between or among the specified parties. The Commission consistently has made clear that application of the rule prohibiting communications has never required total suspension of essential ongoing business. Entities subject to the prohibition may negotiate agreements during the prohibition period, provided that the communications involved do not relate both (1) to the construction permits or licenses being auctioned and (2) to bids or bidding strategies or post-auction market structure.

32. Business discussions and negotiations that are unrelated to bidding in Auction 106 and that do not convey information about the bids or bidding strategies of an applicant, including the post-auction market structure, are not prohibited by the rule. While section 1.2105(c) does not prohibit business discussions and negotiations among auction applicants that are not auction related, each applicant must remain vigilant not to communicate, directly or indirectly, information that affects, or could affect, bids or bidding strategies. Certain discussions might touch upon subject matters that could convey price or geographic information related to bidding strategies. Such subject areas include, but are not limited to, management, sales, local marketing agreements, and other transactional agreements.

33. *Communicating with Third Parties.* Section 1.2105(c) does not prohibit an applicant from communicating bids or bidding strategies to a third-party, such as a consultant or consulting firm, counsel, or lender. The applicant should take appropriate steps, however, to ensure

that any third party it employs for advice pertaining to its bids or bidding strategies does not become a conduit for prohibited communications to other specified parties, as that would violate the rule. For example, an applicant might require a third party, such as a lender, to sign a non-disclosure agreement before the applicant communicates any information regarding bids or bidding strategy to the third party. Within third-party firms, separate individual employees, such as attorneys or auction consultants, may advise individual applicants on bids or bidding strategies, so long as such firms implement firewalls and other compliance procedures that prevent such individuals from communicating the bids or bidding strategies of one applicant to other individuals representing separate applicants. Although firewalls and/or other procedures should be used, their existence is not an absolute defense to liability if a violation of the rule has occurred.

34. In the case of an individual, the objective precautionary measure of a firewall is not available. As a result, an individual that is privy to bids or bidding information of more than one applicant presents a greater risk of becoming a conduit for a prohibited communication. Whether a prohibited communication has taken place in a given case will depend on all the facts pertaining to the case, including who possessed what information, what information was conveyed to whom, and the course of bidding in the auction.

35. Potential applicants may discuss the short-form application or bids for specific permits with their counsel, consultant, or expert of their choice before the short-form application deadline. Furthermore, the same third-party individual could continue to give advice regarding the application after the short-form application deadline, provided that no information pertaining to bids or bidding strategies is conveyed to that individual. To the extent potential applicants can develop bidding instructions prior to the short-form deadline that a third party could implement without changes during bidding, the third party could follow such instructions for multiple applicants provided that those applicants do not communicate with the third party during the prohibition period.

36. Applicants should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become conduits for the communication of prohibited bidding information. For example, an

applicant's statement to the press that it intends to stop bidding in an auction could give rise to a finding of a Section 1.2105 violation. Similarly, an FCC Form 175 applicant's public statement of intent not to place bids during bidding could also violate the rule.

37. *Section 1.2105(c) Certification.* By electronically submitting its FCC Form 175, each applicant in Auction 106 certifies its compliance with 47 CFR 1.2105(c) and 73.5002(d). However, the mere filing of a certifying statement as part of an application will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted. Any applicant found to have violated these communication prohibitions may be subject to sanctions.

38. *Duty to Report Prohibited Communications.* Section 1.2105(c)(4) requires that any applicant that makes or receives a communication that appears to violate section 1.2105(c) must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. Each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.

39. *Procedures for Reporting Prohibited Communications.* Section 1.2105(c) requires parties to file only a single report concerning a prohibited communication and to file that report with Commission personnel expressly charged with administering the Commission's auctions. This rule is designed to minimize the risk of inadvertent dissemination of information in such reports. Any reports required by section 1.2105(c) must be filed consistent with the instructions set forth in the *Auction 106 Procedures Public Notice*. For Auction 106, such reports must be filed with the Chief of the Auctions Division, OEA, by the most expeditious means available. Any such report should be submitted by email to Margaret W. Wiener at the following email address: [auction106@fcc.gov](mailto:auction106@fcc.gov). If you choose instead to submit a report in hard copy, any such report must be delivered only to: Margaret W. Wiener, Chief, Auctions Division, OEA, FCC, 445 12th Street SW, Washington, DC 20554.

40. A party reporting any communication pursuant to sections 1.65, 1.2105(a)(2), or 1.2105(c)(4) must take care to ensure that any report of a prohibited communication does not itself give rise to a violation of section

1.2105(c). For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection such as submission through the FCC Office of the Secretary or ECFS. A party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by following the procedures specified in 47 CFR 0.459. Such parties also are encouraged to coordinate with the Auctions Division staff about the procedures for submitting such reports.

41. *Antitrust Laws.* Applicants remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. Applicants should note that conduct that is permissible under the Commission's Rules may be prohibited by the antitrust laws. Compliance with the disclosure requirements of section 1.2105(c) will not insulate a party from enforcement of the antitrust laws. To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, 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 a forfeiture and may be prohibited from participating in future auctions, among other sanctions. See 47 CFR 1.2109(d).

42. *New Entrant Bidding Credit.* Two commenters observed that the *Auction 106 Comment Public Notice* did not invite comments on the use of new entrant bidding credits in this auction, and seek confirmation that new entrant bidding credits will be available to eligible applicants in this auction. This proceeding concerning procedures for conducting this auction does not alter the applicability of the Commission's rules for broadcast auctions; thus, a new entrant bidding credit will be available in Auction 106.

43. Applicants that qualify for the new entrant bidding credit, as specified in 47 CFR 73.5007, are eligible for a bidding credit in this auction that represents the amount by which a bidder's winning bid is discounted. The size of the new entrant bidding credit depends on the number of ownership interests in other media of mass communications that are attributable to

the bidder entity and its attributable interest-holders. A 35% bidding credit will be given to a winner 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 section 73.5008. A 25% 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 section 73.5008. No bidding credit will be given if any of the commonly owned mass media facilities serve the same area as the broadcast permit proposed in the auction, as defined in section 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. For purposes of determining whether a broadcast permit offered in this auction is in the same area as an applicant's existing mass media facilities, the coverage area of the to-be-auctioned facility is calculated using maximum class facilities at the allotment reference coordinates, not any applicant-specified preferred site coordinates. Bidding credits are not cumulative; qualifying applicants receive either the 25% or the 35% bidding credit, but not both. The interests of the applicant, and of any individuals or entities with an attributable interest in the applicant, in other media of mass communications are considered when determining an applicant's eligibility for the New Entrant Bidding Credit. Attributable interests are defined in section 73.3555 and note 2 of that section. In Auction 106, the bidder's attributable interests and, thus, its maximum new entrant bidding credit eligibility are determined as of the short-form application filing deadline. 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, specifically no later than five business days after the change occurs. Each applicant has a duty to continuously maintain the accuracy of information submitted in its auction application.

44. An applicant intending to divest a media interest or make any other ownership change, such as resignation of positional interests (officer or director), 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 FCC Form 175 filing deadline. Thus, an applicant could not qualify for a bidding credit, nor upgrade a previously claimed bidding credit, based upon ownership or officer/director positional changes occurring after the FCC Form 175 filing deadline.

45. Under broadcast attribution rules, those entities or individuals with an attributable interest in a bidder include: All officers and directors of a corporate bidder; any owner of 5% or more of voting stock of a corporate bidder; all partners and limited partners of a partnership bidder, unless the limited partners are sufficiently insulated; and all members of a limited liability company, unless sufficiently insulated.

46. 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. See *Clarification of Commission Policies Regarding Spousal Attribution*, MM Docket No. 91-122, Policy Statement, 57 FR 8845, Mar. 13, 1992.

47. In the *New Entrant Bidding Credit Reconsideration Order*, the Commission attributed 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% of the total asset value of the applicant, even if such an interest is non-voting. See 47 CFR 73.5008(c).

48. In the *Diversity Order*, the Commission relaxed the equity/debt plus (EDP) 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 section 73.3555. On September 23, 2019, the United States Court of Appeals for the Third Circuit issued a decision in *Prometheus Radio Project v. FCC*, vacating the Commission's eligible entity definition, and remanding those provisions of the *Quadrennial Second Report and Order* that rely on the eligible entity definition. As a result of this ongoing litigation, the relaxed EDP rule for

eligible entities as the basis for the New Entrant Bidding Credit will be unavailable in Auction 106.

49. 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. See 47 CFR 73.5007. Typically, de jure control is evidenced by ownership of at least 50.1% 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. 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 applicant's other mass media interests in determining its eligibility for a New Entrant Bidding Credit. A medium of mass communications is defined in Section 73.5008(b). Full power noncommercial educational stations, on both reserved and non-reserved channels, are included among media of mass communications as defined in section 73.5008(b).

50. *Application Requirements.* In addition to the ownership information required pursuant to sections 1.2105 and 1.2112, applicants seeking a New Entrant Bidding Credit are required to establish on their short-form applications that they satisfy the eligibility requirements to qualify for the bidding credit. In those cases, a certification under penalty of perjury must be provided in completing the short-form application. An applicant claiming that it qualifies for a 35% 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% New Entrant Bidding Credit must certify that neither it nor any of its attributable interest holders has any attributable interests in more than three media of mass communications, and must identify and describe such media of mass communications.

51. *Unjust Enrichment.* Applicants should note that the unjust enrichment provisions of 47 CFR 73.5007(c) 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.

52. *Provisions regarding Former and Current Defaulters.* Each applicant must make certifications regarding whether it is a current or former defaulter or delinquent. A current defaulter or delinquent is not eligible to participate in Auction 106. An applicant is considered a current defaulter or a current delinquent when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, is in default on any payment for any Commission construction permit or license (including a down payment) or is delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for auction applications. Accordingly, each applicant must certify under penalty of perjury on its FCC Form 175 that the applicant, any of its affiliates, any of its controlling interests, and any of the affiliates of its controlling interests, are not in default on any payment for a Commission construction permit or license (including down payments) and that they are not delinquent on any non-tax debt owed to any Federal agency. For purposes of making this certification, the term affiliate is defined in 47 CFR 1.2110 and the term controlling interest is defined in 47 CFR 1.2105(a)(4)(i).

53. An applicant is considered a former defaulter or a former delinquent when, as of the FCC Form 175 filing deadline, it or any of its controlling interests has defaulted on any Commission construction permit or license or has been delinquent on any non-tax debt owed to any Federal agency, but has since remedied all such defaults and cured all of the outstanding non-tax delinquencies. A former defaulter or delinquent who has remedied all such defaults and cured all of the outstanding non-tax delinquencies prior to the FCC Form 175 filing deadline in this auction may participate so long as it is otherwise qualified and if the applicant makes an upfront payment that is 50% more than would otherwise be required. For this reason, an applicant must certify under penalty of perjury whether it (along with any of its controlling interests) has ever been in default on any payment for a Commission construction permit or license (including a down payment) or has ever been delinquent on any non-tax debt owed to any Federal agency, subject to the exclusions of any cured default on a Commission construction permit or license as well as any cured delinquency on a non-tax debt owed to a Federal agency described in 47 CFR 1.2105(a)(2)(xii). For purposes of making this certification, the term

controlling interest is defined in 47 CFR 1.2105(a)(4)(i).

54. For purposes of evaluating the certifications required by sections 1.2105(a)(2)(xi) and (xii), non-tax debt owed to any Federal agency includes all amounts owed under Federal programs, including contributions to the Universal Service Fund, Telecommunications Relay Services Fund, and the North American Numbering Plan Administration, notwithstanding that the administrator of any such fund may not be considered a Federal agency under the Debt Collection Improvement Act of 1996. Public Law 104–134, 110 Stat. 1321 (1996).

55. We encourage applicants to review previous guidance provided on default and delinquency disclosure requirements in the context of the auction short-form application process. Applicants also are advised to consult with Auctions Division staff if they have questions about delinquency or default disclosure requirements.

56. 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 its obligations under the Debt Collection Improvement Act of 1996, which governs the collection of debts owed to the United States. Under the red light rule, applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission will not be processed. The Commission's adoption of the red light rule does not alter the applicability of any of its competitive bidding rules, including the provisions and certifications of sections 1.2105 and 1.2106, with regard to current and former defaults or delinquencies.

57. The Commission's Red Light Display System, which provides information regarding debts currently owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of section 1.2105. While the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant's lack of current red light status is not necessarily determinative of its eligibility to participate in an auction (or whether it may be subject to an increased upfront payment obligation). A prospective applicant in Auction 106 should note that any long-form application filed after the close of 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 applications dismissed will be deemed to have defaulted and will be subject to default payments under 47 CFR 1.2104(g) and 1.2109(c).

58. Each applicant should carefully review all records and other available Federal agency databases and information sources to determine whether the applicant, or any of its affiliates, or any of its controlling interests, owes or was ever delinquent in the payment of non-tax debt owed to any Federal agency.

59. *Optional Applicant Status Identification.* An applicant owned by members of minority groups and/or women, as defined in section 1.2110(c)(3), or rural telephone companies, as defined in section 1.2110(c)(4), may identify itself as such in its FCC Form 175. This applicant status information is optional and collected for statistical purposes only because it assists the Commission in monitoring the participation of various groups in its auctions.

60. *Noncommercial Educational Status Election.* In the *NCE Second Report and Order*, the Commission held that applications for noncommercial educational (NCE) FM stations on non-reserved spectrum, filed during an FM filing window, will be returned as unacceptable for filing if mutually exclusive with any application for a commercial station. Auction applications specifying the same FM station construction permit are considered mutually exclusive. If an FCC Form 175 filed during the Auction 106 filing window identifying the application's proposed station as NCE is mutually exclusive with any application filed during that window for a commercial station, the NCE application will be returned as unacceptable for filing. In the *NCE Second Report and Order*, the Commission determined that short-form applications that do not identify the facilities proposed in the FCC Form 175 as NCE will be considered, as a matter of law, applications for commercial broadcast stations. For this reason, each prospective applicant in this auction should consider carefully whether it wishes to propose NCE operation for any FM station acquired in this auction. This NCE election cannot be reversed after the initial application filing deadline.

61. *Only Minor Modifications to FCC Form 175 Allowed.* After the initial FCC Form 175 filing deadline, an Auction 106 applicant will be permitted to make only minor modifications to its short-

form application. Examples of minor changes include the deletion or addition of authorized bidders (to a maximum of three), revision of addresses and telephone numbers of the applicant, its responsible party, and its contact person, or change in the applicant's selected bidding option (electronic or telephonic). Major modifications to an FCC Form 175 application (e.g., change of construction permit selection, change in required certifications, change in control of the applicant such as any change in ownership or control that would constitute an assignment or transfer of control of the applicant, claim eligibility for a higher percentage of bidding credit, or change of the identification of the application's proposed facilities as noncommercial educational) will not be permitted after the initial FCC Form 175 filing deadline. If an applicant makes a major amendment, as defined by section 1.2105(b)(2), the major amendment may result in disqualification of the applicant from participating in bidding. Even if an applicant's FCC Form 175 is dismissed, the applicant would remain subject to the prohibitions on certain communications of 47 CFR 1.2105(c) until the down payment deadline for this auction. Questions about FCC Form 175 amendments should be directed to the Auctions Division at (202) 418–0660.

62. *Maintaining Current Information in Short-Form Applications.* Each applicant has a continuing obligation to maintain the accuracy and completeness of information furnished in its pending application in a competitive bidding proceeding. An auction applicant must furnish additional or corrected information to the Commission within five days after a significant occurrence, or amend its FCC Form 175 no more than five days after the applicant becomes aware of the need for the amendment. An applicant's obligation to make modifications to a pending auction application to provide additional or corrected information continues beyond the five-day period, even if the report is not made within the five-day period. Changes that cause a loss of or reduction in the percentage of bidding credit specified on the originally submitted application must be reported immediately, and no later than five business days after the change occurs. An applicant is obligated to amend its pending application even if a reported change is considered to be a major modification that may result in the dismissal of its application.

63. *Modifying an FCC Form 175.* During the initial filing window, an applicant will be able to make any

necessary modifications to its FCC Form 175 in the Auction Application System. An applicant that has certified and submitted its FCC Form 175 before the close of the initial filing window may continue to make modifications as often as necessary until the close of that window; however, the applicant must re-certify and re-submit its FCC Form 175 before the close of the initial filing window to confirm and effect its latest application changes. After each submission, a confirmation page will be displayed stating the submission time and submission date.

64. As with filing the FCC Form 175, any amendment(s) to the application and related statements of fact must be certified by an authorized representative of the applicant with authority to bind the applicant. Applicants should note that submissions of any such amendment or related statement of fact constitutes a representation by the person certifying that he or she is an authorized representative with such authority and that the contents of the amendment or statement of fact are true and correct.

### III. Preparing for Bidding

65. *Due Diligence.* Each potential bidder is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the construction permit(s) it is seeking in this auction. The FCC makes no representations or warranties about the use of this spectrum or these construction permits for particular services. Each Applicant should be aware that an FCC auction represents an opportunity to become an FCC permittee in a broadcast service, subject to certain conditions and regulations. This includes the established authority of the Commission to alter the terms of existing licenses by rulemaking, which is equally applicable to licenses awarded by auction. 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.

66. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. Each potential bidder should perform technical analyses and/or refresh its previous analyses to assure itself that, should it become a winning bidder for any Auction 106 construction permit, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements. Each applicant should

inspect any prospective transmitter sites located in, or near, the service area for which it plans to bid, to confirm the availability of such sites, and to familiarize itself with the Commission's rules regarding any applicable federal, state or local requirements. See 47 CFR pt. 1, subpart I.

67. Each applicant should continue to conduct its own research throughout Auction 106 to determine the existence of pending or future administrative or judicial proceedings that might affect its decision on continued participation in the auction. Each Auction 106 applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on construction permits available in this auction. The due diligence considerations mentioned in the *Auction 106 Procedures Public Notice* do not comprise an exhaustive list of steps that should be undertaken prior to participating in Auction 106. The burden is on the potential bidder to determine how much research to undertake, depending upon specific facts and circumstances related to its interests.

68. 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 106. Each potential bidder is responsible for undertaking research to ensure that any permits won in this auction will be suitable for its business plans and needs. Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

69. 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, it must 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.

70. *Bidder Education—Online Tutorial on Auction Process.* An educational auction tutorial will be available on the Auction 106 web page by Tuesday, January 22, 2020. This

online tutorial will provide information about pre-auction procedures, the FCC auction application system, completing short-form applications, auction conduct, the FCC auction bidding system, auction rules, and broadcast services rules. The online auction tutorial will be accessible on the Education tab of the Auction 106 website at [www.fcc.gov/auction/106](http://www.fcc.gov/auction/106). Once posted, this tutorial will remain available and accessible anytime for reference in connection with the procedures outlined in the *Auction 106 Procedures Public Notice*.

71. *Short-Form Applications: Due Before 6:00 p.m. ET on February 11, 2020.* In addition to other requirements, in order to be eligible to bid in Auction 106, an applicant must first submit an FCC Form 175 electronically via the Auction Application System, following the instructions set forth in Attachment B to the *Auction 106 Procedures Public Notice*. The FCC Form 175 will become available with the opening of the initial filing window and must be submitted prior to 6:00 p.m. on February 11, 2020. Late applications will not be accepted. No application fee is required.

72. Applications may be filed at any time beginning at noon ET on January 29, 2020, until the filing window closes at 6:00 p.m. ET on February 11, 2020. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. There are no limits or restrictions on the number of times an application can be updated or amended until the initial filing deadline on February 11, 2020.

73. An applicant must always click on the CERTIFY & SUBMIT button on the Certify & Submit screen to successfully submit its FCC Form 175 and any modifications; otherwise, the application or changes to the application will not be received or reviewed by Commission staff. Additional information about accessing, completing, and viewing the FCC Form 175 is included in Attachment B to the *Auction 106 Procedures Public Notice*. Applicants requiring technical assistance should contact FCC Auctions Technical Support at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (text telephony (TTY)); hours of service are Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET. All calls to Technical Support are recorded. The Commission periodically performs scheduled maintenance of its IT systems. During scheduled maintenance activities, which typically occur over the weekends, every effort is made to minimize any downtime to auction-related systems, including the auction

application system. However, there are occasions when auction-related systems may be temporarily unavailable.

74. *Public Notice of Applicant's Initial Application Status and Opportunity for Minor Modifications.* After the deadline for filing auction applications, Commission staff will review all timely submitted applications to determine whether each applicant has complied with the application requirements and provided all information concerning its qualifications for bidding. Commission staff will issue a public notice with applicants' initial application status identifying (1) those that are complete; (2) those that are rejected; or (3) those that are incomplete or deficient because of minor defects that may be corrected. The public notice will include the deadline for resubmitting corrected applications, and a paper copy will be sent by overnight delivery to the contact address listed in the FCC Form 175 for each applicant. In addition, each applicant with an incomplete application will be sent information on the nature of the deficiencies in its application, along with the name and phone number of a Commission staff member who can answer questions specific to the application.

75. Non-mutually exclusive applications will be listed in a subsequent public notice to be released by the Office of Economics and Analytics (OEA) and MB. 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 applications proposing commercial stations will proceed to auction.

76. Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the FCC Form 175, unless the applicant's certifying official or contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on its behalf. Authorizations may be sent by email to [auction106@fcc.gov](mailto:auction106@fcc.gov).

77. *Public Notice of Applicant's Final Application Status After Upfront Payment Deadline.* After review of resubmitted applications for Auction 106 and consideration of upfront payments, Commission staff will release a public notice identifying applicants that have become qualified bidders. A Qualified Bidders Public Notice will be issued before bidding in the auction begins. Qualified bidders are those applicants with submitted FCC Form 175 applications that are deemed timely

filed and complete, and which have made a timely and sufficient upfront payment.

78. *Upfront Payments.* In addition to other requirements, to be eligible to bid in this auction, a sufficient upfront payment and a complete and accurate FCC Remittance Advice Form (FCC Form 159, February 2003 edition) must be submitted before 6:00 p.m. ET on March 20, 2020, following the procedures described in the *Auction 106 Procedures Public Notice* and the instructions in its Attachment C. After completing its short-form application, an applicant will have access to an electronic version of the FCC Form 159. This FCC Form 159 can be printed and the completed form must be sent by fax to the FCC at (202) 418-2843, or by email to [RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov).

79. *Making Upfront Payments by Wire Transfer.* All upfront payments must be made by wire transfer. An applicant must initiate the wire transfer through its bank, authorizing the bank to wire funds from the applicant's account to the Commission's account at the U.S. Treasury. No other payment method is acceptable. The Commission will not accept checks, credit cards, or automated clearing house (ACH) payments. All payments must be made in U.S. dollars. Upfront payments for Auction 106 go to a U.S. Treasury account number different from the accounts used in previous FCC auctions. The beneficiary account number is specific to the upfront payments for Auction 106. Do not use a beneficiary account number from a previous auction. Wire transfer information is specified in the Making Upfront Payments by Wire Transfer section of the Auction 106 Procedures Public Notice.

80. Each applicant is responsible for ensuring timely submission of its upfront payment and for timely filing of an accurate and complete Form 159. To avoid untimely payments, an applicant should discuss arrangements and deadlines with its financial institution (including that financial institution's specific wire transfer requirements) several days before it plans to make the wire transfer, and well ahead of the due date, as well as allow sufficient time for the wire transfer to be initiated and completed prior to the deadline. The Commission repeatedly has cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer. Each applicant is responsible for obtaining confirmation from its financial institution that its wire transfer to U.S. Treasury was successful

and from Commission staff that its upfront payment was timely received and that it was deposited into the proper account. To receive confirmation from Commission staff, contact Scott Radcliffe of the Office of Managing Director's Revenue & Receivables Operations Group/Auctions at (202) 418-7518, or Theresa Meeks at (202) 418-2945.

81. Failure to deliver a sufficient upfront payment by the March 20, 2020 deadline will result in dismissal of the short-form application and disqualification from participation in the auction.

82. *Completing and Submitting FCC Form 159.* An accurate and complete Form 159 (February 2003 edition) must be sent to the FCC to accompany each upfront payment. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must fax a completed Form 159 to the FCC at (202) 418-2843. On the fax cover sheet, write: Wire Transfer—Auction Payment for Auction 106. Alternatively, the completed form can be scanned and sent as an attachment to an email to [RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov).

83. *Upfront Payments and Bidding Eligibility.* In the *Auction 106 Comment Public Notice*, an upfront payment amount was proposed for each construction permit, taking into account various factors related to the efficiency of the auction process and the potential value of similar construction permits, and comment was sought on the proposed upfront payment amounts.

84. A commenter suggests that we reduce to zero the upfront payments for certain allotments. This comment fails to recognize that the refundable upfront payments not only establish each qualified bidder's bidding eligibility and ensure that the pace of bidding is managed appropriately, but the upfront payments also protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the bidding. For these reasons, this proposal was rejected and the upfront payment amounts specified for those allotments were retained. The upfront payment amounts proposed in the *Auction 106 Comment Public Notice* are unchanged from those proposed, and the specific upfront payment amounts and bidding units for each construction permit are set forth in Attachment A of the *Auction 106 Procedures Public Notice*.

85. An applicant must make an upfront payment sufficient to obtain bidding eligibility on the construction permits on which it will bid. It was

proposed in the *Auction 106 Comment Public Notice* 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 any single round. Under that proposal, 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 qualified 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 applicant wishes to place bids and hold provisionally winning bids in any given round. Provisionally winning bids are bids that would become final winning bids if the auction were to close after the given round. The total upfront payment does not affect the total dollar amount the bidder may bid on any given construction permit. No comments on this proposal were submitted, and it is adopted. Each applicant's upfront payment amount will determine that bidder's initial bidding eligibility.

86. 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. To make this calculation, an applicant should add together the bidding units 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.

87. An applicant that is a former defaulter must pay an upfront payment 50% greater than that required of an applicant that is not a former defaulter. Defaults and delinquencies of the applicant itself and its controlling interests are included. 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. 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.

88. 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 in its FCC Form 175, the applicant will not be eligible to participate in bidding in the auction. That applicant will retain its status as an Auction 106 applicant and will remain subject to 47 CFR 1.2105(c), 73.5002(d), (e).

89. *Auction Registration.* All qualified bidders for Auction 106 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® tokens that will be required to place bids, the web address and instructions for accessing and logging in to the auction bidding system, an FCC assigned username (User ID) for each authorized bidder, and the Auction Bidder Line phone number.

90. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, if this mailing is not received by the contact representative for a qualified bidder by noon on Wednesday, April 22, 2020, call the Auctions Hotline at (717) 338-2868. Receipt of this registration mailing is critical to participating in the auction, and each qualified bidder is responsible for ensuring it has received all of the registration materials.

91. If SecurID® tokens are lost or damaged, only an authorized bidder, the contact person, or the certifying official on the applicant's FCC Form 175 may request replacements. To request replacement of these items, call the Auction Bidder Line at the telephone number provided in the registration materials or the Auctions Hotline at (717) 338-2868.

92. *Remote Electronic Bidding via the FCC Auction Bidding System.* The Commission will conduct this auction remotely over the internet, and telephonic bidding will be available as well. There will be no on-site bidding during Auction 106. Only qualified bidders are permitted to bid. Each authorized bidder must have its own SecurID® token, which the Commission will provide at no charge. Each qualified bidder with one authorized bidder will be issued two SecurID® tokens, while qualified bidders with two or three authorized bidders will be issued three tokens. For security purposes, the

SecurID® tokens, bidding system web address, FCC assigned username, and the telephonic bidding telephone number are only mailed to the contact person at the contact address listed on the FCC Form 175. Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 106.

93. The Commission makes no warranties whatsoever with respect to the FCC auction application system and the auction bidding 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 systems that are 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 systems.

94. To the extent an issue arises with the auction bidding system itself, the Commission will take all appropriate measures to resolve such issues quickly and equitably. The Commission periodically performs scheduled maintenance of its IT systems which typically occur over the weekends. Every effort is made to minimize any downtime to auction-related systems, including the Commission's bidding system. However, there are occasions when auction-related systems may be temporarily unavailable.

95. Should an issue arise that is outside the auction bidding system or attributable to a bidder, including, but not limited to, a bidder's hardware, software, or internet access problem that prevents the bidder from submitting a bid prior to the end of a round, the Commission shall have no obligation to resolve or remedy such an issue on behalf of the bidder. Similarly, if an issue arises due to bidder error using the auction bidding system, the Commission shall have no obligation to resolve or remedy such an issue on behalf of the bidder. After the close of a bidding round, the results of bid processing will not be altered absent evidence of any failure in the auction bidding system.

96. *Mock Auction.* All qualified bidders will be eligible to participate in a mock auction on Friday, April 24, 2020. The mock auction will enable bidders to become familiar with the FCC

auction bidding system prior to the auction. Bidders are strongly encouraged to participate in the mock auction. Details will be announced by public notice.

97. *Fraud Alert.* Some unscrupulous entrepreneurs may attempt to use Auction 106 to deceive and defraud unsuspecting investors. Information about deceptive telemarketing investment schemes is available from the FCC, FTC, and SEC. Information for potential bidders and investors may be obtained from the following sources: (1) The FCC's Consumer Call Center at (888) 225-5322 or by visiting [www.fcc.gov/general/frauds-scams-and-alerts-guides](http://www.fcc.gov/general/frauds-scams-and-alerts-guides); (2) the FTC at (877) FTC-HELP ((877) 382-4357) or by visiting [www.consumer.ftc.gov/articles/0238-investment-risks](http://www.consumer.ftc.gov/articles/0238-investment-risks); or (3) the SEC at (202) 942-7040 or by visiting [www.sec.gov/investor](http://www.sec.gov/investor). Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (202) 835-0618.

98. *Environmental Review Requirements.* Permittees or licensees must comply with the Commission's rules for environmental review under the National Environmental Policy Act, the National Historic Preservation Act, 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. These 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 State Historic Preservation Office, the U.S. Army Corps of Engineers, and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). In assessing the effect of facility construction on historic properties, the permittee or licensee must follow the provisions of the FCC's Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process. The permittee or licensee must prepare environmental assessments for any facility 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. In addition, the permittee or licensee must prepare environmental assessments for facilities that include high intensity white lights in residential

neighborhoods or excessive radio frequency emission.

#### IV. Bidding

##### A. Auction Structure

99. *Simultaneous Multiple Round Auction.* In the *Auction 106 Comment Public Notice*, it was proposed to auction all construction permits listed in Attachment A of the *Auction 106 Procedures Public Notice* 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 qualified bidders may place bids on individual construction permits. No comment was received for this proposal, and this proposal is adopted. Unless otherwise announced, bids will be accepted on all construction permits in each round of the auction until bidding stops on every construction permit.

100. *FCC Auction Bidding System.* The Commission will conduct this auction over the internet using the FCC auction bidding system. Qualified bidders are permitted to bid electronically via the internet or by telephone using the telephonic bidding option. For this reason, each applicant should indicate its bidding preference, electronic or telephonic, on its FCC Form 175. Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders must 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. All such telephone calls are recorded.

101. An Auction 106 bidder's ability to bid on specific construction permits is determined by two factors: (1) The construction permits selected by that applicant in its FCC Form 175 and (2) the bidder's bidding eligibility measured in bidding units. The FCC auction bidding system will allow bidders to submit bids on only those construction permits the bidder selected on its FCC Form 175.

102. In order to access the bidding function of the FCC auction bidding system, bidders must be logged in during a bidding round using the passcode generated by the SecurID® token 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.

103. *Round Structure.* The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders in the auction, which is released at least one week before bidding in the auction starts. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted each day. Moreover, unless otherwise announced, bidding on all construction permits will be conducted on each business day until bidding has stopped on all construction permits.

104. Commission staff retain 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. Commission staff may change the amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors, by prior announcement.

105. *Eligibility and Activity Rules.* Upfront payments will determine initial (maximum) bidding eligibility (as measured in bidding units) for Auction 106. 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 listed in Attachment A to the *Auction 106 Procedures Public Notice*. Bidding units assigned to each construction permit do not change as prices rise during the auction. Upfront payments are 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 the bidder's current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. 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 FCC Form 175. The total upfront payment does not affect the total dollar amount a bidder may bid on any given construction permit.

106. 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. A bidder's activity level in a round is the sum of the bidding units associated with construction permits covered by the bidder's new bids in the current round and provisionally winning bids from the previous round. Provisionally winning bids are bids that would become final winning bids if the auction were to close after the given round.

107. The minimum required activity is expressed as a percentage of the bidder's current eligibility, and it increases by stage as the auction progresses. 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.

108. To provide bidders with flexibility to pursue backup strategies if they so desire, a more flexible activity requirement is adopted than that proposed in the *Auction 106 Comment Public Notice* for this auction of well over 100 permits in which applicants are not limited in their permit selections and may seek to implement backup plans as price information is made available during bidding rounds. Initially two activity requirements are adopted: An 80% requirement for the beginning of the auction and a 95% requirement that will be used later in the auction.

109. *Auction Stages.* Auction 106 will be conducted in at least two stages as described below. A bidder desiring to maintain its current bidding eligibility will be required to be active on construction permits representing at least 80% of its current eligibility during each round of Stage One, and on at least 95% of its current bidding eligibility in Stage Two.

110. *Stage One:* During the first stage of the auction, a bidder desiring to maintain its current bidding eligibility will be required to be active on construction permits representing at least 80% of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in the use of an activity rule waiver or, if the bidder has no activity rule waivers remaining, a reduction in the bidder's bidding eligibility in the next round. 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 five-fourths ( $\frac{5}{4}$ ).

111. *Stage Two:* During the second stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on 95% of its current bidding eligibility. Failure to maintain the required activity level will result in the use of an activity rule waiver or, if the bidder has no activity rule waivers remaining, a reduction in the bidder's bidding eligibility in the next round. 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 ( $\frac{20}{19}$ ).

Since 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 into the FCC auction bidding system. Prior to any move from Stage One to Stage Two, bidders will be alerted during the auction by announcement in the auction bidding system.

112. *Stage Transitions.* The auction will advance from Stage One to Stage Two after Commission staff consider a variety of measures of auction activity, including, but not limited to, the percentages of construction permits (as measured in bidding units) on which there are new bids, the number of new bids, and the increase in revenue.

113. The auction will start in Stage One. The stage of the auction does not affect the auction stopping rules; the auction may conclude in Stage One. Commission staff will regulate the pace of the auction by announcement in the auction bidding system.

114. Commission staff retain the discretion to change the activity requirements during the auction as circumstances warrant, and also have other mechanisms to influence the speed of the auction. For example, there may be no transition to Stage Two if the auction is progressing satisfactorily under the Stage One activity

requirement, or there may be a transition to Stage Two with an activity requirement that is higher or lower than 95%, or add an additional stage with a higher activity requirement. This determination will be based on a variety of measures of auction activity, including, but not limited to, the number of new bids and the percentages of construction permits (as measured in bidding units) on which there are new bids.

115. If Commission staff implement a stage with an activity requirement other than 80% or 95%, a bidder's reduced eligibility for the next round will be calculated by multiplying that bidder's current round activity by the reciprocal of the activity requirement. For example, if there is a 98% activity requirement, the bidder's current round activity would be multiplied by  $\frac{50}{49}$ ; if there is a 100 percent activity requirement, the bidder's current round activity would become its bidding eligibility (current round activity would be multiplied by  $\frac{1}{1}$ ).

116. *Activity Rule Waivers.* Each qualified bidder in the auction will be provided with three activity rule waivers, which are principally a mechanism for a bidder to avoid the loss of bidding eligibility in the event that exigent circumstances prevent it from bidding in a particular round. Use of an activity rule waiver preserves the bidders eligibility despite its activity in the current round being below the required minimum activity level. An activity rule waiver applies to an entire round of bidding, not to a particular construction permit. A bidder may use an activity rule waiver in any round of the auction as long as the bidder has not used all of its waivers.

117. The FCC auction bidding system will assume that a bidder that does not meet the activity requirement would prefer to use 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 in which a bidder's activity level is below the minimum required unless (1) the bidder has no activity rule waiver remaining or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, therefore meeting the activity requirement. If a bidder has no waivers remaining and does not satisfy the required activity level, the bidder's current eligibility will be permanently reduced, possibly curtailing or eliminating its ability to place additional bids in the auction.

118. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity

rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC auction bidding system. The bidder's eligibility would be permanently reduced to bring it into compliance with the activity rule. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder cannot regain its lost bidding eligibility.

119. 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 rule waiver during a bidding round in which no bids are placed, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC auction bidding system in a round in which there is no new bid or a proactive waiver will not keep the auction open.

120. *Auction Stopping Rules.* For Auction 106, a simultaneous stopping rule approach was proposed, which means all construction permits remain available for bidding until bidding stops on every construction permit. Specifically, bidding will close on all construction permits after the first round in which no bidder submits any new bid or applies a proactive waiver.

121. Comment was sought on alternative versions of the simultaneous stopping rule for Auction 106: Option 1. The auction would close for all construction permits after the first round in which no bidder applies a proactive waiver or places any new bid on a 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. Option 2. The auction would close for all construction permits after the first round in which no bidder applies a waiver or places any new bid on any construction permit that already has a provisionally winning bid. Thus, absent any other bidding activity, a bidder placing a new bid on an FCC-held construction permit (a construction permit that does not have a provisionally winning bid) would not keep the auction open under this modified stopping rule. Option 3. The auction would close using a modified version of the simultaneous stopping rule that combines Option 1 and Option 2. Option 4. The auction would close after a specified number of additional rounds (special stopping rule) to be announced in advance in the FCC auction bidding system. If this special

stopping rule is invoked, bids will be accepted in the specified final round(s), after which the auction will close. Option 5. The auction would remain open even if no bidder places any new bids or applies a waiver. 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 lose bidding eligibility or use a waiver.

122. These proposed options will be exercised only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising these options, Commission staff may attempt to change the pace of bidding in the auction. For example, the number of bidding rounds per day and/or the minimum acceptable bids may change. Commission staff retain the discretion to exercise any of these options with or without prior announcement during the auction.

123. *Auction Delay, Suspension, or Cancellation.* By public notice or by announcement through the FCC auction bidding system, Commission staff may delay, suspend, or cancel bidding in the auction in the event of natural disaster, technical obstacle, network interruption, 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.

124. In such cases, Commission staff, in their sole discretion, may elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. This authority will be exercised solely at the discretion of Commission staff, and not as a substitute for situations in which bidders may wish to apply their activity rule waivers.

#### B. Bidding Procedures

125. *Bid Amounts.* In each round of Auction 106 a qualified bidder will be able to place a bid on a given construction permit in any of up to nine different amounts if a bidder has sufficient eligibility to place a bid on the particular construction permit. The FCC auction bidding system interface will list the nine acceptable bid amounts for each construction permit.

126. No comments were received on the proposal to use a minimum acceptable bid increment percentage of 10% to calculate the first of the

acceptable bid amounts. This means that the minimum acceptable bid amount for a construction permit will be approximately 10% greater than the provisionally winning bid amount for the construction permit. No comments were received on the proposal to use an additional bid increment percentage of 5% to calculate the eight additional acceptable bid amounts. Therefore, the auction will begin with a minimum acceptable bid increment percentage of 10% and an additional bid increment percentage of 5%.

127. In Auction 106, 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 construction permit, the minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount by one plus the minimum acceptable bid percentage—*i.e.*, provisionally winning bid amount \* 1.10, rounded.

128. In Auction 106, the FCC auction bidding system will calculate the eight additional bid amounts by multiplying the minimum acceptable bid amount by the additional bid increment percentage of 5%, and that result (rounded) is the additional increment amount. The first additional acceptable bid amount equals the minimum acceptable bid amount plus the additional increment amount. The second additional acceptable bid amount equals the minimum acceptable bid amount plus two times the additional increment amount; the third additional acceptable bid amount is the minimum acceptable bid amount plus three times the additional increment amount; etc. Because the additional bid increment percentage is 5%, the calculation of the additional increment amount is (minimum acceptable bid amount) \* (0.05), rounded. The first additional acceptable bid amount equals (minimum acceptable bid amount) + (additional increment amount); the second additional acceptable bid amount equals (minimum acceptable bid amount) + (2\*(additional increment amount)); the third additional acceptable bid amount equals (minimum acceptable bid amount) + (3\*(additional increment amount)); etc.

129. The result of the calculation of a minimum acceptable bid increment and the result of the calculation of each additional bid increment is subject to a minimum of \$100. Any results above \$10,000 will be rounded to the nearest \$1,000, results below \$10,000 but above \$1,000 will be rounded to the nearest

\$100, while results below \$1,000 will be rounded to the nearest \$10.

130. Commission staff retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid increment percentage, the additional bid increment percentage, and the number of acceptable bid amounts, with the discretion to do so on a construction permit-by-construction permit basis, as well as to retain the discretion to limit (a) the amount by which a minimum acceptable bid for a construction permit may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, Commission staff could set a \$1,000 limit on increases in minimum acceptable bid amounts over provisionally winning bids. Thus, if calculating a minimum acceptable bid using the minimum acceptable bid increment percentage results in a minimum acceptable bid amount that is \$1,200 higher than the provisionally winning bid on a construction permit, the minimum acceptable bid amount would instead be accepted at \$1,000 above the provisionally winning bid. If we exercise this discretion, we will alert bidders by announcement in the FCC auction bidding system during the auction.

131. *Provisionally Winning Bids.* In Auction 106, the FCC auction bidding system at the end of each bidding round will determine a provisionally winning bid for each construction permit based on the highest bid amount received for that 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. Provisionally winning bids count toward activity for purposes of the activity requirement.

132. A pseudo-random number generator will be used to select a single provisionally winning bid in the event that identical high bid amounts are submitted on a construction permit in a given round (*i.e.*, tied bids). The FCC auction bidding system will assign a pseudo-random number to each bid upon submission. The tied bid with the highest pseudo-random number wins the tiebreaker, and becomes the provisionally winning bid. The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to

close with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid. If the construction permit receives any bids in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the construction permit.

133. *Bid Removal and Bid Withdrawal.* Each qualified bidder has the option of removing any bids placed in a round provided that such bids are removed before the close of that bidding round. By removing a bid within a round, a bidder effectively unsubmitted the bid. 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 because a removed bid no longer counts toward bidding activity for the round. Once a round closes, a bidder may no longer remove a bid.

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

135. *Bidding Results.* Bids placed during a round will not be made public until the conclusion of that round. After a round closes, Commission staff 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 waiver), and post the reports for public access.

136. *Auction Announcements.* Commission staff will use auction announcements to report necessary information to bidders, such as schedule changes. All auction announcements will be available by clicking a link in the FCC auction bidding system.

## V. Post-Auction Procedures

137. Shortly after bidding has closed, 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 long-form applications (FCC Forms 2100, Schedule 301-FM).

138. *Down Payments.* As required by 47 CFR 1.2107(b), within ten business days after release of the auction closing public 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 106 to 20% of the net amount of its winning bid(s)

(gross bid(s) less any applicable new entrant bidding credit(s)).

139. *Final Payments.* As required by section 1.2109(a), each winning bidder will be required to submit the balance of the net amount for each of its winning bids within ten business days after the applicable deadline for submitting down payments.

140. *Long-Form Applications.* Within 30 days following the close of bidding and notification to the winning bidders, unless a longer period is specified by public notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 2100, Schedule 301-FM, Commercial FM Station Construction Permit Application), and required exhibits for each construction permit won through Auction 106. A winning bidder in a commercial broadcast spectrum auction is required to submit an application filing fee with its post-auction long-form application. 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.

141. *Default and Disqualification.* 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 a full and timely final payment, or is otherwise disqualified) is liable for a default payment as described in 47 CFR 1.2104(g)(2). This default payment consists of a deficiency payment, equal to the difference between the amount of the Auction 106 bidder's winning 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. An additional payment for defaults in Auction 106 under 47 CFR 1.2104(g)(2) will be assessed at 20% of the applicable bid.

142. In the event of a default, the Commission has the discretion to 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.

143. *Refund of Remaining Upfront Payment Balance.* All refunds of upfront payment balances will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. This written authorization must comply with the refund instructions provided in the *Auction 106 Procedures Public Notice*.

## VI. Procedural Matters

144. *Paperwork Reduction Act.* The Office of Management and Budget (OMB) has approved the information collections in the Application to Participate in an FCC Auction, FCC Form 175. The *Auction 106 Procedures Public Notice* does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. Therefore, it does not contain any new or modified information burden for small business concerns with fewer than 25 employees pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198. See 44 U.S.C. 3506(c)(4).

145. *Congressional Review Act.* The Commission will submit the *Auction 106 Procedures Public Notice* to the Administrator of OMB's Office of Information and Regulatory Affairs for concurrence as to whether these procedures are major or non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the *Auction 106 Procedures Public Notice* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

146. *Supplemental Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), 5 U.S.C. 601–612, the Commission prepared Initial Regulatory Flexibility Analyses (IRFAs) in connection with the *Broadcast Competitive Bidding Notice of Proposed Rulemaking* (NPRM), and other Commission NPRMs (collectively *Competitive Bidding NPRMs*) pursuant to which Auction 106 will be conducted. Final Regulatory Flexibility Analyses (FRFAs) likewise were prepared in the *Broadcast Competitive Bidding Order* and other Commission orders (collectively *Competitive Bidding Orders*) pursuant to which Auction 106 will be conducted. In this proceeding, a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) was incorporated in the *Auction*

*106 Comment Public Notice*, 84 FR 59605, Nov. 5, 2019. The Commission sought written public comment on the proposals in the *Auction 106 Comment Public Notice*, including comments on the Supplemental IRFA. This Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) supplements the FRFAs in the *Competitive Bidding Orders* to reflect the actions taken in the *Auction 106 Procedures Public Notice* and conforms to the RFA.

147. *Need for, and Objectives of, the Public Notice.* The procedures for the conduct of Auction 106 as described in the *Auction 106 Procedures Public Notice* implement the Commission's competitive bidding rules, which have been adopted by the Commission in multiple notice-and-comment rulemaking proceedings. More specifically, the *Auction 106 Procedures Public Notice* provides an overview of the procedures, terms and conditions governing Auction 106 and the post-auction application and payment processes, as well as setting the minimum opening bid amount for each of the FM broadcast construction permits that are subject to being assigned by competitive bidding.

148. To promote the efficient and fair administration of the competitive bidding process for all Auction 106 participants, including small businesses, the *Auction 106 Procedures Public Notice* announces the following procedures: (1) Use of a simultaneous multiple-round auction format, consisting of sequential bidding rounds with a simultaneous procedure; (2) a specific upfront payment amount for each construction permit; (3) a specific minimum opening bid amount for each construction permit; (4) a specific number of bidding units for each construction permit; (5) a bidder's initial bidding eligibility will be based on the amount of that bidder's upfront payment; (6) a two-stage auction with an activity requirement in which a bidder is required to be active on 80% of its bidding eligibility in stage one and 95% of its bidding eligibility in stage two; (7) provision of three activity waivers for each qualified bidder to allow it to preserve bidding eligibility during the course of the auction; (8) use of minimum acceptable bid amounts and additional acceptable increments, along with the methodology for calculating such amounts; (9) a procedure for breaking ties if identical high bid amounts are submitted on one permit in a given round; (10) a prohibition on bid withdrawals; and (11) establishment of an additional default payment percentage of 20% of the applicable bid

under 47 CFR 1.2104(g)(2) in the event that a winning bidder defaults or is disqualified after the auction.

149. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* There were no comments filed that specifically addressed the procedures and policies proposed in the Supplemental IRFA.

150. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.* Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comment filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed procedures as a result of those comments, 5 U.S.C. 604(a)(3). The Chief Counsel did not file any comments in response to the procedures that were proposed in the *Auction 106 Comment Public Notice*.

151. *Description and Estimate of the Number of Small Entities to Which the Procedures Will Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. 5 U.S.C. 604(a)(3). The RFA generally defines the term small entity as having the same meaning as the terms small business, small organization, and small governmental jurisdiction. 5 U.S.C. 601(6). In addition, the term small business has the same meaning as the term small business concern under the Small Business Act. 5 U.S.C. 601(3). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA, 15 U.S.C. 632(a)(1), (a)(2)(A).

152. The specific competitive bidding procedures and minimum opening bid amounts described in the *Auction 106 Procedures Public Notice* will affect all applicants participating in Auction 106. The number of entities that may apply to participate in Auction 106 is unknown. Based on the number of applicants in prior FM auctions, the estimate is that the number of applicants for Auction 106 may range from approximately 175 to 260. This estimate is based on the number of applicants who filed short-form applications to participate in previous auctions of FM construction permits held to date, an average of 1.98 short-form applications were filed per construction permit offered, with a median of 1.365 applications per permit. The actual number of applicants for Auction 106 could vary significantly

as any individual's or entity's decision to participate may be affected by a number of factors beyond the Commission's knowledge.

153. *Radio Stations.* This Economic Census category comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has established a small business size standard for this category as firms having \$41.5 million or less in annual receipts. Economic Census data for 2012 shows that 2,849 radio station firms operated during that year. Of that number, 2,806 firms operated with annual receipts of less than \$25 million per year, 17 with annual receipts between \$25 million and \$49,999,999 and 26 with annual receipts of \$50 million or more. Therefore, based on the SBA's size standard, the majority of such entities are small entities.

154. According to Commission staff review of the BIA/Kelsey, LLC's Media Access Pro Radio Database as of September 17, 2019, about 11,033 (or about 99.95%) of 11,039 commercial radio stations had revenues of \$41.5 million or less and thus qualify as small entities under the SBA definition. The SBA size standard data does not enable us to make a meaningful estimate of the number of small entities who may participate in Auction 106.

155. Also, in assessing whether a business entity qualifies as small under the SBA definition, business control affiliations must be included. Our estimate therefore likely overstates the number of small entities that might be affected by this auction because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. Moreover, the definition of small business also requires that an entity not be dominant in its field of operation and that the entity be independently owned and operated. The estimate of small businesses to which Auction 106 competitive bidding rules may apply does not exclude any radio station from the definition of a small business on these bases and is therefore over-inclusive to that extent. Furthermore, it is not possible at this time to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. In addition, it is difficult to assess these criteria in the context of media entities and therefore these estimates of small businesses to which they apply may be over-inclusive to this extent.

156. It is not possible to accurately develop an estimate of how many of the entities in this auction would be small businesses based on the number of small entities that applied to participate in prior broadcast auctions because that information is not collected from applicants for broadcast auctions in which bidding credits are not based on an applicant's size (as is the case in auctions of licenses for wireless services).

157. According to the SBA, a radio station is a small business concern if it has annual revenue of \$41.5 million or less. Based on Commission staff review of the BIA/Kelsey, LLC's Media Access Pro Radio Database, 6,739 (99.91%) of 6,745 FM radio stations fall at or under that revenue threshold. Accordingly, based on this data, it is estimated that the majority of Auction 106 applicants would likely meet the SBA's definition of a small business concern.

158. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* The Commission has designed the auction application process itself to minimize reporting and compliance requirements for applicants, including small business applicants. For all spectrum auctions, in the first part of the Commission's two-phased application process, parties desiring to participate in an 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 an applicant's short-form application and certifications, as well as its upfront payment. In the second phase of the auction application process, there are additional compliance requirements for winning bidders.

159. Auction 106 applicants, including small entities, will become qualified to bid in Auction 106 only if they comply with the following: (1) Submission of a short-form application that is timely and is found to be substantially complete, and (2) timely submission of a sufficient upfront payment for at least one of the construction permits that the applicant selected on its FCC Form 175, accompanied by a complete and accurate FCC Form 159.

160. In accordance with the terms of 47 CFR 1.2105(b)(2), an applicant whose application is found to contain deficiencies will have a limited opportunity to bring their application into compliance with the Commission's competitive bidding rules during a resubmission window. In addition, each Auction 106 applicant must maintain the accuracy of its previously filed

short-form application electronically using the FCC auction application system.

161. In the second phase of the process, there are additional compliance requirements only applicable to winning bidders. As with other winning bidders, any small entity that is a winning bidder will be required to comply with the terms of the following rules, among others: (1) 47 CFR 1.2107(b) by submitting as a down payment within 10 business days of release of the auction closing public notice sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 106 to 20% of the net amount of its winning bids; and (2) 47 CFR 1.2109(a) by submitting within 10 business days after the down payment deadline the balance of the amount for each of its winning bids; and (3) 47 CFR 73.5005(a) by electronically filing a properly completed long-form application (FCC Form 2100, Schedule 301-FM, Commercial FM Station Construction Permit Application) and required exhibits for each construction permit won through Auction 106, within 30 days following release of a closing public notice for Auction 106, unless a longer period is specified by public notice.

162. Further, as required by 47 CFR 1.2105(c), reports concerning a prohibited communication must be filed with the Chief of the Auctions Division, as detailed in the *Auction 106 Procedures Public Notice*.

163. *Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities. See 5 U.S.C. 603(c)(1)-(4).

164. OEA and MB anticipate that the steps taken to make numerous resources available to small entities and other auction participants at no cost should minimize any economic impact of the auction processes and procedures on small entities and should result in both

operational and administrative cost savings for small entities and other auction participants. For example, prior to the beginning of bidding in this auction, the Commission will hold a mock auction to allow qualified bidders the opportunity to familiarize themselves with both the processes and systems that will be utilized in Auction 106. During the auction, participants will be able to access and participate in bidding via the internet using a web-based system, or telephonically, providing two cost effective methods of participation and avoiding the cost of travel for in-person participation. Further, small entities as well as other auction participants will be able to avail themselves of a telephone hotline for assistance with auction processes and procedures as well as a technical support telephone hotline to assist with issues such as access to or navigation within the electronic FCC Form 175 and use of the FCC's auction bidding system. In addition, all auction participants, including small business entities, will have access to various other sources of information and databases through the Commission that will aid in both their understanding and participation in the process. These resources, coupled with the description and communication of the bidding procedures before bidding begins in Auction 106, should ensure that the auction will be administered predictably, efficiently and fairly, thus providing certainty for small entities as well as other auction participants.

165. *Notice to SBA.* The Commission will send a copy of the *Auction 106 Procedures Public Notice*, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA.

Federal Communications Commission.

**Gary Michaels,**

*Deputy Chief, Auctions Division, Office of Economics and Analytics.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MB Docket Nos. 14-50, 09-182, 07-294, 04-256, 17-289; DA 19-1303; FRS 16410]

### 2010/2014 Quadrennial Regulatory Review; Rules and Policies To Promote New Entry and Ownership Diversity in the Broadcasting Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document amends the broadcast ownership rules to reflect the mandate of the U.S. Court of Appeals for the Third Circuit, which vacated and remanded the Commission's 2018 *Incubator Order* and 2017 *Order on Reconsideration* in their entirety, and the definition of eligible entities adopted in the Commission's 2016 *Second Report and Order*. This document implements the Third Circuit's mandate and clarifies which rules are currently in effect.

**DATES:** Effective January 29, 2020.

**FOR FURTHER INFORMATION CONTACT:** Ty Bream, *Ty.Bream@fcc.gov*, or 202-418-0644.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Order*, DA 19-1303, in MB Docket Nos. 14-50, 09-182, 07-294, 04-256, 17-289, adopted and released on December 20, 2019. The complete text of this document is available electronically via the search function on the FCC's Electronic Document Management System (EDOCS) web page at [https://apps.fcc.gov/edocs\\_public/](https://apps.fcc.gov/edocs_public/) ([https://apps.fcc.gov/edocs\\_public/](https://apps.fcc.gov/edocs_public/)). The complete document is available for inspection and copying in the FCC Reference Information Center, 445 12th Street SW, Room CY-A257, Washington, DC 20554 (for hours of operation, see <https://www.fcc.gov/general/fcc-reference-information-center>). To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) (mail to: [fcc504@fcc.gov](mailto:fcc504@fcc.gov)) or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

### Synopsis

1. In *Prometheus Radio Project v. FCC*, the United States Court of Appeals for the Third Circuit vacated and remanded the Commission's 2018 *Incubator Order* (83 FR 43773, Aug. 28, 2018) and its 2017 *Order on Reconsideration* (83 FR 755, Jan. 8, 2018) in their entirety, as well as the definition of eligible entities adopted in the Commission's 2016 *Second Report and Order* (81 FR 76262, Nov. 1, 2016). Pursuant to F. R. App. P. 41(b), the court issued its mandate on November 29, 2019, which vacated, as of that date, the rule changes adopted in the *Incubator Order* and *Order on Reconsideration* and the eligible entity definition as adopted in the *Second Report and Order*. With this Order, we amend our rules to reflect the court's mandate and clarify which rules are currently in

effect. Nothing in this *Order* shall be construed to affect the right of the Commission or any other party to the *Prometheus* litigation to seek further review of the Third Circuit's decision in the U.S. Supreme Court, or to limit the Commission's discretion in the event that the Supreme Court were to take further action in that litigation. Consistent with the court's mandate, this Order repeals changes adopted in the *Incubator Order* and *Order on Reconsideration* and the eligible entity definition as adopted in the *Second Report and Order*. As a result of the court's decision and these revisions, the newspaper/broadcast cross-ownership rule, radio/television cross-ownership rule, local television ownership rule, local radio ownership rule, and television joint sales agreement attribution rule are reinstated as they existed prior to the *Order on Reconsideration*. For clarity, because the *Order on Reconsideration* is vacated in its entirety, the presumption under the local radio ownership rule that would apply a two-prong test for waiver requests involving existing parent markets with multiple embedded markets is repealed and unavailable to applicants. Note 5 to § 73.3555 is reinstated with a reference to the streamlined procedures adopted in March 2019 for reauthorizing television satellite stations when such stations are assigned or transferred. In addition, the eligible entity standard and its application to regulatory measures as set forth in the *Second Report and Order* are repealed. Apart from the portions of the order related to the now vacated eligible entity definition, the remainder of the *Second Report and Order* is in effect and provides additional guidance with respect to the reinstated rules. Finally, the regulatory measures adopted in the *Incubator Order* are similarly repealed and unavailable to applicants.

2. The Bureau finds that notice and comment are unnecessary for these rule amendments under 5 U.S.C. 553(b), because this ministerial order merely implements the mandate of the United States Court of Appeals for the Third Circuit, and the Commission lacks discretion to depart from this mandate. Because this Order is being adopted without notice and comment, the Regulatory Flexibility Act does not apply.

3. Accordingly, *it is ordered* that § 73.3555 of the Commission's rules, 47 CFR 73.3555, is amended as set forth in the Final Rules, effective upon publication in the **Federal Register**. While the effect of the court's mandate was to vacate certain rule changes and