

required report, EPA issued guidance that explains what Section 1414(c)(3)(A) requires and provides model language and reporting templates. EPA also annually makes available to the states a computer query that generates for each state (from information states are already required to submit to EPA's national database on a quarterly basis) the required violations information in a table consistent with the reporting template in EPA's guidance.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Burden Statement:** The annual public reporting and recordkeeping burden for this collection of information is estimated to average 208 hours for annual response. The number of respondents is 54 states, commonwealths and territories. The estimated total annual hour burden is 11,232 hours. The estimated total annualized cost burden is \$669,400. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: January 26, 2001.

**Karin Leff,**

*Acting Director, Compliance Assistance and Sector Programs Division.*

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## FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC-00-37-C (Auction No. 37); DA 01-119]

### Notice and Filing Requirements for FM Broadcast Construction Permits Auction, Minimum Opening Bids and Other Procedural Issues

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the procedures and minimum opening bids for the upcoming auction of certain FM Broadcast construction permits and also provides the final inventory of vacant FM allotments to be made available for this auction.

**DATES:** Auction No. 37 is scheduled for May 9, 2001.

#### FOR FURTHER INFORMATION CONTACT:

Auctions and Industry Analysis Division: Kenneth Burnley, Legal Branch, or Jeff Crooks, Auctions Operations Branch at (202) 418-0660; Barbara Sibert, Auctions Operations Branch at (717) 338-2888. Audio Services Division: Lisa Scanlan at (202) 418-2700. Media Contact: Mark Rubin at (202) 418-2924.

**SUPPLEMENTARY INFORMATION:** This is a summary of a Public Notice released January 19, 2001. The complete text of the public notice, including Attachments A through H, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 1231 20th Street, N.W. Washington, DC 20036, (202) 857-3800. It is also available on the Commission's web site at <http://www.fcc.gov>.

List of Attachments available at the FCC:

Attachment A—Construction Permits To Be Auctioned  
Attachment B—FCC Auction Seminar Registration Form  
Attachment C—Electronic Filing and Review of the FCC Form 175  
Attachment D—Guidelines for Completion of FCC Form 175 and Exhibits

Attachment E—Auction—Specific Instructions for FCC Remittance Advice (Form 159)  
Attachment F—FCC Bidding Preference/Remote Software Order Form  
Attachment G—Accessing the FCC Network Using Windows 95/98  
Attachment H—Summary Listing of Documents (Anti-Collusion)

## I. General Information

### A. Introduction

This public notice announces the procedures and minimum opening bids for the upcoming auction of certain FM Broadcast construction permits ("Auction No. 37"). On September 25, 2000, the Mass Media Bureau ("MMB") and the Wireless Telecommunications Bureau ("WTB") (collectively, the "Bureaus") released the *Auction No. 37 Comment Public Notice*, 65 FR 59841 (October 6, 2000), seeking comment on the establishment of reserve prices and/or minimum opening bids for Auction No. 37, in accordance with the Balanced Budget Act of 1997. On September 29, 2000, the Bureaus released a second Public Notice, stating that eight additional vacant FM allotments would be included in Auction No. 37 (*Auction No. 37 Additional Comment Public Notice*, 65 FR 59841 (October 6, 2000)). In addition, the Bureaus sought comment on procedures to be used in Auction No. 37. The Bureaus received twenty comments and three reply comments in response to the *Auction No. 37 Comment Public Notice* and the *Auction No. 37 Additional Comment Public Notice*.

### B. Scheduling

The *Auction No. 37 Comment Public Notice* announced that Auction No. 37 would begin on February 21, 2001. In this public notice, the Bureaus announce the beginning date of Auction No. 37 has been rescheduled to May 9, 2001.

### C. Construction Permits To Be Auctioned

Auction No. 37 will consist of 355 construction permits in the FM Broadcast service for stations throughout the United States and Guam. These construction permits are for vacant FM allotments, reflecting FM channels assigned to the Table of FM Allotments, 47 CFR 73.202(b), pursuant to the Commission's established rulemaking procedures, designated for use in the indicated community. As stated in the *Broadcast First Report and Order*, 63 FR 48615 (September 11, 1998), applicants may apply for any vacant FM allotment, as specified in

Attachment A; applicants specifying the same FM allotment will be considered mutually exclusive and, thus, the construction permit for the FM allotment will be awarded by competitive bidding procedures. The reference coordinates for each vacant FM allotment are also listed in Attachment A.

One commenter suggests that the Bureaus should treat any allotment that has only one bidder as not being mutually exclusive. As stated in the *Broadcast First Report and Order*, all pending mutually exclusive applications for broadcast services must be resolved through a system of competitive bidding. Accordingly, for a specific FM allotment, if the Commission were to receive only one FCC Form 175, Application to Participate in an FCC Auction ("short-form application"), and, thus, mutual exclusivity would not exist for auction purposes, the auction for any such construction permit would cancel.

National Public Radio requests that the Commission modify its auction procedures to permit noncommercial educational broadcast applicants to apply for a noncommercial station utilizing any of the FM allotments listed in Attachment A without having to compete in an auction. However, none of the FM channels included in Auction No. 37 are reserved exclusively for noncommercial educational use, or are otherwise exempt from competitive bidding procedures, if mutually exclusive applications are filed.

Several commenters request that the Bureaus remove certain FM allotments from Auction No. 37 due to the pendency of rulemaking proceedings concerning the FM allotment, or because of other pending challenges regarding the FM channels to be auctioned. The FM allotments designated as FM71, FM160, FM189, and FM275 are hereby removed from Auction No. 37. A revised Attachment A, reflecting the deletion of the four referenced FM allotments, is appended to the Public Notice.

Two commenters request the inclusion of additional FM channels in Auction No. 37. Ganske requests that the Commission include Channel 224C2 for Sunriver, Oregon, and Satellite requests the inclusion of Channel 239A for Big Pine Key, Florida. The rulemaking proceeding to add Channel 224C2 at Sunriver, Oregon to the Table of FM Allotments is not yet final (MM Docket No. 96-7), and accordingly, FM Channel 224C2 at Sunriver, Oregon will not be added to the list of FM allotments for Auction No. 37. Big Pine Key, Florida will be included in a subsequent

FM auction. The *Auction No. 37 Comment Public Notice* inadvertently included two allotments for Channel 261A at Corrigan, TX (FM 280 and FM 281) and two allotments for Channel 291A at Kerrville, TX (FM 289 and FM 290). Accordingly, duplicative listings FM 281 and FM 289 will be removed from Attachment A.

#### D. Rules and Disclaimers

##### 1. Relevant Authority

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

Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions contained in this Public Notice, the *Auction No. 37 Comment Public Notice*, the *Auction No. 37 Additional Comment Public Notice*, the *Broadcast First Report and Order*, the *Broadcast Reconsideration Order*, 64 FR 24523 (May 7, 1999) and the *New Entrant Bidding Credit Reconsideration Order*, 64 FR 44856 (August 18, 1999). Potential bidders must also familiarize themselves with Part 1, Subpart Q of the Commission's rules concerning competitive bidding proceedings.

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 our public notices at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Internet node via anonymous ftp @ftp.fcc.gov or the FCC Auctions World Wide Web site at <http://www.fcc.gov/wtb/auctions>. Additionally, documents may be obtained for a fee by calling the Commission's copy contractor, International Transcription Service, Inc. (ITS), at (202) 314-3070. When ordering documents from ITS, please provide the appropriate FCC number (for example, FCC 98-194 for the *Broadcast First Report and Order* and FCC 99-74 for the *Broadcast Reconsideration Order*).

##### 2. Prohibition of Collusion

To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for the same market from communicating with each other during the auction about bids, bidding

strategies, or settlements. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. Bidders competing for construction permits in the same market are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he or she is authorized to represent in the auction. Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or consulting firm), a violation could similarly occur. In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.

However, the Bureaus caution that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted. In Auction No. 37, for example, the rule would apply to any applicants bidding for the same market (i.e., Bethel, Alaska, Channel 252C3, Market FM1). Therefore, applicants that apply to bid for any FM construction permit in the same market would be precluded from communicating after filing the FCC Form 175 short-form application with any other applicant for a FM construction permit in that same market. However, applicants may enter into bidding agreements before filing their FCC Form 175, as long as they disclose the existence of the agreement(s) in their FCC Form 175. If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application under 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other applicants for the same market. By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with 1.2105(c) and 73.5002. In addition, 1.65 of the Commission's rules requires an applicant to maintain

the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules immediately upon learning of such violation.

A summary listing of documents from the Commission and the Bureaus addressing the application of the anti-collusion rules may be found in Attachment H of the Public Notice.

### 3. Due Diligence

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

Potential bidders are strongly encouraged to conduct their own research prior to Auction No. 37 in order to determine the existence of pending proceedings that might affect their decisions regarding participation in the auction. Participants in Auction No. 37 are strongly encouraged to continue such research during the auction.

### 4. Bidder Alerts

All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a construction permit, and not in default on any payment for Commission construction permits or licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, construction permit or license revocations, exclusion from

participation in future auctions, and/or criminal prosecution.

As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 37 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

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

Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326-2222 and from the SEC at (202) 942-7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876-7060. Consumers who have concerns about specific proposals may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225-5322).

### 5. National Environmental Policy Act (NEPA) Requirements

The permittee must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a broadcast facility is a federal action and the permittee must comply with the Commission's NEPA rules for each such facility. The Commission's NEPA rules require that, among other things, the permittee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corp of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The permittee must prepare environmental

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

### E. Auction Specifics

#### 1. Auction Date

The auction will begin on Wednesday, May 9, 2001. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding will be conducted on each business day until bidding has stopped on all construction permits.

#### 2. Auction Title

Auction No. 37—FM Broadcast

#### 3. Bidding Methodology

The bidding methodology for Auction No. 37 will be a simultaneous, multiple-round, ascending auction. Bidding will be permitted only from remote locations, either electronically (by computer) or telephonically.

#### 4. Pre-Auction Dates and Deadlines

Auction Seminar: March 7, 2001  
 Short-Form Application Filing Deadline (FCC Form 175): March 19, 2001; 6:00 p.m. ET  
 Orders for Remote Bidding Software: March 19, 2001; 6:00 p.m. ET  
 Upfront Payments (via wire transfer): April 16, 2001; 6:00 p.m. ET  
 Mock Auction: May 7, 2001  
 Auction Begins: May 9, 2001

#### 5. Requirements for Participation

Those wishing to participate in the auction must:

- Submit a short form application (FCC Form 175) electronically by 6:00 p.m. ET, March 19, 2001. No other application may be substituted for the FCC Form 175.
- Submit a sufficient upfront payment and a FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, April 16, 2001.
- Comply with all provisions outlined in this public notice and applicable Commission rules.

#### 6. General Contact Information

The following is a list of general contact information relating to Auction No. 37:

**General Auction Information:**

General Auction Questions, Seminar Registration, Orders for Remote Bidding Software: FCC Auctions Hotline, (888) 225-5322, Press Option #2 or direct (717) 338-2888, Hours of service: 8 a.m.-5:30 p.m. et.

**Auction Legal Information:**

Auction Rules, Policies, Regulations: Auctions and Industry Analysis Division, Legal Branch, (202) 418-0660

**Licensing Information:**

Rules, Policies, Regulations, Licensing Issues, Engineering Issues: Audio Services Division, (202) 418-2700

**Technical Support:**

Electronic Filing Assistance, Software Downloading: FCC Auctions Technical Support Hotline, (202) 414-1250 (Voice), (202) 414-1255 (TTY)

Hours of service: Monday-Friday, 7 a.m. to 10 p.m. ET, Saturday, 8 a.m. to 7 p.m., ET, Sunday, 12 noon to 6 p.m., ET

**Payment Information:**

Wire Transfers, Refunds: FCC Auctions Accounting Branch, (202) 418-1995, (202) 418-2843 (Fax)

**Telephonic Bidding:** Will be furnished only to qualified bidders

**FCC Copy Contractor:**

Additional Copies of Commission Documents: International Transcription Services, Inc., 445 12th Street, SW, Room CY-B400, Washington, DC 20554, (202) 314-3070

**Press Information:** Mark Rubin (202) 418-2924

**FCC Forms:**

(800) 418-3676 (outside Washington, DC), (202) 418-3676 (in the Washington Area)

**FCC Internet Sites:**

<http://www.fcc.gov/wtb/auctions>  
<http://www.fcc.gov/ftp://ftp.fcc.gov>

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

Guidelines for completion of the short-form (FCC Form 175) are set forth in Attachment D to the public notice. The short-form application seeks the applicant's name and address, legal classification, status, new entrant bidding credit eligibility, identification of the construction permit(s) sought, the authorized bidders and contact persons. To participate in Auction No. 37, no other application may be substituted for the FCC Form 175.

One commenter urges the Bureaus to eliminate the "ALL" box in the FCC Form 175 for this auction. The Bureaus

agree. The capability to select the ALL box originated in the context of, and was designed for use in, wireless auctions. Use of an ALL box, however, is inappropriate in the broadcast context and accordingly, an ALL box will not be included in the FCC Form 175 for use in Auction No. 37.

**A. Ownership Disclosure Requirements (FCC Form 175 Exhibit A)**

The Commission indicated in the *Broadcast First Report and Order*, that, for purposes of determining eligibility to participate in a broadcast auction, the uniform Part 1 ownership standards would apply. Therefore, in completing FCC Form 175, all applicants will be required to file an "Exhibit A" and provide information required by 1.2105 and 1.2112 of the Commission's rules, thus providing a full and complete statement of the ownership of the bidding entity. The ownership disclosure standards for the short-form are set forth in 1.2112 of the Commission's rules.

**B. Consortia And Joint Bidding Arrangements (FCC Form 175 Exhibit B)**

Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the construction permits being auctioned, including any agreements relating to post-auction market structure. See 47 CFR 1.2105(a)(2)(viii) and 1.2105(c)(1). Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular construction permits on which they will or will not bid. See 47 CFR

1.2105(a)(2)(ix). As discussed, if an applicant has had discussions, but has not reached a joint bidding agreement by the short-form deadline, it would not include the names of parties to the discussions on its applications and may not continue discussions with applicants for the same market after the deadline. Where applicants have entered into consortia or joint bidding arrangements, applicants must submit an "Exhibit B" to the FCC Form 175.

A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other

applicants for construction permits in the same market provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, bidders are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.

**C. New Entrant Bidding Credit (Form 175 Exhibit C)**

To fulfill its obligations under 309(j) and further its long-standing commitment to the diversification of broadcast facility ownership, the Commission adopted a tiered New Entrant Bidding Credit for broadcast auction applicants with no, or very few, other media interests.

**1. Eligibility**

The interests of the bidder, and of any individuals or entities with an attributable interest in the bidder, in other media of mass communications shall be considered when determining a bidder's eligibility for the New Entrant Bidding Credit. The bidder's attributable interests shall be determined as of the short-form (FCC Form 175) filing deadline—March 19, 2001. Bidders intending to divest a media interest or make any other ownership changes, such as resignation of positional interests, in order to avoid attribution for purposes of qualifying for the New Entrant Bidding Credit must have consummated such divestment transactions or have completed such ownership changes by no later than the short-form filing deadline—March 19, 2001.

Under traditional broadcast attribution rules, those entities or individuals with an attributable interest in a bidder include:

- All officers and directors of a corporate bidder;
- Any owner of 5 percent or more of the voting stock of a corporate bidder;
- All partners and limited partners of a partnership bidder, unless the limited partners are sufficiently insulated; and
- All members of a limited liability company, unless sufficiently insulated.

In cases where a bidder'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. Bidders should note that the mass media attribution rules were recently revised.

Bidders are also reminded that, by the *New Entrant Bidding Credit Reconsideration Order*, 64 FR 44856 (August 18, 1999), the Commission further refined the eligibility standards for the New Entrant Bidding Credit, judging it appropriate to attribute the media interests held by very substantial investors in, or creditors of, a bidder claiming new entrant status.

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. 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 bidders' other mass media interests in determining its eligibility for a New Entrant Bidding Credit. A medium of mass communications is defined in 47 CFR 73.5008(b).

## 2. Application Requirements

In addition to the ownership information required on Exhibit A, applicants are required to file supporting documentation on Exhibit C to their FCC Form 175 short-form applications to establish that they satisfy the eligibility requirements to qualify for a New Entrant Bidding Credit.

## 3. Bidding Credits

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

- A 35 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has no attributable interest in any other media of mass communications, as defined in 47 CFR 73.5008;
- A 25 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an

attributable interest in the winning bidder, has an attributable interest in no more than three mass media facilities, as defined in 47 CFR 73.5008;

- No bidding credit will be given if any of the commonly owned mass media facilities serve the same area as the proposed broadcast station, as defined in 47 CFR 73.5007, 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.

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

Summit Media Broadcasting contends that the Commission should make allowances for small businesses to participate in auctions, such as partial payment provisions of the established minimum opening bid, or the submission of an accountant or bank report attesting to fund availability. However, as recognized by the Commission in the broadcast competitive bidding rulemaking proceeding, in the *Broadcast First Report and Order*, the *Broadcast Reconsideration Order*, and the *New Entrant Bidding Credit Reconsideration Order*, the designated entity provision adopted and specified for use in broadcast auctions—the New Entrant Bidding Credit—is particularly suitable to promote opportunity for participation in competitive bidding for construction permits in broadcast auctions.

### *D. Provisions Regarding Defaulters and Former Defaulters (Form 175 Exhibit*

Each applicant must certify on its FCC Form 175 application that it is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must attach to its FCC Form 175 application a statement made under penalty of perjury indicating whether or not the applicant, or any of the applicant's controlling interests or their affiliates, has ever been in default on any Commission licenses or has ever been delinquent on any non-tax debt owed to any federal agency. Applicants must include this statement as Exhibit D of the FCC Form 175. If any of an

applicant's controlling interests holders or their affiliates, as defined by 1.2110 of the Commission's rules, have ever been in default on any Commission license, or have ever been delinquent on any non-tax debt owed to any Federal agency, the applicant must include such information as part of the same attached statement. Prospective bidders are reminded that the statement must be made under penalty of perjury and, further, submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

"Former defaulters"—*i.e.*, applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—are eligible to bid in Auction No. 37, provided that they are otherwise qualified. However, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

### *E. Other Information (FCC Form 175 Exhibits E and F)*

Applicants owned by minorities or women, as defined in 47 CFR 1.2110(b)(2), may attach an exhibit (Exhibit E) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of "designated entities" in its auctions. Applicants wishing to submit additional information may do so on Exhibit F (Miscellaneous Information) to the FCC Form 175.

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

Applicants have an obligation under 47 CFR 1.65, to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

### III. Pre-Auction Procedures

#### A. Auction Seminar

On March 7, 2001 the FCC will sponsor a free seminar for Auction No. 37 at the Federal Communications Commission, located at 445 12th Street, S.W., Washington, D.C. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC remote bidding software, and the broadcast service and auction rules.

#### B. Short-Form Application (FCC Form 175)—Due March 19, 2001

In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be submitted electronically beginning at 12:00 noon ET on March 7, 2001 and must be received at the Commission no later than 6:00 p.m. ET on March 19, 2001. Late applications will not be accepted.

There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment. See Part III.D, *infra*.

Pursuant to procedures established in the *Broadcast First Report and Order*, the Mass Media Bureau will impose a temporary freeze on the filing of FM minor modification applications during the period that FCC Form 175 applications may be filed for FM Auction No. 37. A public notice will be released in this regard.

#### 1. Electronic Filing

Applicants must file their FCC Form 175 applications electronically. For Auction No. 37, applications may generally be filed at any time beginning at 12:00 noon ET on March 7, 2001, until 6:00 p.m. ET on March 19, 2001. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on March 19, 2001.

Applicants must press the "Submit Form 175" button on the "Submit" page of the electronic form to successfully submit their FCC Form 175. Any form that is not submitted will not be reviewed by the FCC. Information about accessing the FCC Form 175 is included in Attachment C. Technical support is available at (202) 414-1250 (voice) or (202) 414-1255 (text telephone (TTY)); the hours of service are Monday through Friday, from 7:00 a.m. to 10:00 p.m. ET, Saturday, from 8:00 a.m. to 7:00 p.m. ET, and Sunday, from 12:00 noon to 6:00 p.m. ET. In order to provide better

service to the public, all calls to the hotline are recorded.

#### 2. Completion of the FCC Form 175

Applicants should carefully review 47 CFR 1.2105, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment D of the public notice. Applicants are encouraged to begin preparing the required attachments for FCC Form 175 prior to submitting the form. Attachments C and D to the public notice provide information on the required attachments and appropriate formats.

#### 3. Electronic Review of FCC Form 175

The FCC Form 175 electronic review software may be used to review and print applicants' FCC Form 175 information. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. For this reason, it is important that applicants do not include their Taxpayer Identification Numbers (TINs) on any exhibits to their FCC Form 175 applications. There is no fee for accessing this system. See Attachment C of the Public Notice for details on accessing the review system.

#### C. Application Processing and Minor Corrections

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

As described more fully in the Commission's rules, after the March 19, 2001 short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (e.g., change their construction permit selections, change the certifying official, change control of the applicant, or change New Entrant Bidding Credit eligibility).

#### D. Upfront Payments—Due April 16, 2001

In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by a FCC

Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6:00 p.m. ET on April 16, 2001. Please note that:

- All payments must be made in U.S. dollars;
- All payments must be made by wire transfer;
- Upfront payments for Auction No. 37 go to a lockbox number different from the ones used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments;
- Failure to deliver the upfront payment by the April 16, 2001 deadline will result in dismissal of the application and disqualification from participation in the auction.

#### 1. Auction Payments by Wire Transfer

Wire transfer payments must be received by 6:00 p.m. ET on April 16, 2001. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261  
 Receiving Bank: Mellon Pittsburgh  
 BNF: FCC/ACCOUNT# 910-1211  
 OBI Field: (Skip one space between each information item)  
 "AUCTIONPAY"  
 TAXPAYER IDENTIFICATION NO.  
 (same as FCC Form 159, block 26)  
 PAYMENT TYPE CODE (enter "A37U")  
 FCC CODE 1 (same as FCC Form 159, block 23A: "37")  
 PAYER NAME (same as FCC Form 159, block 2)  
 LOCKBOX NO. # 358435

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

Applicants must fax a completed FCC Form 159 to Mellon Bank at (412) 209-6045 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer—Auction Payment for Auction Event No. 37." Bidders should confirm the timely transmission and receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

#### 2. FCC Form 159

A completed FCC Remittance Advice Form (FCC Form 159) must be faxed to

Mellon Bank to accompany each upfront payment. Proper completion of FCC Form 159 is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment E of the public notice. An electronic version of the FCC Form 159 is available after filing the FCC Form 175. The FCC Form 159 must be completed electronically and must be filed with Mellon Bank via facsimile.

### 3. Amount of Upfront Payment

The Bureaus have delegated authority to determine an appropriate upfront payment for the FM construction permits being auctioned, taking into account such factors as the efficiency of the auction process and the potential value of the spectrum. Any auction applicant that has previously been in default on any Commission license or has previously been delinquent on any non-tax debt owed to any Federal agency must submit an upfront payment equal to 50 percent more than that set for each particular construction permit. See 47 CFR 1.2106.

### 4. Applicant's Wire Transfer Information for Purposes of Refunds

The Commission will use wire transfers for all Auction No. 37 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed below be supplied to the FCC. Applicants can provide the information electronically during the initial short form filing window after the form has been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Tim Dates or Gail Glasser, at (202) 418-2843 by March 19, 2001. Should the payer fail to submit the requested information, the refund will be returned to the original payer. For additional information, please call (202) 418-1995.

Name of Bank

ABA Number

Contact and Phone Number

Account Number to Credit

Name of Account Holder

Correspondent Bank (if applicable)

ABA Number

Account Number

Tax ID Number

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in Section V.E.

### E. Auction Registration

Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose short-form applications have been accepted for filing and that have timely submitted an upfront payment.

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

Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Thursday, May 3, 2001, should contact the Auctions Hotline at (717) 338-2888. Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

Qualified bidders should note that lost login codes, passwords, or bidder identification numbers can be replaced only by appearing *in person* at the FCC Auction Headquarters located at 445 12th Street, SW., Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's short-form application, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacement codes. Qualified bidders requiring replacement codes must call technical support prior to arriving at the FCC to arrange preparation of new codes.

### F. Remote Electronic Bidding Software

Qualified bidders are allowed to bid electronically or by telephone. If choosing to bid electronically, each bidder must purchase their own copy of the remote electronic bidding software. Electronic bids will only be accepted from those applicants purchasing the software. However, the software may be copied by the applicant for use by its authorized bidders at different locations. The price of the FCC's remote bidding software is \$175.00 and must be ordered by Monday, March 19, 2001. For security purposes, the software is only mailed to the contact person at the contact address listed on the short-form application. Please note that auction

software is tailored to a specific auction, so software from prior auctions will not work for Auction No. 37. If bidding telephonically, the telephonic bidding phone number will be supplied in the first Federal Express mailing of confidential login codes. Qualified bidders that do not purchase the software may only bid telephonically. To indicate your bidding preference, an FCC Bidding Preference/Remote Software Order Form can be accessed when submitting the FCC Form 175. Bidders should complete this form electronically, print it out and fax to (717) 338-2850. A manual copy of this form is also included as Attachment F of the public notice.

### G. Mock Auction

All qualified bidders will be eligible to participate in a mock auction on Monday, May 7, 2001. The mock auction will enable applicants to become familiar with the electronic software prior to the auction. Free demonstration software will be available for use in the mock auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

## IV. Auction Event

The first round of bidding for Auction No. 37 will begin on Wednesday, May 9, 2001. The initial bidding schedule will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

### E. Auction Structure

#### 1. Multiple Round, Ascending Auction

In the *Auction No. 37 Comment Public Notice*, we proposed to award the construction permits for FM Broadcast stations in a simultaneous, multiple-round, ascending auction. We received no comments on this issue. We conclude that it is operationally feasible and appropriate to auction the construction permits using this auction design. Unless otherwise announced, bids will be accepted on all construction permits in successive rounds of bidding.

#### 2. Maximum Eligibility and Activity Rules

In the *Auction No. 37 Comment Public Notice*, we proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder.

For Auction No. 37, we will adopt the maximum eligibility proposal for Auction No. 37. The amount of the upfront payment submitted by a bidder

determines the initial maximum eligibility (in bidding units) for each bidder. Note again that the upfront payments are not attributed to specific construction permits, but instead will be translated into bidding units to define a bidder's initial maximum eligibility. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid. As there is no provision for increasing a bidder's maximum eligibility during the course of an auction, prospective bidders are cautioned to calculate their upfront payments carefully. The total upfront payment does not define the total dollars a bidder may bid on any given construction permit.

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

A bidder's activity level in a round is the sum of the bidding units associated with construction permits on which the bidder is active. A bidder is considered active on a construction permit in the current round if it is either the high bidder at the end of the previous round and does not withdraw the high bid in the current round, or if it submits an acceptable bid in the current round. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a permanent reduction in the bidder's bidding eligibility to bring them into compliance with the activity rule.

### 3. Activity Rule Waivers and Reducing Eligibility

In the *Auction No. 37 Comment Public Notice*, we proposed that each bidder in the auction would be provided five activity rule waivers that may be used in any round during the course of the auction.

Based upon our experience in previous auctions, we adopt our proposal and each bidder will be provided five activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit. We are satisfied that our practice of providing five waivers over the course of the auction provides a sufficient number of

waivers and maximum flexibility to the bidders, while safeguarding the integrity of the auction.

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

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

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

### 4. Auction Stopping Rules

For Auction No. 37, the Bureau proposed to employ a simultaneous stopping rule. Under this rule, bidding will remain open on all construction permits until bidding stops on every construction permit. The auction will close for all construction permits when one round passes during which no bidder submits a new acceptable bid on any construction permit, a withdrawal, or applies a proactive waiver. After the first such round, bidding closes simultaneously on all construction permits.

The Bureau also sought comment on a modified version of the stopping rule. The modified version of the stopping rule would close the auction after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on a construction permit when it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a

construction permit for which it is the standing high bidder would not keep the auction open under this modified stopping rule.

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

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

We adopt all of the above proposals concerning the auction stopping rules. Auction No. 37 will begin under the simultaneous stopping rule, and the Bureau will retain the discretion to invoke the other versions of the stopping rule.

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

In the *Auction No. 37 Comment Public Notice*, we proposed that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding.

Because this approach has proven effective in resolving exigent circumstances in previous auctions, we will adopt our proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureau may delay, suspend, or

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

### B. Bidding Procedures

#### 1. Round Structure

The initial bidding schedule will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. This public notice will be included in the registration mailings. The round structure for each bidding round contains a single bidding round followed by the release of the round results. Multiple bidding rounds may be conducted in a given day. Details regarding round result formats and locations will also be included in the public notice.

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

#### 2. Reserve Price or Minimum Opening Bid

The Balanced Budget Act of 1997 calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses or construction permits are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Congress has enacted a presumption that unless the Commission determines otherwise, minimum opening bids or reserve prices are in the public interest. In conformity with this mandate, the Commission has

directed the Bureaus to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.

In the *Auction No. 37 Comment Public Notice*, the Bureaus proposed to establish minimum opening bids for Auction No. 37. The minimum opening bid was determined by taking into account various factors relating to the efficiency of the auction and the potential value of the spectrum, including the type of service and class of facility offered, market size, population covered by the proposed FM broadcast facility, industry cash flow data, and recent broadcast transactions.

Several commenters asserted that the minimum opening bids and/or upfront payments identified in Attachment A of the *Auction No. 37 Additional Comment Public Notice* are excessive and seek reductions thereof. In general, most commenters claim that the minimum opening bids, as well as the upfront payments, may not accurately reflect the value of the proposed FM construction permits, as determined by class of facility, market size and anticipated population coverage, and that many of the proposals are not consistent with the minimum opening bids and upfront payments for similar facilities auctioned in Auction No. 25.

After careful consideration of the concerns raised by commenters, we have adjusted the minimum opening bids and upfront payments to reduce the possibility of unsold construction permits and the likelihood that excessive minimum opening bid and upfront payment amounts could discourage auction participation. We believe the modified minimum opening bids and upfront payments remain sufficient to deter insincere bidding. The revised minimum opening bids and upfront payment amounts are reflected on Attachment A to the Public Notice.

#### 3. Bid Increments and Minimum Accepted Bids

In the *Auction No. 37 Comment Public Notice*, we proposed to apply a minimum bid increment of 10 percent. We further proposed to retain the discretion to change the minimum bid increment if circumstances so dictate.

We adopt the proposal contained in the *Auction No. 37 Comment Public Notice*. Once there is a standing high bid on the construction permit, there will be a bid increment associated with that bid indicating the minimum amount by which the bid on that permit can be raised. For Auction No. 37, we will use a flat, across-the-board increment of 10 percent to calculate the minimum bid increment. The Bureaus retain the

discretion to compute the minimum bid increment through other methodologies if it determines circumstances so dictate. Advanced notice of the Bureau's decision to do so will be announced via the Automated Auction System.

#### 4. High Bids

Each bid will be date- and time-stamped when it is entered into the FCC computer system. In the event of tie high bids (identical gross bid amounts) for a construction permit during a round, the earliest of the tied bids will be the standing high bid at the end of the round. The bidding software allows bidders to make multiple submissions in a round. As each bid is individually date- and time-stamped according to when it was submitted, bids submitted by a bidder earlier in a round will have an earlier date and time stamp than bids submitted later in a round.

#### 5. Bidding

During a bidding round, a bidder may submit bids for as many construction permits as it wishes (subject to its eligibility), withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each bidding round. If a bidder submits multiple bids for a single construction permit in the same round, the system takes the last bid entered as that bidder's bid for the round, and the date- and time-stamp of that bid reflects the latest time the bid was submitted.

Please note that all bidding will take place remotely either through the automated bidding software or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 37.

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

The bidding software requires each bidder to login to the FCC auction system during the bidding round using the FCC account number, bidder identification number, and the confidential security codes provided in the registration materials. Bidders are strongly encouraged to download and print bid confirmations after they submit their bids.

The bid entry screen of the automated auction system software for Auction No. 37 allows bidders to place multiple increment bids. Specifically, high bids may be increased from one to nine bid increments. A single bid increment is defined as the difference between the standing high bid and the minimum acceptable bid for a construction permit. The bidding software will display the bid increment for each construction permit.

To place a bid on a construction permit, the bidder must increase the standing high bid by one to nine times the bid increment. This is done by entering a whole number between 1 and 9 in the bid increment multiplier (Bid Mult) field in the software. This value will determine the amount of the bid (Amount Bid) by multiplying the bid increment multiplier by the bid increment and adding the result to the high bid amount according to the following formula:

$$\text{Amount Bid} = \text{High Bid} + (\text{Bid Mult} * \text{Bid Increment})$$

Thus, bidders may place a bid that exceeds the standing high bid by between one and nine times the bid increment. For example, to bid the minimum acceptable bid, which is equal to one bid increment, a bidder will enter "1" in the bid increment multiplier column and press submit.

For any construction permit on which the FCC is designated as the high bidder (*i.e.*, a construction permit that has not yet received a bid in the auction or where the high bid was withdrawn and a new bid has not yet been placed), bidders will be limited to bidding only the minimum acceptable bid. In both of these cases no increment exists for the construction permit, and bidders should enter "1" in the Bid Mult field. Note that in this case, any whole number between 1 and 9 entered in the multiplier column will result in a bid value at the minimum acceptable bid amount. Finally, bidders are cautioned in entering numbers in the Bid Mult field because, as explained in the following section, a high bidder that withdraws its standing high bid from a previous round, even if mistakenly or erroneously made, is subject to bid withdrawal payments.

#### 6. Bid Removal and Bid Withdrawal

In the *Auction No. 37 Comment Public Notice*, we proposed bid removal and bid withdrawal rules. With respect to bid withdrawals, we proposed limiting each bidder to withdrawals in no more than two rounds during the course of the auction. The two rounds in which withdrawals are utilized, we proposed, would be at the bidder's discretion.

In previous auctions, we have detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While we continue to recognize the important role that bid withdrawals play in an auction, we conclude that, for Auction No. 37, adoption of a limit on their use to two rounds is the most appropriate outcome. By doing so we believe we strike a reasonable compromise that will allow bidders to use withdrawals. Our decision on this issue is based upon our experience in prior auctions, particularly the PCS D, E and F block auctions, and 800 MHz SMR auction, and is in no way a reflection of our view regarding the likelihood of any speculation or "gaming" in this auction.

The Bureau will therefore limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals during the auction will still be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on construction permits. If a high bid is withdrawn, the construction permit will be offered in the next round at the second highest bid price, which may be less than, or equal to, in the case of tie bids, the amount of the withdrawn bid, without any bid increment. The Commission will serve as a "place holder" on the construction permit until a new acceptable bid is submitted on that construction permit.

*Procedures.* Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bid" function in the software, a bidder may effectively "unsubmit" any bid placed within that round. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is subsequently removed does not count toward the bidder's activity requirement. This procedure will enhance bidder flexibility during the

auction. Therefore, we will adopt these procedures for Auction No. 37.

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

*Calculation.* Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the net high bid in the same or subsequent auction(s). In the case of multiple bid withdrawals on a single construction permit, within the same or subsequent auction(s), the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids, in either the same or subsequent auction(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any withdrawal payments if there is a subsequent higher bid in the same or subsequent auction(s). This policy allows bidder to most efficiently allocate their resources as well as to evaluate their bidding strategies and business plans during an auction while, at the same time, maintaining the integrity of the auction process. The Bureau retains the discretion to scrutinize multiple bid withdrawals on a single construction permit for evidence of anti-competitive strategic behavior and take appropriate action when deemed necessary.

In the *Part 1 Fifth Report and Order*, 65 FR 52323 (August 29, 2000), the Commission modified 1.2104(g)(1) of the rules regarding assessments of interim bid withdrawal payments. As amended, 1.2104(g)(1) provides that in instances in which bids have been withdrawn on a construction permit that is not won in the same auction, the Commission will assess an interim withdrawal payment equal to 3 percent of the amount of the bid withdrawals. The 3 percent interim payment will be applied toward any final bid withdrawal payment that will be assessed at the close of the subsequent auction of the

construction permit. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment. The *Part 1 Fifth Report and Order* provides specific examples showing application of the bid withdrawal payment rule.

#### 7. Round Results

Bids placed during a round will not be published until the conclusion of that bidding period. After a round closes, the Commission will compile reports of all bids placed, bids withdrawn, current high bids, new minimum accepted bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities and FCC account numbers for Auction No. 37 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

#### 8. Auction Announcements

The FCC will use auction announcements to announce items such as schedule changes. All FCC auction announcements will be available on the FCC remote electronic bidding system, as well as on the Internet.

#### 9. Maintaining the Accuracy of Short-Form (FCC Form 175) Information

As noted in Part II.A., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and certain revision of exhibits. Filers must make these changes on-line, and submit a letter summarizing the changes to: Louis Sigalos, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-A668, Washington, D.C. 20554

A separate copy of the letter should be mailed to Kenneth Burnley, Auctions and Industry Analysis Division, 4-B524, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. Questions about other changes should be directed to Kenneth Burnley at (202) 418-0660.

### V. Post-Auction Procedures

#### A. Down Payments

After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bids and bidders for each construction permit, and listing bid withdrawal payments due.

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 United States Government to 20 percent of its net winning bid (actual bids less any applicable bidding credit). See 47 CFR 1.2107(b) and 73.5003. In addition, by the same deadline all bidders must pay any withdrawn bid amounts due under 47 CFR 1.2104(g), as discussed in "Bid Removal and Bid Withdrawal," Part IV.B.6. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

#### B. Long-Form Application

Within thirty days following the release of the FM auction closing public notice, winning bidders must submit a properly completed Form 301, Application for FM Construction Permit, and required exhibits, for each construction permit won through Auction No. 37. Winning bidders claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit. See 47 CFR 1.2112(b) and 73.5005. Further filing instructions will be provided to auction winners at the close of the auction.

#### C. Auction Discount Voucher

On June 8, 2000, the Commission awarded Qualcomm, Inc. a transferable Auction Discount Voucher in the amount of \$125,273,878.00. This Auction Discount Voucher may be used by Qualcomm or its transferee, in whole or in part, to adjust a winning bid in any spectrum auction prior to June 8, 2003, subject to terms and conditions set forth in the Commission's Order.

#### D. Default and Disqualification

Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-

auction the construction permit or offer it to the next highest bidder (in descending order) at their final bid. See 47 CFR 1.2109(b) and (c). In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses or construction permits held by the applicant. See 47 C.F.R. § 1.2109(d).

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

All applicants that submitted upfront payments but were not the winning bidder for a construction permit in Auction No. 37 may be entitled to a refund of their upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid.

Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions and a Taxpayer Identification Number ("TIN"). Send refund request to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Gail Glasser, 445 12th Street, S.W., Room 1-A824, Washington, D.C. 20554

Bidders are encouraged to file their refund information electronically using the refund information portion of the FCC Form 175, but bidders can also fax their information to the Auctions Accounting Group at (202) 418-2843. Once the information has been approved, a refund will be sent to the party identified in the refund information. **Note:** Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Tim Dates or Gail Glasser at (202) 418-1995.

Federal Communications Commission.

#### Lisa Scanlan,

Supervisory Attorney, Audio Services Division, Mass Media Bureau.

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