

application with the Department of Justice (DOJ) to request that DOJ pay the costs of the carrier's CALEA compliance (cost-shifting relief) with respect to any equipment, facility or service installed or deployed after January 1, 1995. The Second Report and Order required several different collections of information: (a) Within 90 days of the effective date of the Second Report and Order, facilities based broadband Internet access and interconnected Voice over Interconnected Protocol (VoIP) providers newly identified in the First Report and Order in this proceeding were required to file system security statements under the Commission's rules (system security statements are currently approved under the existing OMB 3060-0809 information collection). (b) All telecommunications carriers, including broadband Internet access and interconnected VoIP providers, must file updates to their systems security statements on file with the Commission as their information changes. (c) Petitions filed under section 107(c), request for additional time to comply with CALEA; these provisions apply to all carriers subject to CALEA and are voluntary filings. (d) Section 109(b), request for reimbursement of CALEA; these provisions apply to all carriers subject to CALEA and are necessary for carriers seeking relief under this section of the CALEA statute.

Federal Communications Commission.

**Marlene H. Dortch,**

Secretary.

[FR Doc. E8-16972 Filed 7-23-08; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Approved by the Office of Management and Budget

July 17, 2008.

**SUMMARY:** The Federal Communications Commission has received Office of Management and Budget (OMB) approval for the following public information collection(s) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid OMB control number. Comments concerning the accuracy of the burden estimate(s) and any suggestions for reducing the burden

should be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

**FOR FURTHER INFORMATION CONTACT:** Leslie Haney, *Leslie.Haney@fcc.gov*, (202) 418-1002.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060-0434.

*OMB Approval Date:* May 8, 2008.

*Expiration Date:* May 31, 2011.

*Title:* 47 CFR Section 90.20(e)(6), Stolen Vehicle Recovery System Requirements.

*Form No.:* Not applicable.

*Estimated Annual Burden:* 20 responses; 4 hours per response; 80 hours total per year.

*Obligation to Respond:* Required to Obtain or Retain Benefits.

*Nature and Extent of Confidentiality:* There is no need for confidentiality.

*Needs and Uses:* The frequency 173.075 MHz is available for stolen vehicle recovery systems on a shared basis with Federal stations in the fixed and mobile services. Applications for base stations operating on the 173.075 MHz frequency band shall require coordination with the Federal Government. Applicants shall perform an analysis for each base station located within 169 km (105 miles) of a TV channel 7 transmitter for potential interference to TV channel 7 viewers. Applicants will have to certify to certain requirements set out in rule Section 90.20(e)(6).

Federal Communications Commission.

**Marlene H. Dortch,**

Secretary.

[FR Doc. E8-16993 Filed 7-23-08; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC-08-85-D (Auction 85); AU Docket No. 08-22; DA 08-460]

### Auction of LPTV and TV Translator Digital Companion Channels Scheduled for November 5, 2008; Announcement of Settlement Period Ending July 31, 2008; Comment Sought on Competitive Bidding Procedures for Auction 85

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the auction of LPTV and TV Translator Digital Companion Channel construction permits, with bidding scheduled to commence on November 5, 2008 (Auction 85). This document also seeks comments on competitive bidding

procedures for Auction 85, and announces a settlement period that ends on July 31, 2008.

**DATES:** Comments are due on or before July 31, 2008, and reply comments are due on or before August 7, 2008.

**ADDRESSES:** Comments and reply comments must be identified by AU Docket No. 08-22. Comments may be filed electronically using the Internet by accessing the Federal Communications Commission's (Commission's) Electronic Comment Filing System (ECFS) at <http://www.fcc.gov/cgb/ecfs>. Filers should follow the instructions provided on the Web site for submitting comments. The Media and Wireless Telecommunications Bureaus (Bureaus) request that a copy of all comments and reply comments be submitted electronically to the following address: [auction85@fcc.gov](mailto:auction85@fcc.gov). In addition, comments and reply comments may be submitted by any of the following methods:

- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Bureaus continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Attn: WTB/ASAD, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. Eastern Time (ET). All hand deliveries must be held together with rubber bands or fasteners.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or telephone: 202-418-0530 or TTY: 202-418-0432.

**FOR FURTHER INFORMATION CONTACT:** *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* For auction legal questions: Lynne

Milne at 202-418-0660. For general auction questions: Debbie Smith or Linda Sanderson at 717-338-2868. *Media Bureau, Video Division*: For service rule questions: Shaun Maher at 202-418-2324 or Hossein Hashemzadeh at 202-418-1600.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction 85 Comment Public Notice* released on July 17, 2008. The complete text of the *Auction 85 Comment Public Notice*, including attachments, and related Commission documents, 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. The *Auction 85 Comment Public Notice* and related Commission documents also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-488-5300, facsimile 202-488-5563, or you may contact BCPI at its Web site: <http://www/BCPIWEB.com>. When ordering documents from BCPI, please provide the appropriate FCC document number, for example, DA 08-460. The *Auction 85 Comment Public Notice* and related documents also are available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/85/>, or by using the search function on the ECFS Web page at <http://www/fcc.gov/cgb/ecfs/>.

## I. Introduction

1. The Wireless Telecommunications Bureau and the Media Bureau (collectively, the Bureaus) announce an auction of construction permits for Low Power Television (LPTV), including Class A Television (TV), and TV Translator digital companion channels. This auction, which is designated Auction 85, is scheduled to commence on November 5, 2008. The Bureaus also seek comment on a variety of auction-specific procedures for Auction 85. The Bureaus also announce additional settlement period for applicants to use engineering solutions or settlements to resolve conflicts among their proposed stations.

## II. Construction Permits in Auction 85

2. The construction permits to be auctioned are the subject of pending, mutually exclusive applications for the referenced broadcast services for which the Commission has not approved settlement agreements or engineering

amendments. Participation in this auction will be limited to those applicants for construction permits identified in Attachment A of the *Auction 85 Comment Public Notice*. Applicants will be eligible to bid only on the corresponding construction permits listed in Attachment A.

3. Attachment A specifies the MX Groups accompanied by their respective minimum opening bids and upfront payments. In the event that the Commission approves any settlements pursuant to the settlement period announced in the *Auction 85 Comment Public Notice*, certain MX Groups may be modified or deleted. Any such MX Group changes will be announced in a future public notice.

4. Attachment A also lists the names of the applicants for construction permits in each MX Group. For each MX Group identified in Attachment A, competing applications were filed during the relevant filing period. All applications within an identified MX Group are directly mutually exclusive with one another. When two or more short-form applications (FCC Forms 175) are accepted for filing for a construction permit within the same MX Group in Auction 85, mutual exclusivity exists for auction purposes. Therefore, a single construction permit will be auctioned for each MX Group identified in Attachment A. Moreover, once mutual exclusivity exists for auction purposes, then, even if only one application for a particular construction permit in Auction 85 submits an upfront payment, that applicant is required to submit a bid in order to obtain the construction permit. Any applicant that submits a short-form application that is accepted for filing but fails to timely submit an upfront payment will retain its status as an applicant in Auction 85 and will remain subject to the Commission's anti-collusion rules, but, having purchased no bidding eligibility, will not be eligible to bid.

## III. Settlement Period

5. The Bureaus announce a settlement window beginning with the release of the *Auction 85 Comment Public Notice* and ending at 6 p.m. Eastern Time (ET) on Thursday, July 31, 2008, for parties with proposals in the mutually exclusive (MX) groups listed in Attachment A to dismiss their proposals, enter into settlement agreements or otherwise resolve their mutual exclusivities by means of engineering solutions. The parties must submit their requests for dismissal or settlement agreements and/or engineering submissions by the deadline on July 31, 2008. After

approval of the settlement or engineering submission, the proposed permittee(s) must submit an accurate and complete FCC Form 346 by the deadline subsequently specified by staff.

6. Applicants must ensure that their settlement agreements comply with the provisions of 47 U.S.C. 311(c), and the pertinent requirements of 47 CFR 73.3525, including the reimbursement restrictions. Parties must submit a copy of their settlement agreement and any ancillary agreement(s). Parties must submit a joint request for approval of such agreement. Parties must submit an affidavit of each party to the agreement setting forth: (a) The reasons why it is considered that such agreement is in the public interest; (b) A statement that its application was not filed for the purpose of reaching or carrying out such agreement; (c) A certification that neither the applicant nor its principals has received any money or other consideration in excess of the legitimate and prudent expenses of the applicant; (d) The exact nature and amount of any consideration paid or promised; (e) An itemized accounting of the expenses for which it seeks reimbursement; and (f) The terms of any oral agreement relating to the dismissal or withdrawal of its application.

7. Applicants that request dismissal of their proposal or file an engineering amendment that removes the mutual exclusivity to their proposal without having entered a settlement agreement with another applicant must nevertheless submit an affidavit as to whether or not consideration has been promised to or received by such applicant in connection with their dismissal or engineering amendment. Applicants may make minor amendments to engineering proposals in order to resolve mutual exclusivity, but, according to 47 CFR 1.2105(b) and 73.3572(a)(1), applicants are not permitted to propose technical changes that would be considered a major change.

8. Anti-Collusion Rule. The prohibition of collusion set forth in 47 CFR 1.2105(c) became effective upon the short-form application filing deadline on June 30, 2006. However, the Commission's rules provide for a limited opportunity to settle, or otherwise resolve mutual exclusivities by means of engineering solutions, following the filing of the short-form applications. Specifically, parties in MX groups listed in Attachment A may discuss possible settlement agreements or technical solutions with other parties in their group during the limited period which commences with the release of the *Auction 85 Comment Public Notice*

and ends at 6 p.m. on July 31, 2008. Once the settlement period ends, the anti-collusion restrictions once again take effect. The Commission will proceed to auction with any competing mutually exclusive proposals that are not resolved by the parties during this settlement period.

9. Settlement agreements that are entered into in connection with this settlement period must be filed prior to 6 p.m. ET on July 31, 2008, as an attachment to the respective parties' FCC Forms 175 via the FCC Auction System. All parties to a settlement agreement must attach the requisite documents to their respective FCC Forms 175. Similarly, applicants proposing engineering amendments in connection with this settlement period must do so by amending the technical portion of their FCC Forms 175 via the FCC Auction System. Engineering amendments also must be submitted prior to 6 p.m. on July 31, 2008. Late-filed settlement agreements and engineering amendments will not be accepted. Applicants are strongly encouraged to file their settlement agreements and engineering amendments early and are responsible for allowing adequate time for filing. Information about accessing, viewing, completing amendments to, and filing settlement agreements for the FCC Form 175 is included in Attachment B of the *Auction 85 Comment Public Notice*.

#### IV. Bureaus Seek Comment on Auction Procedures

##### A. Auction Structure

###### i. Simultaneous Multiple-Round Auction Design

10. The Bureaus propose to auction all construction permits included in Auction 85 using the Commission's standard simultaneous multiple-round auction format. Auction 85 offers every construction permit for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual construction permits. Typically, bidding remains open on all construction permits until bidding stops on every construction permit. The Bureaus seek comment on this proposal.

###### ii. Round Structure

11. The Commission will conduct Auction 85 over the Internet, and telephonic bidding will be available as well. The toll-free telephone number for the Auction Bidder Line will be provided to qualified bidders.

12. The auction will consist of sequential bidding rounds, each followed by the release of round results.

The Bureaus propose to 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. Under this proposal, the Bureaus may increase or decrease 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. The Bureaus seek comment on this proposal. Commenters may wish to address the role of the bidding schedule in managing the pace of the auction and the tradeoffs in managing auction pace by bidding schedule changes, by changing the activity requirements or bid amount parameters, or by using other means.

###### iii. Stopping Rule

13. For Auction 85, the Bureaus propose to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all construction permits remain available for bidding until bidding closes simultaneously on all construction permits. More specifically, bidding will close simultaneously on all construction permits after the first round in which no bidder submits any new bids, applies a proactive waiver, or withdraws any provisionally winning bids (if permitted).

14. Further, the Bureaus propose to retain the discretion to exercise any of the following options during Auction 85. (a) Use a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all construction permits after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid (if permitted), or places any new bids on any construction permit for 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. (b) Declare that the auction will end after a specified number of additional rounds. If the Bureaus invoke this special stopping rule, they will accept bids in the specified final round(s) after which the auction will close. (c) Keep the auction open even if no bidder places any new bids, applies a waiver, or withdraws any provisionally winning bids (if permitted). In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule will apply as usual, and a bidder with insufficient

activity will either lose bidding eligibility or use a waiver.

15. The Bureaus propose to exercise these options only in certain circumstances. The Bureaus propose to retain the discretion to exercise any of these options with or without prior announcement during the auction. The Bureaus seek comment on these proposals.

###### iv. Information Relating to Auction Delay, Suspension, or Cancellation

16. For Auction 85, the Bureaus propose that, by public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, 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. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. The Bureaus emphasize that exercise of this authority is solely within the discretion of the Bureaus, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureaus seek comment on this proposal.

##### B. Auction Procedures

###### i. Upfront Payments and Bidding Eligibility

17. A bidder's upfront payment is a refundable deposit to establish eligibility to bid on construction permits. The Bureaus propose the schedule of upfront payments for each construction permit as set forth in Attachment A of the *Auction 85 Comment Public Notice*. The Bureaus further propose that the amount of the upfront payment submitted by an applicant will determine the applicant's initial bidding eligibility in bidding units. The Bureaus seek comment on these proposals.

###### ii. Activity Rule

18. The Bureaus propose for Auction 85 the following activity requirement: In each round of the auction, a bidder desiring to maintain its eligibility to participate in the auction is required to be active on 100 percent of its bidding eligibility. Failure to maintain the required activity level will result in the

use of an activity rule waiver or a reduction in the bidder's bidding eligibility for the next round of bidding. A bidder's reduced eligibility for the next round will be equal to the bidder's activity in the current round. The Bureaus seek comment on this proposal.

19. Commenters that believe that this activity rule should be modified should explain their reasoning and comment on the desirability of an alternative approach. Commenters are advised to support their claims with analyses and suggest alternative activity rules. Comments may wish to address the alternative of having more than one stage in the auction, with subsequent stages characterized by increasing activity requirements, for example, an 80 percent activity requirement in Stage One and a 95 percent activity requirement in Stage Two.

### iii. Activity Rule Waivers and Reducing Eligibility

20. The FCC Auction System assumes 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 waivers remaining; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the activity requirement. If a bidder has no waivers remaining and does not satisfy the required activity level, its eligibility will be permanently reduced, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

21. The Bureaus propose that each bidder in Auction 85 be provided with three activity rule waivers that may be used at the bidder's discretion during the course of the auction. The Bureaus seek comment on this proposal.

### iv. Reserve Price or Minimum Opening Bids

22. For Auction 85, the Bureaus propose minimum opening bid amounts determined by taking into account the type of service and class of facility offered, and the number of potential over-the-air viewers covered by the proposed LPTV or TV translator broadcast facility. This proposed minimum opening bid amount for each construction permit available in Auction 85 is set forth in Attachment A of the *Auction 85 Comment Public Notice*. The Bureaus do not propose to establish a separate reserve price for the construction permits to be offered in

Auction 85. The Bureaus seek comment on these proposals.

### v. Bid Amounts

23. The Bureaus propose that, in each round, eligible bidders be able to place a bid on a given construction permit in any of up to nine different amounts (if the bidder has sufficient eligibility to place a bid on the particular construction permit). Under this proposal, the FCC Auction System interface will list the acceptable bid amounts for each construction permit.

24. For Auction 85, the Bureaus propose to use a minimum acceptable bid percentage of 10 percent. This means that the minimum acceptable bid amount for a construction permit will be approximately 10 percent greater than the provisionally winning bid amount for the construction permit. To calculate the additional acceptable bid amounts, the Bureaus propose to use a bid increment percentage of 5 percent.

25. The Bureaus retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the bid increment percentage, and the number of acceptable bid amounts if the Bureaus determine that circumstances so dictate. Further, the Bureaus retain the discretion to do so on a construction permit-by-construction permit basis. The Bureaus also 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. The Bureaus seek comment on the circumstances under which the Bureaus should employ such a limit, factors to be considered when determining the dollar amount of the limit, and the tradeoffs in setting such a limit or changing other parameters, such as changing the minimum acceptable bid percentage, and the bid increment percentage, and the number of acceptable bid amounts. If the Bureaus exercise this discretion, they will alert bidders by announcement in the FCC Auction System during the auction. The Bureaus seek comment on these proposals.

### vi. Provisionally Winning Bids

26. At the end of a bidding round, a provisionally winning bid for each construction permit will be determined based on the highest bid amount received for the construction permit.

In the event of identical high bid amounts being submitted on a

construction permit in a given round (*i.e.*, tied bids), the Bureaus will use a random number generator to select a single provisionally winning bid from among the tied bids. (Each bid is assigned a random number, and the tied bid with the highest random number wins the tiebreaker.) The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid. If any bids are received on the construction permit in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the construction permit.

### vii. Bid Removal and Bid Withdrawal

27. For Auction 85, the Bureaus propose the following bid removal procedures. Before the close of a bidding round, a bidder has the option of removing any bid placed in that round. By removing selected bids in the FCC Auction System, a bidder may effectively unsubmit any bid placed within that round. In contrast to the bid withdrawal provisions, a bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid. The Bureaus seek comment on this bid removal proposal.

28. Where permitted in an auction, bid withdrawals provide a bidder with the option of removing bids placed in prior rounds that have become provisionally winning bids. If permitted, a bidder that withdraws its provisionally winning bid(s) is subject to the bid withdrawal payment provisions of the Commission rules. For Auction 85, the Bureaus propose to prohibit bidders from withdrawing any bids after the round in which bids were placed has closed. The Bureaus seek comment on this proposal.

### C. Post-Auction Payments

#### i. Interim Withdrawal Payment Percentage

29. If withdrawals are allowed in this auction, the Bureaus seek comment on the appropriate percentage of a withdrawn bid that should be assessed as an interim withdrawal payment, in the event that a final withdrawal payment cannot be determined at the close of the auction. In general, the Commission's rules provide that a bidder that withdraws a bid during an auction is subject to a withdrawal payment equal to the difference between

the amount of the withdrawn bid and the amount of the winning bid in the same or a subsequent auction. However, if a construction permit for which a bid has been withdrawn does not receive a subsequent higher bid or winning bid in the same auction, the final withdrawal payment cannot be calculated until a corresponding construction permit receives a higher bid or winning bid in a subsequent auction. When that final payment cannot yet be calculated, the bidder responsible for the withdrawn bid is assessed an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed. The Commission recently amended its rules to provide that in advance of the auction, the Commission shall establish a percentage between three percent and twenty percent of the withdrawn bid to be assessed as an interim bid withdrawal payment.

30. The Commission has indicated that the level of the interim withdrawal payment in a particular auction will be based on the nature of the service and the inventory of the construction permits being offered. The Commission noted that it may impose a higher interim withdrawal payment percentage to deter the anti-competitive use of withdrawals when, for example, bidders likely will not need to aggregate construction permits offered, such as when few construction permits are offered, the construction permits offered are not on adjacent frequencies or in adjacent areas, or there are few synergies to be captured by combining construction permits.

31. Applying the reasoning that a higher interim withdrawal payment percentage is appropriate when aggregation of construction permits is not expected, as with the construction permits subject to competitive bidding in Auction 85, if the Bureaus allow bid withdrawals in this auction, the Bureaus propose the maximum interim withdrawal payment allowed under the current rules. Specifically, the Bureaus propose to establish an interim bid withdrawal payment of twenty percent of the withdrawn bid for this auction. The Bureaus seek comment on this proposal.

ii. Additional Default Payment Percentage

32. Any winning bidder that defaults or is disqualified after the close of an 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) is liable for a default payment under 47

CFR 1.2104(g)(2). This payment consists of a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

33. For Auction 85, the Bureaus propose to establish an additional default payment of twenty percent of the relevant bid. The Bureaus seek comment on this proposal.

**V. Due Diligence**

34. Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the broadcast facilities they are seeking in this auction. Applicants are strongly encouraged to conduct their own research prior to Auction 85 in order to determine the existence of pending administrative or judicial proceedings that might affect their decisions regarding participation in the auction. Prospective bidders should perform due diligence to identify and consider all proceedings that may affect the digital companion channel facilities they are seeking. Participants in Auction 85 are strongly encouraged to continue such research throughout the auction. In addition, applicants should perform technical analyses sufficient to assure themselves that, should they prevail in competitive bidding for a specific construction permit, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements.

35. Potential bidders are reminded that digital companion channels are licensed on a secondary interference basis, and these channels may be displaced by full-power television stations. In addition, LPTV stations operating on Channels 52-69 may be displaced by new 700 MHz operations. Low power displacement applications (both analog and digital) have processing priority over all other low power applications, including digital companion channel applications. Displacement applications may be filed at any time. Therefore, the pending digital companion channel proposals in Auction 85 may be affected by newly-filed displacement applications. Bidders should continue to examine the effect that newly-filed displacement applications may have on their engineering proposals.

36. Potential bidders for any new television facility in Auction 85 are also reminded that full service television stations are in the process of converting from analog to digital operation and that stations may have pending applications to construct and operate digital television facilities, construction permits and/or licenses for such digital facilities.

**VI. Prohibition of Collusion**

37. Applicants for Auction 85 are reminded that they remain subject to the Commission's anti-collusion rule until the down payment deadline after the auction, which will be announced in a future public notice. This prohibition applies to all applicants listed on Attachment A of the *Auction 85 Comment Public Notice* regardless of whether such applicants become qualified bidders or actually bid.

38. Applicants also are reminded that, for purposes of this prohibition, an applicant is defined as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application.

39. Parties subject to the anti-collusion rule are prohibited from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications (FCC Form 175) as parties with whom they have entered into agreements pursuant to 47 CFR 1.2105(a)(2)(viii). Thus, competing applicants must affirmatively avoid all communications with each other that affect or, in their reasonable assessment, have the potential to affect, bids or bidding strategy, which may include communications regarding the post-auction market structure.

40. Applicants are hereby placed on notice that public disclosure of information relating to bids, bidding strategies, or post auction market structure may violate the anti-collusion rule. Bidders should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become a conduit for the communication of prohibited bidding information. For example, a qualified bidder's statement to the press that it intends to stop bidding in the auction could give rise to a finding of an anti-collusion rule violation. Similarly, a listed applicant's public

statement of intent not to participate in Auction 85 bidding, including a request to dismiss an application outside the settlement period, could also violate the rule.

41. The Bureaus also remind applicants with engineering proposals filed in the digital companion channel window that are mutually exclusive that they must not communicate indirectly about bids or bidding strategy. Accordingly, such applicants are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between such applicants. Also, if the authorized bidders are different individuals employed by the same organization, a violation similarly could occur. A violation of the anti-collusion rule could occur in other contexts, such as an individual serving as an officer for two or more applicants.

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

43. In addition, 47 CFR 1.65 requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, 47 CFR 1.65 requires an auction applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. Applicants are therefore required by 47 CFR 1.65 to make such notification to the Commission immediately upon discovery.

44. Moreover, 47 CFR 1.2105(c)(6) requires that any applicant that makes or receives a communication prohibited by Section 1.2105(c) must report such communication to the Commission in writing immediately, and in no case later than five business days after the communication occurs. 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.

45. Any report of a communication pursuant to 47 CFR 1.65 or 1.2105(c)(6)

must be submitted by electronic mail to the following address:

[auction85@fcc.gov](mailto:auction85@fcc.gov). The electronic mail report must include a subject or caption referring to Auction 85 and the name of the applicant.

46. Parties reporting communications pursuant to 47 CFR 1.2105(a)(2) or 1.2105(c)(6) must take care to ensure that any such reports of prohibited communications do not themselves give rise to a violation of the anti-collusion rule. 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. A party seeking to report such prohibited communications should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection pursuant to 47 CFR 0.459. Such parties are also encouraged to coordinate with the Auctions and Spectrum Access Division staff if they have any questions about the procedures for submitting such reports.

Federal Communications Commission.

**Gary D. Michaels,**

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

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## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

**AGENCY:** Federal Trade Commission ("Commission" or "FTC").

**ACTION:** Notice.

**SUMMARY:** The information collection requirements described below will be submitted to the Office of Management and Budget ("OMB") for review, as required by the Paperwork Reduction Act ("PRA"). The FTC is seeking public comments on its proposal to extend through October 31, 2011, the current PRA clearance for information collection requirements contained in the FTC rule on "Labeling and Advertising of Home Insulation" ("R-value Rule" or "Rule"). The current clearance expires on October 31, 2008.

**DATES:** Comments must be submitted on or before September 22, 2008.

**ADDRESSES:** Interested parties are invited to submit written comments. Comments should refer to "16 CFR Part 460: Paperwork Comment, FTC File No.

R811001" to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope and should be mailed or delivered to the following address: Federal Trade Commission, Room H-135 (Annex J), 600 Pennsylvania Ave., N.W., Washington, D.C. 20580. The Commission is requesting that any comment filed in paper form be sent by courier or overnight service, if possible because U.S. postal mail in the Washington area and at the FTC is subject to delay due to heightened security precautions. Moreover, because paper mail in the Washington area and at the FTC is subject to delay, please consider submitting your comments in electronic form, as prescribed below. If, however, the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled "Confidential."<sup>1</sup>

Comments filed in electronic form should be submitted by following the instructions on the web-based form at (<https://secure.commentworks.com/ftc-rvaluePRA>) and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at: (<https://secure.commentworks.com/ftc-rvaluePRA>). If this notice appears at [www.regulations.gov](http://www.regulations.gov), you may also file an electronic comment through that website. The Commission will consider all comments that [www.regulations.gov](http://www.regulations.gov) forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments will be considered by the Commission and will be available to the public on the FTC website, to the extent practicable, at [www.ftc.gov](http://www.ftc.gov). As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy

<sup>1</sup> Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).