

comment as well as allow the public to submit comments to the appropriate federal agency.

Module 2—Federal Docket Management System. This system, currently under development, will build upon Regulations.gov to establish a full-featured docket management system. It will serve as a central repository for federal rulemaking dockets, which are comprised of **Federal Register** notices, supporting materials, and public comments. The docket management system also will be designed to include non-rulemaking documents, such as Information Collection Requests that agencies can post online for public comment.

Module 3—Online Rulewriter Toolbox. The Initiative also will explore deploying information technology tools to assist in the development, review, and publication of federal regulations and the analysis of public comments. Tools will be available to federal regulation writers and the public. Such tools may include templates, collaboration applications, databases and content categorization software.

The Environmental Protection Agency leads an inter-agency team that manages the Initiative. Other participating federal agencies include: Department of Agriculture, Department of Commerce, Department of Defense, Department of Energy, Department of Health and Human Services, Department of Homeland Security, Department of Housing and Urban Development, Department of Interior, Department of Justice, Department of Labor, Department of Transportation, Department of Treasury, Equal Employment Opportunity Commission, Federal Communications Commission, National Archives and Records Administration, General Services Administration, the Government Printing Office, and the Small Business Administration.

#### B. Topics of Discussion

The eRulemaking Program Office is seeking public feedback on the usability and features of the Regulations.gov Web site, the planned government-wide electronic federal docket management system, and the rulewriter's toolbox. The following topics will be discussed at the meetings:

- Web site designs that maximize ease-of-use and public utilization,
- Features that users consider most important and would frequently use,
- Additional capabilities that users can apply, and
- Other considerations regarding the eRulemaking Initiative.

We welcome comments from stakeholders interested in electronic rulemaking including, but not limited to, advocacy groups, trade associations, labor unions, regulated industries, small businesses, state and local governments, and the academic community.

#### II. Additional Information

Additional information about the eRulemaking Initiative is available online at: <http://www.regulations.gov>. You may also contact the person listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Help in understanding the Federal rulemaking process and terminology is available from the **Federal Register** at: <http://www.gpoaccess.gov/fr/index.html>.

Dated: July 13, 2004.

**Mark A. Luttner,**

*Director of Information Collection, Office of Environmental Information.*

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#### FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC-04-37-K; DA 04-1699]

#### Auction of FM Broadcast Construction Permits Scheduled for November 3, 2004; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

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

**DATES:** Auction No. 37 is scheduled for November 3, 2004.

**FOR FURTHER INFORMATION CONTACT:** Auctions and Spectrum Access Division, WTB: For legal questions: Kenneth Burnley at (202) 418-0660, for general auction questions: Jeff Crooks at (202) 418-0660 or Lisa Stover at (717) 338-2888. Media Contact: Lauren Patrich at (202) 418-7944.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction No. 37 Procedures Public Notice* released on June 10, 2004. The complete text of the *Auction No. 37 Procedures Public Notice*, including attachments, is available for public inspection and

copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC, 20554. The *Auction No. 37 Procedures Public Notice* may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. ("BCPI"), Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone 202-488-5300, facsimile 202-488-5563, or you may contact BCPI at their Web site: <http://www.BCPIWEB.com>. This document is also available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/37/>.

#### I. General Information

##### A. Introduction

1. The *Auction No. 37 Procedures Public Notice*, announces the procedures and minimum opening bids for the upcoming auction of certain FM Broadcast construction permits scheduled for November 3, 2004 (Auction No. 37). On April 15, 2004, in accordance with the Balanced Budget Act of 1997, the Media Bureau ("MB") and the Wireless Telecommunications Bureau ("WTB") (collectively the "Bureaus") released a public notice seeking comment on previously announced procedures to be used in Auction No. 37. The Bureaus received eight comments and no reply comments in response to the *2004 Auction No. 37 Revised Comment Public Notice*, 69 FR 26103, May 11, 2004.

##### i. Background of Proceeding

2. As described in detail in the *2004 Auction No. 37 Revised Comment Public Notice*, Auction No. 37 was originally scheduled for February 21, 2001, but was subsequently postponed. Before Auction No. 37 was postponed in September 2001, on September 25, 2000, 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 and procedures for Auction No. 37, in accordance with the Balanced Budget Act of 1997. On September 29, 2000, the Bureaus released the *Auction No. 37 Additional Comment Public Notice*, 65 FR 59841, October 6, 2000, adding eight additional vacant FM allotments to the auction inventory and seeking comment on auction procedures and minimum opening bids with respect to the additional allotments. On January 19, 2001, the Bureaus released the *Auction No. 37 2001 Procedures Public Notice*, 66 FR 8961, February 5, 2001, in which the Bureaus, *inter alia*, reduced the

minimum opening bids for the Auction No. 37 construction permits, and set forth the procedures to be followed in Auction No. 37.

3. In the *NCE Second Report and Order*, 68 FR 26220, May 15, 2003, the Commission established revised procedures through which NCE applicants could seek to reserve non-reserved FM channels. Pursuant to the Public Notice, *Media Bureau Opens Window to Permit Noncommercial Educational Reservation Showings for Certain Vacant FM Allotments*, released September 30, 2003, 18 FCC Rcd 19600 (2003), MB opened a window to permit NCE reservation showings for certain FM allotments. By the reservation filing deadline, NCE applicants had filed petitions to reserve 60 of the channels previously included in the Auction No. 37 inventory. Those channels have been removed from the auction inventory while reservation showings are being evaluated. Auction No. 37 will proceed with the remaining vacant FM allotments. In the *2004 Auction No. 37 Revised Comment Public Notice*, the Bureaus again sought comment on the minimum opening bids and procedures for Auction No. 37.

#### ii. Construction Permits to Be Auctioned

4. Auction No. 37 will consist of 290 construction permits in the FM Broadcast service for stations throughout the United States, Guam, and American Samoa. 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. Pursuant to the policies established 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 of the *Auction No. 37 Procedures Public Notice*; 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 of the *Auction No. 37 Procedures Public Notice*. When two or more short-form applications (FCC Form 175) for an FM allotment are accepted for filing, mutual exclusivity ("MX") exists for auction purposes. Once mutual exclusivity exists for auction purposes, even if only one applicant within an MX Group submits an upfront payment, that applicant is required to

submit a bid in order to obtain the construction permit.

#### B. Rules and Disclaimers

##### i. Relevant Authority

5. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to the FM broadcast service contained in Title 47, Part 73 of the Code of Federal Regulations. Prospective bidders must also be familiar with the rules relating to broadcast auctions and competitive bidding proceedings contained in Title 47, Part 1, subpart Q, and Part 73, subpart I of the Code of Federal Regulations. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions contained in *Auction 37 Procedures Public Notice*, the *2004 Auction No. 37 Revised Comment Public Notice*, and the *Broadcast First Report and Order*, the *Broadcast Reconsideration Order*, 64 FR 56974, October 22, 1999, and the *New Entrant Bidding Credit Reconsideration Order*, 64 FR 44856, August 18, 1999. In particular, broadcasters should also familiarize themselves with the Commission's recent amendments and clarifications to its general competitive bidding rules.

6. 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 applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction.

##### ii. Prohibition of Collusion

7. To ensure the competitiveness of the auction process, the Commission's Part 1 rules prohibit applicants for any of the same geographic license areas from communicating with each other during the auction about bids, bidding strategies, or settlements unless such applicants have identified each other on their FCC Form 175 applications as parties with whom they have entered into agreements under § 1.2105(a)(2)(viii). Thus, applicants for any of the same geographic license areas must affirmatively avoid all discussions with each other that affect, or in their reasonable assessment, have the potential to affect, bids or bidding strategy. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. The "geographic license area" is the market designation

of the particular service. For the FM service, the market designation is the particular vacant FM allotment (e.g., Bethel, Alaska Channel 252C3, Market FM001). In Auction No. 37, for example, the rule would apply to applicants bidding for any of the same FM allotments. Therefore, applicants that apply to bid for an FM construction permit for the same allotment would be precluded from engaging in prohibited communications after the FCC Form 175 short-form application deadline. In addition, even if auction applicants are each eligible to bid on only one common FM allotment, they may not discuss with each other their bids or bidding strategies relating to any FM allotment that either is eligible to bid on. For purposes of this prohibition, § 1.2105(c)(7)(i) defines applicant as including all controlling interests in the entity submitting a short-form application to participate in the auction, 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, and all officers and directors of that entity.

8. Bidders competing for construction permits for any of the same designated markets 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.

9. The Commission's anti-collusion rules allow applicants to form certain agreements during the auction, provided the applicants have not applied for construction permits in the same designated 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 designated market. By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with §§ 1.2105(c) and 73.5002.

10. Section 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 auction applicants that engage in communications of bids or bidding strategies that result in a bidding agreement, arrangement or understanding not already identified on their short-form applications to promptly disclose any such agreement, arrangement or understanding to the Commission by amending their pending applications. In addition, § 1.2105(c)(6) requires all auction applicants to report prohibited discussions or disclosures regarding bids or bidding strategy to the Commission in writing immediately, but in no case later than five business days after the communication occurs, even if the communication does not result in an agreement or understanding regarding bids or bidding strategy that must be reported under § 1.65.

11. Applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in all bidding consortia, joint ventures, partnerships, and other arrangements entered into relating to the competitive bidding process. Any applicant found to have violated the anti-collusion rule may be subject to sanctions, including forfeiture of its upfront payment, down payment or full bid amount, and may be prohibited from participating in future auctions. In addition, applicants are reminded that they are subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace.

12. A summary listing of documents from the Commission and the Bureaus addressing the application of the anti-

collusion rules may be found in Attachment F of the *Auction No. 37 Procedures Public Notice*.

### iii. Due Diligence

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

14. In particular, potential bidders are strongly encouraged to review all underlying Commission orders, such as the specific *Report and Order* amending the FM Table of Allotments and allotting the FM channel(s) on which they plan to bid. *Reports and Orders* adopted in FM allotment rulemaking proceedings often include anomalies such as site restrictions or expense reimbursement requirements. Bidders are also responsible for reviewing all pending rulemaking petitions and open proceedings that might affect the FM allotment(s) on which they plan to bid. Additionally, potential bidders should perform technical analyses sufficient to assure them that, should they prevail in competitive bidding for a given FM allotment, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements.

15. Potential bidders are also strongly encouraged to conduct their own research prior to Auction No. 37 in order to determine the existence of any pending administrative or judicial proceedings that might affect their decision to participate in the auction. Participants in Auction No. 37 are strongly encouraged to continue such research throughout the auction.

16. Potential bidders should also be aware that certain pending and future applications (including those for modification), petitions for rulemaking, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal oppositions, and applications for review

before the Commission may relate to particular applicants or incumbent permittees or the construction permits available in Auction No. 37. In addition, pending and future judicial proceedings may relate to particular applicants or incumbent permittees, or the construction permits available in Auction No. 37. Prospective bidders are responsible for assessing the likelihood of the various possible outcomes, and considering their potential impact on construction permits available in this auction.

17. Prospective bidders should perform due diligence to identify and consider all proceedings that may affect the construction permits being auctioned. We note that resolution of such matters could have an impact on the availability of spectrum for Auction No. 37. In addition, although the Commission may continue to act on various pending applications, informal objections, petitions, and other requests for Commission relief, some of these matters may not be resolved by the time of the auction.

18. Bidders are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the construction permits available in Auction No. 37. Potential bidders are strongly encouraged to physically inspect any sites located in, or near, the FM allotment for which they plan to bid.

19. Potential bidders may research the licensing database for the Media Bureau on the Internet in order to determine which channels are already licensed to incumbent licensees. Licensing records for the Media Bureau are contained in the Media Bureau's Consolidated Data Base System (CDBS) and may be researched on the Internet at <http://www.fcc.gov/mb/>. Potential bidders may query the database online and download a copy of their search results if desired. Detailed instructions on using Search for Station Information, Search for Ownership Report Information and Search for Application Information and downloading query results are available online by selecting the CDBS Public Access (main) button at the bottom of the Electronic Filing and Public Access list section.

20. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by a bidder,

bidders may obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the database.

#### iv. Bidder Alerts

21. 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.

22. 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 amount of investment is less than \$25,000.
- 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.

23. 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 regarding Auction No. 37 may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225-5322).

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

24. Permittees 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.

#### C. Auction Specifics

##### i. Auction Date

25. The auction will begin on Wednesday, November 3, 2004, as announced in the *Auction No. 37 Comment Public Notice*. 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 on all construction permits will be conducted on each business day until bidding has stopped on all construction permits.

##### ii. Auction Title

26. Auction No. 37—FM Broadcast.

##### iii. Bidding Methodology

27. The bidding methodology for Auction No. 37 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. As a contingency plan, bidders may also dial in to the FCC Wide Area Network. Qualified bidders are permitted to bid telephonically or electronically.

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

28. The following is a list of important dates related to Auction No. 57:

Auction Seminar—July 22, 2004

Short-Form Application (FCC FORM 175) Filing Window Opens—July 22, 2004; noon, e.t.

Short-Form Application (FCC FORM 175) Filing Window Deadline—August 6, 2004; 6 p.m. e.t.

Upfront Payments (via wire transfer)—September 24, 2004; 6 p.m. e.t.

Mock Auction—October 29, 2004

Auction Begins—November 3, 2004

##### v. Requirements for Participation

29. Those wishing to participate in the auction must:

- Submit a short form application (FCC Form 175) electronically by 6 p.m. e.t., August 6, 2004. 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 p.m. e.t., September 24, 2004.

- Comply with all provisions outlined in this *Auction No. 37 Procedures Public Notice* and applicable Commission rules.

30. Two commenters suggest that we establish restrictions on which entities are eligible to participate in Auction No. 37. The Bureaus' process for seeking comment on auction procedures is not the appropriate forum to address such rule changes. Such an issue should have been raised in the context of a rulemaking proceeding establishing license eligibility rules for the FM Broadcast service.

#### vi. General Contact Information

General Auction Information, General Auction Questions, Seminar Registration

FCC Auctions Hotline (888) 225-5322, Press Option #2 or direct (717) 338-2888. Hours of service: 8 a.m.-5:30 p.m. e.t. Monday through Friday

Auction Legal Information, Auction Rules, Policies, Regulations Auctions and Spectrum Access Division (202) 418-0660

Licensing Information Rules, Policies, Regulations, Licensing Issues, Engineering Issues, Due Diligence, Incumbency Issues

Audio Division (202) 418-2700

Technical Support, Electronic Filing, FCC Automated Auction System FCC Auctions Technical Support Hotline (202) 414-1250 (Voice), (202) 414-1255 (TTY). Hours of service: 8 a.m. to 6:00 p.m. e.t., Monday through Friday

Payment Information, Wire Transfers, Refunds

FCC Auctions Accounting Group (202) 418-0578, (202) 418-2843 (Fax)

Telephonic Bidding Will be furnished only to qualified bidders

Press Information

Lauren Patrick at (202) 418-7944

FCC Forms

(800) 418-3676 (outside Washington, DC), (202) 418-3676 (in the Washington Area) <http://www.fcc.gov/formpage.html>

FCC Internet Sites

<http://www.fcc.gov>, <http://wireless.fcc.gov/auctions>, <http://www.fcc.gov/mb/audio>, <ftp://>

*ftp.fcc.gov*

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

31. Guidelines for completion of the short-form application (FCC Form 175) are set forth in Attachment D of the *Auction No. 37 Procedures 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. 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 license and, as discussed below in Section II.E (Provisions Regarding Defaulters and Former Defaulters), that they are not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. To participate in Auction No. 37, no other application may be substituted for the FCC Form 175.

### A. Permit Selection

32. In the FCC Form 175 for certain previous non-broadcast auctions, applicants could use a "Save All Licenses" function to indicate that they wanted to pursue all markets being auctioned. One commenter suggests we not include a "Save All Licenses" function in the Form 175 for Auction No. 37. The commenter claims that inclusion of this function will increase the likelihood that applicants will use the function rather than selecting only those allotments that they wish to construct and operate. We agree that a "Save All Licenses" function is appropriate for wireless auctions, but it is inappropriate in the broadcast context. Thus, on the FCC Form 175 for Auction No. 37, applicants must indicate FM construction permits that they want to pursue by selecting the FM allotments individually.

### B. Ownership Disclosure Requirements (FCC Form 175 Exhibit A)

33. 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 disclosure standards would apply. Therefore, in completing the 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.

### C. Consortia and Joint Bidding Arrangements (FCC Form 175 Exhibit B)

34. 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 that relate in any way to the construction permits being auctioned, including any agreements relating to post-auction market structure. 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. As discussed above, 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.

35. 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, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies. Such subject areas include, but are not limited to, issues such as management, sales, local marketing agreements, rebroadcast agreements, and other transactional agreements.

### D. New Entrant Bidding Credit (FCC Form 175 Exhibit C)

36. 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.

#### i. Eligibility

37. 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 application (FCC Form 175) filing deadline—August 6, 2004. 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—August 6, 2004.

38. 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.

39. 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.

40. Bidders are also reminded that, by the New Entrant Bidding Credit Reconsideration Order, the Commission further refined the eligibility standards for the New Entrant Bidding Credit, judging it appropriate to attribute the media interests held by very substantial investors in, or creditors of, a bidder claiming new entrant status. Specifically, the attributable mass media interests held by an individual or entity with an equity and/or debt interest in a

bidder shall be attributed to that bidder for purposes of determining its eligibility for the New Entrant Bidding Credit, if the equity and debt interests, in the aggregate, exceed 33 percent of the total asset value of the bidder, even if such an interest is non-voting.

41. 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). Full service noncommercial educational stations, on both reserved and non-reserved channels, are included among "media of mass communications" as defined in § 73.5008(b).

#### ii. Application Requirements

42. 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 applications to establish that they satisfy the eligibility requirements to qualify for a New Entrant Bidding Credit. In those cases where a New Entrant Bidding Credit is being sought, a certification under penalty of perjury must be set forth in Exhibit C. An applicant claiming that it qualifies for a 35 percent new entrant bidding credit must provide a certification, under penalty of perjury, that neither it nor any of its attributable interest holders have any attributable interests in any other media of mass communications. An applicant claiming that it qualifies for a 25 percent new entrant bidding credit must provide a certification, under penalty of perjury, that neither it nor any of its attributable interest holders have any attributable interests in more than three media of mass communications, and must identify and describe such media of mass communications.

#### iii. Bidding Credits

43. 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(b), or if the winning bidder, and/or any individual or entity with an attributable interest in the winning bidder, has attributable interests in more than three mass media facilities.

44. 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.

45. Several commenters request that we revise the new entrant bidding credits available for Auction No. 37. One commenter suggests we adopt certain measures to prevent what it terms "bidding credit fraud," whereby certain bidders initially claim eligibility for new entrant bidding credits and thereafter change their status to the alleged disadvantage of other bidders. Another commenter suggests that we revise the eligibility criteria for new entrant bidding credits. A third commenter, suggests a graduated scale of bidding credits ranging from a 10 to 50 percent discount for bidders with no commercial stations and proposes that bidders with a large number of commercial stations pay up to five times the amount of their winning bid.

46. Several commenters provide suggestions relating to the broad context of bidding credits and bidding preferences in Auction No. 37. For example, one commenter requests that the Commission provide bidding credits for minority-owned businesses in Auction No. 37. Another commenter

requests that we first auction the construction permits offered in Auction No. 37 to minority businesses before the announced start date for Auction No. 37.

37. A third commenter suggests a bidding credit for an applicant that has its main office within 50 miles of the allotment on which it is bidding.

47. First, we disagree with the assumption underlying comments that applicants that lose or change their new entrant bidding credit status have necessarily engaged in fraudulent misrepresentation. To the extent that an applicant makes a misrepresentation or lacks candor in the course of its claim for a bidding credit, the Commission has sufficient mechanisms to address such conduct, including the petition to deny process. We therefore find no reason to adopt special measures to address these concerns.

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

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

49. Each applicant must certify on its FCC Form 175 application under penalty of perjury that the applicant, its controlling interests, its affiliates, and the affiliates of its controlling interests, as defined by § 1.2110, are not in default on any payment for Commission licenses (including down payments) and not delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must include in its FCC Form 175 application a statement made under penalty of perjury indicating whether or not the applicant, its affiliates, its controlling interests, or the affiliates of its controlling interest, as defined by § 1.2110, have ever been in default on any Commission licenses or have 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. Prospective applicants are reminded that submission of a false certification to the

Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

50. "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, as discussed *infra* in section III.D.iii, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts. One commenter, although agreeing with the current defaulter and former defaulter certification requirement, suggests as an alternative that if a former defaulter has remedied all defaults, cured all outstanding delinquencies and remained debt-free for at least ten years, it only be required to pay the standard upfront payment. However, implementation of this suggestion would require amendment of § 1.2106(a) of the Commission's rules, which can only be accomplished through a Commission rulemaking proceeding.

#### F. Installment Payments

51. One commenter suggests we allow small businesses to pay for their licenses by making installment payments throughout the eight-year initial license period. In the *Part 1 Third Report and Order*, 63 FR 770 (January 7, 1998), the Commission suspended the use of installment payments for the foreseeable future. Accordingly, installment payment plans will not be available in Auction No. 37.

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

52. Applicants owned by minorities or women, as defined in 47 CFR 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.

#### H. Minor Modifications to Short-Form Applications (FCC Form 175)

53. After the short-form filing deadline (6 p.m. e.t. on August 6, 2004), applicants may make only minor

changes 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). See 47 CFR 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of certain exhibits. Applicants should make these modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: [auction37@fcc.gov](mailto:auction37@fcc.gov). The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 37. The Bureau request that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

54. A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338-2850.

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

55. Section 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. 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

56. On Thursday, July 22, 2004, the FCC will sponsor a seminar for Auction No. 37 at the Federal Communications Commission, located at 445 12th Street, SW., Washington, DC. The seminar will provide attendees with information about pre-auction procedures, auction conduct, the FCC Automated Auction System, auction rules, and the FM broadcast service rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

57. To register, complete the registration form attached hereto as

Attachment B of the *Auction No. 37 Procedures Public Notice* and submit it by Monday, July 19, 2004. Registrations are accepted on a first-come, first-served basis. The seminar is free of charge.

58. For potential bidders who are unable to attend, Audio/Video of this seminar will be webcast live from the FCC's Audio/Video Events page at <http://www.fcc.gov/realaudio/>. A recording of the webcast will also be available for playback from the FCC's A/V Archives Page following the meeting.

#### B. Short-Form Application (FCC Form 175)—Due August 6, 2004

59. In order to be eligible to bid in this auction, applicants must first submit a FCC Form 175 application. This application must be submitted electronically and received at the Commission no later than 6 p.m. e.t. on August 6, 2004. Late applications will not be accepted.

60. 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 Section III.D, *infra*. Applicants must submit only one FCC Form 175, regardless of the number of vacant FM allotments selected.

61. Pursuant to procedures established in the Broadcast First Report and Order, the 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 separate public notice addressing this temporary freeze has been released.

#### i. Electronic Filing

62. Applicants must file their FCC Form 175 applications electronically. Applications may generally be filed at any time beginning at noon e.t. on July 22, 2004, until 6 p.m. e.t. on August 6, 2004. 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 August 6, 2004.

63. Applicants must press the "SUBMIT Application" button on the "Submission" page of the electronic form to successfully submit their FCC Form 175s. 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 of the *Auction No. 37 Procedures Public Notice*. Technical support is available at (202) 414-1250 (voice) or (202) 414-1255 (text telephone (TTY)); hours of service are



Monday through Friday, from 8 a.m. to 6 p.m. e.t. In order to provide better service to the public, *all calls to the hotline are recorded.*

ii. Completion of the FCC Form 175

64. Applicants should carefully review 47 CFR 1.2105 and 73.5002, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment D of the *Auction No. 37 Procedures Public Notice*. Applicants are encouraged to begin preparing the required attachments for FCC Form 175 prior to submitting the form. Attachments C and D of the *Auction No. 37 Procedures Public Notice* provide information on the required attachments and appropriate formats.

iii. Electronic Review of FCC Form 175

65. The FCC Form 175 electronic review system may be used to locate and print applicants' FCC Form 175 information. There is no fee for accessing this system. See Attachment C of the *Auction No. 37 Procedures Public Notice* for details on accessing the review system.

66. 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.

**Note:** Applicants should not include their TIN/EIN or other sensitive information on any exhibit/attachment to be uploaded. Contents of exhibits/attachments become available for public access once the Status Public Notice is released.

*C. Application Processing and Minor Corrections*

67. 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: (i) Those applications accepted for filing; (ii) those applications rejected; and (iii) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

68. Non-mutually exclusive applications will be listed in a subsequent Public Notice to be released by the Bureaus. Such applications will not proceed to auction, but will proceed in accordance with instructions set forth in the Public Notice. All mutually exclusive applications will be considered under the relevant procedures for conflict resolution. Mutually exclusive commercial applications will proceed to auction. In the *NCE Second Report and Order*, the

Commission held that applications for NCE FM stations on non-reserved spectrum, filed during an FM filing window, will be returned as unacceptable for filing if mutually exclusive with any application for a commercial station. Accordingly, if an FCC Form 175 filed during the Auction No. 37 filing window identifying the applicant as noncommercial educational is mutually exclusive with any application filed during that window by an applicant for a commercial station, the former will be returned as unacceptable for filing.

*D. Upfront Payments—Due September 24, 2004*

69. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6 p.m. e.t. on September 24, 2004. Failure to deliver the upfront payment by the September 24, 2004, deadline will result in dismissal of the application and disqualification from participation in the auction. For specific details regarding upfront payments, see III.D. of the *Auction No. 37 Procedures Public Notice*.

i. Making Auction Payments by Wire Transfer

70. Wire transfer payments must be received by 6 p.m. e.t. on September 24, 2004. 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.

71. Applicants must fax a completed FCC Form 159 (Revised Feb. 2003) 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." In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account by the deadline. Applicants are responsible for obtaining confirmation from their financial institution that Mellon Bank has timely received their upfront payment and deposited it in the proper account.

ii. Amount of Upfront Payment

72. In the *Part 1 Order*, 62 FR 13540, March 21, 1997, the Commission delegated to the Bureaus the authority and discretion to determine appropriate upfront payment(s) for each auction. In addition, in the *Part 1 Fifth Report and Order*, 65 FR 52323, August 29, 2000, the Commission ordered that "former defaulters," i.e., applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, be required to pay upfront payments 50 percent greater than non-"former defaulters." For purposes of this calculation, the "applicant" includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by § 1.2110 of the Commission's rules.

73. The *Auction No. 37 Comment Public Notice* and the *2004 Auction No. 37 Revised Comment Public Notice*, proposes that the amount of the upfront payment would determine the number of bidding units on which a bidder may place bids. In order to bid on a construction permit, otherwise qualified bidders that applied for that construction permit on FCC Form 175 must have an eligibility level that meets or exceeds the number of bidding units assigned to that construction permit. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the construction permit applied for on FCC Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all construction permits for which the applicant has applied on its FCC Form 175, but rather to cover the maximum number of bidding units that are associated with construction permits on which the bidder wishes to place bids and hold high bids at any given time.

74. In the *2001 Procedures Public Notice*, after reviewing comments received in response to the *Auction No. 37 Comment Public Notice*, we reduced the upfront payments originally proposed in that *Public Notice*, setting forth the revised upfront payment amounts in Attachment A to the *2001 Procedures Public Notice*. One commenter, in response to the *2004 Auction No. 37 Revised Comment Public Notice*, suggests we further reduce the upfront payments so that none is greater than \$125,000, and that any allotment representing the first local transmission service to a community with a population under 10,000 have an



upfront payment not to exceed \$5,000, regardless of station class. This commenter further suggests that the upfront payments be reduced to 10 percent of the minimum opening bid values listed in the *2004 Auction No. 37 Revised Comment Public Notice*, and that a bidders upfront payment should be no higher than the single highest minimum opening bid for any allotment the bidder has selected in its FCC Form 175. We do not adopt these suggestions. The Media Bureau has evaluated each allotment and assigned an upfront payment amount, taking into account various factors related 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. Having once revised these amounts, in the *2001 Procedures Public Notice*, the Media Bureau has determined that the revised upfront payment amounts set forth in Attachment A to the *2004 Auction No. 37 Revised Comment Public Notice* are appropriate for these allotments.

75. We adopt our proposal. The specific upfront payments and bidding units for each construction permit are set forth in Attachment A of the *Auction No. 37 Procedures Public Notice*.

76. In calculating its upfront payment amount, an applicant should determine the *maximum* number of bidding units on which it may wish to be active (bidding units associated with construction permits on which the bidder has the standing high bid from the previous round and construction permits on which the bidder places a bid in the current round) in any single round, and submit an upfront payment covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all construction permits on which it seeks to bid in any given round. Bidders should check their calculations carefully, as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

77. Former defaulters should calculate their upfront payment for all construction permits by multiplying the number of bidding units they wish to purchase by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

**Note:** An applicant's actual bidding in any round will be limited by the bidding units

reflected in its upfront payment, notwithstanding the number of construction permits the applicant has indicated in its FCC Form 175.

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

78. 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.

Name of Bank, ABA Number, Contact and Phone Number, Account Number to Credit, Name of Account Holder, FCC Registration Number (FRN), Taxpayer Identification Number (see below), Correspondent Bank (if applicable), ABA Number, and Account Number.

79. 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: Gail Glasser, at (202) 418-2843 by September 24, 2004. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call Gail Glasser at (202) 418-0578.

### E. Auction Registration

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

81. 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 the confidential bidder identification number (BIN) and the other containing the SecurID cards, both of which are required to place bids. These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.

82. 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 Wednesday, October 27, 2004, 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.

83. Qualified bidders should note that lost bidder identification numbers or SecurID cards can be replaced only by appearing *in person* at the FCC Headquarters located at 445 12th Street, SW., Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacements. Qualified bidders requiring replacements must call technical support prior to arriving at the FCC.

### F. Remote Electronic Bidding

84. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. As a contingency plan, bidders may also dial in to the FCC Wide Area Network. Qualified bidders are permitted to bid telephonically or electronically. Each applicant should indicate its bidding preference—electronic or telephonic—on the FCC Form 175. In either case, each authorized bidder must have its own SecurID card, which the FCC will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID cards, while applicants with two or three authorized bidders will be issued three cards. For security purposes, the SecurID cards and the FCC Automated Auction System user manual are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID card is tailored to a specific auction; therefore, SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 37. The telephonic bidding phone number will be supplied in the first overnight mailing, which also includes the confidential bidder identification number.

### G. Mock Auction

85. All qualified bidders will be eligible to participate in a mock auction on Friday, October 29, 2004. The mock auction will enable applicants to become familiar with the FCC Automated Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

#### IV. Auction Event

86. The first round of bidding for Auction No. 37 will begin on Wednesday, November 3, 2004. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

##### A. Auction Structure

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

87. In the *2004 Auction No. 37 Revised Comment Public Notice*, we proposed to award all construction permits in Auction No. 37 in a simultaneous multiple round auction. One commenter objects to the simultaneous multiple round bidding methodology, claiming that it is unfair for individuals and small groups who wish to bid on multiple construction permits. Bidding rounds at the beginning of the auction should provide sufficient time for bidders to enter bids on as many allocations as they have selected. We will modify the round schedule as the auction continues, making rounds shorter and more frequent as bidding activity decreases, which is typical as auctions progress. Any changes to the round schedule will be done based on our analysis of the bidding activity and should not prevent bidders from being able to place their bids before the conclusion of a round. We adopt our proposal. We conclude that it is operationally feasible and appropriate to auction the FM broadcast stations construction permits through a simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all construction permits in each round of the auction.

###### ii. Maximum Eligibility and Activity Rules

88. In the *Auction No. 37 Comment Public Notice* and the *2004 Auction No. 37 Revised Comment Public Notice*, we propose 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. No comments were received concerning the eligibility rule, and we adopted the proposal in the *2001 Procedures Public Notice*.

89. For Auction No. 37, we adopt the maximum eligibility proposal. The amount of the upfront payment submitted by a bidder determines the initial eligibility (in bidding units) for each bidder. Note again that each construction permit is assigned a specific number of bidding units equal to the upfront payment listed in

Attachment A of the *Auction No. 37 Procedures Public Notice* on a bidding unit per dollar basis. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid and hold high bids in a round. As there is no provision for increasing a bidder's eligibility after the upfront payment deadline, applicants are cautioned to calculate their upfront payments carefully. The total upfront payment does not affect the total dollar amount a bidder may bid on any given construction permit.

90. In addition, we received no comments on our proposal for a single stage auction, and therefore adopted this proposal in the *2001 Procedures Public Notice*. In response to the *2004 Auction No. 37 Revised Comment Public Notice*, one commenter disagreed with the 100 percent activity level requirement and the potential eligibility reduction for failure to maintain a 100 percent activity level. 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. Therefore, we adopt this proposal with the following activity requirement: In each round of the auction, a bidder desiring to maintain its current eligibility is required to be active on construction permits representing one hundred (100) percent of its current eligibility. A bidder's activity will be the sum of the bidding units associated with the construction permits upon which it places a bid during the current round and the bidding units associated with construction permits upon which it is the standing high bidder. That is, a bidder must either place a bid and/or be the standing high bidder during each round of the auction.

91. 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, possibly eliminating the bidder from further bidding in the auction. To the extent that potential bidders require assistance in understanding these rules, we encourage them to attend the July 22, 2004, auction seminar, and participate in the October 29, 2004, mock auction.

###### iii. Activity Rule Waivers and Reducing Eligibility

92. Based upon our experience in previous auctions, we adopt our proposal that 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 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 flexibility to the bidders, while safeguarding the integrity of the auction.

93. The FCC Automated 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: (i) The bidder has no more activity rule waivers available; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements. If a bidder has no waivers remaining and does not satisfy the required activity level, its current eligibility will be permanently reduced, possibly eliminating the bidder from further bidding in the auction.

94. A bidder that is eligible to bid on more than one construction permit and has insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding period by using the reduce eligibility function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in "Maximum Eligibility and Activity Rules" (see Section IV.A.ii. above). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

95. 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 FCC Automated Auction System) during a bidding period in which no bids or withdrawals are submitted, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver invoked in a round in which there are no new bids or withdrawals will not keep the auction open. The submission of a proactive waiver cannot occur after a bid has been submitted in a round and will preclude a bidder from placing any bids later in that round.

**Note:** Once a proactive waiver is submitted during a round, that waiver cannot be unsubmitted.

#### iv. Auction Stopping Rules

96. For Auction No. 37, the Commission will 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 proactive waiver, a withdrawal, or a new bid on any construction permit. After the first such round, bidding closes simultaneously on all construction permits.

97. The modified version of the stopping rule would close the auction for all construction permits 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.

98. The Bureaus retain the discretion to keep an auction open even if no new 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 use an activity rule waiver (if it has any left) or lose bidding eligibility.

99. The Bureaus reserve the right to declare that the auction will end after a designated number of additional rounds ("special stopping rule"). If the Bureaus invoke this special stopping rule, they 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. The Bureau may 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 Bureaus are likely to attempt to increase the pace of the auction by, for example, increasing the number of rounds per day, and/or adjusting the minimum acceptable bids and bid increments for the construction permits. In 2004, one commenter objected to the modified stopping rule, special stopping rule, and option to keep the auction open, supporting only the simultaneous stopping rule.

100. Auction No. 37 will begin under the simultaneous stopping rule, and the Bureaus retain the discretion to invoke the other versions of the stopping rule. We believe that these stopping rules are most appropriate for Auction No. 37, because our experience in prior auctions demonstrates that the auction stopping rules balance the interests of administrative efficiency and maximum bidder participation.

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

101. By public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding.

102. By public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive 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. We 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.

#### B. Bidding Procedures

##### i. Round Structure

103. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of 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 qualified bidders public notice.

104. 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 Bureaus may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

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

105. The Bureaus will establish minimum opening bids for Auction No. 37, reasoning that a minimum opening bid, successfully used in other broadcast auctions, is a valuable bidding tool, effectively regulating the pace of the auction. Specifically, a minimum opening bid was proposed for each FM allotment listed in Attachment A of the *Auction No. 37 Procedures Public Notice*. The minimum opening bid was determined by taking into account various factors relating to the efficiency of the auction and the potential value of the spectrum, including the type of service and class of facility offered, market size, population covered by the proposed FM broadcast facility, industry cash flow data, and recent broadcast transactions. Based on our experience in using minimum opening bids in other auctions, we believe that minimum opening bids speed the course of the auction and ensure that valuable assets are not sold for nominal prices, without unduly interfering with the efficient awarding of construction permits.

106. We adjusted the minimum opening bids and upfront payments in the *2001 Procedures Public Notice*, to reduce the possibility of unsold construction permits and the likelihood that excessive minimum opening bid and upfront payment amounts could discourage auction participation.

107. We adopt our proposed minimum opening bids for Auction No. 37. We note that the minimum opening bids adopted here are 50 percent less than those originally proposed for this auction. Based on this reduction and the other considerations, we believe the proposed minimum opening bids are appropriate. Thus, for these reasons and those set forth in our discussion of Auction No. 37 upfront payments, we are not persuaded that the proposed minimum opening bids are unreasonable.

108. The minimum opening bids we adopt for Auction No. 37 are reducible at the discretion of the Bureaus. We emphasize, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the

Bureaus will not entertain any requests to reduce the minimum opening bid on specific construction permits.

109. The specific minimum opening bids for each construction permit available in Auction No. 37 are set forth in Attachment A of the *Auction No. 37 Procedures Public Notice*.

### iii. Minimum Acceptable Bids and Bid Increments

110. In the *Auction No. 37 Comment Public Notice* and again in the *2004 Auction No. 37 Revised Comment Public Notice*, the Commission proposed to apply a minimum bid increment of 10 percent. We further proposed to retain the discretion to change the minimum acceptable bids and bid increments if circumstances so dictate. After receiving a comment in 2000 in support of this proposal, we adopted the proposal in the *2001 Procedures Public Notice*. Having received no further comments, we adopt this proposal here as well.

111. In each round, each eligible bidder will be able to place a bid on a particular construction permit for which it applied in any of nine different amounts. The FCC Automated Auction System will list the nine bid amounts for each construction permit.

112. Once there is a standing high bid on a construction permit, the FCC Automated Auction System will calculate a minimum acceptable bid for that construction permit for the following round, as described below. The difference between the minimum acceptable bid and the standing high bid for each construction permit will define the bid increment — *i.e.*, bid increment = (minimum acceptable bid) – (standing high bid). The nine acceptable bid amounts for each construction permit consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

113. For Auction No. 37 we will use a 10 percent bid increment. This means that the minimum acceptable bid for a construction permit will be approximately 10 percent greater than the previous standing high bid received on the construction permit. The minimum acceptable bid amount will be calculated by multiplying the standing high bid times one plus the increment percentage—*i.e.*, (standing high bid) \* (1.10). We will round the result using our standard rounding procedure for minimum acceptable bid calculations:

results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10.

114. At the start of the auction and until a bid has been placed on a construction permit, the minimum acceptable bid for that construction permit will be equal to its minimum opening bid. Corresponding additional bid amounts are calculated using bid increments defined as the difference between the minimum opening bid times one plus the percentage increment, rounded as described above, and the minimum opening bid. That is, the increment used to calculate additional bid amounts = (minimum opening bid)(1 + percentage increment){rounded} – (minimum opening bid). Therefore, when the percentage increment equals 0.1 (*i.e.*, 10%), the first additional bid amount will be approximately ten percent higher than the minimum opening bid; the second, twenty percent higher; the third, thirty percent higher; etc.

115. In the case of a construction permit for which the standing high bid has been withdrawn, the minimum acceptable bid will equal the second highest bid received for the construction permit. The additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid.

116. The Bureaus retain the discretion to change the minimum acceptable bids and bid increments and the methodology for determining the minimum acceptable bids and bid increments if they determine that circumstances so dictate. The Bureaus will do so by announcement in the FCC Automated Auction System. The Bureaus may also use their discretion to adjust the minimum bid increment without prior notice if circumstances warrant.

### iv. High Bids

117. At the end of a bidding round, the high bids will be determined based on the highest gross bid amount received for each construction permit. A high bid from a previous round is sometimes referred to as a “standing high bid.” A “standing high bid” will remain the high bid until there is a higher bid on the same construction permit at the close of a subsequent round. Bidders are reminded that standing high bids are counted as activity for purposes of the activity rule.

118. The Bureaus propose to use a random number generator to select a high bid in the event of identical high

bids on a construction permit in a given round (*i.e.*, tied bids). A Sybase® SQL pseudo-random number generator based on the L'Ecuyer algorithms will be used to assign a random number to each bid. The tied bid having the highest random number will become the standing high bid. The remaining bidders, as well as the high bidder, will be able to submit a higher bid in a subsequent round. If no bidder submits a higher bid in a subsequent round, the high bid from the previous round will win the construction permit. If any bids are received on the construction permit in a subsequent round, the high bid will once again be determined on the highest gross bid amount received for the construction permit.

### v. Bidding

119. During a 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 round. If a bidder submits multiple bids for a single construction permit in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with construction permits for which the bidder has removed or withdrawn its bid do not count towards the bidder's activity at the close of the round.

120. Please note that all bidding will take place remotely either through the FCC Automated Auction System 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.

121. A bidder's ability to bid on specific construction permits in the first round of the auction is determined by two factors: (i) The construction permits applied for on FCC Form 175 and (ii) the upfront payment amount deposited. The bid submission screens will allow bidders to submit bids on only those construction permits for which the bidder applied on its FCC Form 175.

122. In order to access the bidding functions of the FCC Automated Auction System, bidders must be logged in during the bidding round using the bidder identification number provided in the registration materials, and the

password generated by the SecurID card. Bidders are strongly encouraged to print bid confirmations for each round after they have completed all of their activity for that round.

123. In each round, eligible bidders will be able to place bids on a given construction permit in any of nine different amounts. For each construction permit, the FCC Automated Auction System interface will list the nine acceptable bid amounts in a drop-down box. Bidders may use the drop-down box to select from among the nine bid amounts. The FCC Automated Auction System also includes an import function that allows bidders to upload text files containing bid information and a Type Bids function that allows bidders to enter specific construction permits for filtering.

124. Until a bid has been placed on a construction permit, the minimum acceptable bid for that construction permit will be equal to its minimum opening bid. Once there is a standing high bid on a construction permit, the FCC Automated Auction System will calculate a minimum acceptable bid for that construction permit for the following round, as described in section IV.B.iii.

125. Finally, bidders are cautioned to select their bid amounts carefully because, as explained in the following section, bidders that withdraw a standing high bid from a previous round, even if the bid was mistakenly or erroneously made, are subject to bid withdrawal payments.

#### vi. Bid Removal and Bid Withdrawal

126. For Auction No. 37 the Commission adopts bid removal and bid withdrawal procedures. With respect to bid withdrawals, the Commission will limit each bidder to withdrawals in no more than two rounds during the course of the auction. The two rounds in which withdrawals are used would be at the bidder's discretion.

127. 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 bidding system, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is removed does not count towards bidding activity. These procedures will enhance bidder flexibility during the auction.

128. 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 in the FCC Automated Auction System (assuming that the bidder has not reached its withdrawal limit). 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). Note: Once a withdrawal is submitted during a round, that withdrawal cannot be unsubmitted.

129. In previous auctions, the Bureau has detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While the Bureau continues to recognize the important role that bid withdrawals play in an auction, *i.e.*, reducing risk associated with efforts to secure various construction permits in combination, we conclude that, for Auction No. 37, adoption of a limit on the use of withdrawals to two rounds per bidder is appropriate. 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.

130. The Bureaus 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 the rounds. Withdrawals during the auction will 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 a construction permit.

131. If a high bid is withdrawn, the minimum acceptable bid will equal the second highest bid received for the construction permit, which may be less than, or equal to, in the case of tied bids, the amount of the withdrawn bid. The Bureau retain the discretion to lower the minimum acceptable bid on such construction permits in the next round or in later rounds. To set the additional bid amounts, the second highest bid also will be used in place of the standing high bid in the formula used to calculate bid increments. The Commission will serve as a "place holder" high bidder on the construction permit until a new bid is submitted on that construction permit.

132. *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 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 auctions(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 auctions(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 bidders most efficiently to 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 Bureaus retain 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.

133. Section 1.2104(g)(1) of the Commission's rules 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 withdrawn bids. The 3 percent interim payment will be applied toward any final bid withdrawal payment that will be assessed after 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.

#### vii. Round Results

134. Bids placed during a round will not be made public until the conclusion of that bidding period. After a round closes, the Bureaus 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 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.

#### viii. Auction Announcements

135. The FCC will use auction announcements to announce items such as schedule changes. All FCC auction announcements will be available by clicking a link on the FCC Automated Auction System.

### V. Post-Auction Procedures

#### A. Down Payments and Withdrawn Bid Payments

136. After bidding has ended, the Commission will issue a public notice declaring the auction closed and identifying winning bidders, down payments and any withdrawn bid payments due.

137. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction No. 37 to 20 percent of the net amount of its winning bids (gross bids less any applicable new entrant bidding credits). In addition, by the same deadline all bidders must pay any bid withdrawal payments due under 47 CFR 1.2104(g), as discussed in "Bid Removal and Bid Withdrawal," Part IV.B.vi. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

#### B. Final Payments

138. After the termination of the pleading cycle for petitions to deny, the Commission will issue a public notice announcing that it is prepared to award the construction permits to the winning bidders, if the applications are uncontested. Within ten business days after the date of that public notice, the uncontested winning bidders will be required to make full payment of the balance of their winning bids. Broadcast construction permits will be granted only after the full and timely payment of winning bids and any applicable late fees, in accordance with § 1.2109(a). The previously filed long-form applications of the unsuccessful competing bidders will be dismissed following the grant of the winning bidder's construction permit.

139. WTB now employs a final payment deadline different from that

described above. Consistent with current WTB practice, for Auction No. 37, the Bureaus are considering rule changes to conform §§ 73.3573(f)(5)(ii) and 73.5006(d) to analogous Part 1 auction rules. If adopted, each winning bidder would be required to submit the balance of the net amount of its winning bids within 10 business days after the deadline for submitting down payments.

#### C. Long-Form Application

140. Within thirty days after the release of the auction closing notice, winning bidders must electronically submit a properly completed Form 301, Application for FM Construction Permit, and required exhibits for each construction permit won through Auction No. 37. Further filing instructions will be provided to auction winners at the close of the auction.

#### D. Default and Disqualification

141. 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 its final bid. 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.

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

142. All applicants that submit upfront payments but are not winning bidders for a construction permit in Auction No. 37 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from the applicant after any applicable bid withdrawal payments have been paid. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

143. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments

before the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, 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, Taxpayer Identification Number ("TIN") and FCC Registration Number ("FRN"). Send refund request to Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Gail Glasser, 445 12th Street, SW., Room 1-C864, Washington, DC 20554.

144. 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 Gail Glasser at (202) 418-0578.

Federal Communications Commission.

**Margaret Wiener,**

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

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## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

**AGENCY:** Board of Governors of the Federal Reserve System

**SUMMARY:** Background. Notice is hereby given of the final approval of proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond