

do so by visiting the FCC PRA Web page at: <http://www.fcc.gov/omd/prs>.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Judith B. Herman at (202) 418-0214 or via the Internet at [Judith-B.Herman@fcc.gov](mailto:Judith-B.Herman@fcc.gov).

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060-0678.

*Title:* Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations.

*Form No.:* FCC Form 312, Schedule S.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 3,001.

*Estimated Time Per Response:* 1-80 hours.

*Frequency of Response:* On occasion and annual reporting requirements and third party disclosure requirement.

*Total Annual Burden:* 41,279 hours.

*Total Annual Cost:* \$531,875,000.

*Privacy Act Impact Assessment:* No.

*Needs and Uses:* The Commission adopted and released a Fifth Report and Order in IB Docket No. 00-248, and a Third Report and Order in CC Docket No. 86-496, FCC 05-63, which adopted new information collection requirements. The Commission has adopted six new rule sections which impose reporting and third party certifications which are subject to the Paperwork Reduction Act. They are: (1) Section 25.220(c)(1) requires that non-routine earth station license applicants may obtain certifications from target satellite operators showing that the non-routine earth station has been coordinated with potentially affected satellite operators; (2) Section 25.220(c)(2) requires non-routine earth station applicants may demonstrate in their applications that will reduce their power levels sufficiently to compensate for their small-than-routine earth station antennas; (3) Section 25.132(b)(3) requires submission of antenna gain patterns required of all non-routine earth station applicants proposing smaller-than-routine antennas; (4) Section 25.220(e) requires operators of satellite communicating with non-routine earth station ("target" satellite) to coordinate with non-routine power levels with operators of potentially affected satellites within six degrees and to certify that coordination has been completed; (5) Section 25.130(a) requires licensees to provide language for the Commission to place in the public notice. (In addition, applicants not required to submit applications on FCC Form 312EZ, other than ESV

applicants, must submit the following information to be used as an "informative" in the public notice issued under Section 25.151 as an attachment to their application: (a) A detailed description of the service to be provided, including frequency band and satellites to be used. The applicant must identify either the specific satellite(s) with which it plans to operate, or the eastern or western boundaries of the arc it plans to coordinate; (b) the diameter or equivalent of the antenna; (c) proposed power and power density levels; (d) identification of any random access technique, if applicable; and (e) identification of a specific rule or rules for which a waiver is requested); and (6) licensees must provide information on half-power beam width if they plan to operate in a band that is shared with government users.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 05-14268 Filed 7-19-05; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC-05-62-B (Auction No. 62); DA 05-1598]

### Auction of FM Broadcast Construction Permits Scheduled for November 1, 2005, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 62

**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. 62 is scheduled to begin on November 1, 2005.

**FOR FURTHER INFORMATION CONTACT:** Auctions and Spectrum Access Division, Wireless Telecommunications Bureau: For legal questions: Howard Davenport at (202) 418-0660. For general auction questions: Jeff Crooks at (202) 418-0660 or Linda Sanderson at (717) 338-2888; Media Contact: Lauren Patrick at (202) 418-7944. Media Bureau, Audio Division: For service rule questions: Lisa Scanlan at (202) 418-2700. To request materials in accessible formats (Braille, large print, electronic

files, audio format) for people with disabilities, send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction No. 62 Procedures Public Notice*, released on June 17, 2005. The complete text of the *Auction No. 62 Procedures Public Notice*, including attachments, as well as related Commission documents, are available for public inspection and copying from 8 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The *Auction No. 62 Procedures Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 488-5300, facsimile (202) 488-5563, or you may contact BCPI at its Web site: <http://www.BCPIWEB.com>. The *Auction No. 62 Procedures Public Notice* and related documents are also available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/62/>.

## I. General Information

### A. Introduction

1. The Media Bureau and Wireless Telecommunications Bureau (collectively the Bureaus) announce the procedures and minimum opening bid amounts for the upcoming auction of certain FM broadcast construction permits scheduled for November 1, 2005. On April 14, 2005, in accordance with the § 309(j)(3) of the Communications Act of 1934, as amended, the Bureaus released a public notice seeking comment on reserve prices or minimum opening bid amounts and the procedures to be used in Auction No. 62. The Bureaus received 15 comments, one reply comment and one supplement to the reply comment in response to the *Auction No. 62 Comment Public Notice* 70 FR 21782, April 27, 2005.

### i. Construction Permits To Be Auctioned

2. Auction No. 62 will offer 172 construction permits in the FM broadcast service for stations throughout the United States and the U.S. Virgin Islands. The construction permits to be auctioned include 172 new FM allotments, including 30 FM construction permits that were offered,

but not sold, in Auction No. 37. These construction permits are for vacant FM allotments, reflecting FM channels assigned to the FM Table of Allotments, pursuant to the Commission's established rulemaking procedures, designated for use in the indicated communities. Please note that the number assigned to each construction permit has been revised from those that were included in the *Auction No. 62 Comment Public Notice*. The updated construction permit numbers are listed in Attachment A of the *Auction No. 62 Procedures Public Notice*.

3. Two commenters requested that specific additional FM channels be added to the list of FM allotments to be auctioned in Auction No. 62. In the interest of an effective and efficient auction process, the Bureaus decline to enlarge the Auction No. 62 inventory by adding additional FM allotments at this time. The specific vacant FM allotments at issue will however, be included in a subsequent FM auction. Two commenters ask that specific FM allotments be removed from the Auction No. 62 inventory, asserting that existing stations provide sufficient service and concluding that the communities at issue cannot support additional stations based on declining populations. The commenters requested that FM 169 and FM 170, Wheatland, WY, be removed, and that FM 110, Farmington, PA, and FM 112, Strattonville, PA, be removed. The Bureaus will not remove the four FM allotments from the auction inventory, in light of the expressions of interest filed in the respective rulemaking proceedings to amend the FM Table of Allotments. Simply removing the allotments from this auction does not delete the FM channel from the Table of Allotments. Rather, an entity must submit a petition for rulemaking to delete an allotment from the FM Table of Allotments. Finally, because the winning bidder for the Mason, Texas FM allotment in Auction No. 37 defaulted on its high bid, a commenter contends that as second highest bidder, it should be permitted the opportunity to purchase the FM construction permit at the net bid amount before the permit is included in another auction. The commenter's request is being considered separately along with other similar requests by unsuccessful bidders in Auction No. 37.

4. 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 listed in Attachment A of the *Auction No. 62 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. Attachment A of the *Auction No. 62 Procedures Public Notice* also lists the reference coordinates for each vacant FM allotment. 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 general competitive bidding rules, including recent amendments and clarifications. Broadcasters should also familiarize themselves with the Commission's rules relating to the FM broadcast service contained in 47 CFR 73.201–73.333, 73.1001–73.5009. 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 this public notice, the *Auction No. 62 Comment Public Notice* and the *Broadcast First Report and Order*, the *Broadcast First Reconsideration Order*, 64 FR 24523, May 7, 1999, and the *New Entrant Bidding Credit Reconsideration Order*, 64 FR 44856, August 18, 1999, and the *NCE Second Report and Order*, 68 FR 26220, May 15, 2003.

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. This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid. 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., Wasilla, Alaska, Channel 265C2, Market FM001). In Auction No. 62, 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 during the period from the FCC Form 175 short-form application deadline until the down payment deadline following the close of the auction. 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 must not communicate indirectly about bids or bidding strategy. Accordingly, such bidders 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 likewise 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. If an applicant is found to have violated the antitrust laws in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions.

12. A summary listing of documents issued by the Commission and the Bureaus addressing the application of the anti-collusion rule may be found in Attachment E of the *Auction No. 62 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 Commission makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that a Commission auction represents an opportunity to become a Commission permittee in the broadcast service, subject to certain conditions and regulations. A Commission auction does not constitute an endorsement by the Commission of any particular service, technology, or product, nor does a Commission 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. 62 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. 62 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. 62. In addition, pending and future judicial proceedings may relate to particular applicants or incumbent permittees, or the construction permits available in Auction No. 62. 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. The Bureaus note that resolution of such matters could have an impact on the availability of spectrum for Auction No. 62. 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. 62.

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/>.

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.

21. Potential applicants are strongly encouraged to physically inspect any sites located in, or near, the service area for which they plan to bid, and also to familiarize themselves with the environmental assessment obligations.

22. Two commenters suggest reducing the risk attendant to bidding, and advocate that no FM allotment be offered at auction if that allotment is subject to an on-going rulemaking proceeding, remains under reconsideration, or still requires foreign concurrence. International coordination has been completed for all Auction No. 62 FM allotments listed in Attachment A of the *Auction No. 62 Procedures Public Notice*. Furthermore, concurrence data including approval dates are now available in CDBS regarding Canadian and Mexican approvals. With regard to allotment FM160, Meeteetse, WY, Channel 273C, the Bureaus agrees with the commenter that the FM channel was inadvertently allotted and will remove it from the Auction No. 62 inventory.

23. The Bureaus decline, however, to remove any additional allotments from the auction based on the pendency of a rulemaking proceeding which may or may not ultimately affect the FM allotment at issue. All rulemaking

proposals and counterproposals regarding FM allotments are entered into the Commission's CDBS system, thus giving notice of the proponent's specific technical proposal. To the extent the allotment proceeding is docketed, the release of a notice of proposed rulemaking or report and order provides further information about the specific technical proposal at hand. As is customary in broadcast auctions, to avoid conflicts with auction proposals and promote a more certain and speedy auction process, the Media Bureau will be releasing its public notice announcing an FM minor change application and petition for rulemaking freeze simultaneously with the *Auction No. 62 Procedures Public Notice*. The Bureaus caution bidders to exercise due diligence in researching whether prior or pending allotment proceedings could affect their bids. To proceed as the commenter suggests could potentially encourage the filing of frivolous petitions for rulemaking for the sole purpose of preventing an allotment from proceeding to auction. Furthermore, the commenter provides no evidence indicating that any of the winning bidders in Auction No. 37 were adversely affected by an ongoing rulemaking proceeding, or that any of the Auction No. 37 allotments were sold at substandard amounts due to a then-ongoing rulemaking proceeding. In fact, the commenter raised similar objections in Auction No. 37, requesting that 39 allotments be deleted from that auction. Of those 39 allotments, 35 were won at auction for a total of over \$22.8 million dollars (net), and 15 of those construction permits have already been granted. The Bureaus find that proceeding with the auction with the current allotment inventory provides an appropriate balance between the prompt initiation of FM service to those allotment communities and the provision of certainty to auction participants.

#### iv. Bidder Alerts

24. The Commission makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that a Commission auction represents an opportunity to become a Commission permittee in the broadcast service, subject to certain conditions and regulations. A Commission auction does

not constitute an endorsement by the Commission of any particular services, technologies or products, nor does a Commission construction permit constitute a guarantee of business success. Applicants and interested parties should perform their own due diligence before proceeding, as they would with any new business venture.

25. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 62 to deceive and defraud unsuspecting investors. Information about deceptive telemarketing schemes is available from the FTC at (202) 326-2222 and from the SEC at (202) 942-7040.

#### v. National Environmental Policy Act Requirements

26. 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

27. Bidding in Auction No. 62 will begin on Tuesday, November 1, 2005, as announced in the *Auction No. 62 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

28. Auction No. 62—FM Broadcast.

##### iii. Bidding Methodology

29. The bidding methodology for Auction No. 62 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet using the FCC's Integrated Spectrum Auction System (ISAS or FCC Auction System), and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically via the Internet or by telephone.

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

Auction Seminar .....	July 27, 2005.
Short-Form Application (FCC Form 175) Window Opens .....	July 27, 2005; 12 p.m. ET.
Short-Form Application (FCC Form 175) Filing Window Deadline .....	August 12, 2005; 6 p.m. ET.
Upfront Payments (via wire transfer) .....	September 30, 2005; 6 p.m. ET.
Mock Auction .....	October 28, 2005.
Auction Begins .....	November 1, 2005.

## v. Requirements for Participation

30. Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically prior to 6 p.m. Eastern Time (ET), August 12, 2005.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. ET, September 30, 2005.
- Comply with all provisions outlined in this public notice and applicable Commission rules.

## vi. Proposals To Restrict Participation

31. Two commenters suggest that the Bureaus establish restrictions on which entities are eligible to participate in Auction No. 62. The Bureaus will not impose any eligibility restrictions on bidders in Auction No. 62. Barring certain entities from participating in an auction based on the number of facilities they currently own would constitute a *de facto* amendment of the Commission's rules. In those cases where they are used, rules concerning eligibility to participate in an auction or

hold a license are established in service specific rules adopted by the Commission. Requests made in comments filed to change the eligibility rules are beyond the scope of a public notice regarding the procedures for an auction. Such an issue should have been raised in the context of a rulemaking proceeding concerning service rules for the FM broadcast service. For this reason, the Bureaus also decline to base auction participation on the numerical limits of the broadcast multiple ownership rules, as the commenter suggests.

General Auction Information: General Auction Questions, Seminar Registration.

Auction Legal Information: Auction Rules, Policies, Regulations.

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

Technical Support: Electronic Filing FCC Auction System .....

Payment Information: Wire Transfers, Refunds .....

Telephonic Bidding .....

FCC Copy Contractor: Additional Copies of Commission Documents.

Press Information .....

FCC Forms .....

FCC Internet Sites .....

FCC Auctions Hotline (888) 225-5322, option two; or (717) 338-2888. Hours of service: 8 a.m.-5:30 p.m. ET, Monday through Friday. Auctions and Spectrum Access Division (202) 418-0660.

Audio Division (202) 418-2700

FCC Auctions Technical Support Hotline (877) 480-3201, option nine; or (202) 414-1250, (202) 414-1255 (TTY). Hours of service: 8 a.m.-6 p.m. ET, Monday through Friday.

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

Will be furnished only to qualified bidders.

Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, (800) 378-3160, <http://www.bcpweb.com>.

Lauren Patrich (202) 418-7944.

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

<http://www.fcc.gov>, <http://wireless.fcc.gov/auctions>, <http://wireless.fcc.gov/uls>.

## II. Short-Form (FCC FORM 175) Filing Requirements

32. A party's application to participate in an FCC auction, referred to as a short-form application or FCC Form 175, provides information used in determining whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or permits. For Auction No. 62, if an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 will be used in determining whether the applicant is eligible for the claimed bidding credit. Applicants to participate in Auction No. 62 must file FCC Form 175 electronically prior to 6 p.m. ET on August 12, 2005, following the procedures set forth in Attachment C of the *Auction No. 62 Procedures Public Notice*. Applicants bear full responsibility for submission of timely and complete FCC Form 175 applications. 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. Applicants should read the instructions set forth in Attachment C to the *Auction No. 62 Procedures Public Notice* carefully and should consult the Commission's rules to ensure that, in

addition to the materials described below, all the information that is required under the Commission's rules is included with their FCC Form 175 applications.

33. An entity may not submit more than one short-form application in a single auction. In the event that a party submits multiple FCC Forms 175, such additional applications will be dismissed. Applicants should further note that submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

### A. New Entrant Bidding Credit

34. 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

35. 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 12, 2005. Thus, the bidder's maximum new entrant bidding credit eligibility will be determined as of the short-form application filing deadline. 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 12, 2005. Prospective bidders are reminded, however, that events occurring after the short-form filing deadline, such as the acquisition of attributable interests in media of mass communications, may cause diminishment or loss of the

bidding credit, and must be reported immediately.

36. 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.

37. 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.

38. 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.

39. 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).

#### B. Application Requirements

40. In addition to the ownership information required pursuant to

§ 1.2112, applicants are required to establish on their FCC Form 175 applications 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 provided in completing the applicant's FCC Form 175. An applicant claiming that it qualifies for a 35 percent new entrant bidding credit must certify that neither it nor any of its attributable interest holders have any attributable interests in any other media of mass communications. An applicant claiming that it qualifies for a 25 percent new entrant bidding credit must certify 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.

#### i. Bidding Credits

41. Applicants that qualify for the New Entrant Bidding Credit, as set forth in the applicable rule, 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.

42. 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.

43. Several commenters request that the Bureaus revise the new entrant bidding credits available for Auction No. 62. The Bureaus are unable to adopt for Auction No. 62 the 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 Bureaus' process for seeking comment on auction procedures is not the appropriate forum in which to raise 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. With respect to one commenter's suggestion of an "original petitioner bidding credit," the Commission previously addressed and rejected the idea of awarding a credit to an FM applicant that successfully petitioned for the FM allotment of the channel being auctioned in the *Broadcast First Report and Order*.

44. One commenter's proposal sought to address constitutionally permissible measures to increase minority and female ownership of radio and television stations. The Bureaus believe that these proposals are more appropriately addressed in a separate proceeding rather than in response to a public notice seeking comment on the forthcoming auction of FM broadcast allotments. Accordingly, the Bureaus will incorporate these proposals into the record of the Commission's § 257 proceeding.

#### C. Permit Selection

45. In Auction No. 62, applicants must select the construction permits on which they want to bid from the eligible permits list. In Auction No. 62, FCC Form 175 will include a filtering mechanism that allows an applicant to filter the available construction permits to create customized lists of construction permits. The applicant will make selections for one or more of the filter criteria and the system will produce a list of construction permits satisfying the specified criteria. In the FCC Form 175 for certain previous non-broadcast auctions, applicants could use

a *Select All* function to indicate that they wanted to pursue all markets being auctioned. One commenter states that the bidding strategy of identifying all available channels so that competitors are unable to determine which allotments "are really of interest" has the potential of discouraging truly new entrant applicants from bidding in the auction "if they believe there are hundreds of bidders for the allotment they seek." Enhancements to the FCC Auction System make it easy for applicants to select multiple construction permits with or without a *Select All* function. The ability for applicants to select and bid on multiple construction permits can improve bidders' ability to pursue backup bidding strategies during the auction. Based upon the Bureau's experience in past auctions, the Bureaus adopt its proposal.

46. There is no opportunity to change construction permit selection after the short-form filing deadline. It is critically important that an applicant confirm its construction permit selection because the FCC Auction System will not accept bids on construction permits that an applicant has not selected on its FCC Form 175.

#### *D. Consortia and Joint Bidding Arrangements*

47. Applicants will be required to indicate on their applications whether they have 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. Applicants will also 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. 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 such discussions with applicants for the same market after the deadline.

48. 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.

#### *E. Ownership Disclosure Requirements*

49. 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, all applicants must comply with the uniform Part 1 ownership disclosure standards and provide information required by §§ 1.2105 and 1.2112 of the Commission's rules. Specifically, in completing FCC Form 175, applicants will be required to fully disclose information on the real party or parties-in-interest and ownership structure of the bidding entity. The ownership disclosure standards for the short form are set forth in § 1.2112 of the Commission's rules. Applicants are responsible for information submitted in FCC Form 175 being complete and accurate. Accordingly, applicants should carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for filing FCC Form 175. Applicants can update any information that needs to be changed directly in the FCC Form 175.

50. To simplify filling out FCC Form 175, an applicant's most current ownership information on file with the Commission, if in an electronic format compatible with FCC Form 175, such as information submitted in an on-line FCC Form 602 in connection with wireless services, will automatically be entered into FCC Form 175.

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

51. Each applicant must state under penalty of perjury on its FCC Form 175

application whether or not the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, 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. In addition, each applicant must certify under penalty of perjury on its FCC Form 175 application that the applicant, its affiliates, its controlling interests, 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 that they are not delinquent on any non-tax debt owed to any Federal agency. 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.

52. 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. 62, provided that they are otherwise qualified. However, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts. One commenter, although agreeing with the defaulter and former defaulter certification requirement, suggests as an alternative that if a former defaulter has cured outstanding infractions and has not been delinquent on any non-tax debt owed to any Federal agency for at least a decade, it should only be required to pay the standard upfront payment. The Bureaus cannot adopt this proposal.

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.

53. Current defaulters—*i.e.*, applicants, including their attributable interest holders, that are in default on any payment for Commission licenses (including down payments) or are delinquent on any non-tax debt owed to any Federal agency—are not eligible to bid in Auction No. 62.

54. Applicants are encouraged to review the Bureau's previous guidance on default and delinquency disclosure requirements in the context of the



Bureau's short-form application process. Applicants are reminded that the Commission's Red Light Display System, which provides information regarding debts owed to the Commission, may not be determinative of an applicant's ability to comply with the default and delinquency disclosure requirements.

#### G. Installment Payments

55. One commenter suggests the Bureau allow small businesses to pay for their licenses by making installment payments throughout the eight-year license period. In the *Part 1 Third Report and Order*, 65 FR 52401, August 29, 2000, the Commission suspended use of installment payments for the foreseeable future. Accordingly, installment payment plans will not be available in Auction No. 62.

#### H. Other Information

56. Applicants owned by minorities or women, as defined in § 1.2110(c)(2), may identify themselves in filling out their FCC Form 175 short-form application 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.

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

57. After the short-form filing deadline (6 p.m. ET August 12, 2005), applicants may make only minor changes to their applications. Applicants will not be permitted to make major modifications to their applications (e.g., change their construction permit selections, change control of the applicant, increase a previously claimed bidding credit, or change their self-identification as noncommercial educational). Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and addresses and phone numbers of the applicants and their contact persons. Applicants must click on the SUBMIT button in the FCC Auction System for the changes to be submitted and considered by the Commission. After the revised application has been submitted, a confirmation page will be displayed that states the submission time and date, along with a unique file number. In addition, applicants should 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: [auction62@fcc.gov](mailto:auction62@fcc.gov).

The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 62 and the name of the applicant. The Bureau request that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

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

58. 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. Changes that cause a loss of or reduction in eligibility for a new entrant bidding credit should be reported immediately. Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications 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—July 27, 2005

59. On Wednesday, July 27, 2005, the FCC will sponsor a seminar for parties interested in participating in Auction No. 62 at the Federal Communications Commission headquarters, located at 445 12th Street, SW., Washington, DC. The seminar will provide attendees with information about pre-auction procedures, completing FCC Form 175, auction conduct, the FCC Auction System, auction rules, and the FM broadcast service rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

60. To register, complete the registration form Attachment B of the *Auctions No. 62 Procedures Public Notice* and submit it by Monday, July 25, 2005. Registrations are accepted on a first-come, first-served basis. The seminar is free of charge.

61. For individuals who are unable to attend, an Audio/Video of this seminar will be available via webcast from the FCC's Auction 62 Web page at <http://wireless.fcc.gov/auctions/62/>.

#### B. Short-Form Application (FCC Form 175)—Due by August 12, 2005, 6 p.m. ET

62. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be submitted

electronically and received at the Commission prior to 6 p.m. ET on August 12, 2005. Late applications will not be accepted. There is no application fee required when filing FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment.

63. Applications may generally be filed at any time beginning at noon ET on July 27, 2005, until 6 p.m. ET on August 12, 2005. 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 12, 2005.

64. Applicants must always click on the SUBMIT button on the Certify and Submit screen of the electronic form to successfully submit their FCC Form 175s or modifications. Any form that is not submitted will not be reviewed by the FCC.

#### C. Application Processing and Minor Corrections

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

66. 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. 62 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.



67. As described more fully in the Commission's rules, after the August 12, 2005, short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (e.g., change their construction permit selections, change control of the applicant, increase a previously claimed bidding credit, or change their self-identification as NCE).

*D. Upfront Payments—Due September 30, 2005*

68. 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 in the proper account at Mellon Bank by 6 p.m. ET on September 30, 2005.

*i. Making Auction Payments by Wire Transfer*

69. Wire transfer payments must be received by 6 p.m. ET on September 30, 2005. 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.

70. Applicants must fax a completed FCC Form 159 (Revised 2/03) 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 No. 62. 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. FCC Form 159*

71. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be faxed to Mellon Bank to

accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/03) is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment D of the *Auction No. 62 Procedures Public Notice*. An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payors using a pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

*iii. 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 make 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. In the *Auction No. 62 Comment Public Notice*, the Bureaus proposed that the amount of the upfront payment would determine a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids. In order to bid on a construction permit, otherwise qualified bidders that applied for that construction permit on FCC Form 175 must have a current eligibility level that meets or exceeds the number of bidding units assigned to that construction permit. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits 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 FCC Form 175, but rather to cover the number of bidding units that are associated with construction permits on which the bidder wishes to place bids and hold provisionally winning bids at any given time.

74. In the *Auction No. 62 Comment Public Notice*, the Bureaus proposed upfront payments for each construction permit taking into account various factors related to the efficiency of the auction process and the potential value of similar spectrum. One commenter suggests having no minimum opening bid amount or reserve price. The same commenter alternatively suggests limiting upfront payments to no more than \$50,000 for any allotment, and to \$5,000 for allotments for the first local transmission services to communities with populations under 10,000. The commenter suggests that lower upfront payment amounts will increase bidder participation and ensure that smaller populations will receive service. However, the Bureaus' auction experience has shown no such correlation between the amount of the upfront payment and bidder interest. Moreover, the Bureaus' method of setting upfront payments is designed to ensure that permits will be awarded to the parties that value them most, rather than encouraging speculation by potentially discounting prices. The Bureaus thus decline to adopt the commenter's proposal. The specific upfront payment and bidding units for each construction permit are set forth in Attachment A of the *Auction No. 62 Procedures Public Notice*.

75. In calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to be active on (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all construction permits on which it seeks to be active in any given round. Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline.

**EXAMPLE: UPFRONT PAYMENTS AND BIDDING FLEXIBILITY**

Market No.	Channel/class	Location	Bidding units	Upfront payment
FM362 .....	232C3 .....	Viola, AR .....	50,000	50,000

## EXAMPLE: UPFRONT PAYMENTS AND BIDDING FLEXIBILITY—Continued

Market No.	Channel/class	Location	Bidding units	Upfront payment
FM015 .....	279C3 .....	Flagstaff, AZ .....	70,000	70,000

76. Former defaulters should calculate their upfront payment for all construction permits by multiplying the number of bidding units on which they wish to be active by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit. If a former defaulter fails to submit a sufficient upfront payment to establish eligibility to bid on at least one of the construction permits applied for on its FCC Form 175, the applicant will not be eligible to participate in the auction.

**iv. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments**

77. The Commission will use wire transfers for all Auction No. 62 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed in the *Auction No. 62 Procedures Public Notice* be supplied to the FCC. Applicants can provide the information electronically during the initial short-form filing window after the form has been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, Attn: Gail Glasser, at (202) 418-2843. 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**

78. 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.

79. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent

only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID cards that will be required to place bids (or access the FCC Auction System) and the telephonic bidding phone number. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder that has not received this mailing by noon on Thursday, October 27, 2005, should call (717) 338-2888. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

80. Qualified bidders should note that lost SecurID cards can be replaced only by appearing in person at the FCC headquarters, located at 445 12th St., 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**

81. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically and telephonically. 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, the telephonic bidding phone number, and the Integrated Spectrum Auction System (ISAS) Bidder's Guide 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. 62.

82. Please note that the SecurID cards can be recycled, and the Bureaus encourage bidders to return the cards to the FCC. The Bureaus will provide pre-addressed envelopes that bidders may use to return the cards once the auction is over.

**G. Mock Auction—October 28, 2005**

83. All qualified bidders will be eligible to participate in a mock auction on Friday, October 28, 2005. The mock auction will enable applicants to become familiar with the FCC Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

**IV. Auction Event**

84. The first round of bidding for Auction No. 62 will begin on Tuesday, November 1, 2005. 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**

85. In the *Auction No. 62 Comment Public Notice*, the Bureaus proposed to award all construction permits in Auction No. 62 in a simultaneous multiple round auction. In a simultaneous multiple round auction, all construction permits are available during the entire auction, and bids are accepted on any construction permit until the auction concludes. Two commenters found the structure unfair to new entrant bidders. One commenter argued that keeping the bidding open on all permits forces the continued monitoring of all permits after each round of bidding and therefore unduly increases the administrative costs for these smaller applicants. Both commenters suggest that after a designated number of consecutive rounds ensue without additional activity, the auction for that particular FM channel should be declared closed and the permit awarded to the provisionally winning bidder. Through its experience with auctions, the Commission has found that the simultaneous multiple round bidding design best advances the goals of competitive bidding. This auction

design generates the most information about relative prices during the course of the auction and provides bidders with the greatest flexibility to pursue back-up strategies. Furthermore, in addition to the informational and bidding flexibility advantages, simultaneous multiple round auctions engender vigorous competition and are more likely to place construction permits in the hands of the bidder with the highest valuation. The Bureaus therefore 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. Eligibility and Activity Rules

86. In the *Auction No. 62 Comment Public Notice*, the Bureaus proposed that the amount of the upfront payment submitted by a bidder would determine the initial (maximum) eligibility (as measured in bidding units) for each bidder. The Bureaus received no comments on this issue.

87. For Auction No. 62 the Bureaus adopts this proposal. The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. 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. 62 Procedures Public Notice* on a bidding unit per dollar basis. Bidding units for a given construction permit do not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific construction permits. Rather, a bidder may place bids on any combination of construction permits selected on its FCC Form 175 as long as the total number of bidding units associated with those construction permits does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. The total upfront payment does not affect the total dollar amount a bidder may bid on any given construction permit.

88. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to

bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction.

89. A bidder's activity level in a round is the sum of the bidding units associated with construction permits on which the bidder is active. A bidder is considered active on a construction permit in the current round if it is either the provisionally winning bidder at the end of the previous bidding round and does not withdraw the provisionally winning bid in the current round, or if it submits a bid in the current round. The minimum required activity is expressed as a percentage of the bidder's current eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions, the Bureaus adopt them for Auction No. 62.

#### iii. Auction Stages

90. In the *Auction No. 62 Comment Public Notice*, the Bureaus proposed to conduct the auction in two stages and employ an activity rule. The Bureaus further proposed that, in each round of Stage One, a bidder desiring to maintain its current bidding eligibility would be required to be active on construction permits representing at least 75 percent of its current bidding eligibility. Finally, the Bureaus proposed that in each round of Stage Two, a bidder desiring to maintain its current bidding eligibility would be required to be active on at least 95 percent of its current bidding eligibility.

91. Two commenters, opposed the introduction of staged bidding, which they believe will confuse bidders and, in one's view, advantage larger bidders who "can hire a math strategy expert" to determine optimal bids. Both commenters favor retention of a 100 percent activity requirement. The Bureaus disagree. If anything, the 100 percent bidding requirement is more difficult, as it forces bidders to assemble groups of bids—often in a short time—that taken together equal exactly the number of bidding units the bidders possess. Under the Bureau's proposal, a bidder's Stage One bids and provisionally winning bids need only total three-quarters or more of the bidder's eligibility—a level that is neither difficult to calculate nor to implement. Bidders do not need to calculate their required activity; the FCC Auction System clearly displays for a bidder whether its bids meet the activity requirement. Moreover, even though the

95 percent activity level in Stage Two is close to the former 100 percent activity requirement, the five percent difference provides enough flexibility to enable participants to bid without having to match exactly their bidding eligibility. Further, the lack of a 100 percent activity requirement can improve bidders' ability to pursue backup bidding strategies during the auction. Thus the Bureaus believe that a staged bidding approach will better serve Auction No. 62 applicants than the activity requirement advocated by the commenters.

92. Another commenter proposed that the minimum activity level in Stage One of the auction be 50 percent of bidding eligibility (Rounds 1–20), with minimum activity in Stage Two set for 75 percent (Rounds 21 and thereafter), suggesting in the alternative that the Bureaus adopt a 100 percent minimum activity requirement in Stage Three, which would commence with Round 41. The commenter believes the lower activity requirements will result in higher bids, by allowing bidders to monitor activity on certain allotments without being forced to bid or drop out. However, the Bureaus believe that such lower activity requirements will prolong the auction by allowing bidders to postpone bidding activity until the later rounds of the auction. The Bureaus believe the 75 percent Stage One activity requirement represents the best compromise between allowing auction participants time to learn from the information revealed in the auction, and requiring them to participate actively throughout the auction. The Bureaus thus decline to adopt the commenter's suggestion.

93. The Bureaus adopt the following activity levels for each stage of the auction. The Bureaus reserve the discretion to further alter the activity percentages before and/or during the auction.

94. *Stage One:* During the first stage of the auction, a bidder desiring to maintain its current bidding eligibility will be required to be active on construction permits representing at least 75 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding unless an activity rule waiver is used. During Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by four-thirds ( $\frac{4}{3}$ ).

95. *Stage Two*: During the second stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding unless an activity rule waiver is used. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by twenty-nineteenths ( $\frac{20}{19}$ ).

96. *Caution*: Since activity requirements increase in Stage Two, bidders must carefully check their activity during the first round following a stage transition to ensure that they are meeting the increased activity requirement. This is especially critical for bidders that have provisionally winning bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required activity level by either logging in to the FCC Auction System or by accessing the bidder summaries on the public results page.

#### iv. Stage Transitions

97. The auction will start in Stage One and will generally advance to Stage Two when, in each of three consecutive rounds of bidding, the provisionally winning bids have been placed on 20 percent or less of the construction permits being auctioned (as measured in bidding units). In addition, the Bureaus will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of construction permits (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Bureaus believe that these stage transition rules, having proven successful in prior auctions, are appropriate for use in Auction No. 62.

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

98. The Bureaus adopt their proposal that each bidder be provided three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. Use of an activity rule waiver preserves the

bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum activity level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit. Activity rule waivers can be either applied proactively by the bidder (known as a proactive waiver) or applied automatically by the FCC Auction System (known as an automatic waiver) and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round. The Bureaus are satisfied that its practice of providing three 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.

99. The FCC Auction System assumes that bidders with insufficient activity would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any round where a bidder's activity level is below the minimum required unless: (1) There are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements. If a bidder has no waivers remaining and does not satisfy the required activity level, the eligibility will be permanently reduced, possibly eliminating the bidder from further bidding in the auction.

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

101. Finally, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity waiver (using the apply waiver function in the FCC Auction System) during a bidding round 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 applied by the FCC Auction

System in a round in which there are no new bids or withdrawals will not keep the auction open. Note: Applying a waiver is irreversible; once a proactive waiver is submitted that waiver cannot be unsubmitted, even if the round has not yet closed.

#### vi. Auction Stopping Rules

102. For Auction No. 62, the Bureaus proposed to employ a simultaneous stopping rule approach. The Bureaus also sought comment on a modified version of the simultaneous stopping rule. The modified version of the stopping rule would close the auction for all construction permits after the first round in which no bidder applies a waiver, places a withdrawal, or submits any new bids on any construction permit on which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule.

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

104. In addition, the Bureaus proposed that the Bureaus reserve the right to declare that the auction will end after a specified number of additional rounds (special stopping rule). If the Bureaus invoke this special stopping rule, it will accept bids in the specified final round(s) and the auction will close.

105. The Bureaus proposed to exercise these options 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 these options, the Bureaus are likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of construction permits where there is still a high level of bidding activity.

106. Two commenters suggest using a non-simultaneous stopping rule. The Bureaus believe that experience in prior

auctions demonstrates that their proposed auction stopping rules balance the interests of administrative efficiency and maximum bidder participation. The Bureaus therefore decline the commenters suggestion and adopt the Bureaus' proposed stopping rules. Auction No. 62 will begin under the simultaneous stopping rule approach, and the Bureaus will retain the discretion to invoke the other versions of the stopping rule.

vii. Auction Delay, Suspension, or Cancellation

107. Because the Bureaus' approach to notification of delay during an auction has proven effective in resolving exigent circumstances in previous auctions, the Bureaus adopt their proposed auction cancellation rules. 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. The Bureaus emphasize that exercise of this authority is solely within the discretion of the Bureaus, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

*B. Bidding Procedures*

i. Round Structure

108. 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 round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will also be included in the qualified bidders public notice.

109. 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

110. Section 309(j) of the Communications Act of 1934, as amended, calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when applications for FCC licenses or construction permits are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission directed the Bureaus to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. Among other factors, the Bureaus must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on the spectrum being auctioned. The Commission concluded that the Bureaus should have the discretion to employ either or both of these mechanisms for future auctions. This is consistent with policy applied in earlier spectrum auctions, including Auction Nos. 25, 27, and 54 (Closed Broadcast); Auction No. 32 (AM Broadcast); and Auction No. 37 (FM Broadcast).

111. In the *Auction No. 62 Comment Public Notice*, the Bureaus proposed to establish minimum opening bids for Auction No. 62, reasoning that a minimum opening bid, successfully used in other broadcast auctions, is a valuable tool, effectively regulating the pace of the auction. Specifically, a minimum opening bid was proposed for each MX group listed in Attachment A of the *Auction No. 62 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 the Bureaus' experience in using minimum opening bids in other auctions, the Bureaus 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.

112. In the alternative, the Bureaus sought comment on whether, consistent with the § 309(j), the public interest would be served by having no minimum opening bid or reserve price.

113. One commenter requests that the Bureaus lower the minimum opening bids for two FM allotments—FM145, Arnoldsburg, WV and FM146, Burnsville, WV, claiming that the communities are within two of West Virginia's poorest rural counties and the population within each county is decreasing. As discussed above, population is but one factor in determining minimum opening bid amounts. Furthermore, the Bureaus consider population estimates within the proposed FM service contour at the allocation reference coordinates, not county population data. Generally, the service area of an FM station proposal extends beyond the boundaries of a particular county, and the population within that service area is therefore greater than the population of the county. Moreover, many allotments in Auction No. 62 with similar population coverage are in rural areas with lower than average household income and have experienced a population decline. Under these circumstances, the Bureaus are not persuaded that the minimum bid amounts are unreasonable, and decline to modify the minimum opening bid amounts for the two West Virginia FM allotments.

114. Another commenter seeks to reduce the minimum opening bid amount for FM 113, Due West, SC, Channel 237A. As the original proponent of the FM allotment, the commenter asserts that the proposed minimum opening bid amount is excessive, considering the population of the community of Due West, the area demographics, and the potential for upgrade and maximization. While conceding that the total population for the proposed Due West facility is over 100,000 persons, the commenter claims that the dominant market that the station would serve is already a depressed market for radio stations. The Bureaus are not persuaded that the minimum bid amount is disproportionate to the population to be served by the proposed FM facility in this instance, and accordingly decline to modify the minimum opening bid amount for the Due West, SC, FM allotment.

115. More generally, a commenter alleges that the Commission has oversimplified the method used to ascertain the population for each FM allotment. Specifically, in calculating

the coverage area of an allotment, he claims that the Commission used perfect circles of coverage instead of the preferred terrain-dependant coverage. Contrary to a commenter's contention, the Commission calculated coverage areas and associated populations using terrain-dependant coverages. Specifically, the staff used 360 evenly spaced radials for each allotment, starting at true north, and calculated the specific antenna height above mean sea level to achieve the correct class maximum antenna height above average terrain (HAAT). Then, using class maximum facilities centered at the allotment reference coordinates, the staff determined the contour distance for all azimuths. These contours were then used to calculate the population for each FM allotment. This method provides more than adequate accuracy to determine the population to be served by the proposed FM facility for the purpose of calculating minimum opening bid amounts.

116. The Bureaus believe that the proposed minimum bid amounts are appropriate, and the Bureaus adopt their proposal. The minimum opening bid amounts the Bureaus adopt for Auction No. 62 are reducible at the discretion of the Bureaus. The Bureaus 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 requests to reduce the minimum opening bid amount on specific construction permits.

117. The specific minimum opening bid amounts for each construction permit available in Auction No. 62 are set forth in Attachment A of the *Auction No. 62 Procedures Public Notice*.

#### iii. Minimum Acceptable Bid Amounts and Bid Increment Amounts

118. In the *Auction No. 62 Comment Public Notice*, the Bureaus proposed to use a minimum acceptable bid increment of 10 percent. This means that the minimum acceptable bid amount for a construction permit will be approximately 10 percent greater than the provisionally winning bid amount for the construction permit. The minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount times one plus the minimum acceptable bid percentage—*i.e.*, (provisionally winning bid amount) \* (1.10). The Bureaus will round the result using its standard rounding procedures. The Bureaus further proposed to retain the discretion to change the minimum acceptable bid

amounts and bid increments amounts if the Bureaus determine that circumstances so dictate. One commenter suggests reducing the minimum bid increment to five percent after ten rounds or once the high bid exceeds \$100,000, arguing that the ten percent increment disadvantages smaller entities as the high bids increase. The Bureaus believe that a bid increment smaller than ten percent has the potential to prolong the auction, but note again that the Bureaus retain the discretion to change the minimum acceptable bid amounts and bid increments if events so warrant. Thus, the Bureaus will begin the auction with a minimum acceptable bid percentage of 10 percent.

119. 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 Auction System will list the nine acceptable bid amounts for each construction permit. Until a bid has been placed on a construction permit, the minimum acceptable bid amount for that construction permit will be equal to its minimum opening bid amount.

120. The nine acceptable bid amounts for each construction permit consist of the minimum acceptable bid amount and eight other bid amounts based on the bid increment percentage. The first additional acceptable bid amount, above the minimum acceptable bid amount, equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded—*e.g.*, if the bid increment percentage is 10 percent, then the next bid amount will equal (minimum acceptable bid amount) \* 1.10, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) \* 1.20, rounded; the third additional acceptable bid amount equals the minimum acceptable bid amount times one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) \* 1.30, rounded; etc. The Bureaus will begin the auction with a bid increment percentage of 10 percent. Note that the bid increment percentage need not be the same as the minimum acceptable bid percentage.

121. In the case of a construction permit for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the amount of the second highest bid received for the construction permit. The additional bid amounts above the minimum acceptable bid amount are

calculated using the bid increment percentage as described in the previous paragraph.

122. The Bureaus retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, and the bid increment percentage if they determine that circumstances so dictate. The Bureaus will do so by announcement in the FCC Auction System. The Bureaus may also use their discretion to adjust the minimum bid increment amount without prior notice if circumstances warrant.

#### iv. Provisionally Winning Bids

123. At the end of each bidding round, a provisionally winning bid will be determined based on the highest bid amount received for each construction permit. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.

124. In the *Auction No. 62 Comment Public Notice*, the Bureaus proposed to use a random number generator to select a provisionally winning bid in the event of identical high bid amounts being submitted on a construction permit in a given round (*i.e.*, tied bids). No comments were received on this proposal. Therefore, the Bureaus adopt their proposal. A 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 provisionally winning bid. Eligible bidders, including the provisionally winning bidder, will be able to submit a higher bid in a subsequent round. If no bidder submits a higher bid in subsequent rounds, the provisionally winning bid from the previous round will win the construction permit, unless that provisionally winning bid was withdrawn. If any bids are received on the construction permit in a subsequent round, the provisionally winning bid will once again be determined based on the highest bid amount received for the construction permit.

#### v. Bidding

125. During a round, a bidder may submit bids for as many construction permits as it wishes (subject to its eligibility), withdraw provisionally winning bids from previous bidding rounds, remove bids placed in the

current bidding round, or permanently reduce eligibility. Bidders also have the option of submitting and removing multiple bids and withdrawing multiple provisionally winning bids (subject to the limitation on withdrawal rounds discussed below) during a 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 current activity.

126. All bidding will take place remotely either through the FCC Auction System or by telephonic bidding. There will be no on-site bidding during Auction No. 62. Please note that 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, five to ten minutes are necessary to complete a telephonic bid submission.

127. A bidder's ability to bid on specific construction permits in the first round of the auction is determined by two factors: (1) The construction permits applied for on the bidder's FCC Form 175 and (2) the bidder's upfront payment amount. 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.

128. In order to access the bidding function of the FCC Auction System, bidders must be logged in during the bidding round using the passcode generated by the SecurID card and a personal identification number (PIN) created by the bidder. Bidders are strongly encouraged to print a round summary for each round after they have completed all of their activity for that round.

129. 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 Auction System will list the nine acceptable bid amounts in a drop-down box. Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC Auction System also includes an "upload" function that allows bidders to upload text files containing bid information.

130. Until a bid has been placed on a construction permit, the minimum acceptable bid amount for that construction permit will be equal to its

minimum opening bid amount. Once there is a provisionally winning bid on a construction permit, the FCC Auction System will calculate a minimum acceptable bid amount for that construction permit for the following round.

131. Finally, bidders are cautioned to select their bid amounts carefully because, as explained in the following section, bidders that withdraw a provisionally winning 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

132. In the *Auction No. 62 Comment Public Notice*, the Commission proposed bid removal and bid withdrawal procedures. With respect to bid withdrawals, the Commission proposed limiting each bidder to withdrawals in no more than one round during the course of the auction. The round in which withdrawals are used would be at each bidder's discretion.

133. Some commenters suggested modifications to the Bureau's bid withdrawal procedures. One commenter notes that, in Auction 37, some high bids were withdrawn late in the auction, returning those permits to the Commission after competing bidders had reduced their bidding eligibility below the level necessary to place new bids for the permits. The commenter suggests that, if a bidder withdraws a standing high bid for a particular permit, any applicant that had previously been a high bidder for that permit should, if necessary, have its bidding eligibility restored to enable it to resume bidding for the permit. The commenter's solution would involve substantial additional programming of the FCC Auction System. Instead, the Bureaus have opted for an alternative approach toward reducing the number of construction permits that remain unsold at the end of the auction due to withdrawn bids. First, by allowing bid withdrawals in only one round, the Bureaus are restricting the opportunity for withdrawing provisionally winning bids. Secondly, by implementing a staged auction and using activity requirements of less than 100 percent, the Bureaus are increasing the chance that other bidders might have sufficient eligibility to bid on constructions permits for which provisionally winning bids have been withdrawn.

134. A commenter suggests that the Commission allow the "second-place bidder to be designated as a winner [of a permit] when the high bidder withdraws" a high bid during the auction and no other bidder places a

high bid on the permit by the end of the auction. The Commission's rules do not provide for the procedure suggested by the commenter. Pursuant to § 1.2109(b) of the Commission's rules, however, the Bureaus retain the discretion to offer licenses to the next-highest bidder if a winning bidder withdraws or defaults after the Commission has declared competitive bidding closed. Thus, the commenter's suggestion would require a change of the Commission's rules, which is beyond the scope of this proceeding. Moreover, after the close of Auction No. 44, WTB rejected a similar request by a second-highest bidder that sought a waiver of § 1.2109(b) of the Commission's rules.

135. Another commenter argues that bidders who withdrew bids in Auction No. 37 should be prohibited from bidding on those permits in Auction No. 62 for which they previously withdrew bids. As noted previously, bid withdrawals during an auction are allowed by the Bureaus' procedures, and the Bureaus' rules and auction procedures are designed to allow bidders to withdraw a limited number of bids for entirely legitimate reasons. The commenter's suggestion could result in an inefficient auction result: If bidding in a reauction is restricted, a construction permit may be won by a party other than the one that values the permit the most. For these reasons, the Bureaus decline to adopt the two commenter's proposals.

136. *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 bids* function in the FCC Auction System, a bidder may effectively *unsubmit* any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is removed does not count toward bidding activity. These procedures will enhance bidder flexibility during the auction, and therefore the Bureaus adopt them for Auction No. 62.

137. Once a round closes, a bidder may no longer remove a bid. However, in later rounds, a bidder may withdraw provisionally winning bids from previous rounds using the *withdraw bids* function in the FCC Auction System (assuming that the bidder has not reached its withdrawal limit). A provisionally winning bidder that withdraws its provisionally winning 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.

138. In previous auctions, the Bureaus have detected bidder conduct that, arguably, may have constituted anti-competitive behavior through the use of bid withdrawals. While the Bureaus continue 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, the Bureaus conclude that, for Auction No. 62, adoption of a limit on the use of withdrawals to one round per bidder is appropriate. By doing so the Bureaus believe the Bureaus strike a reasonable compromise that will allow bidders to use withdrawals. The Bureaus base their decision on this issue upon their experience with bid withdrawals in prior auctions, including PCS D, E and F block, 800 MHz SMR, and FM broadcast auctions. The Bureaus' decision is in no way a reflection of its view regarding the likelihood of any gaming in this auction.

139. The Bureaus will therefore limit the number of rounds in which bidders may place withdrawals to one round. The round will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in the round. 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.

140. If a provisionally winning bid is withdrawn, the minimum acceptable bid amount will equal the amount of the second highest bid received for the construction permit, which may be less than, or in the case of tied bids, equal to, the amount of the withdrawn bid. To set the additional bid amounts, the second highest bid amount also will be used in place of the provisionally winning bid in the formula used to calculate bid increment amounts. The Commission will serve as a place holder provisionally winning bidder on the construction permit until a new bid is submitted on that construction permit.

141. *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 provisionally winning 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.

142. Section 1.2104(g)(1) of the rules sets forth the payment obligations of a bidder that withdraws a high bid on a construction permit during the course of an auction, and provides for the assessment of interim bid withdrawal payments. As amended, § 1.2104(g)(1) provides that in instances in which bids have been withdrawn on a construction permit that is not won in the same auction, the Commission will assess an interim withdrawal payment equal to 3 percent of the amount of the 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. Section 1.2104(g) provides specific examples showing application of the bid withdrawal payment rule.

#### vii. Round Results

143. Bids placed during a round will not be made public until the conclusion of that round. After a round closes, the Bureaus will compile reports of all bids placed, bids withdrawn, current provisionally winning bids, new minimum acceptable bid amounts, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities for Auction No. 62 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

144. The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available by clicking a link in the FCC Auction System.

### IV. Post-Auction Procedures

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

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

146. 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. 62 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. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

#### i. Final Payments

147. If a winning bidder's long-form application is uncontested, after the termination of the pleading cycle for petitions to deny, the Commission will issue a public notice announcing that it is prepared to grant the winning bidder's long-form application. If a petition to deny is filed within the pleading cycle for petitions to deny, and if the petition to deny is dismissed or denied, the Commission will issue a public notice announcing that it is prepared to grant the winning bidder's long-form application promptly after the Media Bureau disposes of any such petition to deny and is otherwise satisfied that the applicant is qualified to hold the specified construction permit. Within ten (10) business days after the date of the release of the public notice announcing that the Commission is prepared to grant a winning bidder's long-form application, each winning bidder will be required to submit the balance of the net amount of its winning bids (gross bids less any applicable new entrant bidding credits). Broadcast

construction permits will be granted only after the full and timely payment of winning bids and any applicable late fees, in accordance with 47 CFR 1.2109(a).

#### ii. Long-Form Applications

148. Within thirty days after the release of the auction closing notice, winning bidders must electronically submit a properly completed FCC Form 301, Application for FM Construction Permit, and required exhibits for each construction permit won through Auction No. 62. Winning bidders claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit. Further filing instructions will be provided to auction winners at the close of the auction.

149. One commenter suggests that the FCC Form 301 deadline be extended beyond 30 days, arguing that the Auction No. 37 FCC Form 301 deadline occurred immediately after the end-of-year holiday period, and at a time of year when the locations of many allotments were subject to winter weather (snow & ice). The commenter implies, without explanation, that the winter weather interferes with winning bidders' "finding and negotiating for a parcel of property." However, the Bureaus' rules provide for FCC Form 301 filing within 30 days of the auction's close, which itself is not a fixed date. In Auction No. 37, all winning bidders timely filed their FCC Form 301 applications, and over half of the applicants, 139, received grants within 90 days of the FCC Form 301 filing deadline. Thus, the Bureaus see no reason to alter the filing deadline.

#### iii. Default and Disqualification

150. 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.

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

151. All applicants that submit upfront payments but are not winning bidders for a construction permit in Auction No. 62 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.

152. 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 provisionally winning 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 requests to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Gail Glasser, 445 12th Street, SW., Room 1-C864, Washington, DC 20554.

Federal Communications Commission.

**Gary D. Michaels,**

*Deputy Chief, Auctions and Spectrum Access Division.*

[FR Doc. 05-14238 Filed 7-19-05; 8:45 am]

**BILLING CODE 6712-01-P**

### FEDERAL COMMUNICATIONS COMMISSION

[CC Docket 87-124, DA 05-1683]

#### Request for Comments On Panasonic Corporation Of North America's Request For Waiver Of Hearing Aid-Compatibility And Volume Control Requirements For Its Panasonic 2.4 GHz FHSS Cordless Telephone With Bone Conduction Type Ear-Piece

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this document, the Commission seeks public comment on a

Request for Waiver filed by Panasonic Corporation regarding the hearing aid compatibility and volume control requirements in order to market the Panasonic 2.4 GHz FHSS Cordless Telephone with Bone Conduction Type Ear-Piece, Model KX-TG2388.

**DATES:** Reply comments may be filed on or before July 7, 2005.

**ADDRESSES:** You may submit comments identified by CC Docket 87-124, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Federal Communications Commission's Web site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- E-mail: [Arlene.Alexander@fcc.gov](mailto:Arlene.Alexander@fcc.gov).

Include the docket number(s) in the subject line of the message.

- Mail: Federal Communications Commission, Consumer & Governmental Affairs Bureau, 445 12th Street, SW., Room CY-418, Washington, DC 20554.

- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone (202) 418-0539 or TTY: (202) 418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

#### FOR FURTHER INFORMATION CONTACT:

Arlene Alexander, (202) 418-0581 (voice), (202) 418-0183 (TTY), or e-mail [Arlene.Alexander@fcc.gov](mailto:Arlene.Alexander@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Public Notice, DA 05-1683, released June 17, 2005. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file reply comments on or before July 7, 2005. All filings must reference CC Docket No. 87-124. Reply comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Reply comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/cgb/ecfs/>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the reply comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the