

implementation of section 255 of the Telecommunications Act of 1996, which seeks to ensure that telecommunications equipment and services are available to all Americans, including those individuals with disabilities. As with any complaint procedure, a certain number of regulatory and information burdens are necessary to ensure compliance with FCC rules. The information collection requirements also give full effect to the accessibility policies embodied in section 255. They do so by requiring telecommunications equipment manufacturers and service providers to make end-user product documentation available in alternate formats, including providing contact information to request such documentation, and by requiring them to demonstrate how they considered accessibility during product development.

Federal Communications Commission.

Bulah P. Wheeler,

*Deputy Manager, Office of the Secretary,
Office of Managing Director.*

[FR Doc. 2011-1208 Filed 1-20-11; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

January 11, 2011.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501-3520. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it

displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before March 22, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, Federal Communications Commission, via e-mail to PRA@fcc.gov and Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For further information on this collection contact Cathy Williams on (202) 418-2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-xxxx.

Title: Satellite Digital Audio Radio Service (SDARS).

Form No.: Not applicable.

Type of Review: New information collection.

Respondents: Business and other for-profit.

Number of Respondents/Responses: 1 respondent; 74 responses.

Estimated Time per Response: 4-12 hours per response.

Frequency of Response: On occasion reporting requirement; recordkeeping requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 47 U.S.C. 701-744; Sections 4, 301, 302, 303, 307, 309, and 332 of the Communications Act, as amended, 47 U.S.C. 154, 301, 302a, 303, 307, 309, and 332.

Total Annual Burden: 400 hours.

Annual Cost Burden: \$175,020.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: The Federal Communications Commission ("Commission") is requesting approval from the Office of Management and Budget (OMB) to establish a new information collection titled, "Satellite Digital Audio Radio Service (SDARS), Rule Sections: 25.144(e)(3), (e)(8), (e)(9); 25.263(b), (c)."

The Commission released a Second Report and Order (FCC 10-82; IB Docket No. 95-91) on May 20, 2010, in which the agency accomplished three goals: (1) Adopted technical rules governing the operation of SDARS repeaters that will not constrain their function or deployment but will limit the potential for harmful interference to adjacent Wireless Communications Service (WCS) spectrum users by requiring SDARS licensees to notify WCS licensees prior to the deployment of new or modified SDARS terrestrial repeaters; (2) established a blanket-licensing regime for repeaters up to 12 kilowatts (kW) average equivalent isotropically radiated power (EIRP) to facilitate the flexible deployment of SDARS repeaters while ensuring that such repeater operations comply with the Commission's rules regarding RF safety, antenna marking and lighting, equipment authorization and international agreements; and, (3) established site-by-site licensing regime for repeaters operating above 12 kW (average) EIRP, or otherwise not in compliance with the rules adopted for SDARS terrestrial repeater operations.

The information collection requirements accounted for in this collection are necessary to determine the technical and legal qualifications of SDARS applicants or licensees to operate a station, transfer or assign a license, and to determine whether the authorization is in the public interest, convenience and necessity. Without such information, the Commission could not determine whether to permit respondents to provide SDARS services in the U.S. Therefore, the Commission would be unable to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended.

Bulah P. Wheeler,

*Deputy Manager, Office of the Secretary,
Office of Managing Director, Federal
Communications Commission.*

[FR Doc. 2011-1210 Filed 1-20-11; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 10-183; DA 10-2253]

Auction of FM Broadcast Construction Permits Rescheduled for April 27, 2011; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 91

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 the auction. This auction, which is designated as Auction 91, is now scheduled to start on April 27, 2011.

DATES: Applications to participate in Auction 91 must be filed prior to 6 p.m. Eastern Time (ET) on February 10, 2011. Bidding for construction permits in Auction 91 is scheduled to begin on April 27, 2011.

FOR FURTHER INFORMATION CONTACT:

Wireless Telecommunications Bureau, Auctions and Spectrum Access Division: For legal questions: Lynne Milne or Howard Davenport at (202) 418-0660. For general auction questions: Roy Knowles or Linda Sanderson at (717) 338-2829. *Media Bureau, Audio Division:* For licensing information and service rule questions: Lisa Scanlan or Tom Nessinger at (202) 418-2700. To request materials in accessible formats (Braille, large print, electronic files or audio format) for people with disabilities, send an e-mail to 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 91 Procedures Public Notice*, which was released on December 3, 2010. The complete text of the *Auction 91 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. ET Monday through Thursday and from 8 a.m. to 11:30 a.m. ET on Friday in the FCC Reference Information Center, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The *Auction 91 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 Web site: <http://www.BCPIWEB.com>, using document number DA 10-2253 for the *Auction 91 Procedures Public Notice*. The *Auction 91 Procedures Public Notice* and related documents are also available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/91/>.

I. General Information**A. Introduction**

1. The Wireless Telecommunications and the Media Bureaus (collectively, the Bureaus) announce a new start date and pre-auction deadlines for the upcoming auction of certain FM broadcast construction permits and establish the procedures and minimum opening bid amounts for the auction. On September 21, 2010, the Bureaus released a public notice seeking comment on competitive bidding procedures to be used in Auction 91. Five parties submitted five comments in response to the *Auction 91 Comment Public Notice*, 75 FR 61752, October 6, 2010, and two entities submitted filings by the reply comment deadline.

i. Construction Permits in Auction 91

2. Auction 91 will offer 144 construction permits in the FM broadcast service as listed in Attachment A of the *Auction 91 Procedures Public Notice*. The construction permits to be auctioned are for 144 new FM allotments, including 37 construction permits that were offered but not sold in Auction 79. These construction permits are for vacant FM allotments, reflecting FM channels assigned to the FM Table of Allotments (Table), pursuant to the Commission's established rulemaking procedures, and are designated for use in the indicated communities.

3. Attachment A to the *Auction 91 Procedures Public Notice* reflects certain changes to the list of construction permits that were proposed for inclusion in this auction in the *Auction 91 Comment Public Notice*. The Bureaus removed three construction permits that were listed in Attachment A to the *Auction 91 Comment Public Notice*: (1) MM-FM767-C1 on Channel 250C1 at Tuba City, Arizona; (2) MM-FM859-A on Channel 285A at Union Gap, Washington; and (3) MM-FM807-C2 on Channel 254C2 at Ennis, Montana. The correct listing for the Ennis vacant FM allotment is MM-FM411-C2. In addition, the correct allotment coordinates for MM-FM797-A, Adams, Massachusetts, Channel 255A are listed in Attachment A to the *Auction 91 Procedures Public Notice*. The Bureaus will not offer allotments sought to be added by two commenters and will instead make them available in an upcoming auction of FM broadcast construction permits.

4. Applicants may apply for any vacant FM allotment listed in Attachment A of the *Auction 91 Procedures Public Notice*. When two or more short-form applications (FCC Form

175) specifying the same FM allotment are accepted for filing, mutual exclusivity (MX) exists for auction purposes, and thus, that construction permit for the FM allotment will be awarded by competitive bidding procedures. Once mutual exclusivity exists for auction purposes, even if only one applicant for a particular construction permit submits an upfront payment, that applicant is required to submit a bid in order to obtain the construction permit.

5. One commenter contends that the Commission's rules should be revised to automatically delete allotments that are offered at auction but receive no bids. The commenter suggests that such vacant allotments may hinder efforts by existing licensees to change channels or cities of license. The commenter also argues that, in the event that only one applicant places a bid on a permit, that applicant should not be required to submit a payment for the permit. Adoption of this proposal would require reversal of the Commission's determination that mutual exclusivity is determined in the auction context by the filing of short-form applications for the same permit. These proposed changes would require amendment of the Commission's rules and are thus outside of the scope of this proceeding, which is confined to establishing procedures for the conduct of this auction of FM construction permits. Because these proposals are outside of the scope of this proceeding, the Bureaus are unable to consider them here.

B. Rules and Disclaimers**i. Relevant Authority**

6. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules, including recent amendments and clarifications, as well as Commission decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees. Broadcasters should also familiarize themselves with the Commission's rules relating to the FM broadcast service contained in 47 CFR 73.201-73.333 and 73.1001-73.5009. Prospective bidders must also be familiar with the rules relating to broadcast auctions and competitive bidding proceedings contained in 47 CFR 1.2101-1.2112 and 73.5000-73.5009. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions contained in the *Auction 91 Procedures*

Public Notice, and the authorities cited therein.

7. 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 the Bureaus 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. Prohibited Communications and Compliance With Antitrust Laws

8. To ensure the competitiveness of the auction process, 47 CFR 1.2105(c) prohibits auction applicants for construction permits in any of the same geographic license areas from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications (FCC Form 175) as parties with whom they have entered into agreements pursuant to 47 CFR 1.2105(a)(2)(viii).

a. Entities Subject to Section 1.2105

9. 47 CFR 1.2105(c)'s prohibition on certain communications will apply to any applicants that submit short-form applications seeking to participate in a Commission auction for construction permits in the same geographic license area. Thus, unless they have identified each other on their short-form applications as parties with whom they have entered into agreements under 47 CFR 1.2105(a)(2)(viii), applicants for any of the same geographic license areas must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy. In some instances, this prohibition extends to communications regarding the post-auction market structure. This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid. In broadcast services, 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., Whitehall, Montana, Channel 274A, MM-FM185A). In Auction 91, this rule would apply to applicants designating on the short-form application any of the same FM allotments.

10. Applicants are also reminded that, for purposes of this prohibition on certain communications, 47 CFR

1.2105(c)(7)(i) defines applicant as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application. For example, where an individual served as an officer for two or more applicants, the Bureaus have found that the bids and bidding strategies of one applicant are necessarily conveyed to the other applicant, and, absent a disclosed bidding agreement, an apparent violation of 47 CFR 1.2105(c) occurs.

11. Individuals and entities subject to 47 CFR 1.2105(c) should take special care in circumstances where their employees may receive information directly or indirectly from a competing applicant relating to any competing applicant's bids or bidding strategies. The Bureaus have not addressed situations where non-principals (*i.e.*, those who are not officers or directors and thus not considered to be the applicant) receive information regarding a competing applicant's bids or bidding strategies and whether that information might be deemed to necessarily convey to the applicant. An exception to the prohibition on certain communications allows non-controlling interest holders to obtain interests in more than one competing applicant without violating 47 CFR 1.2105(c) provided specified conditions are met (including a certification that no prohibited communications have occurred or will occur), but that exception does not extend to controlling interest holders.

12. Moreover, Auction 91 applicants are encouraged not to use the same individual as an authorized bidder. A violation of 47 CFR 1.2105(c) could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between such applicants. Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or engineering firm or consulting firm), a violation similarly could 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 47 CFR 1.2105(c).

b. Prohibition Applies Until Down Payment Deadline

13. The 47 CFR 1.2105(c) prohibition on certain communications begins at the short-form application filing deadline and ends at the down payment deadline after the auction, which will be announced in a future public notice.

c. Prohibited Communications

14. Applicants should note that they must not communicate directly or indirectly about bids or bidding strategy to other applicants in this auction. 47 CFR 1.2105(c) prohibits not only a communication about an applicant's own bids or bidding strategy, but also a communication of another applicant's bids or bidding strategy. While 47 CFR 1.2105(c) does not prohibit non-auction-related business negotiations among auction applicants, applicants must remain vigilant so as not to communicate directly or indirectly information that affects, or could affect, bids or bidding strategy, or the negotiation of settlement agreements.

15. The Commission remains vigilant about prohibited communications taking place in other situations. Public disclosure of information relating to bids, or bidding strategies, or to post auction market structures, may violate 47 CFR 1.2105(c). For example, the Commission has warned that prohibited communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly. The use of the Commission's bidding system to disclose an applicant's bidding strategy or market information will not be tolerated. Similarly, an applicant's public statement of intent not to participate in bidding in this auction also could violate this rule.

d. Disclosure of Bidding Agreements and Arrangements

16. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form applications. If parties agree in principle on all material terms prior to the short-form application filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under 47 CFR 1.2105(c), even if the agreement has not been reduced to writing. If the parties have

not agreed in principle by the short-form filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiation, discussion or communication with any other applicants after the short-form application filing deadline.

e. Section 1.2105(c) Certification

17. By electronically submitting a short-form application, each applicant in Auction 91 certifies its compliance with 47 CFR 1.2105(c) and 73.5002. However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted. The Commission has stated that it intends to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring. Any applicant found to have violated 47 CFR 1.2105(c) may be subject to sanctions.

f. Duty To Report Prohibited Communications: Reporting Procedure

18. 47 CFR 1.2105(c)(6) provides that any applicant that makes or receives a communication that appears to violate 47 CFR 1.2105(c) must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. The Commission has clarified that each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.

19. In addition, 47 CFR 1.65 requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission of any substantial change that may be of decisional significance to that application. Thus, 47 CFR 1.65 requires an auction applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. An applicant is therefore required by 47 CFR 1.65 to report to the Commission any communication the applicant has made to or received from another applicant after the short-form application filing deadline that affects or has the potential to affect bids or bidding strategy, unless such communication is made to or received from a party to an agreement identified under 47 CFR 1.2105(a)(2)(viii).

20. 47 CFR 1.65(a) and 1.2105(c) require applicants in competitive

bidding proceedings to furnish additional or corrected information within five days of a significant occurrence, or to amend their short-form applications no more than five days after the applicant becomes aware of the need for amendment. These rules are intended to facilitate the auction process by making the information available promptly to all participants and to enable the Bureaus to act expeditiously on those changes when such action is necessary.

21. A party reporting any communication pursuant to 47 CFR 1.65, 1.2105(a)(2), or 1.2105(c)(6) must take care to ensure that any report of a prohibited communication does not itself give rise to a violation of 47 CFR 1.2105(c). For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection.

22. 47 CFR 1.2105(c) requires parties to file only a single report concerning such communication and to file that report with Commission personnel expressly charged with administering the Commission's auctions. This rule is designed to minimize the risk of inadvertent dissemination of information in such reports. Pursuant to the amended rule, any reports required by 47 CFR 1.2105(c) must be filed consistent with the instructions set forth in the Auction 91 Procedures *Public Notice*. For Auction 91, such reports must be filed with the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available. Specifically, any such report must be submitted by e-mail to auction91@fcc.gov or delivered to the following address: Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room 6423, Washington, DC 20554.

23. A party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection pursuant to 47 CFR 0.459. Such parties also are encouraged to coordinate with the Auctions and Spectrum Access Division staff if they have any questions about the procedures for submitting such reports. The Auction 91 Procedures *Public Notice* provides additional guidance on procedures for submitting application-related information.

g. Winning Bidders Must Disclose Terms of Agreements

24. Applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in any bidding consortia, joint venture, partnership, or agreement, understanding, or other arrangement entered into relating to the competitive bidding process, including any agreement relating to the post-auction market structure. Applicants must be aware that failure to comply with the Commission's rules can result in enforcement action.

h. Additional Information Concerning Rule Prohibiting Certain Communications

25. A summary listing of documents issued by the Commission and the Bureaus addressing the application of 47 CFR 1.2105(c) may be found in Attachment D of the Auction 91 Procedures *Public Notice*.

i. Antitrust Laws

26. Applicants are also reminded that, regardless of compliance with the Commission's rules, they remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. Compliance with the disclosure requirements of 47 CFR 1.2105(c) will not insulate a party from enforcement of the antitrust laws. For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submitted a short-form application. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions. See 47 CFR 1.2109(d).

ii. Due Diligence

27. Potential applicants are reminded that they are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the construction permits for broadcast facilities they are seeking in this auction. Bidders are responsible for assuring themselves that, if they win a construction permit, they will be able to build and operate facilities in accordance with the Commission's rules. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an

opportunity to become an FCC construction permittee in a broadcast service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success.

28. Applicants should perform their individual due diligence before proceeding, as they would with any new business venture. In particular, potential applicants 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 restrictions, including site restrictions or expense reimbursement requirements. Additionally, potential bidders should perform technical analyses or refresh their previous analyses to assure themselves that, should they be a winning bidder for any Auction 91 construction permit, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements. Applicants are strongly encouraged to inspect any prospective transmitter sites located in, or near, the service area for which they plan to bid, confirm the availability of such sites, and also to familiarize themselves with the Commission's rules regarding the National Environmental Policy Act at 47 CFR chapter 1, part 1, subpart I.

29. Applicants are strongly encouraged to conduct their own research prior to Auction 91 in order to determine the existence of any pending administrative or judicial proceedings, including pending allocation rulemaking proceedings that might affect their decision to participate in the auction. Participants in Auction 91 are strongly encouraged to continue such research throughout the auction. The due diligence considerations mentioned in the *Auction 91 Procedures Public Notice* do not comprise an exhaustive list of steps that should be undertaken prior to participating in this auction. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon specific facts and circumstances.

30. Applicants should also be aware that certain pending and future proceedings before the Commission—including applications, applications for modification, petitions for rulemaking, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal

objections, and applications for review—may relate to particular applicants, incumbent permittees, incumbent licensees, or the construction permits available in Auction 91. In addition, pending and future judicial proceedings may relate to particular applicants, incumbent permittees, incumbent licensees, or the construction permits available in Auction 91. Prospective applicants are responsible for assessing the likelihood of the various possible outcomes and for considering their potential impact on construction permits available in this auction.

31. Applicants should perform due diligence to identify and consider all proceedings that may affect the construction permits being auctioned and that could have an impact on the availability of spectrum for Auction 91. 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 beginning of bidding in the auction. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the construction permits available in Auction 91.

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

33. A commenter contended that the Bureaus should provide additional information in the Auction 91 public notices about the history of the allotments being offered and suggests that the Media Bureau's Consolidated Data Base System (CDBS) should contain information as to whether a permit was previously offered at auction, as well as details concerning cancellation of a permit due to a failure to construct or licensee default. The Bureaus noted that Attachment A to the *Auction 91 Procedures Public Notice*

indicates whether a permit was previously offered at auction. Further, the Commission makes various databases and other sources of information, including CDBS, the auctions databases and copies of Commission decisions, available to the public without charge. Potential bidders may research the background of allotments using this information as well as other sources, just as this commenter has done. The Bureaus rejected this commenter's claim that absent the affirmative disclosure of such background information, the Commission fails to meet a due diligence obligation. It is the responsibility of each potential bidder to undertake research to ensure that any permits won in this auction will be suitable for its business plans and needs. Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

iii. Use of Integrated Spectrum Auction System

34. The Commission will make available a browser-based bidding system to allow bidders to participate in Auction 91 over the Internet using the Commission's Integrated Spectrum Auction System (ISAS or FCC Auction System). The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees, or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning, or use of the FCC Auction System that is accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming, or other advice or service provided in connection with the FCC Auction System.

iv. Environmental Review Requirements

35. Permittees or licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other Federal environmental statutes. The construction of a broadcast facility is a Federal action and the permittee or licensee must comply with the Commission's environmental rules for each such facility. Additional information about such Commission requirements is provided in the *Auction 91 Procedures Public Notice*.

C. Auction Specifics

i. Auction Start Date

36. Bidding in Auction 91 has been rescheduled and will begin on Wednesday, April 27, 2011. The Bureaus have postponed the originally scheduled start of the auction for reasons of administrative and bidder convenience. Although one commenter requested a later starting date, the Bureaus concluded that rescheduling the starting date for Auction 91 from March 29, 2011 to April 27, 2011, will help ensure optimum participation and an efficient auction process, as well as provide prospective applicants with additional time for planning and preparation.

37. The initial schedule for bidding rounds will be announced by public notice at least one week before the start of the auction. Moreover, unless otherwise announced, bidding on all construction permits will be conducted on each business day until bidding has stopped on all construction permits.

ii. Bidding Methodology

38. The bidding methodology for Auction 91 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet using the FCC Auction System, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically via the Internet or by telephone. All telephone calls are recorded.

iii. Pre-Auction Dates and Deadlines

39. The following dates and deadlines apply:

Auction Tutorial Available (via Internet)—January 31, 2011
Short-Form Application (FCC Form 175) Filing Window Opens—January 31, 2011; 12 noon ET
Short-Form Application (FCC Form 175) Filing Window Deadline—February 10, 2011; prior to 6 p.m. ET
Upfront Payments (via wire transfer)—March 21, 2011; 6 p.m. ET
Mock Auction—April 25, 2011
Auction Begins—April 27, 2011

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

A. General Information Regarding Short-Form Applications

40. An 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. The short-form application is the first part of the

Commission's two-phased auction application process. In the first phase of this process, parties desiring to participate in the auction must file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications. Each applicant must take seriously its duties and responsibilities and carefully determine before filing an application that the applicant has the legal, technical and financial resources to participate in Auction 91, as well as construct and operate an FM station if the auction applicant becomes a licensee as a result of its participation in this auction. Eligibility to participate in bidding is based on the applicants' short-form applications and certifications as well as their upfront payments. In the second phase of the process, winning bidders must file more comprehensive long-form applications.

41. Entities and individuals seeking construction permits available in Auction 91 must file a short-form application electronically via the FCC Auction System prior to 6 p.m. ET on February 10, 2011, following the procedures prescribed in Attachment B to the *Auction 91 Procedures Public Notice*. 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. Beginning on the application filing deadline, applicants filing a short-form application are subject to 47 CFR 1.2105(c) and 73.5002.

42. Applicants bear full responsibility for submitting accurate, complete and timely short-form applications. All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license. Applicants should read carefully the instructions set forth in Attachment B to the *Auction 91 Procedures Public Notice* and should consult the Commission's rules to ensure that all information and materials required in that public notice and under the Commission's rules is included within their short-form applications.

43. An individual or entity may not submit more than one short-form application for a single auction. If a party submits multiple short-form applications, only one application may be accepted for filing.

44. Applicants also should note that submission of a short-form application (and any amendments thereto) constitutes a representation by the certifying official that he or she is an authorized representative of the

applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Applicants are not permitted to make major modifications to their applications; such impermissible changes include a change of the certifying official to the application. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

B. Permit Selection

45. An applicant must select the construction permits on which it wants to bid from the *Eligible Permits* list on its short-form application. To assist applicants in identifying construction permits of interest that will be available in Auction 91, the FCC Auction System includes a filtering mechanism that allows an applicant to filter the *Eligible Permits* list. 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. The applicant may select all the construction permits in the customized list or select individual construction permits from the list. Applicants also will be able to select construction permits from one customized list and then create additional customized lists to select additional construction permits.

46. Applicants interested in participating in Auction 91 must have selected construction permit(s) available in this auction by the short-form application filing deadline. Applicants must review and verify their construction permit selections before the deadline for submitting short-form applications. Applicants will not be able to change their construction permit selections after the short-form application filing deadline. The FCC Auction System will not accept bids from an applicant on construction permits that the applicant has not selected on its short-form application.

C. New Entrant Bidding Credit

47. Under the tiered New Entrant Bidding Credit for broadcast auction applicants with no, or very few, other media interests, the interests of the applicant, and of any individuals or entities with an attributable interest in the applicant, in other media of mass communications are considered when determining an applicant's eligibility for the New Entrant Bidding Credit. In Auction 91, the bidder's attributable interests are determined as of the short-

form application filing deadline. Thus, the applicant's maximum new entrant bidding credit eligibility will be determined as of the short-form application filing deadline. Applicants 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. 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.

48. Under traditional broadcast attribution rules, those entities or individuals with an attributable interest in a bidder include: (1) All officers and directors of a corporate bidder; (2) Any owner of 5 percent or more of the voting stock of a corporate bidder; (3) All partners and limited partners of a partnership bidder, unless the limited partners are sufficiently insulated; and (4) All members of a limited liability company, unless sufficiently insulated.

49. In cases where an applicant's spouse or close family member holds other media interests, such interests are not automatically attributable to the bidder. The Commission decides attribution issues in this context based on certain factors traditionally considered relevant. Applicants should note that the mass media attribution rules were revised in 1999.

50. 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, an applicant claiming new entrant status. Specifically, the attributable mass media interests held by an individual or entity with an equity and/or debt interest in an applicant shall be attributed to that bidder for purposes of determining its eligibility for the New Entrant Bidding Credit, if the equity and debt interests, in the aggregate, exceed 33 percent of the total asset value of the applicant, even if such an interest is non-voting.

51. The Commission relaxed the equity/debt plus (EDP) attribution standard, to allow for higher investment opportunities in entities meeting the definition of eligible entities. An eligible entity is defined in Note 2(i) of 47 CFR 73.3555. The Commission allows the

holder of an equity or debt interest in the applicant to exceed the above-noted 33 percent threshold without triggering attribution provided (1) the combined equity and debt in the eligible entity is less than 50 percent; or (2) the total debt in the eligible entity does not exceed 80 percent of the asset value, and the interest holder does not hold any equity interest, option, or promise to acquire an equity interest in the eligible entity or any related entity.

52. 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 bidder's other mass media interests in determining its eligibility for a New Entrant Bidding Credit. Any bidder asserting new entrant bidding status must have *de facto* as well as *de jure* control of the entity claiming the bidding credit. See 47 CFR 73.5007.

D. Application Requirements

53. In addition to the ownership information required pursuant to 47 CFR 1.2112, applicants seeking a New Entrant Bidding Credit are required to establish on their short-form applications that they satisfy the eligibility requirements to qualify for the bidding credit. In those cases, a certification under penalty of perjury must be provided in completing the applicant's short-form application. 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 has any attributable interests in more than three media of mass communications, and must identify and describe such media of mass communications. A medium of mass communications is defined in 47 CFR 73.5008(b). Full service noncommercial educational stations, on both reserved and nonreserved channels, are included among media of mass communications as defined in 47 CFR 73.5008(b).

E. Bidding Credits

54. Applicants that qualify for the New Entrant Bidding Credit, as specified 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 broadcast permit proposed in the auction, 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. For purposes of determining whether a broadcast permit identified for bidding in the auction is in the same area as an applicant's existing mass media facilities, the coverage area of the to-be-auctioned facility is calculated using maximum class facilities at the allotment reference coordinates, NOT applicant-specified preferred site coordinates.

55. 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. Applicants 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.

F. Disclosure of Bidding Arrangements

56. Applicants will be required to identify in their short-form application all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the construction permits being auctioned, including any agreements relating to post-auction market structure.

G. Ownership Disclosure Requirements

57. All applicants to participate in a broadcast auction must comply with the uniform Part 1 ownership disclosure standards and provide information required by 47 CFR 1.2105 and 1.2112. Specifically, in completing the short-form application, applicants will be required to fully disclose information on the real party- or parties-in-interest and ownership structure of the applicant, including both direct and indirect ownership interests of 10 percent or more. The ownership disclosure standards for the short-form application are prescribed in 47 CFR 1.2105 and 1.2112. Each applicant is responsible for information submitted in its short-form application being complete and accurate.

58. Each applicant is responsible for ensuring that the information submitted in its short-form application for Auction 91 is complete and accurate. In certain circumstances, an applicant's most current ownership information on file with the Commission, if in an electronic format compatible with the short-form application (FCC Form 175) (such as information submitted in an on-line FCC Form 602 or in an FCC Form 175 filed for a previous auction using ISAS) will automatically be entered into the applicant's short-form application. Applicants should carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for filing the short-form application.

H. Provisions Regarding Former and Current Defaulters

59. Current defaulters or delinquents are not eligible to participate in Auction 91, but former defaulters or delinquents can participate so long as they are otherwise qualified and make upfront payments that are 50 percent more than the normal upfront payment amounts. An applicant is considered a current defaulter or a current delinquent when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, is in default on any payment for any Commission construction permit or license (including a down payment) or is delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for short-form applications. An applicant is considered a former defaulter or a former delinquent when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, have defaulted on any Commission construction permit or license or been delinquent on any non-tax debt owed to

any Federal agency, but have since remedied all such defaults and cured all of the outstanding non-tax delinquencies.

60. On the short-form application, an applicant must certify under penalty of perjury that it, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by 47 CFR 1.2110, are not in default on any payment for a Commission construction permit or license (including down payments) and that it is not delinquent on any non-tax debt owed to any Federal agency. Each applicant must also state under penalty of perjury whether it, its affiliates, its controlling interests, and the affiliates of its controlling interests, have ever been in default on any Commission construction permit or license or have ever been 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. These statements and certifications are prerequisites to submitting an application to participate in an FCC auction.

61. The *Auction 91 Procedures Public Notice* also reviews the Bureau's previous guidance on default and delinquency disclosure requirements in the context of the short-form application process.

62. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the red light rule, that implement the Commission's obligations under the Debt Collection Improvement Act of 1996, which governs the collection of claims owed to the United States. Under the red light rule, the Commission will not process applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission. In the same rulemaking order, the Commission explicitly declared, however, that the Commission's competitive bidding rules are not affected by the red light rule. As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of the Commission's competitive bidding rules, including the provisions and certifications of 47 CFR 1.2105 and 1.2106, with regard to current and former defaults or delinquencies.

63. Applicants are reminded, however, that the Commission's Red Light Display System, which provides information regarding debts currently owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of 47 CFR 1.2105. Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant's lack of current red light status is not necessarily determinative of its eligibility to participate in an auction or of its upfront payment obligation.

64. Moreover, prospective applicants in Auction 91 should note that any long-form applications filed after the close of bidding will be reviewed for compliance with the Commission's red light rule, and such review may result in the dismissal of a winning bidder's long-form application. Applicants that have their long-form applications dismissed will be deemed to have defaulted and will be subject to the default payments under 47 CFR 1.2104(g) and 1.2109(c).

I. Optional Applicant Status Identification

65. Applicants owned by members of minority groups and/or women, as defined in 47 CFR 1.2110(c)(3), and rural telephone companies, as defined in 47 CFR 1.2110(c)(4), may identify themselves regarding this status in filling out their short-form applications. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of designated entities in its auctions.

J. Noncommercial Educational Status Election

66. In the *NCE Second Report and Order*, 68 FR 26220, May 15, 2003, the Commission held that applications for noncommercial educational (NCE) FM stations on nonreserved spectrum, filed during an FM auction filing window, will be returned as unacceptable for filing if mutually exclusive with any application for a commercial station. If an FCC Form 175 filed during the Auction 91 filing window identifying the application's proposed station as noncommercial educational is mutually exclusive with any application filed during that window for a commercial station, the former will be returned as unacceptable for filing. For this reason, each prospective applicant in this auction should consider carefully if the applicant wishes to propose operation for any NCE FM station acquired in this auction. This NCE election cannot be

reversed after the initial application filing deadline.

K. Minor Modifications to Short-Form Applications

67. After the deadline for filing initial applications, an Auction 91 applicant is permitted to make only minor changes to its application. Permissible minor changes include, among other things, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons. An applicant is not permitted to make a major modification to its application (*e.g.*, change of construction permit selection, change control of the applicant, change the certifying official, claim eligibility for a higher percentage of bidding credit, or change the identification of the application's proposed facilities as noncommercial educational) after the initial application filing deadline. Thus, any change in control of an applicant, resulting from a merger for example, will be considered a major modification to the applicant's application, which will consequently be dismissed. The Bureaus reiterated that, even if an applicant's short-form application is dismissed, the application will remain subject to 47 CFR 1.2105(c)'s prohibition on certain communications until the down payment deadline, which will be established after the auction closes.

68. If an applicant wishes to make permissible minor changes to its short-form application, such changes should be made electronically to its short-form application using the FCC Auction System whenever possible. Applicants are reminded to click on the SUBMIT button in the FCC Auction System for the change 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, submission date, and a unique file number. The Bureaus advise applicants to print and retain a copy of the confirmation page.

69. An applicant cannot use the FCC Auction System outside of the initial and resubmission filing windows to make changes to its short-form application other than administrative changes (*e.g.* changing certain contact information or the name of an authorized bidder). If these or other permissible minor changes need to be made outside of these windows, the applicant must submit a letter briefly summarizing the changes and subsequently update its short-form application in ISAS once the system is

available. Moreover, after the filing window has closed, ISAS will not permit applicants to make certain changes, such as the applicant's legal classification and the identification of the application's proposed facilities as noncommercial educational.

70. Any letter describing changes to an applicant's short-form application should be submitted by e-mail to auction91@fcc.gov. The e-mail summarizing the changes must include a subject or caption referring to Auction 91 and the name of the applicant.

71. According to 47 CFR 1.917, any application amendment and related statements of fact must be certified by (1) the applicant, if the applicant is an individual; (2) one of the partners if the applicant is a partnership; (3) an officer, director, or duly authorized employee, if the applicant is a corporation; (4) a member who is an officer, if the applicant is an unincorporated association; (5) the trustee, if the applicant is an amateur radio service club; or (6) a duly elected or appointed official who is authorized to make such certifications under the laws of the applicable jurisdiction, if the applicant is a governmental entity.

72. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System, which was used for submitting comments regarding Auction 91.

L. Maintaining Current Information in Short-Form Applications

73. 47 CFR 1.65 and 1.2105(b) require an applicant to maintain the accuracy and completeness of information furnished in its pending application and in competitive bidding proceedings to furnish additional or corrected information to the Commission within five days of a significant occurrence, or to amend a short form application no more than five days after the applicant becomes aware of the need for the amendment. Changes that cause a loss of or reduction in the percentage of bidding credit specified on the originally submitted application must be reported immediately, and no later than five business days after the change occurs. For example, if ownership changes result in the attribution of new interest holders that affect the applicant's qualifications for a new entrant bidding credit, such information must be clearly stated in the bidder's amendment. Events occurring after the application filing deadline, such as the acquisition of attributable interests in media of mass communications, also may cause diminishment or loss of the

bidding credit, and must be reported immediately.

74. If an amendment reporting substantial changes is a major amendment, as defined by 47 CFR 1.2105, the major amendment will not be accepted and may result in the dismissal of the application. After the application filing deadline, applicants may make only minor changes to their applications.

75. Applicants must click on the Submit button in the FCC Auction System for the changes to be submitted and considered by the Commission. If 47 CFR 1.65 submissions are needed after the initial filing and resubmission windows close, applicants must submit a letter, briefly summarizing the changes, by e-mail to auction91@fcc.gov. The e-mail summarizing the changes must include a subject or caption referring to Auction 91 and the name of the applicant.

III. Pre-Auction Procedures

A. Online Auction Tutorial—Available January 31, 2011

76. On Monday, January 31, 2011, the Commission will post an educational auction tutorial on the Auction 91 web page for prospective bidders to familiarize themselves with the auction process. This online tutorial will provide information about pre-auction procedures, completing short-form applications, auction conduct, the FCC Auction Bidding System, auction rules, and broadcast services rules. The tutorial will also provide an avenue to ask FCC staff questions about the auction, auction procedures, filing requirements, and other matters related to this auction. The online tutorial will be accessible using a web browser with Adobe Flash Player from the FCC's Auction 91 Web page at <http://wireless.fcc.gov/auctions/91/> through an Auction Tutorial link.

B. Short-Form Applications—Due Prior to 6:00 p.m. ET on February 10, 2011

77. In order to be eligible to bid in this auction, applicants must follow the procedures set forth in Attachment B to the *Auction 91 Procedures Public Notice* to submit a short-form application (FCC Form 175) electronically via the FCC Auction System. This short-form application must be submitted through the FCC Auction System prior to 6 p.m. ET on February 10, 2011. Late applications will not be accepted. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. An applicant always must click on the SUBMIT button on the

certify and submit screen to successfully submit its FCC Form 175 and any modifications; otherwise the application or changes to the application will not be received or reviewed. There is no application fee required when filing an FCC Form 175, but an applicant must submit a timely upfront payment to be eligible to bid. Any applicant that submits a short-form application but fails to timely submit an upfront payment will retain its status as an applicant in Auction 91 and will remain subject to the Commission's rules prohibiting certain communications, 47 CFR 1.2105(c) and 73.5002(d), but, having purchased no bidding eligibility, will be not be eligible to bid.

C. Application Processing and Minor Corrections

78. After the deadline for filing FCC Form 175 applications, the Commission will process all timely submitted applications to determine which are complete, and subsequently will issue a public notice identifying (1) those applications that are complete; (2) those applications that are rejected; and (3) those applications that are incomplete because of minor defects that may be corrected. The public notice will include the deadline for resubmitting corrected applications.

79. Applications specifying the same FM station construction permit are considered mutually exclusive. 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 that public notice. All mutually exclusive applications will be considered under the relevant procedures for conflict resolution. Mutually exclusive applications proposing commercial stations will proceed to auction.

80. Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the applicant's short-form application, unless the applicant's certifying official or contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on its behalf. Authorizations may be sent by e-mail to auction91@fcc.gov.

D. Upfront Payments—Due March 21, 2011

81. In order to be eligible to bid in this auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing its short-form application, an applicant will have

access to an electronic version of the FCC Form 159 that can be printed and sent by fax to the Commission's auction payment lockbox bank, the U.S. Bank in St. Louis, Missouri. All upfront payments must be made as instructed in the *Auction 91 Procedures Public Notice* and must be received in the proper account at U.S. Bank before 6 p.m. ET on March 21, 2011. All payments must be made in U.S. dollars. All payments must be made by wire transfer. An applicant must initiate the wire transfer through its bank, authorizing the bank to wire funds from the applicant's account to the U.S. Bank in St. Louis, Missouri. Upfront payments for Auction 91 go to a lockbox number different from the lockboxes used in previous FCC auctions. Failure to deliver a sufficient upfront payment, as instructed, by the deadline on March 21, 2011 will result in dismissal of the short-form application and disqualification from participation in the auction.

i. Making Upfront Payments by Wire Transfer

82. Wire transfer payments must be received before 6 p.m. ET on March 21, 2011. No other payment method is acceptable. The Commission will not accept checks, credit cards, or automated clearing house payments.

83. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must fax a completed FCC Form 159 (Revised 2/03) to U.S. Bank at (314) 418-4232. On the fax cover sheet, applicants must write Wire Transfer—Auction Payment for Auction 91. In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account for Auction 91 before the deadline.

84. Each applicant is responsible for ensuring timely submission of its upfront payment and for timely filing of an accurate and complete FCC Form 159. To avoid untimely payments, an applicant should coordinate with its financial institution well ahead of the due date regarding its wire transfer, including a discussion of bank closing schedules, and allow sufficient time for the transfer to be initiated and completed prior to the deadline. The Commission repeatedly has cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer. Each applicant also is responsible for obtaining confirmation from its financial institution that its wire transfer to U.S. Bank was successful and from Commission staff

that the Commission has timely received the applicant's upfront payment and deposited it into the proper account.

ii. FCC Form 159

85. A completed FCC Form 159 (Revised 2/03) must be faxed to U.S. Bank to accompany each upfront payment. Proper completion of FCC Form 159 is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment C to the *Auction 91 Procedures Public Notice*. An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payers using the 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 U.S. Bank by fax.

iii. Upfront Payments and Bidding Eligibility

86. The Commission has delegated to the Bureaus the authority and discretion to determine appropriate upfront payments for each auction. Upfront payments help deter frivolous or insincere bidding, and provide the Commission with a source of funds in the event that the bidder incurs liability during the auction.

87. Applicants that are former defaulters must pay upfront payments 50 percent greater than non-former defaulters. For purposes of this calculation, the applicant includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by 47 CFR 1.2110.

88. Applicants must make upfront payments sufficient to obtain bidding eligibility on the construction permits on which they will bid. The amount of the upfront payment determines 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 particular construction permit, a qualified bidder must have selected the construction permit on its FCC Form 175 and must have a current eligibility level that meets or exceeds the number of bidding units assigned to that construction permit. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits selected on its FCC Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all

construction permits the applicant selected on its FCC Form 175, but only enough to cover the maximum number of bidding units that are associated with construction permits on which the bidder wishes to place bids and hold provisionally winning bids in any given round. (Provisionally winning bids are bids that would become final winning bids if the auction were to close after the given round.) A bidder's total upfront payment does not affect the total dollar amount the bidder may bid on any given construction permit.

89. The Bureaus adopted upfront payments and bidding units for each construction permit in Auction 91. Upfront payment amounts and bidding units are set forth in Attachment A of the *Auction 91 Procedures Public Notice*.

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

91. If an applicant is a former defaulter, according to 47 CFR 1.2106(a), it must calculate its upfront payment for all of its identified construction permits by multiplying the number of bidding units on which it wishes 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 its construction permits selected on its FCC Form 175, the applicant will not be eligible to participate in the auction.

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

92. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information be supplied. Applicants can provide the information electronically during the initial short-form application filing window after the form has been submitted. (Applicants are reminded

that information submitted as part of an FCC Form 175 will be available to the public; for that reason, wire transfer information should not be included in an FCC Form 175.) Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations, Auctions Accounting Group, Attn: Gail Glasser, at (202) 418-2843 (fax). 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.

F. Auction Registration

93. Approximately ten days before the auction, the Bureaus will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants with submitted FCC Form 175 applications that are deemed timely-filed, accurate, and complete, provided that such applicants have timely submitted an upfront payment that is sufficient to qualify them to bid.

94. 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® tokens that will be required to place bids, the Integrated Spectrum Auction System (ISAS) Bidder's Guide, and the Auction Bidder Line phone number.

95. 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 Wednesday, April 20, 2011, should call (717) 338-2868. 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.

96. In the event that SecurID® tokens are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacements. Qualified bidders requiring the replacement of these items must call Technical Support at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY).

G. Remote Electronic Bidding

97. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Only qualified bidders are permitted to bid. Each applicant should indicate its bidding preference—electronic or telephonic—on its FCC Form 175. In either case, each

authorized bidder must have its own SecurID® token, which the Commission will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. For security purposes, the SecurID® tokens, the telephonic bidding telephone 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. Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 91.

H. Mock Auction—April 25, 2011

98. All qualified bidders will be eligible to participate in a mock auction on Monday, April 25, 2011. The mock auction will enable qualified bidders 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

99. The first round of bidding for Auction 91 will begin on Wednesday, April 27, 2011. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is to be released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction

100. All construction permits in Auction 91 will be auctioned in a single auction using the Commission's standard simultaneous multiple-round auction format. This type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual construction permits. A bidder may bid on, and potentially win, any number of construction permits. Unless otherwise announced, bids will be accepted on all construction permits in each round of the auction until bidding stops on every construction permit.

ii. Eligibility and Activity Rules

101. The Bureaus will use upfront payments to determine each bidder's initial (maximum) eligibility (as measured in bidding units) for Auction 91. The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum

number of bidding units on which a bidder may be active. Each construction permit was assigned a specific number of bidding units as listed in Attachment A of the *Auction 91 Procedures Public Notice*. 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 of the construction permits selected on its FCC Form 175 as long as the total number of bidding units associated with those construction permits does not exceed its current eligibility.

102. In order to ensure that an 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.

103. A bidder's activity level in a round is the sum of the bidding units associated with any construction permits covered by new and provisionally winning bids. 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 or if it submits a bid in the current round.

104. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

iii. Auction Stages

105. Auction 91 will be conducted in two stages and employ an activity rule. A bidder desiring to maintain its current bidding eligibility is required to be active on construction permits representing at least 75 percent of its current bidding eligibility, during each round of Stage One, and at least 95 percent of its current bidding eligibility in Stage Two. The Bureaus retain the discretion to alter the activity requirements before and/or during the auction as circumstances warrant.

106. 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 the use of an activity rule waiver or, if the bidder has no

activity rule waivers remaining, a reduction in the bidder's bidding eligibility in the next round. During Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by four-thirds ($\frac{4}{3}$).

107. 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 the use of an activity rule waiver or, if the bidder has no activity rule waivers remaining, a reduction in the bidder's bidding eligibility in the next round. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by twenty-nineteenths ($\frac{20}{19}$).

108. 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 logging into the FCC Auction System.

iv. Stage Transitions

109. The auction will start in Stage One. The Bureaus will regulate the pace of the auction by announcement. The Bureaus retain the discretion to change the activity requirements during the auction, including transition the auction from Stage One to Stage Two, to add an additional stage with a higher activity requirement, not to transition to Stage Two, and to transition to Stage Two with an activity requirement that is higher or lower than 95 percent. This determination will be based on a variety of measures of auction activity, including, but not limited to, the number of new bids and the percentages of construction permits (as measured in bidding units) on which there are new bids.

v. Activity Rule Waivers

110. Each bidder in the auction will be provided with 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 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 proactive or automatic 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.

111. 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 bidding 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. If a bidder has no waivers remaining and does not satisfy the activity requirement, the FCC Auction System will permanently reduce the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

112. 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 rule. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility even if the round has not yet ended.

113. 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 are placed 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 proactive waivers will not keep the auction open.

A bidder cannot submit a proactive waiver after submitting a bid in a round, and submitting a proactive waiver will preclude a bidder from placing any bids in that round. It is important for bidders to understand that applying a waiver is irreversible. Once a bidder submits a proactive waiver, the bidder cannot unsubmit the waiver even if the round has not yet ended.

vi. Auction Stopping Rules

114. For Auction 91, the Bureaus will employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all construction permits remain available for bidding until bidding closes simultaneously on all construction permits. More specifically, bidding will close simultaneously on all construction permits after the first round in which no bidder submits any new bids or applies a proactive waiver.

115. As explained in the *Auction 91 Procedures Public Notice*, the Bureaus retain the discretion to exercise any alternative version of the simultaneous stopping rule for Auction 91 with or without prior announcement during the auction. For example, under Option 1, the auction would close for all construction permits after the first round in which no bidder applies a waiver or places 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. Under Option 2, the auction would close for all construction permits after the first round in which no bidder applies a waiver or places any new bids on any construction permit that is not FCC held. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit that does not already have a provisionally winning bid (an FCC-held construction permit) would not keep the auction open under this modified stopping rule. Under Option 3, the auction would close using a modified version of the simultaneous stopping rule that combines Option 1 and Option 2. Under Option 4, the auction would end after a specified number of additional rounds. If the Bureaus invoke this special stopping rule, it will accept bids in the specified final round(s) and the auction will close. Under Option 5, the auction would remain open even if no bidder places any new bids or applies a waiver. In this event, the effect will be the same as if a bidder had applied a waiver. Thus, the activity rule will apply as

usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

vii. Auction Delay, Suspension, or Cancellation

116. The Bureaus, by public notice or by announcement during the auction, may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to resume 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

117. 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.

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

ii. Reserve Price and Minimum Opening Bids

119. There will be no reserve price for the construction permits offered in Auction 91. After consideration of one commenter's request for a reduction of the proposed minimum opening bid for the FM station construction permit for Blanket, Texas, Channel 284A, the Bureaus adopted a minimum opening bid for MM-FM837-A, Blanket, Texas, of \$7,500. After further consideration of the specific circumstances concerning the FM station construction permit at

Charlo, Montana, Channel 251C3, as presented by a second commenter, the Bureaus adopted a minimum opening bid of \$5,000 for MM-FM808-C3, Charlo, Montana.

120. Another commenter contended that generally the minimum opening bids for re-auctioned allotments are too high, and that those allotments that were unsold in previous auctions should all be assigned a uniform minimum opening bid of \$1,000. Similarly, a fourth commenter suggests an across-the-board decrease of 75 percent of the minimum opening bids proposed in the *Auction 91 Comment Public Notice*. The Bureaus declined to adopt for minimum opening bids in this auction either the proposed across-the-board 75 percent reduction or the proposed uniform minimum bid amount for all permits because those proposals do not take into account the various factors that were used in developing these amounts.

121. The specific minimum opening bid amounts adopted by the Bureaus for the construction permits available in Auction 91 are set forth in Attachment A of the *Auction 91 Procedures Public Notice*.

iii. Bid Amounts

122. In each round of Auction 91, eligible bidders will be able to place a bid on a given construction permit in any of up to nine different amounts, if the bidder has sufficient eligibility to place a bid on the particular construction permit. The FCC Auction System interface will list the nine acceptable bid amounts for each construction permit.

123. The first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid on the construction permit. After there is a provisionally winning bid for a permit, the minimum acceptable bid amount will be a percentage higher. That is, the minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount times one plus the minimum acceptable bid percentage. For example, if the minimum acceptable bid percentage is 10 percent, the minimum acceptable bid amount will equal (provisionally winning bid amount) * (1.10), rounded.

124. The Bureaus will begin the auction with a minimum acceptable bid percentage of 10 percent. The eight additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage.

The Bureaus will begin the auction with a bid increment percentage of 5 percent. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded. With a bid increment percentage is 5 percent, the calculation is (minimum acceptable bid amount) * (1 + 0.05), rounded, or (minimum acceptable bid amount) * 1.05, 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) * 1.10, 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) * 1.15, rounded; *etc.* The Bureaus will round the results of these calculations using the standard rounding procedures for auctions. The Bureaus retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the bid increment percentage, and the number of acceptable bid amounts if the Bureaus determine that circumstances so dictate. Further, the Bureaus retain the discretion to do so on a construction permit-by-construction permit basis. The Bureaus also retain the discretion to limit (a) the amount by which a minimum acceptable bid for a construction permit may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, the Bureaus could set a \$10,000 limit on increases in minimum acceptable bid amounts over provisionally winning bids. Thus, if calculating a minimum acceptable bid using the minimum acceptable bid percentage results in a minimum acceptable bid amount that is \$12,000 higher than the provisionally winning bid on a construction permit, the minimum acceptable bid amount would instead be capped at \$10,000 above the provisionally winning bid. If the Bureaus exercise this discretion, they will alert bidders by announcement in the FCC Auction System during the auction.

iv. Provisionally Winning Bids

125. 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.

126. The Bureaus will use a random number generator to select a single 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). The FCC Auction System will assign a random number to each bid upon submission. The tied bid with the highest random number wins the tiebreaker, and becomes the provisionally winning bid. Bidders, regardless of whether they hold a provisionally winning bid, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid.

v. Bidding

127. 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 91. Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders were reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; applicants should allow a minimum of ten minutes.

128. A bidder's ability to bid on specific construction permits is determined by two factors: (1) The construction permits selected on the bidder's FCC Form 175 and (2) the bidder's eligibility. The bid submission screens will allow bidders to submit bids on only those construction permits the bidder selected on its FCC Form 175.

129. 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® token and a personal identification number (PIN) created by the bidder. Bidders are strongly encouraged to print a round summary for each round after they have completed all of their activity for that round.

130. In each round, eligible bidders will be able to place bids on a given construction permit in any of up to nine pre-defined bid amounts, if the bidder has sufficient eligibility to place a bid on the particular construction permit. For each construction permit, the FCC

Auction System will list the 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.

131. 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 are bids on a construction permit, minimum acceptable bids for a construction permit for the following round will be determined.

132. During a round, an eligible bidder may submit bids for as many construction permits as it wishes (providing that it is eligible to bid), remove bids placed in the current bidding round, or permanently reduce eligibility. If a bidder submits multiple bids for the same 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 bids do not count towards the bidder's current activity.

vi. Bid Removal and Bid Withdrawal

133. In Auction 91, each bidder has the option of removing any bids placed in a round provided that such bids are removed before the close of that bidding round. By 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. Once a round closes, a bidder may no longer remove a bid.

134. In the *Auction 91 Comment Public Notice*, the Bureaus proposed to prohibit bidders from withdrawing any bids after the round in which the bids were placed has closed. The Bureaus declined to adopt one commenter's proposal to allow, on a case-by-case basis, a bidder in this auction to withdraw a bid where the bidder has a legitimate reason and is not encouraging unethical process that would result in personal gains for the bidder or disqualifying of eligible bidders.

135. The Bureaus will prohibit bid withdrawals in Auction 91. Bidders are cautioned to select bid amounts carefully because no bid withdrawals will be allowed in Auction 91, even if

a bid was mistakenly or erroneously made.

vii. Round Results

136. Reports reflecting bidders' identities for Auction 91 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.

137. Bids placed during a round will not be made public until the conclusion of that round. After a round closes, the Bureaus will compile and post for public access reports of all bids placed, current provisionally winning bids, new minimum acceptable bid amounts for the following round, whether the construction permit is FCC held, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access.

viii. Auction Announcements

138. The Commission will use auction announcements to report necessary information such as schedule changes. All auction announcements will be available by clicking a link in the FCC Auction System.

V. Post-Auction Procedures

139. Shortly after bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, final payments, and the long-form applications (FCC Forms 301).

A. Down Payments

140. Within ten business days after release of the auction closing public notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 91 to 20 percent of the net amount of its winning bids (gross bids less any applicable new entrant bidding credits).

B. Final Payments

141. Each winning bidder will be required to submit the balance of the net amount of its winning bids within ten business days after the applicable deadline for submitting down payments.

C. Long-Form Application (FCC Form 301)

142. The Commission's rules currently provide that within thirty days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 301, Application for Construction

Permit for Commercial Broadcast Station), and required exhibits for each construction permit won through Auction 91. Winning bidders claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit. Further instructions on these and other filing requirements will be provided to winning bidders in the auction closing public notice.

D. Default and Disqualification

143. Any winning bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). The payments include both a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less. The Bureaus set the additional default payment for this auction at twenty percent of the applicable bid.

144. Finally, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing authorizations held by the applicant.

E. Refund of Remaining Upfront Payment Balance

145. After the auction, applicants that are not winning bidders or are winning bidders whose upfront payment exceeded the total net amount of their winning bids may be entitled to a refund of some or all of their upfront payment. 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. Bidders that drop out of the auction completely (have exhausted all of their activity rule waivers and have no remaining bidding eligibility) may request a refund of their upfront payments before the close of the auction.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auction and Spectrum Access Division, WTB.

[FR Doc. 2011-1375 Filed 1-20-11; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:10 p.m. on Tuesday, January 18, 2011, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision, corporate and resolution activities.

In calling the meeting, the Board determined, on motion of Director John E. Bowman (Acting Director, Office of Thrift Supervision), seconded by Director Thomas J. Curry (Appointive), concurred in by Vice Chairman Martin J. Gruenberg, Director John G. Walsh (Acting Comptroller of the Currency), and Chairman Sheila C. Bair, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: January 18, 2011.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011-1315 Filed 1-19-11; 11:15 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: January 26, 2011-10 a.m.