

# PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.661:

■ a. Amend paragraph (a)(1) by:

■ i. Designating the table as Table 1 to Paragraph (a)(1);

■ ii. Adding in alphabetical order the entry “Coffee, green beans”; and

■ iii. Revising the entries “Grain, cereal, group 15, except corn and rice” and “Rapeseed subgroup 20A”;

■ b. Amend paragraph (a)(2) by:

■ i. Designating the table as Table 2 to Paragraph (a)(2); and

■ ii. Revising newly designated Table 2.

The additions and revisions read as follows:

## § 180.661 Fluopyram; tolerances for residues.

(a) \* \* \*

(1) \* \* \*

TABLE 1 TO PARAGRAPH (a)(1)

Commodity	Parts per million
* * * *	*
Coffee, green beans <sup>2</sup> .....	0.03
* * * *	*
Grain, cereal, group 15, except corn and rice .....	0.5
* * * *	*
Rapeseed subgroup 20A .....	0.3
* * * *	*

<sup>2</sup> There are no U.S. registrations on coffee, green beans as of February 18, 2022.

(2) \* \* \*

TABLE 2 TO PARAGRAPH (a)(2)

Commodity	Parts per million
Cattle, fat .....	0.3
Cattle, meat .....	0.3
Cattle, meat byproducts .....	3
Egg .....	0.03
Goat, fat .....	0.3
Goat, meat .....	0.3
Goat, meat byproducts .....	3
Hog, fat .....	0.01
Hog, meat .....	0.01
Hog, meat byproducts .....	0.04
Horse, fat .....	0.3
Horse, meat .....	0.3
Horse, meat byproducts .....	3
Milk .....	0.15
Poultry, fat .....	0.01
Poultry, meat .....	0.02
Poultry, meat byproducts .....	0.06

TABLE 2 TO PARAGRAPH (a)(2)—Continued

Commodity	Parts per million
Sheep, fat .....	0.3
Sheep, meat .....	0.3
Sheep, meat byproducts .....	3

\* \* \* \*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1 and 73

[AU Docket No. 21–449; DA 22–125; FR ID 71977]

### Auction of Construction Permits for Full Power Television Stations; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 112

**AGENCY:** Federal Communications Commission.

**ACTION:** Final action; requirements and procedures.

**SUMMARY:** This document summarizes the procedures, deadlines, and upfront payment and minimum opening bid amounts for the upcoming auction of construction permits for full power television (TV) stations. The *Auction 112 Procedures Public Notice* summarized here is intended to familiarize potential applicants with details of the procedures, terms, and conditions governing participation in Auction 112, as well as an overview of the post-auction application and payment processes.

**DATES:** Applications to participate in Auction 112 must be submitted before 6:00 p.m. Eastern Time (ET) on March 30, 2022. Upfront payments for Auction 112 must be received by 6:00 p.m. ET on May 6, 2022. Bidding in Auction 112 is scheduled to start on June 7, 2022.

#### FOR FURTHER INFORMATION CONTACT:

*General Auction 112 Information:* FCC Auctions Hotline at 888–225–5322, option two; or 717–338–2868.

*Auction 112 Legal Information:* Mary Lovejoy or Andrew McArdell at (202) 418–0660.

*Licensing Information:* Shaun Maher at (202) 418–2324 or Kevin Harding at (202) 418–7077.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communication Commission’s (Commission or FCC) document, *Auction 112 Procedures Public Notice*, in AU Docket No. 21–

449; DA 21–125, released on February 10, 2022. The complete text of this document, including attachments and any related documents, is available on the Commission’s website at <http://www.fcc.gov/auction/112> or by using the search function for on the Commission’s Electronic Comment Filing System (ECFS) web page at [www.fcc.gov/ecfs](http://www.fcc.gov/ecfs). Alternative formats are available to persons with disabilities by sending an email to [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

### I. General Information

#### A. Introduction

1. By the *Auction 112 Procedures Public Notice*, the Office of Economics and Analytics (OEA) and the Media Bureau (MB) establish the procedures and minimum opening bid amounts to be used for Auction 112, an auction of construction permits for full power television (TV) stations. Bidding in this auction is scheduled to start on June 7, 2022. The *Auction 112 Procedures Public Notice* provides details regarding the procedures, terms, conditions, dates, and deadlines governing participation in Auction 112 bidding, as well as an overview of the post-auction application and payment processes.

#### B. Background and Relevant Authority

2. On November 19, 2021, OEA and MB released a public notice seeking comment on competitive bidding procedures to be used in Auction 112. One party filed comments in response to the *Auction 112 Comment Public Notice*, 86 FR 68203, December 1, 2021, and one party filed a reply. In the *Auction 112 Procedures Public Notice*, OEA and MB resolve all open issues raised in the *Auction 112 Comment Public Notice*. Auction 112 will proceed pursuant to the procedures described in the *Auction 112 Procedures Public Notice*, which have been adopted in accordance with 47 U.S.C. 309(j)(3).

3. Other Commission rules and decisions provide the underlying authority for the procedures OEA and MB adopt for Auction 112. Auction 112 applicants must familiarize themselves thoroughly with the Commission’s general competitive bidding rules, including Commission decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees. Prospective applicants should also familiarize themselves with the Commission’s television broadcast service and

competitive bidding requirements contained in part 73 of the Commission's rules, as well as Commission orders concerning competitive bidding for broadcast construction permits. Applicants must also be thoroughly familiar with the procedures, terms and conditions contained in the *Auction 112 Procedures Public Notice* and any future public notices that may be released in this proceeding.

4. 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 its public notices at any time and will issue public notices to convey any new or supplemental information to applicants. Pursuant to the Commission's rules, OEA and MB also retain the authority to implement

further procedures during the course of this auction. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to Auction 112.

#### *C. Construction Permits To Be Offered in Auction 112*

5. Auction 112 will offer 27 construction permits for TV stations. The construction permits that will be available in Auction 112 are listed in Attachment A to the *Auction 112 Procedures Public Notice*.

6. The construction permits that will be available in Auction 112 are for channel allotments contained in the Table of Television Allotments (TV Table) and assigned at the indicated communities for which there currently is not a licensee. Each construction permit awarded will be for one of the

allotted-but-unlicensed channels currently contained in the TV Table.

#### *D. Auction Specifics*

##### 1. Auction Title and Start Date

7. This auction of construction permits for TV stations will be referred to as "Auction 112." Bidding in Auction 112 is scheduled to begin on Tuesday, June 7, 2022. Pre-auction dates and deadlines are listed below.

8. The initial schedule for bidding rounds will be announced by public notice at least one week before the bidding starts in Auction 112. Unless otherwise announced, bidding on all construction permits will be conducted on each business day until bidding has stopped on all construction permits.

##### 2. Auction Dates and Deadlines

9. The following dates and deadlines apply to Auction 112:

Auction Tutorial Available (via internet) .....	No later than February 25, 2022.
Short-Form Application (FCC Form 175) Filing Window Opens .....	March 17, 2022, 12:00 p.m. ET.
Short-Form Application (FCC Form 175) Filing Window Deadline .....	March 30, 2022, 6:00 p.m. ET.
Upfront Payments (via wire transfer) .....	May 6, 2022, 6:00 p.m. ET.
Mock Auction .....	June 3, 2022.
Bidding Begins in Auction 112 .....	June 7, 2022.

### 3. Requirements for Participation

10. Those wishing to participate in Auction 112 must:

- Submit a short-form application (FCC Form 175) electronically prior to 6:00 p.m. ET on March 30, 2022, following the electronic filing procedures set forth in the FCC Form 175 Instructions.

- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET on May 6, 2022, following the procedures and instructions set forth in Attachment B to the *Auction 112 Procedures Public Notice*.

- Comply with all provisions outlined in the *Auction 112 Procedures Public Notice* and applicable Commission rules.

## II. Applying To Participate in Auction 112

### *A. General Information Regarding Short-Form Applications*

11. A short-form application, or FCC Form 175, provides information that the Commission uses to determine whether the applicant has the legal, technical, and/or financial qualifications to participate in a Commission auction 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, a party seeking to participate in Auction

112 must file a short-form application in which it certifies, under penalty of perjury, that it is qualified to participate. Eligibility to participate in Auction 112 is determined based on an applicant's short-form application and certifications and on the applicant's upfront payment. After bidding closes, in the second phase of the process, each winning bidder in Auction 112 must file a more comprehensive post-auction, long-form application FCC Form 2100, Schedule A, in the Media Bureau's Licensing and Management System (LMS) for the construction permits it wins in the auction.

12. A party seeking to participate in Auction 112 must file an FCC Form 175 electronically via the Auction Application System prior to 6:00 p.m. ET on March 30, 2022, following the procedures prescribed in the FCC Form 175 Instructions. If an applicant claims eligibility for a bidding credit, then the information provided in its FCC Form 175 will be used to determine whether the applicant is eligible for the claimed bidding credit. Below OEA and MB describe more fully the information disclosures and certifications required in the short-form application. Each Auction 112 applicant will be subject to the Commission's rule prohibiting certain communications. An applicant is subject to the prohibition beginning at the deadline for filing short-form

applications—6:00 p.m. ET on March 30, 2022.

13. An Auction 112 applicant bears full responsibility for submitting an accurate, complete, and timely short-form application. Pursuant to the Commission's competitive bidding rules, an applicant must make a series of certifications under penalty of perjury on its FCC Form 175 related to the information provided in its application and its participation in the auction, and an applicant must confirm that it is legally, technically, financially, and otherwise qualified to hold a permit. Additionally, each participant in Auction 112 must certify that it has read the *Auction 112 Procedures Public Notice* and familiarized itself both with the auction procedures and with the requirements for obtaining a construction permit for a television broadcast station. If an Auction 112 applicant fails to make the required certifications in its FCC Form 175 by the filing deadline, then its application will be deemed unacceptable for filing and cannot be corrected after the filing deadline.

14. An applicant should note that submitting an FCC Form 175 (and any amendments thereto) constitutes a representation by the certifying official that he or she is an authorized representative of the applicant with authority to bind 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. Submitting 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.

15. Applicants are cautioned that, because the required information submitted in FCC Form 175 bears on each applicant's qualifications, requests for confidential treatment will not be routinely granted. The Commission generally has held that it may publicly release confidential business information where the party has put that information at issue in a Commission proceeding or where the Commission has identified a compelling public interest in disclosing the information. In this regard, the Commission specifically has held that information submitted in support of receiving bidding credits in auction proceedings should be made available to the public.

16. No individual or entity may file more than one short-form application. If a party submits multiple short-form applications for an auction, then only one application may form the basis for that party to become qualified to bid in that auction.

17. Similarly, and consistent with the Commission's general prohibition on joint bidding agreements, a party generally is permitted to participate in a Commission auction only through a single bidding entity. Accordingly, the filing of applications in Auction 112 by multiple entities controlled by the same individual or set of individuals generally will not be permitted. Consistent with this requirement, a broadcaster interested in bidding on more than one construction permit cannot use two or more subsidiary entities to bid separately on construction permits in separate markets, regardless of whether each subsidiary were to select different construction permits on its short-form application. Likewise, if an entity, individual, or set of individuals hold controlling interests in multiple entities that are interested in participating in Auction 112, regardless of whether those entities have other, non-shared controlling or non-controlling interests, those entities must participate in the auction through a single bidding entity and only that bidding entity may file an auction application. In that regard, the bidding entity must disclose in its short-form application any joint ventures or other agreements or arrangements with any commonly controlled, non-applicant entities related to bidding in

Auction 112. As noted by the Commission in adopting the prohibition on applications by commonly controlled entities, this rule, in conjunction with the prohibition against joint bidding agreements, protects the competitiveness of the Commission's auctions.

18. OEA and MB discuss below additional details regarding certain information required to be submitted in the FCC Form 175. An applicant should consult the Commission's rules to ensure that, in addition to the materials described below, all required information is included in its short-form application. To the extent the information in the *Auction 112 Procedures Public Notice* does not address an applicant's specific operating structure, or if the applicant needs additional information or guidance concerning the described disclosure requirements, the applicant should review the educational materials for Auction 112 (see the Education section of the Auction 112 website at [www.fcc.gov/auction/112](http://www.fcc.gov/auction/112)) and use the contact information provided in the *Auction 112 Procedures Public Notice* to consult with Commission staff to better understand the information that it must submit in its short-form application.

#### *B. Certification That Applicant Has Read the Procedures Public Notice and Familiarized Itself With Requirements*

19. In the *Auction 112 Comment Public Notice*, OEA and MB sought comment on a proposal to require each participant in Auction 112 to certify in its short-form application, under penalty of perjury, that it has read the public notice adopting procedures for the auction and that it has familiarized itself both with the auction procedures and with the requirements for obtaining a construction permit for a TV station. As with other certifications required to be made in an auction application, a failure to make the certification would render the application unacceptable for filing, and the applicant will not be found qualified to bid. OEA and MB proposed this requirement to help ensure that each applicant has reviewed the procedures to become a qualified bidder and participate in the auction process and that it has investigated and assessed technical and business factors that may be relevant to its use of the licenses being offered. OEA and MB expressed the belief that this requirement would promote an applicant's successful participation and minimize its risk of defaulting on its auction obligations. No parties filed comments addressing this proposal, and

OEA and MB adopt it in the *Auction 112 Procedures Public Notice*.

20. This certification is designed to bolster applicants' efforts to educate themselves about the procedures for auction participation and to ensure that, prior to submitting their short-form applications, applicants understand their obligation to stay abreast of relevant, forthcoming information. Familiarity with the Commission's rules and procedures governing Auction 112 may also help bidders avoid the consequences to them associated with defaults, which also cause harm to other applicants and the public by reducing the efficiency of the auction process and reducing the likelihood that the license will be assigned to the bidder that values it the most. This certification, along with the other certifications required pursuant to 47 CFR 1.2105(a), will promote submission of applications that meet the Commission's requirements, thereby leading to a more efficient application process.

21. A substantively similar requirement was recently instituted for Auction 110, a Commission auction of flexible-use licenses in the 3.45–3.55 GHz band. That requirement furthered a long-standing policy under which the Commission expressly places a burden upon each applicant to be thoroughly familiar with the procedures, terms, and conditions contained in the relevant *Procedures Public Notice* and any future public notices that may be released in the auction proceeding. While the certification OEA and MB add refers to information regarding auction procedures and licensing that is available at the time of certification, potential auction applicants are on notice that their educational efforts must continue even after their short-form applications are filed. Commission staff routinely makes available detailed educational materials, such as interactive, online tutorials and technical guides, to enhance interested parties' comprehension of the pre-bidding and bidding processes and to help minimize the need for applicants to engage outside engineers, legal counsel, or other auction experts.

22. For these reasons, OEA and MB will require each Auction 112 applicant to certify as follows in its short-form application: That the applicant has read the public notice adopting procedures for the auction and that it has familiarized itself both with the auction procedures and with the requirements for obtaining a construction permit for a television broadcast station.

23. An applicant must provide this certification under penalty of perjury, consistent with 47 CFR 1.2105(a).

### C. Authorized Bidders

24. An applicant must designate at least one authorized bidder, and no more than three, in its FCC Form 175. The Commission's rules prohibit an individual from serving as an authorized bidder for more than one auction applicant or being listed as an authorized bidder in more than one FCC Form 175 application.

### D. Permit Selection

25. An applicant must select on its FCC Form 175 all of the construction permits on which it may want to bid. An applicant must carefully review and verify its construction permit selections before the FCC Form 175 filing deadline because permit selections cannot be changed after the initial auction application filing deadline. The FCC Auction Bidding System (bidding system) will not accept bids on construction permits that were not selected on the bidder's FCC Form 175.

### E. Disclosure of Agreements and Bidding Arrangements

26. An applicant must provide in its FCC Form 175 a brief description of, and identify each party to, any partnerships, joint ventures, consortia or agreements, arrangements, or understandings of any kind relating to the TV construction permits being auctioned, including any agreements that address or communicate directly or indirectly bids (including specific prices), bidding strategies (including the specific licenses on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls or is controlled by the applicant, is a party. In connection with the agreement disclosure requirement, the applicant must certify under penalty of perjury in its FCC Form 175 that it has described, and identified each party to, any such agreements, arrangements, or understandings to which it (or any party that controls it or that it controls) is a party. If, after the FCC Form 175 filing deadline, an auction applicant enters into any agreement relating to the licenses being auctioned, then it is subject to these same disclosure obligations. Each applicant must maintain the accuracy and completeness of the information in its pending auction application.

27. For purposes of making the required agreement disclosures on the FCC Form 175, if parties agree in principle on all material terms prior to the application filing deadline, then each party to the agreement that is submitting an auction application must

provide a brief description of, and identify the other party or parties to, the agreement on its respective FCC Form 175, even if the agreement has not been reduced to writing. Parties that have not agreed in principle by the FCC Form 175 filing deadline should not describe, or include the names of parties to, the discussions on their applications.

28. The Commission's rules generally prohibit joint bidding and other arrangements involving auction applicants (including any party that controls or is controlled by such applicants). For purposes of the prohibition, a joint bidding arrangement includes any arrangement relating to the construction permits being auctioned that addresses or communicates, directly or indirectly, bidding at the auction, bidding strategies, including arrangements regarding price or the specific construction permits on which to bid, and any such arrangement relating to the post-auction market structure.

29. To implement the prohibition on joint bidding arrangements, the Commission's rules require each applicant to certify in its short-form application that it has disclosed any arrangements or understandings of any kind relating to the permits or licenses being auctioned to which it (or any party that controls or is controlled by it) is a party. The applicant must also certify that it (or any party that controls or is controlled by it) has not entered and will not enter into any arrangement or understanding of any kind relating directly or indirectly to bidding at auction with, among others, any other applicant.

30. Although the Commission's rules do not prohibit auction applicants from communicating about matters that are within the scope of an excepted agreement that has been disclosed in an FCC Form 175, the Commission reminds applicants that certain discussions or exchanges could nonetheless touch upon impermissible subject matters, and that compliance with the Commission's rules will not insulate a party from enforcement of the antitrust laws.

31. Applicants should bear in mind that a winning bidder will be required to disclose in its FCC Form 2100 post-auction application the specific terms, conditions, and parties involved in any agreement relating to the construction permits being auctioned into which it had entered prior to the time bidding was completed. This applies to any settlement agreement, joint venture, partnership, or other agreement, arrangement, or understanding of any kind entered into relating to the competitive bidding process, including

any agreements relating to the construction permits being auctioned that address or communicate directly or indirectly bids (including specific prices), bidding strategies (including the specific construction permits on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls or is controlled by the applicant, is a party.

### F. Ownership Disclosure Requirements

32. Each applicant must comply with the ownership disclosure requirements and provide information required by 47 CFR 1.2105 and 1.2112. Specifically, in completing FCC Form 175, an applicant must fully disclose information regarding the real party or parties-in-interest in the applicant or application and the ownership structure of the applicant, including both direct and indirect ownership interests of 10% or more, as prescribed in 47 CFR 1.2105 and 1.2112. These interest holders may differ from the types of attributable interest holders that are required to be reported by broadcast applicants under part 73 of the rules in conjunction with licensing and assignment and transfer of facilities or reporting of ownership information, such as insulated interest holders and holders of non-voting stock/equity in the applicant. Each applicant is responsible for ensuring that information submitted in its short-form application is complete and accurate.

33. In certain circumstances, an applicant may have previously filed an FCC Form 602 ownership disclosure information report or filed an auction application for a previous auction in which ownership information was disclosed. The most current ownership information contained in any FCC Form 602 or previous auction application on file with the Commission that used the same FCC Registration Number (FRN) the applicant is using to submit its FCC Form 175 will automatically be pre-filled into certain ownership sections on the applicant's FCC Form 175, if such information is in an electronic format compatible with FCC Form 175. Each applicant must carefully review any ownership information automatically entered into its FCC Form 175, including any ownership attachments, to confirm that all information supplied on FCC Form 175 is complete and accurate as of the application filing deadline. Any information that needs to be corrected or updated must be changed directly in FCC Form 175.

### G. Foreign Ownership Disclosure Requirements

34. The provisions in 47 U.S.C. 310 require the Commission to review

foreign investment in radio station licenses and imposes specific restrictions on who may hold certain types of radio licenses. In completing FCC Form 175, an applicant is required to disclose information concerning foreign ownership of the applicant. If an applicant has foreign ownership interests in excess of the applicable limit or benchmark set forth in 47 U.S.C. 310(b), then it may seek to participate in Auction 112 only if it has filed a petition for declaratory ruling with the Media Bureau prior to the FCC Form 175 filing deadline. An applicant must certify in its FCC Form 175 that, as of the deadline for filing its application to participate in the auction, the applicant either is in compliance with the foreign ownership provisions of 47 U.S.C. 310 or has filed a petition for declaratory ruling requesting Commission approval to exceed the applicable foreign ownership limit or benchmark in 47 U.S.C. 310(b) that is pending before, or has been granted by, the Commission.

#### *H. Information Procedures During the Auction Process*

35. Consistent with past practice in most recent Commission spectrum auctions, OEA and MB adopt the proposal to limit information available in Auction 112 in order to discourage unproductive and anticompetitive strategic behavior. Accordingly, OEA and MB will not identify bidders placing particular bids until after the bidding has closed. While OEA and MB generally make available to the public information provided in each applicant's FCC Form 175 following an initial review by Commission staff, they will not make public until after bidding has closed: (1) The construction permits that an applicant selects for bidding in its short-form application, (2) the amount of any upfront payment made by or on behalf of an applicant, (3) any applicant's bidding eligibility, and (4) any other bidding-related information that might reveal the identity of the bidder placing a bid.

36. The limited information procedures used in past auctions have helped safeguard against potential anticompetitive behavior such as retaliatory bidding and collusion. No commenters objected to this proposal, and OEA and MB find nothing in the record to suggest that they should not use those procedures for Auction 112. The competitive benefits associated with limiting information disclosure support adoption of such procedures and outweigh the potential benefits of full disclosure.

37. After the close of each round of bidding in Auction 112, under the

limited information procedures (sometimes also referred to as anonymous bidding), for each permit OEA and MB will make public its current provisionally winning bid amount, the minimum acceptable bid amount for the following round, and the amounts of all bids placed on the permit during the round. These reports will be publicly accessible.

38. Throughout the auction, OEA and MB will provide bidders with secure access to certain non-public bidding information while bidding is ongoing. For example, bidders will be able to view their own level of eligibility, both before and during the auction.

39. After the close of bidding, bidders' permit selections, upfront payment amounts, bidding eligibility, bids, and other bidding-related information will be made publicly available.

40. OEA and MB warn applicants that direct or indirect communication to other applicants or the public disclosure of non-public information (e.g., reductions in eligibility, identities of bidders) could violate the Commission's rule prohibiting certain communications. Therefore, to the extent an applicant believes that such a disclosure is required by law or regulation, including regulations issued by the U.S. Securities and Exchange Commission (SEC), OEA and MB strongly urge that the applicant consult with Commission staff in the Auctions Division before making such disclosure.

#### *I. Prohibited Communications and Compliance With Antitrust Laws*

41. The rules prohibiting certain communications set forth in 47 CFR 1.2105(c) and 73.5002(d) and (e) apply to each "applicant" in Auction 112. The provisions in 47 CFR 1.2105(c)(1) provide that, subject to specified exceptions, after the deadline for filing a short-form application, all applicants are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other in any manner the substance of their own, or each other's, or any other applicant's bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after the down payment deadline.

##### **1. Entities Subject to Section 1.2105(c)**

42. An "applicant" for purposes of this rule includes the officers and directors of the applicant, all "controlling interests" in the entity submitting the FCC Form 175, as well as all holders of interests amounting to 10% or more of that entity. A party that submits an application becomes an

"applicant" under the rule at the short-form application filing deadline, and that status does not change based on later developments, including failure to become a qualified bidder. Thus, an auction applicant that does not correct deficiencies in its application, fails to submit a timely and sufficient upfront payment, or does not otherwise become qualified, remains an "applicant" for purposes of the rule and remains subject to the prohibition on certain communications until the applicable down payment deadline.

##### **2. Prohibition Applies Until Down Payment Deadline**

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

##### **3. Scope of Prohibition on Certain Communications; Prohibition on Joint Bidding Agreements**

44. The provisions in 47 CFR 1.2105(c) prohibit certain communications between auction applicants, regardless of whether the applicants seek permits in the same geographic area or market. The rule also prohibits any "joint bidding arrangement," including arrangements relating to the permits being auctioned that address or communicate, directly or indirectly, bidding at the auction, bidding strategies, including arrangements regarding price or the specific permits on which to bid, and any such arrangements relating to the post-auction market structure. The rule allows for limited exceptions for communications within the scope of any arrangement consistent with the exclusion from the Commission's rule prohibiting joint bidding, provided such arrangement is disclosed on the applicant's short-form application. An applicant may communicate pursuant to any pre-existing agreements, arrangements, or understandings relating to the licenses being auctioned that are solely operational or that provide for the transfer or assignment of licenses, provided that such agreements, arrangements, or understandings are disclosed on its application and do not both relate to the permits at auction and address or communicate bids (including amounts), bidding strategies, or the particular permits or licenses on which to bid or the post-auction market structure.

45. In addition to express statements of bids and bidding strategies, the prohibition against communicating "in

any manner” includes public disclosures as well as private communications and indirect or implicit communications. Consequently, an applicant must take care to determine whether its auction-related communications may reach another applicant. Applicants are reminded that the prohibition on communications between applicants begins at the deadline for submitting short-form applications and before the public notice identifying applicants is released. Special care should be taken with regard to any public disclosures or private communications regarding bids or bidding strategies during the period following the short-form application deadline when the identity of other applicants is not known.

46. Parties subject to 47 CFR 1.2105(c) should take special care in circumstances where their officers, directors, and employees may receive information directly or indirectly relating to any applicant’s bids or bidding strategies. Such information may be deemed to have been received by the applicant under certain circumstances. For example, Commission staff have determined that, where an individual serves as an officer or director for two or more applicants, the bids and bidding strategies of one applicant are presumed to be conveyed to the other applicant through the shared officer or director, which creates an apparent violation of the rule.

47. Subject to the limited exceptions for communications within the scope of any arrangement consistent with the exclusion from the Commission’s rule prohibiting joint bidding, 47 CFR 1.2105(c)(1) prohibits applicants from communicating with specified other parties only with respect to “their own, or each other’s, or any other applicant’s bids or bidding strategies . . . .” The *Prohibited Communications Guidance Public Notice*, 80 FR 63215, October 19, 2015, released in advance of the broadcast incentive auction (Auction 1000) reviewed the scope of the prohibition generally, as well as specific variations on the prohibition that were unique to Auction 1000. As the Commission explained therein, a communication conveying “bids or bidding strategies (including post-auction market structure)” must also relate to the “licenses being auctioned” in order to be covered by the prohibition. Thus, the prohibition is limited in scope and does not apply to all communications between or among the specified parties. The Commission consistently has made clear that application of the rule prohibiting communications has never required

total suspension of essential ongoing business. Entities subject to the prohibition may negotiate agreements during the prohibition period, provided that the communications involved do not relate to both: (1) The licenses or permits being auctioned and (2) bids or bidding strategies or post-auction market structure.

48. Accordingly, business discussions and negotiations that are unrelated to bidding in Auction 112 and that do not convey information about the bids or bidding strategies of an applicant, including the post-auction market structure, are not prohibited by the rule. Moreover, not all auction-related information is covered by the prohibition. For example, communicating merely whether a party has or has not applied to participate in Auction 112 will not violate the rule. In contrast, communicating, among other things, how a party will participate, including whether or not a party plans to submit an upfront payment and the upfront payment amount, specific bid amounts, and/or whether or not the party is placing or intends to place bids, would convey bids or bidding strategies and would be prohibited.

49. While 47 CFR 1.2105(c) does not prohibit business discussions and negotiations among auction applicants that are unrelated to the auction, each applicant must remain vigilant not to communicate, directly or indirectly, information that affects, or could affect, bids or bidding strategies. Certain discussions might touch upon subject matters that could convey price or geographic information related to bidding strategies. Such subject areas include, but are not limited to, management, sales, local marketing agreements, and other transactional agreements.

50. OEA and MB caution applicants that bids or bidding strategies may be communicated outside of situations that involve one party subject to the prohibition communicating privately and directly with another such party. 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. Moreover, the Commission found a violation of the rule against prohibited communications when an applicant used the Commission’s bidding system to disclose its bidding strategy in a manner that explicitly invited other

auction participants to cooperate and collaborate . . . in specific markets, and it has placed auction participants on notice that the use of its bidding system to disclose market information to competitors will not be tolerated and will subject bidders to sanctions.

51. Likewise, when completing a short-form application, each applicant should avoid any statements or disclosures that may violate 47 CFR 1.2105(c), particularly in light of the limited information procedures in effect for Auction 112. Specifically, an applicant should avoid including any information in its short-form application that might convey information regarding its permit selections, such as referring to certain markets in describing agreements, including any information in application attachments that will be publicly available that may otherwise disclose the applicant’s permit selections, or using applicant names that refer to permits being offered.

52. Applicants also should be mindful that communicating non-public application or bidding information publicly or privately to another applicant may violate 47 CFR 1.2105(c) even though that information subsequently may be made public during later periods of the application or bidding processes.

#### 4. Communicating With Third Parties

53. The provisions in 47 CFR 1.2105(c) do not prohibit an applicant from communicating bids or bidding strategies to a third party, such as a consultant or consulting firm, counsel, or lender. The applicant should take appropriate steps, however, to ensure that any third party it employs for advice pertaining to its bids or bidding strategies does not become a conduit for prohibited communications to other specified parties, as that would violate the rule. For example, an applicant might require a third party, such as a lender, to sign a non-disclosure agreement before the applicant communicates any information regarding bids or bidding strategy to the third party. Within third-party firms, separate individual employees, such as attorneys or auction consultants, may advise individual applicants on bids or bidding strategies, as long as such firms implement firewalls and other compliance procedures that prevent such individuals from communicating the bids or bidding strategies of one applicant to other individuals representing separate applicants. Although firewalls and/or other procedures should be used, their existence is not an absolute defense to

liability if a violation of the rule has occurred.

54. As the Commission has noted in other broadcast auctions, in the case of an individual, the objective precautionary measure of a firewall is not available. As a result, an individual that is privy to bids or bidding information of more than one applicant presents a greater risk of becoming a conduit for a prohibited communication. OEA and MB emphasize that whether a prohibited communication has taken place in a given case will depend on all the facts pertaining to the case, including who possessed what information, what information was conveyed to whom, and the course of bidding in the auction.

55. OEA and MB remind potential applicants that they may discuss the short-form application or bids for specific permits with the counsel, consultant, or expert of their choice *before* the short-form application deadline. Furthermore, the same third-party individual could continue to give advice to multiple applicants regarding their applications after the short-form application deadline, provided that no information pertaining to bids or bidding strategies is conveyed to that individual from any of the applicants the individual advises. OEA and MB remind potential applicants, however, that no person may serve as an authorized bidder for more than one applicant in Auction 112.

56. Applicants also should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become conduits for the communication of prohibited bidding information. For example, even though communicating that it has applied to participate in this auction will not violate the rule, an applicant's statement to the press or a statement on social media that it intends to stop bidding or does not intend to bid at all in an auction could give rise to a finding of a 47 CFR 1.2105 violation. Similarly, an FCC Form 175 applicant's public statement of intent not to place bids during bidding in Auction 112 could also violate the rule.

#### 5. Section 1.2105(c) Certifications

57. By electronically submitting its FCC Form 175, each applicant in Auction 112 certifies its compliance with 47 CFR 1.2105(c) and 73.5002(d) of the rules. If an applicant has a non-controlling interest with respect to more than one application, then the applicant must certify that it has established internal control procedures to preclude any person acting on behalf of the applicant from possessing information

about the bids or bidding strategies of more than one applicant or communicating such information with respect to either applicant to another person acting on behalf of and possessing such information regarding another applicant. The mere filing of a certifying statement as part of an application, however, will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted. Any applicant found to have violated these communication prohibitions may be subject to sanctions.

#### 6. Duty To Report Prohibited Communications

58. The provision in 47 CFR 1.2105(c)(4) requires 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. 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.

#### 7. Procedures for Reporting Prohibited Communications

59. A party reporting any information or communication pursuant to 47 CFR 1.65 or 1.2105(a)(2) or (c)(4) 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, reporting a prohibited communication through ECFS or another Commission filing system that allows public access to filed materials could violate the rule by communicating prohibited information to other parties covered by the rule.

60. An applicant must file only a single report concerning a prohibited communication and must file that report with the 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. Any reports required by 47 CFR 1.2105(c) must be filed consistent with the instructions set forth in the *Auction 112 Procedures Public Notice*. For Auction 112, such reports must be filed with the Chief of the Auctions Division, OEA, by the most expeditious means available. Any such report should be submitted by email to the Auctions Division Chief at the following email address: [auction112@fcc.gov](mailto:auction112@fcc.gov). If you choose instead to submit

a report in hard copy, contact Auctions Division staff at [auction112@fcc.gov](mailto:auction112@fcc.gov) or (202) 418-0660 for guidance prior to making any filing.

61. Given the potential competitive sensitivity of information in such a report, a party seeking to report a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by following the procedures specified in 47 CFR 0.459. OEA and MB encourage such parties to coordinate with the Auctions Division staff about the procedures for submitting reports of prohibited communications.

#### 8. Winning Bidders Must Disclose Terms of Agreements

62. Each applicant that is a winning bidder will be required to provide, as part of its long-form application, any agreement or arrangement relating to the competitive bidding process that it has entered into and a summary of the specific terms, conditions, and parties involved in that agreement. This applies to any settlement agreement, 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. Failure to comply with the Commission's rules can result in enforcement action.

#### 9. Additional Information Concerning Rule Prohibiting Certain Communications in Commission Auctions

63. A summary listing of documents issued by the Commission and OEA addressing the application of 47 CFR 1.2105(c) is available on the Commission's auction web page at [www.fcc.gov/summary-listing-documents-addressing-application-rule-prohibiting-certain-communications](http://www.fcc.gov/summary-listing-documents-addressing-application-rule-prohibiting-certain-communications).

#### 10. Antitrust Laws

64. Regardless of compliance with the Commission's rules, applicants 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)(4) 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 submits a short-form application. The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws: for example, actual or potential competitors



may not agree to divide territories in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another market for the other.

65. To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation. 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, then it may be subject to a forfeiture and may be prohibited from participating further in Auction 112 and in future auctions, among other sanctions.

#### *J. New Entrant Bidding Credit*

66. To promote the objectives of 47 U.S.C. 309(j) and further its long-standing commitment to the diversification of broadcast facility ownership, the Commission provides a tiered new entrant bidding credit for broadcast auction applicants with no, or very few, other media interests.

67. Applicants that qualify for the new entrant bidding credit are eligible for a bidding credit in this auction that represents the amount by which a bidder's winning bid is discounted. Eligibility for the new entrant bidding credit must be specified in an applicant's short-form application, which establishes that applicant's maximum bidding credit eligibility for Auction 112. 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% 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% 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.

68. Bidding credits are not cumulative; qualifying applicants receive either the 25% or the 35% bidding credit, but not both.

69. 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. Attributable interests are defined in 47 CFR 73.3555 and note 2 of that section. In Auction 112, the bidder's attributable interests, and thus, its maximum new entrant bidding credit eligibility, are determined as of the short-form application filing deadline. An applicant intending to divest a media interest or make any other ownership change, such as resignation of positional interests (officer or director) 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 FCC Form 175 filing deadline. Each prospective bidder is reminded, however, that events occurring after the short-form application 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. OEA and MB remind each applicant of its duty to continuously maintain the accuracy of information submitted in its auction application.

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

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

71. 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.

72. In the *New Entrant Bidding Credit Reconsideration Order*, 64 FR 44856, August 18, 1999, the Commission further refined the eligibility standards for the new entrant bidding credit, judging it appropriate to attribute the

media interests held by very substantial investors in, or creditors of, 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% of the total asset value of the applicant, even if such an interest is non-voting.

73. In the *Diversity Order*, 76 FR 7719, February 11, 2011, the Commission relaxed the equity/debt plus 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. Pursuant to the *Diversity Order*, the Commission will allow the holder of an equity or debt interest in the applicant to exceed the above-noted 33% threshold without triggering attribution provided (1) the combined equity and debt in the "eligible entity" is less than 50%; or (2) the total debt in the "eligible entity" does not exceed 80% 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.

74. 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. Attributable interests held by a winning bidder in existing low power television, television translator, or FM translator facilities, however, will not be counted among the applicant's other mass media interests in determining its eligibility for a new entrant bidding credit. A medium of mass communications is defined in 47 CFR 73.5008(b). Full service noncommercial educational stations, on both reserved and non-reserved channels, are included among "media of mass communications" as defined in 47 CFR 73.5008(b).

#### 1. Application Requirements

75. In addition to the ownership information required pursuant to 47 CFR 1.2105 and 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 short-form application. An applicant claiming that it qualifies for a 35% new entrant bidding credit must certify that



neither it nor any of its attributable interest holders has any attributable interests in any other media of mass communications. An applicant claiming that it qualifies for a 25% 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.

## 2. Unjust Enrichment

76. 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.

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

77. Pursuant to the rules governing competitive bidding, each applicant must make certifications regarding whether it is a current or former defaulter or delinquent. A current defaulter or delinquent is not eligible to participate in Auction 112, but a former defaulter or delinquent may participate so long as it is otherwise qualified and makes an upfront payment that is 50% more than would otherwise be necessary. Accordingly, each applicant must certify under penalty of perjury on its FCC Form 175 that it, its affiliates, its controlling interests, and the affiliates of its controlling interests 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. Additionally, an applicant must certify under penalty of perjury whether it (along with its controlling interests) has ever been in default on any payment for a Commission construction permit or license (including down payments) or has ever been delinquent on any non-tax debt owed to any Federal agency, subject to the exclusions described below. For purposes of making these certifications, the term “controlling interest” is defined in 47 CFR 1.2105(a)(4)(i).

78. Under the Commission’s rule regarding applications by former defaulters, an applicant is considered a “former defaulter” or a “former delinquent” when, as of the FCC Form 175 deadline, the applicant or any of its controlling interests has defaulted on any Commission construction permit or license or has been delinquent on any non-tax debt owed to any Federal

agency, but has since remedied all such defaults and cured all of the outstanding non-tax delinquencies. For purposes of the certification under 47 CFR 1.2105(a)(2)(xii), the applicant may exclude from consideration any cured default on a Commission construction permit or license or cured delinquency on a non-tax debt owed to a Federal agency for which any of the following criteria are met: (1) The notice of the final payment deadline or delinquency was received more than seven years before the FCC Form 175 filing deadline, (2) the default or delinquency amounted to less than \$100,000, (3) the default or delinquency was paid within two quarters (*i.e.*, six months) after receiving the notice of the final payment deadline or delinquency, or (4) the default or delinquency was the subject of a legal or arbitration proceeding and was cured upon resolution of the proceeding. With respect to the first exclusion, notice to a debtor may include notice of a final payment deadline or notice of delinquency and may be express or implied depending on the origin of any Federal non-tax debt giving rise to a default or delinquency. Additionally, for the third exclusion, the date of receipt of the notice of a final default deadline or delinquency by the intended party or debtor will be used for purposes of verifying receipt of notice.

79. In addition to the *Auction 112 Procedures Public Notice*, OEA and MB encourage applicants to review previous guidance on default and delinquency disclosure requirements in the context of the auction short-form application process. Parties are also encouraged to consult with Auctions Division staff if they have any questions about default and delinquency disclosure requirements.

80. 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 its obligations under the Debt Collection Improvement Act of 1996, which governs the collection of debts owed to the United States. Under the red-light rule, applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission will not be processed. When adopting that rule, the Commission explicitly declared, however, that its 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 its 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.

81. OEA and MB remind each applicant, 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 whether it may be subject to an increased upfront payment obligation). Moreover, a prospective applicant in Auction 112 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. OEA and MB encourage each applicant to carefully review all records and other available Federal agency databases and information sources to determine whether the applicant, or any of its affiliates, or any of its controlling interests, or any of the affiliates of its controlling interests, currently owes or was ever delinquent in the payment of non-tax debt owed to any Federal agency.

### *L. Optional Applicant Status Identification*

82. An applicant owned by members of minority groups and/or women, as defined in 47 CFR 1.2110(c)(3), or that is a rural telephone company, as defined in 47 CFR 1.2110(c)(4), may identify itself as such in filling out its FCC Form 175. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of various groups in its auctions.

### *M. Noncommercial Educational Status Election*

83. In the *NCE Second Report and Order*, 68 FR 26220, May 15, 2003, the Commission held that applications for noncommercial educational (NCE) broadcast stations on non-reserved spectrum, filed during an auction filing window, will be returned as unacceptable for filing if mutually exclusive with any application for a commercial station. Accordingly, if an FCC Form 175 filed during the Auction

112 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 NCE application will be returned as unacceptable for filing and the applicant will not be provided with any further opportunity to become eligible to bid in this auction. For this reason, each prospective applicant in this auction should consider carefully whether it wishes to propose NCE operation for any television broadcast station acquired in this auction. This NCE election cannot be reversed after the initial application filing deadline.

#### *N. Modifications to FCC Form 175*

##### **1. Only Minor Modifications Allowed**

84. After the initial short-form application filing deadline, an Auction 112 applicant will be permitted to make only minor changes to its FCC Form 175. Examples of minor changes include the deletion or addition of authorized bidders (to a maximum of three) and the revision of addresses and telephone numbers of the applicant, its responsible party, and its contact person. Major modifications to an FCC Form 175 (*e.g.*, change of construction permit selection, certain changes in ownership that would constitute an assignment or transfer of control of the applicant, change in the required certifications, change in applicant's legal classification that results in a change in control, or change in claimed eligibility for a higher percentage of bidding credit) will not be permitted after the FCC Form 175 filing deadline. If an amendment reporting changes is a "major amendment," as described in 47 CFR 1.2105(b)(2), the major amendment will not be accepted and may result in the dismissal of the application. Questions about FCC Form 175 amendments should be directed to the Auctions Division at (202) 418-0660.

##### **2. Duty to Maintain Accuracy and Completeness of FCC Form 175**

85. Pursuant to 47 CFR 1.65, each applicant has a continuing obligation to maintain the accuracy and completeness of information furnished in a pending application, including a pending application to participate in Auction 112. Consistent with the requirements for spectrum auctions, an applicant for Auction 112 must furnish additional or corrected information to the Commission within five business days after a significant occurrence, or amend its FCC Form 175 no more than five business days after the applicant becomes aware of the need for the

amendment. In accordance with the Commission's rules, an applicant's obligation to make modifications to a pending auction application in order to provide additional or corrected information continues beyond the five-day period, even if the report is not made within the five-day period. An applicant is obligated to amend its pending application even if a reported change may result in the dismissal of the application because it is subsequently determined to be a major modification.

##### **3. Modifying an FCC Form 175**

86. As noted above, a party seeking to participate in Auction 112 must file an FCC Form 175 electronically via the FCC's Auction Application System. During the short-form application filing window, an applicant will be able to make any necessary modifications to its FCC Form 175 in the Auction Application System. An applicant that has certified and submitted its FCC Form 175 before the short-form application filing deadline may continue to make modifications as often as necessary until the filing deadline; however, the applicant must re-certify and re-submit its FCC Form 175 before the filing deadline in order to confirm and effect any application changes. After each submission, a confirmation page will be displayed stating the submission time and submission date.

87. An applicant will also be allowed to modify its FCC Form 175 in the Auction Application System, except for certain fields, during the resubmission filing window and after the release of the public notice announcing the qualified bidders for an auction. During these times, if an applicant needs to make permissible minor changes to its FCC Form 175 or must make changes in order to maintain the accuracy and completeness of its application pursuant to 47 CFR 1.65 and 1.2105(b)(4), then it must make the change(s) in the Auction Application System and re-certify and re-submit its application to confirm and effect the change(s).

88. An applicant's ability to modify its FCC Form 175 in the Auction Application System will be limited between the closing of the initial filing window and the opening of the application resubmission filing window, and between the closing of the resubmission filing window and the release of the public notice announcing the qualified bidders for an auction. During these periods, an applicant will be able to view its submitted application, but will be permitted to modify only the applicant's address, responsible party address, and contact

information (*e.g.*, name, address, telephone number, etc.) in the Auction Application System. An applicant will not be able to modify any other pages of the FCC Form 175 in the Auction Application System during these periods. If, during these periods, an applicant needs to make other permissible minor changes to its FCC Form 175, or changes to maintain the accuracy and completeness of its application pursuant to 47 CFR 1.65 and 1.2105(b)(4), then the applicant must submit a letter briefly summarizing the changes to its FCC Form 175 via email to [auction112@fcc.gov](mailto:auction112@fcc.gov). The email summarizing the changes must include a subject line referring to Auction 112 and the name of the applicant, for example, "Re: Changes to Auction 112 Auction Application of XYZ Corp." Any attachments to the email must be formatted as Adobe® Acrobat® (PDF) or Microsoft® Word documents. An applicant that submits its changes in this manner must subsequently modify, certify, and submit its FCC Form 175 application(s) electronically in the Auction Application System once it is again open and available to applicants.

89. Applicants should also note that even at times when the Auction Application System is open and available to applicants, the system will not allow an applicant to make certain other permissible changes itself (*e.g.*, correcting a misstatement of the applicant's legal classification, name, or certifying official). If an applicant needs to make a permissible minor change of this nature, then it must submit a written request by email to the Auctions Division Chief, via [auction112@fcc.gov](mailto:auction112@fcc.gov) requesting that the Commission manually make the change on the applicant's behalf. Once Commission staff has informed the applicant that the change has been made in the Auction Application System, the applicant must then re-certify and re-submit its FCC Form 175 in the Auction Application System to confirm and effect the change(s).

90. As with filing the FCC Form 175, any amendment(s) to the application and related statements of fact must be certified by an authorized representative of the applicant with authority to bind the applicant. Applicants should note that submission of any such amendment or related statement of fact constitutes a representation by the person certifying that he or she is an authorized representative with such authority and that the contents of the amendment or statement of fact are true and correct.

91. Applicants must not submit application-specific material through the Commission's Electronic Comment

Filing System. Further, as discussed above, parties submitting information related to their applications should use caution to ensure that their submissions do not contain confidential information or communicate information that would violate 47 CFR 1.2105(c) or the limited information procedures adopted for Auction 112. An applicant seeking to submit, outside of the Auction Application System, information that might reflect non-public information, such as an applicant's upfront payment amount, or bidding eligibility, should consider including in its email a request that the filing or portions of the filing be withheld from public inspection until the end of the prohibition on certain communications pursuant to 47 CFR 1.2105(c).

92. Questions about FCC Form 175 amendments should be directed to the Auctions Division at (202) 418-0660.

### III. Preparing for Bidding in Auction 112

#### A. Due Diligence

93. OEA and MB remind each potential bidder that it is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the construction permit(s) it is seeking in Auction 112 and that it is required to certify, under penalty of perjury, that it has read the *Auction 112 Procedures Public Notice* and has familiarized itself both with the auction procedures and with the requirements for obtaining a construction permit for a TV station. The Commission makes no representations or warranties about the use of this spectrum or these construction permits for particular services. Each applicant should be aware that a Commission auction represents an opportunity to become an FCC permittee in a broadcast service, subject to certain conditions and regulations. This includes the established authority of the Commission to alter the terms of existing licenses by rulemaking, which is equally applicable to permits or licenses awarded by auction. A Commission auction does not constitute an endorsement by the Commission of any particular service, technology, or product, nor does a Commission construction permit or license constitute a guarantee of business success.

94. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. In particular, OEA and MB encourage each potential bidder to perform technical analyses and/or refresh its previous analyses to

assure itself that, should it become a winning bidder for any Auction 112 construction permit, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements. OEA and MB also urge each applicant to inspect any prospective transmitter sites located in, or near, the service area for which it plans to bid, to confirm the availability of such sites, and to familiarize itself with the Commission's rules regarding any applicable federal, state, and local requirements, including the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), and other environmental statutes.

95. OEA and MB also encourage each applicant in Auction 112 to continue to conduct its own research throughout the auction in order to determine the existence of pending or future administrative or judicial proceedings that might affect its decision to continue participating in the auction. Each applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on construction permits available in this auction. The due diligence considerations mentioned in the *Auction 112 Procedures Public Notice* do not comprise an exhaustive list of steps that should be undertaken prior to participating in Auction 112. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon specific facts and circumstances related to its interests.

96. 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 112. Each potential bidder is responsible for undertaking 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.

97. 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, it must 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.

#### B. Bidder Education

98. Before the opening of the short-form application filing window for Auction 112, detailed educational information will be provided in various formats to would-be participants on the Auction 112 web page. Specifically, OEA will provide various materials on the pre-bidding processes in advance of the opening of the short-form application window, beginning with the release of step-by-step instructions for completing the FCC Form 175, which OEA will make available in the Education section of the Auction 112 website at [www.fcc.gov/auction/112](http://www.fcc.gov/auction/112). In addition, OEA will provide an online tutorial for the auction, covering pre-auction procedures including completing a short-form application in the FCC Auction Application System, and bidding procedures including how to use the FCC auction bidding system. In advance of the start of the mock auction, OEA will release a user guide for the bidding system.

99. OEA and MB believe that parties interested in participating in Auction 112 will find the interactive, online tutorial an efficient and effective way to further their understanding of the application and bidding processes. The online tutorial will allow viewers to navigate the presentation outline, review written notes, and listen to audio of the notes. Additional features of this web-based tool include links to auction-specific Commission releases, email links for contacting Commission staff, and screen shots of the online application and bidding systems. The online tutorial will be accessible in the Education section of the Auction 112 website at [www.fcc.gov/auction/112](http://www.fcc.gov/auction/112). Once posted, the tutorial will remain continuously accessible.

#### C. Short-Form Applications: Due Before 6:00 p.m. ET on March 30, 2022

100. In order to be eligible to bid in Auction 112, an applicant must first submit a short-form application (FCC Form 175) electronically via the Auction Application System following the instructions set forth in the FCC Form 175 Instructions. The short-form application will become available with the opening of the initial filing window and must be submitted prior to 6:00 p.m. ET on March 30, 2022. Late applications will not be accepted. No

filing fee is required to be paid at the time of filing a short-form application.

101. Applications may be filed at any time beginning at noon ET on March 17, 2022, until the filing window closes at 6:00 p.m. ET on March 30, 2022. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. There are no limits or restrictions on the number of times an application can be updated or amended until the initial filing deadline on March 30, 2022]

102. An applicant must always click on the CERTIFY & SUBMIT button on the “Certify & 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 by Commission staff. Additional information about accessing, completing, and viewing the FCC Form 175 is provided in the FCC Form 175 Instructions. Applicants requiring technical assistance should contact FCC Auctions Technical Support at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (text telephony (TTY)). Hours of service are Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET. In order to provide better service to the public, all calls to Technical Support are recorded.

#### *D. Application Processing and Minor Modifications*

##### **1. Public Notice of Applicants’ Initial Application Status and Opportunity for Minor Modifications**

103. Commission staff will review all timely submitted applications for Auction 112 to determine whether each applicant has complied with the application requirements and whether it has provided all required information concerning its qualifications for bidding. After this review is completed, OEA and MB will issue a public notice announcing applicants’ initial application status by identifying: (1) Those that are complete; (2) those that are rejected; and (3) those that are incomplete or deficient because of defects that may be corrected. This public notice also will establish an application resubmission filing window, during which an applicant may make permissible minor modifications to its application to address identified deficiencies. The public notice will include the deadline for resubmitting corrected applications and a copy of the public notice will be sent by overnight delivery to the contact address listed in the FCC Form 175 for each applicant. OEA and MB ask each applicant to

make sure that the contact address provided in its short-form application is accurate and is a location capable of accepting packages that require a signature. In addition, each applicant with an incomplete application will be sent information on the nature of the deficiencies in its application, along with the name and contact information of a Commission staff member who can answer questions specific to the application. To become a qualified bidder, an applicant must have a complete application (*i.e.*, have timely corrected any identified deficiencies) and make a timely and sufficient upfront payment. Qualified bidders will be identified by public notice at least 10 days prior to the mock auction.

104. After the initial application filing deadline on March 30, 2022, applicants can make only minor modifications to their applications. Major modifications will not be permitted. After the deadline for resubmitting corrected applications, an applicant will have no further opportunity to cure any deficiencies in its application or provide any additional information that may affect Commission staff’s ultimate determination of whether and to what extent the applicant is qualified to participate in Auction 112.

105. Commission staff will communicate only with an applicant’s contact person or certifying official, as designated on the applicant’s FCC Form 175, unless the applicant’s certifying official or contact person notifies Commission staff in writing that another representative is authorized to speak on the applicant’s behalf. Authorizations may be sent by email to [auction112@fcc.gov](mailto:auction112@fcc.gov).

##### **2. Public Notice of Applicants’ Final Application Status After Upfront Payment Deadline**

106. After Commission staff review resubmitted applications for Auction 112 and evaluate upfront payments, OEA and MB will release a public notice identifying applicants that have become qualified bidders. A *Qualified Bidders Public Notice* will be issued before bidding in the auction begins. Qualified bidders are those applicants with submitted FCC Forms 175 that are deemed timely filed and complete and that have made a sufficient upfront payment.

#### *E. Upfront Payments*

107. In order to be eligible to bid in Auction 112, a sufficient upfront payment and a complete and accurate FCC Remittance Advice Form (FCC Form 159) must be submitted before 6:00 p.m. ET on May 6, 2022. After

completing its short-form application, an applicant will have access to an electronic pre-filled version of the FCC Form 159. An accurate and complete FCC Form 159 (February 2003 edition) must accompany each payment. Proper completion of this form is critical to ensuring correct crediting of upfront payments. Payers using the pre-filled FCC Form 159 are responsible for ensuring that all the information on the form, including payment amounts, is accurate. Instructions for completing FCC Form 159 for Auction 112 are provided in Attachment B to the *Auction 112 Procedures Public Notice*.

##### **1. Making Upfront Payments by Wire Transfer for Auction 112**

108. Upfront payments for Auction 112 must be wired to, and will be deposited in, the U.S. Treasury.

109. Wire transfer payments for Auction 112 must be received before 6:00 p.m. ET on May 6, 2022. No other payment method is acceptable. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules and other specific bank wire transfer requirements, such as an in-person written request before a specified time of day) with their bankers several days before they plan to make the wire transfer, and must allow sufficient time for the transfer to be initiated and completed before the deadline. The following information will be needed:

*ABA Routing Number:* 021030004.

*Receiving Bank:* TREAS NYC, 33 Liberty Street, New York, NY 10045.

*Beneficiary:* FCC, 45 L Street NE, 3rd Floor, Washington, DC 20554.

*Beneficiary Account Number:* 827000001002.

*Originating Bank Information (OBI Field):* (Skip one space between each information item).

“*Auctionpay*”.

*Applicant FCC Registration Number (FRN):* (use the same FRN as used on the applicant’s FCC Form 159, block 21).

*Payment Type Code:* (same as FCC Form 159, block 24A: “U112”).

**Note:** The beneficiary account number (BNF Account Number) is specific to the upfront payments for Auction 112. Do not use a BNF Account Number from a previous auction.

110. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must print and fax a completed FCC Form 159 to the FCC at (202) 418-2843. Alternatively, the completed form can

be scanned and sent as an attachment to an email to [RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov). On the fax cover sheet or in the email subject header, write "Wire Transfer—Auction Payment for Auction 112." To meet the upfront payment deadline, an applicant's payment must be credited to the Commission's account for Auction 112 before the deadline.

111. Each applicant is responsible for ensuring timely submission of its upfront payment and for timely filing of an accurate and complete FCC Form 159. An applicant should coordinate with its financial institution well ahead of the due date regarding its wire transfer 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 the U.S. Treasury was successful and from Commission staff that its upfront payment was timely received and that it was deposited into the proper account. As a regulatory requirement, the U.S. Treasury screens all payments from all financial institutions before deposits are made available to specified accounts. If wires are suspended, the U.S. Treasury may direct questions regarding any transfer to the financial institution initiating the wire. Each applicant must take care to assure that any questions directed to its financial institution(s) are addressed promptly. To receive confirmation from Commission staff, contact Scott Radcliffe of the Office of Managing Director's Revenue & Receivables Operations Group/Auctions at (202) 418-7518 or Theresa Meeks at (202) 418-2945.

112. Please note the following information regarding upfront payments:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction 112 go to an account number different from the accounts used in previous FCC auctions.

113. Failure to deliver a sufficient upfront payment as instructed herein by the upfront payment deadline will result in dismissal of the short-form application and disqualification from participation in the auction.

## 2. Completing and Submitting FCC Form 159

114. An accurate and complete FCC Form 159 must be sent to the FCC to accompany each upfront payment. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must fax a completed Form 159 to the FCC at (202) 418-2843. Alternatively, the completed form can be scanned and sent as an attachment to an email to [RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov). On the fax cover sheet or in the email subject header, write "Wire Transfer—Auction Payment for Auction 112."

## 3. Upfront Payments and Bidding Eligibility

115. The Commission has delegated authority to OEA and MB to determine appropriate upfront payments for each construction permit being auctioned, taking into account such factors as the efficiency of the auction process and the potential value of similar licenses. An upfront payment is a refundable deposit made by each applicant seeking to participate in bidding to establish its eligibility to bid on construction permits. Upfront payments that are related to the specific construction permits being auctioned protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of bidding. In the *Auction 112 Comment Public Notice*, OEA and MB proposed an upfront payment amount for each construction permit and sought comment on the upfront payment amounts. Although OEA and MB received no comments regarding the upfront payment amounts for Auction 112, they adopt upfront payment amounts that are 25% lower than those proposed in Attachment A of the *Auction 112 Comment Public Notice* so as to align the upfront payment amounts with the reduced minimum opening bids that are adopted below.

116. An applicant must make an upfront payment sufficient to obtain bidding eligibility on the construction permits on which it will bid. OEA and MB proposed in the *Auction 112 Comment Public Notice* that the amount of the upfront payment submitted by an applicant will determine its initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids in any single round. Under that proposal, in order to bid on a particular construction permit, a qualified bidder 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 for Auction 112, or else the applicant will not become qualified 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, rather only enough to cover the maximum number of bidding units that are associated with construction permits on which the applicant wishes to place bids and hold provisionally winning bids in any given round. The total upfront payment does not affect the total dollar amount the bidder may bid on any given construction permit.

117. OEA and MB received no comments on the proposals that the upfront payment amount would determine a bidder's initial eligibility and to assign each construction permit a specific number of bidding units, equal to one bidding unit per one thousand dollars of the upfront payment. Therefore, OEA and MB adopt these proposals. Each applicant's upfront payment amount will determine that bidder's initial bidding eligibility.

118. In calculating its upfront payment amount, an applicant must determine the maximum number of bidding units on which it may wish to bid in any single round and submit an upfront payment amount for the auction 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. A qualified bidder's maximum eligibility will not exceed the sum of the bidding units associated with the total number of construction permits selected on its FCC Form 175. In some cases, a qualified bidder's maximum eligibility may be less than the amount of its upfront payment because the qualified bidder has either previously been in default on a Commission construction permit or license or delinquent on non-tax debt owed to a Federal agency, or has submitted an upfront payment that exceeds the total amount of bidding units associated with the construction permits it selected on its FCC Form 175. Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline.

119. An applicant that is a former defaulter, as described above, must pay an upfront payment 50% greater than that required of an applicant that is not a former defaulter. For purposes of this

rule, defaults and delinquencies of the applicant itself and its controlling interests are included. If an applicant is a former defaulter, it must calculate its upfront payment for all of its selected construction permits by multiplying the number of bidding units on which it wishes to be active (bid on or hold provisionally winning bids on) during a given round 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.

#### F. Auction Registration

120. All qualified bidders for Auction 112 are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight delivery. 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 web address and instructions for accessing and logging in to the auction bidding system, FCC assigned username (User ID) for each authorized bidder, and the Auction Bidder Line phone number.

121. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, if this mailing is not received by the contact person for a qualified bidder by noon on May 31, 2022, call the Auctions Hotline at (717) 338–2868. Receipt of this registration mailing is critical to participating in the auction, and each qualified bidder is responsible for ensuring it has received all registration materials.

122. In the event that a SecurID® token is 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 a replacement. To request a replacement, call the Auction Bidder Line at the telephone number provided in the registration materials or the Auction Hotline at (717) 338–2868.

#### G. Remote Electronic Bidding via the FCC Auction Bidding System

123. Bidders will be able to participate in Auction 112 over the internet using the FCC Auction Bidding System (bidding system) or by telephonic bidding. Each applicant should indicate its bidding preference—electronic or telephonic—on its FCC Form 175. Please note that telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore

reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of 10 minutes. The toll-free telephone number for the auction bidder line will be provided to qualified bidders prior to the start of bidding in the auction.

124. Only authorized bidders bidding on behalf of a qualified bidder will be permitted to bid. Each qualified bidder will be issued three SecurID® tokens, which the Commission will provide at no charge. Each authorized bidder for a qualified bidder must have an individually assigned SecurID® token in order to access the bidding system, either by telephone or over the internet. In order to access the bidding function of the bidding 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 *bid summary* for each round after they have completed all of their activity for that round. For security purposes, the SecurID® tokens, bidding system web address, FCC-assigned username, and the telephonic bidding telephone number 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 112. Please note that the SecurID® tokens can be recycled, and the Commission requests that bidders return the tokens to the FCC. Pre-addressed envelopes will be provided to return the tokens once the auction has ended.

125. The Commission makes no warranties whatsoever, and shall not be deemed to have made any warranties, with respect to the FCC Auction Application System and the auction bidding system, including any implied warranties of merchantability or fitness for a particular purpose. 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 use, loss of revenue, loss of business information, or any other direct, indirect, or consequential damages) arising out of or relating to the existence, furnishing, functioning, or use of the FCC Auction Application System or the FCC auction bidding system. 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 systems.

126. To the extent an issue arises with the bidding system itself, the Commission will take all appropriate measures to resolve such issues quickly and equitably. Should an issue arise that is outside the bidding system or attributable to a bidder, including, but not limited to, a bidder's hardware, software, or internet access problem that prevents the bidder from submitting a bid prior to the end of a round, the Commission shall have no obligation to resolve or remedy such an issue on behalf of the bidder. Similarly, if an issue arises due to bidder error using the bidding system, the Commission shall have no obligation to resolve or remedy such an issue on behalf of the bidder. Accordingly, after the close of a bidding round, the results of bid processing will not be altered absent evidence of any failure in the bidding system.

#### H. Mock Auction

127. All qualified bidders will be eligible to participate in a mock auction on June 3, 2022. The mock auction will enable qualified bidders to become familiar with the FCC auction bidding system and to practice submitting bids prior to the auction. OEA and MB recommend that all qualified bidders, including all their authorized bidders, participate to ensure that they can log in to the bidding system and gain experience with the bidding procedures. Participating in the mock auction may reduce the likelihood of a bidder making a mistake during the auction. Details regarding the mock auction will be announced in the *Qualified Bidders Public Notice* for Auction 112.

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

128. In the *Auction 112 Comment Public Notice*, OEA and MB proposed that, at any time before or during the bidding process, OEA, in conjunction with MB, may delay, suspend, or cancel bidding in the auction in the event of natural disaster, technical obstacle, network interruption, 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. OEA and MB received no comments on this proposal.

129. Because this approach has proven effective in resolving exigent circumstances in previous auctions, OEA and MB adopt these proposals regarding auction delay, suspension, or cancellation. By public notice or by announcement through the FCC auction

bidding system, OEA and MB may delay, suspend, or cancel bidding in the auction in the event of natural disaster, technical obstacle, network interruption, 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, OEA, in its sole discretion, may elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. OEA and MB emphasize that they will exercise this authority solely at their discretion, and not as a substitute for situations in which bidders may wish to apply their activity rule waivers.

#### J. Environmental Review Requirements

130. Permittees or licensees must comply with the Commission's rules for environmental review under the National Environmental Policy Act, the National Historic Preservation 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. These environmental rules require, among other things, that the permittee or licensee consult with expert agencies having environmental responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the U.S. Army Corps of Engineers, and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). In assessing the effect of facility construction on historic properties, the permittee or licensee must follow the provisions of the FCC's Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process. The permittee or licensee must prepare environmental assessments for any facility that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species, or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. In addition, the permittee or licensee must prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

#### IV. Bidding

131. The first round of bidding for Auction 112 will begin on June 7, 2022.

The initial bidding schedule will be announced in a public notice listing the qualified bidders, which will be released at least one week before the start of bidding in the auction.

##### A. Auction Structure

###### 1. Simultaneous Multiple Round Auction

132. In the *Auction 112 Comment Public Notice*, OEA and MB proposed to auction all construction permits listed in Attachment A to the *Auction 112 Procedures Public Notice* in a single auction using a 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 qualified bidders may place bids on individual construction permits. OEA and MB received no comments on this proposal, and this proposal is adopted. Unless otherwise announced, bids will be accepted on all construction permits in each round of the auction until bidding stops on every construction permit.

###### 2. Round Structure

133. Limited information about the results of a round will be made public after the conclusion of the round. Specifically, after a round closes, OEA and MB will make available for each construction permit its current provisionally winning bid amount, the minimum acceptable bid amount for the following round, the amounts of all bids placed on the construction permit during the round, and whether the license is FCC-held. The reports will be publicly accessible. Moreover, after Auction 112 closes, OEA and MB will make available complete reports of all bids placed during each round of the auction, including bidder identities.

134. As in past Commission spectrum auctions, bidders will have secure access to certain non-public bidding information while bidding is ongoing. Specifically, after each round ends, and before the next round begins, OEA and MB will make the following information available to individual bidders:

- The bidder's activity, based on all bids in the previous round; and
- Summary statistics of the bidder's bidding/bid-related actions in each round, including the construction permits on which it bid and the price it bid for each of those construction permits, the result of each of its bids, whether it has any provisionally winning bids, and remaining activity rule waivers.

135. Limiting the availability of bidding information during the auction

balances the Commission's interest in providing bidders with sufficient information about the status of their own bids and bidding across all construction permits to allow them to bid confidently and effectively, while restricting the availability of information that may facilitate identification of bidders placing particular bids, which could potentially lead to undesirable strategic bidding.

###### 3. Round Structure

136. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders in the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted each day.

137. In the *Auction 112 Comment Public Notice*, OEA and MB proposed to retain the discretion to adjust 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. OEA and MB received no comments on the proposal, and they adopt it for Auction 112. OEA and MB may change the amount of time for bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors.

###### 4. Eligibility and Activity Rules

138. As discussed above, the amount of the upfront payment submitted by a bidder will determine its initial bidding eligibility in terms of bidding units. A bidder's bidding eligibility is the maximum number of bidding units on which a bidder may be active (bid or hold provisionally winning bids) in a given round. As noted earlier, each construction permit is assigned a specific number of bidding units, as listed in Attachment A to the *Auction 112 Procedures Public Notice*. The bidding unit amounts listed in Attachment A of the *Auction 112 Procedures Public Notice* are 25% lower than the bidding unit amounts proposed in Attachment A of the *Auction 112 Comment Public Notice*. OEA and MB adopt these adjusted bidding unit amounts to correspond with the reduced upfront payments adopted above. Bidding units assigned to each construction permit do not change as prices rise during the auction. Upfront payments are 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 the bidder's current eligibility.

139. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units on which it may wish to bid or hold provisionally winning bids in any single round, and submit an upfront payment amount covering that total number of bidding units. At a minimum, an applicant's upfront payment must cover the bidding units for at least one of the construction permits it selected on its short-form application. The total upfront payment does not affect the total dollar amount a bidder may bid on any given construction permit. OEA and MB received no comments on the bidding eligibility proposals, and these proposals are adopted.

140. 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 (bid or hold provisionally winning bids) on a specific percentage of their current bidding eligibility during each round of the auction. A bidder's activity level in a round is the sum of the bidding units associated with construction permits covered by the bidder's new bids in the current round and provisionally winning bids from the previous round. Bidding units associated with construction permits for which the bidder has removed bids do not count towards current activity. Provisionally winning bids are bids that would become final winning bids if the auction were to close after the given round.

141. OEA and MB received no comments on the eligibility and activity rules proposal. Therefore, in order to ensure that the auction closes within a reasonable period of time, OEA and MB adopt the following activity requirement as proposed: A bidder is required to be active on 100% of its current eligibility during each round of the auction. That is, a bidder must either place a bid or be a provisionally winning bidder during each round of the auction. 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 bids in subsequent rounds of the auction.

#### 5. Activity Rule Waivers

142. In the *Auction 112 Comment Public Notice*, OEA and MB proposed

that each bidder in the auction be provided with three activity rule waivers, which are principally a mechanism for a bidder to avoid the loss of bidding eligibility in the event that exigent circumstances prevent it from bidding in a particular round. OEA and MB received no comments on this issue.

143. Therefore, OEA and MB adopt this proposal to provide bidders with three activity rule waivers. Use of an activity rule waiver preserves the bidder's eligibility despite its 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. A bidder may use an activity rule waiver in any round of the auction as long as the bidder has not used all of its waivers.

144. The FCC auction bidding system will assume that a bidder that does not meet the activity requirement would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required unless (1) the bidder has no activity rule waiver remaining, or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, therefore meeting the activity requirement. If the bidder has no waivers remaining and does not satisfy the required activity level, the bidder's current eligibility will be permanently reduced, possibly curtailing or eliminating the ability to place additional bids in the auction.

145. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the *reduce eligibility* function in the FCC auction bidding system. In this case, the bidder's eligibility will be permanently reduced to bring it into compliance with the activity rule described above. Reducing eligibility is an irreversible action once the round has closed, and a bidder cannot regain its lost bidding eligibility.

146. 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 rule waiver (using the *proactive waiver* function in the FCC auction bidding system) during a bidding round in which no bids are placed, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC auction bidding system in a

round in which there is no new bid or a proactive waiver will not keep the auction open.

#### 6. Stopping Rule

147. For Auction 112, OEA and MB proposed to employ a simultaneous stopping rule approach, which means all construction permits remain available for bidding until bidding stops on every construction permit. Specifically, bidding will close on all construction permits after the first round in which no bidder submits a new bid or applies a proactive activity rule waiver.

148. OEA and MB also sought comment on alternative versions of the simultaneous stopping rule for Auction 112:

*Option 1.* The auction would close for all construction permits after the first round in which no bidder applies a proactive waiver or places a new bid 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.

*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 bid on any construction permit that already has a provisionally winning bid. Thus, absent any other bidding activity, a bidder placing a new bid on an FCC-held construction permit (a construction permit that does not have a provisionally winning bid) would not keep the auction open under this modified stopping rule.

*Option 3.* The auction would close using a modified version of the simultaneous stopping rule that combines Option 1 and Option 2 above.

*Option 4.* The auction would close after a specified number of additional rounds (special stopping rule) to be announced in advance in the FCC auction bidding system. If OEA and MB invoke this special stopping rule, they will accept bids in the specified final round(s), after which the auction will close.

*Option 5.* The auction would remain open even if no bidder places a new bid 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.

149. OEA and MB proposed to exercise these options only in certain circumstances, for example, where the

auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising these options, OEA and MB are likely to attempt to change the pace of the auction. For example, OEA and MB may adjust the pace of bidding by changing the number of bidding rounds per day and/or the minimum acceptable bids. OEA and MB proposed to retain the discretion to exercise any of these options with or without prior announcement during the auction. OEA and MB received no comments on these proposals and adopt them for Auction 112.

### B. Bidding Procedures

#### 1. Minimum Opening Bids and Acceptable Bid Amounts

150. The provision at 47 U.S.C. 309(j) calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when applications for FCC licenses or construction permits are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission directed the Bureaus to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.

151. In the *Auction 112 Comment Public Notice*, OEA and MB proposed not to establish reserve prices for specific construction permits listed in Attachment A that are different from minimum opening bid amounts. This is consistent with previous broadcast spectrum auctions. OEA and MB received no comments on this proposal and adopt it.

152. In the *Auction 112 Comment Public Notice*, OEA and MB sought comment on specifically proposed minimum opening amounts for each construction permit listed in Attachment A to the *Auction 112 Procedures Public Notice*, reasoning that a minimum opening bid, which has been used in other broadcast auctions, is an effective tool for accelerating the competitive bidding process. Specifically, a minimum opening bid was proposed for each construction permit by taking into account various factors relating to the efficiency of the auction and the potential value of the spectrum, including the type of service and class of facility offered, market size, population covered by the proposed

broadcast facility, and recent broadcast transaction data, to the extent such information is available.

153. Two commenters request that OEA and MB reduce or eliminate the minimum opening bids that were proposed in the *Auction 112 Comment Public Notice*, in order to reduce costs for prospective stations in remote areas. Brian Lane recommends that OEA and MB cut all proposed opening bids in half, arguing that there are considerable equipment and engineering costs that could be prohibitive to smaller and diverse bidders. Edge Networks, Inc d/b/a Evoca (Evoca) supports Mr. Lane's proposal but suggests that it may not go far enough in order to bring new, improved, and innovative TV and internet services to small, remote, and rural communities. Evoca claims that the markets involved in Auction 112 are so small that layering on any costs in addition to construction and operation of a TV may all but assure that these communities do not get any new service at all, and therefore suggests that OEA and MB consider eliminating the minimums altogether for at least the smaller communities.

154. OEA and MB are not persuaded by arguments that reducing the minimum opening bids by 50% will significantly affect the viability of prospective stations in remote areas. However, in furtherance of their goals of promoting competition and encouraging greater participation by an array of entities, OEA and MB adopt a more modest reduction in minimum opening bids of 25%, which they believe balances these goals with the goal of conducting the auction in an efficient manner that avoids burdening bidders. Those minimum opening bids are laid out in Attachment A to the *Auction 112 Procedures Public Notice*.

155. In the *Auction 112 Comment Public Notice*, OEA and MB proposed that, in each round, a qualified bidder will be able to place a bid on a given construction permit in any of up to nine different amounts. Under the proposal, the FCC auction bidding system interface will list the nine acceptable bid amounts for each construction permit. OEA and MB received no comments on this proposal, and adopt it as proposed.

156. In the *Auction 112 Comment Public Notice*, to calculate the first of the acceptable bid amounts, OEA and MB proposed to use a *minimum acceptable bid increment percentage* of 10%. This means that the minimum acceptable bid amount for a construction permit will be approximately 10% greater than the provisionally winning bid amount for

the construction permit. To calculate the eight additional acceptable bid amounts, OEA and MB proposed in the *Auction 112 Comment Public Notice* to use an additional bid increment percentage of 5% of the minimum acceptable bid. OEA and MB did not receive any comments on these proposals to use 10% and 5% respectively in our calculation of nine acceptable bid amounts for each construction permit. Experience in previous broadcast auctions suggests that a minimum acceptable bid increment percentage of 10% and an additional bid increment percentage of 5% are sufficient to ensure active bidding. Therefore, OEA and MB will begin the auction with a minimum acceptable bid increment percentage of 10% and an additional bid increment percentage of 5%.

157. In Auction 112, 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 for the construction permit. After there is a provisionally winning bid for a construction permit, the minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount by one plus the minimum acceptable bid percentage—*i.e.*, provisionally winning bid amount \* 1.10, rounded. The result of this calculation is subject to a minimum of \$100. Under the Commission's standard rounding procedure for auctions, results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1000 are rounded to the nearest \$10.

158. The FCC auction bidding system will calculate the eight additional bid amounts by multiplying the minimum acceptable bid amount by the additional bid increment percentage of 5%, and that result (rounded) is the additional increment amount. The first additional acceptable bid amount equals the minimum acceptable bid amount plus the additional increment amount. The second additional acceptable bid amount equals the minimum acceptable bid amount plus two times the additional increment amount; the third additional acceptable bid amount is the minimum acceptable bid amount plus three times the additional increment amount; etc. Because the additional bid increment percentage is 5%, the calculation of the additional increment amount is (minimum acceptable bid amount) \* (0.05), rounded. The first additional acceptable bid amount equals (minimum acceptable bid amount) +

(additional increment amount); the second additional acceptable bid amount equals (minimum acceptable bid amount) + (2\*(additional increment amount)); the third additional acceptable bid amount equals (minimum acceptable bid amount) + (3\*(additional increment amount)); etc.

159. OEA and MB proposed to retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid increment percentage, the additional bid increment percentage, and the number of acceptable bid amounts if they determine that circumstances so dictate, consistent with past practice. OEA and MB also proposed to retain the discretion to do so on a construction permit-by-construction permit basis. OEA and MB also proposed to 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, OEA and MB could set a \$1,000 limit on increases in minimum acceptable bid amounts over provisionally winning bids. Thus, if calculating a minimum acceptable bid using the minimum acceptable bid increment percentage results in a minimum acceptable bid amount that is \$1,200 higher than the provisionally winning bid on a construction permit, the minimum acceptable bid amount would instead be capped at \$1,000 above the provisionally winning bid.

160. OEA and MB received no comments on these proposals concerning changes of bid amounts, and adopt the discretion to utilize them. OEA and MB typically exercise this discretion based on their monitoring of ongoing bidding and reserve such discretion here. If OEA and MB exercise this discretion, they will alert bidders by announcement in the FCC auction bidding system during the auction.

## 2. Provisionally Winning Bids

161. Consistent with practice in past auctions, the FCC auction bidding system at the end of each bidding round will determine a *provisionally winning bid* for each construction permit based on the highest bid amount received for that 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.

162. In the *Auction 112 Comment Public Notice*, OEA and MB proposed to use a pseudo-random number generator to select a single provisionally winning bid if identical high bid amounts are submitted on a construction permit in a given round (*i.e.*, tied bids). No comments were received on this proposal, and OEA and MB adopt it as proposed.

163. Accordingly, the FCC auction bidding system will assign a pseudo-random number to each bid upon submission. The tied bid with the highest pseudo-random number wins the tiebreaker and becomes the provisionally winning bid. The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to close with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid. If the construction permit receives any bids in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the construction permit.

164. As a reminder, provisionally winning bids count toward activity for purposes of the activity rule.

## 3. Bid Removal and Bid Withdrawal

165. In the *Auction 112 Comment Public Notice*, OEA and MB explained that each qualified 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 removing a bid within a round, a bidder effectively “unsubmits” the bid. 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 because a removed bid no longer counts toward bidding activity for the round. Once a round closes, a bidder may no longer remove a bid.

166. In the *Auction 112 Comment Public Notice*, OEA and MB proposed to prohibit bidders from withdrawing any bid after close of the round in which that bid was placed. This proposal was made in recognition of the site-specific nature and wide geographic dispersion of the permits available in this auction, as well as OEA and MB’s experience with past auctions of broadcast construction permits. OEA and MB received no comments on this issue. Accordingly, OEA and MB will prohibit bid withdrawals in Auction 112. Bidders are cautioned to select bid amounts carefully because no bid withdrawals will be allowed, even if a bid was mistakenly or erroneously made.

## 4. Bidding Results

167. After Auction 112 closes, OEA and MB will provide a means for the public to view and download reports of all bids placed during each round of the auction and all bid results, including bidder identities.

## 5. Auction Announcements

168. Commission staff will use auction announcements to report necessary information, such as schedule changes, to bidders. All auction announcements will be available by clicking a link in the FCC auction bidding system.

## V. Post-Auction Procedures

169. The public notice announcing the close of the bidding and auction results will be released shortly after bidding has ended in Auction 112. This public notice will also establish the deadlines for submitting down payments, final payments, and the long-form applications.

### A. Down Payments

170. The Commission’s rules provide that, unless otherwise specified by public notice, within ten business days after the release of the auction closing public notice, each winning bidder must submit sufficient funds (in addition to the upfront payment) to bring its total amount of money on deposit with the Commission for Auction 112 to 20% of the net amount of its winning bid(s) (gross bid(s) less any applicable new entrant bidding credit).

### B. Final Payments

171. Each winning bidder will be required to submit the balance of the net amount for each of its winning bid(s) within 10 business days after the applicable deadline for submitting down payments.

### C. Long-Form Application (FCC Form 2100—Schedule A)

172. The Commission’s rules currently provide that within thirty days following the close of bidding and notification to the winning bidders, unless a longer period is specified by public notice, each winning bidder must electronically submit a separate, properly completed long-form application for each permit won, and required exhibits, along with the applicable applicant filing fee. Winning bidders for TV construction permits will electronically file FCC Form 2100, Schedule A, in the Media Bureau’s Licensing and Management System (LMS). 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

173. Any winning bidder that defaults or is disqualified after the close of an auction (*i.e.*, fails to remit the required down payment by the specified deadline, fails to submit a timely long-form application, fails to make a full and timely final payment, or is otherwise disqualified) is liable for default payments as described in 47 CFR 1.2104(g)(2). A default payment consists of a deficiency payment, equal to the difference between the amount of the Auction 112 bidder's winning 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.

174. The percentage of the applicable bid to be assessed as an additional payment for defaults in a particular auction is established in advance of the auction. Accordingly, in the *Auction 112 Comment Public Notice*, OEA and MB proposed to set the additional default payment for this auction at 20% of the applicable bid. OEA and MB received no comments on this proposal, and it is therefore adopted for the reasons described in the *Auction 112 Comment Public Notice*.

175. Finally, in the event of a default, the Commission has the discretion to re-auction the construction permit or offer it to the next highest bidder (in descending order) at its final bid amount. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, then 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

176. All refunds of upfront payment balances will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. Bidders are encouraged to use the Refund Information icon found on the *Auction Application Manager* page or the Refund Form link available on the *Auction Application Submit Confirmation* page in the FCC Auction

Application System to access the form. After the required information is completed on the blank form, the form must be printed, signed, and submitted to the Commission by mail, fax, or email as instructed below.

177. If you have elected not to access the Refund Form through the *Auction Application Manager* page, then OEA and MB request that all information listed below be supplied in writing.

1. Name, address, contact and phone number of Bank
2. ABA Number (capable to accept ACH payments) (please verify this number with your Bank)
3. Account Number to Credit
4. Name of Account Holder
5. FCC Registration Number (FRN)

178. The refund request must be submitted by fax to the Revenue & Receivables Operations Group/Auctions at (202) 418–2843, or by email to [RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov).

**Note:** Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Scott Radcliffe at (202) 418–7518 or Theresa Meeks at (202) 418–2945.

## VI. Procedural Matters

### A. Paperwork Reduction Act

179. The Office of Management and Budget (OMB) has approved the information collections in the Application to Participate in an FCC Auction, FCC Form 175. The *Auction 112 Procedures Public Notice* does not contain new or substantively modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. Therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198. The Commission will be submitting a non-substantive change request to OMB concerning OMB 3060–0600 related to the certification requirement for Auction 112 applicants adopted herein, and the Commission will not require Auction 112 applicants to make this certification on FCC Form 175 until OMB has approved the non-substantive change request.

### B. Congressional Review Act

180. The Commission has determined, and Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that these rules are “non-major” under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the *Auction 112*

*Procedures Public Notice* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

### C. Supplemental Final Regulatory Flexibility Analysis

181. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission prepared Initial Regulatory Flexibility Analyses (IRFAs) in connection with the *Broadcast Competitive Bidding Notice of Proposed Rulemaking* (NPRM), 62 FR 65392, December 12, 1997, and other Commission NPRMs (collectively, *Competitive Bidding NPRMs*) pursuant to which Auction 112 will be conducted. Final Regulatory Flexibility Analyses (FRFAs) likewise were prepared in the *Broadcast Competitive Bidding Order*, 63 FR 48615, September 11, 1998, and other Commission rulemaking orders (collectively, *Competitive Bidding Orders*) pursuant to which Auction 112 will be conducted. In this proceeding, a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) was incorporated in the *Auction 112 Comment Public Notice*. The Commission sought written public comment on the proposals in the *Auction 112 Comment Public Notice*, including comments on the Supplemental IRFA. This Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) supplements the FRFAs in the *Competitive Bidding Orders* to reflect the actions taken in the *Auction 112 Procedures Public Notice* and conforms to the RFA.

182. *Need for, and Objectives of, the Public Notice.* The procedures for the conduct of Auction 112 as described in the *Auction 112 Procedures Public Notice* implement the Commission's competitive bidding rules, which have been adopted by the Commission in multiple notice-and-comment rulemaking proceedings. More specifically, the *Auction 112 Procedures Public Notice* provides an overview of the procedures, terms, and conditions governing Auction 112, and the post-auction application and payment processes, as well as setting the minimum opening bid amount for each of the TV construction permits that are subject to being assigned by competitive bidding.

183. To promote the efficient and fair administration of the competitive bidding process for all Auction 112 participants, including small businesses, in the *Auction 112 Procedures Public Notice*, OEA and MB announce the following procedures:

- A requirement that any applicant seeking to participate in Auction 112 certify in its short-form application, under penalty of perjury, that it has read the public notice adopting procedures for Auction 112, and that it has familiarized itself with those procedures and the requirements for obtaining a construction permit for a TV station;

- establishment of an additional default payment of 20% under 47 CFR 1.2104(g)(2) in the event that a winning bidder defaults or is disqualified after the auction;

- use of a simultaneous multiple-round auction format, consisting of sequential bidding rounds with a simultaneous stopping rule (with discretion to exercise alternative stopping rules under certain circumstances);

- use of anonymous bidding/limited information procedures which will not make public until after bidding has closed: (1) The construction permits that an applicant selects for bidding in its short-form application, (2) the amount of any upfront payment made by or on behalf of an applicant, (3) any applicant's bidding eligibility, and (4) any other bidding-related information that might reveal the identity of the bidder placing a bid;

- retention by OEA, in conjunction with MB, of its discretion to delay, suspend, or cancel bidding in Auction 112 for any reason that affects the fair and efficient conduct of the competitive bidding process;

- retention by OEA of its discretion to adjust the bidding schedule in order to manage the pace of Auction 112;

- a specific minimum opening bid amount for each construction permit available in Auction 112;

- a specific number of bidding units for each construction permit;

- a specific upfront payment amount for each construction permit;

- establishment of a bidder's initial bidding eligibility in bidding units based on that bidder's upfront payment through assignment of a specific number of bidding units for each construction permit;

- use of an activity requirement so that bidders must bid actively during the auction rather than waiting until late in the auction before participating;

- a single stage auction in which a bidder is required to be active on 100% of its bidding eligibility in each round of the auction;

- provision of three activity waivers for each qualified bidder to allow it to preserve eligibility during the course of the auction;

- use of minimum acceptable bid amounts and additional bid increments,

along with a proposed methodology for calculating such amounts, while retaining discretion to change their methodology if circumstances dictate;

- bid removal procedures; and
- a prohibition on bid withdrawals.

184. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* There were no comments filed that specifically addressed the procedures and policies proposed in the Supplemental IRFA.

185. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.* Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comment filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed procedures as a result of those comments. The Chief Counsel did not file any comments in response to the procedures that were proposed in the *Auction 112 Comment Public Notice*.

186. *Description and Estimate of the Number of Small Entities to Which the Procedures Will Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

187. The specific competitive bidding procedures and minimum opening bid amounts described in the *Auction 112 Procedures Public Notice* will affect all applicants participating in Auction 112. OEA and MB expect that the pool of applicants who seek to bid in Auction 112 will include firms of all sizes.

188. *Television Broadcasting.* This Economic Census category "comprises establishments primarily engaged in broadcasting images together with sound." These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to

the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having \$41.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms operated that entire year. Of that number, 656 had annual receipts of \$25,000,000 or less, and 25 had annual receipts between \$25,000,000 and \$49,999,999. Based on this data OEA and MB therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

189. Additionally, the Commission has estimated the number of licensed commercial television stations to be 1,373. Of this total, 1,269 stations (or about 92.4%) had revenues of \$41.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA), and therefore these stations qualify as small entities under the SBA definition.

190. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 385. These stations are non-profit, and therefore considered to be small entities.

191. OEA and MB note, however, that the SBA size standard data does not enable them to make a meaningful estimate of the number of small entities that may participate in Auction 112.

192. In assessing whether a business entity qualifies as small under the SBA definition, business control affiliations must be included. The estimate therefore likely overstates the number of small entities that might be affected by this auction because the revenue figures on which this estimate is based does not include or aggregate revenues from affiliated companies. Moreover, the definition of small business also requires that an entity not be dominant in its field of operation and that the entity be independently owned and operated. The estimate of small businesses to which Auction 112 competitive bidding rules may apply does not exclude any television station from the definition of a small business on these bases and is therefore over-inclusive to that extent. Furthermore, OEA and MB are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation.

193. OEA and MB also note that they are unable to accurately develop an estimate of how many of the potential Auction 112 applicants might prove to

be small businesses based on the number of small entities that applied to participate in prior broadcast auctions because that information is not collected from applicants for broadcast auctions in which bidding credits are not based on an applicant's size (as is the case in certain auctions of licenses for wireless services). OEA and MB conclude, however, that the majority of Auction 112 eligible bidders will likely meet the SBA's definition of a small business concern.

194. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* For Auction 112, no new reporting, recordkeeping, or other compliance requirements for small entities or other auction applicants were proposed. The Commission designed the auction application process itself to minimize reporting and compliance requirements for applicants, including small business applicants. For all spectrum auctions, in the first part of the Commission's two-phased auction application process, parties desiring to participate in an auction file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on an applicant's short-form application and certifications, as well as its upfront payment. In the second phase of the auction application process, there are additional compliance requirements for winning bidders. Thus, a small business that fails to become a winning bidder does not need to provide the additional showings and more detailed demonstrations required of a winning bidder.

195. Auction 112 applicants, including small entities, will become qualified to bid in Auction 112 only if they comply with the following: (1) Submission of a short-form application that is timely and is found to be substantially complete, and (2) timely submission of a sufficient upfront payment for at least one of the construction permits that the applicant selected on its FCC Form 175. In accordance with the terms of 47 CFR 1.2105(b)(2), an applicant whose application is found to contain deficiencies will have a limited opportunity to bring its application into compliance with the Commission's competitive bidding rules during a resubmission window. In addition, each Auction 112 applicant must maintain the accuracy of its previously filed short-form application electronically using the FCC Auction Application System.

196. In the second phase of the process, there are additional compliance requirements only applicable to winning bidders. As with other winning bidders, any small entity that is a winning bidder will be required to comply with the terms of the following rules, among others: (1) 47 CFR 1.2107(b), by submitting as a down payment within 10 business days after release of the auction closing public notice sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 112 to 20% of the amount of its winning bid or bids; (2) 47 CFR 1.2109(a), by submitting within 10 business days after the down payment deadline the balance of the amount for each of its winning bids; and (3) 47 CFR 73.5005(a), by electronically filing a long-form application and required exhibits for each construction permit won through Auction 112.

197. Further, as required by 47 CFR 1.2105(c), reports concerning prohibited communications must be filed with the Chief of the Auctions Division, as detailed in the *Auction 112 Procedures Public Notice*.

198. *Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

199. OEA and MB intend that the procedures adopted in the *Auction 112 Procedures Public Notice* to facilitate participation in Auction 112 will result in both operational and administrative cost savings for small entities and other auction participants. In light of the numerous resources that will be available from the Commission to small entities and other auction participants at no cost, the processes and procedures announced in the *Auction 112 Procedures Public Notice* should minimize any economic impact of the auction processes and procedures on small entities and should result in both operational and administrative cost savings for small entities and other

auction participants. For example, prior to the beginning of bidding in this auction, the Commission will hold a mock auction to allow qualified bidders the opportunity to familiarize themselves with both the processes and systems that will be used in Auction 112. During the auction, participants will be able to access and participate in bidding via the internet using a web-based system, or telephonically, providing two cost-effective methods of participation and avoiding the cost of travel for in-person participation. Further, small entities as well as other auction participants will be able to avail themselves of a telephone hotline for assistance with auction processes and procedures as well as a technical support telephone hotline to assist with issues such as access to or navigation within the electronic FCC Form 175 and use of the FCC's auction bidding system. In addition, all auction participants, including small business entities, will have access to various other sources of information and databases through the Commission that will aid in both their understanding and participation in the process. These mechanisms are made available to facilitate participation by all qualified bidders and may result in significant cost savings for small business entities that utilize these mechanisms. These resources, coupled with the description and communication of the bidding procedures before bidding begins in Auction 112, should ensure that the auction will be administered predictably, efficiently and fairly, thus providing certainty for small entities as well as other auction participants. In addition, in consideration of comments submitted in this proceeding, the minimum opening bid amounts were reduced to amounts 25% lower than those that had been proposed in the *Auction 112 Comment Public Notice*; this change is intended to encourage participation in Auction 112 by a greater number of interested parties, which may include some small entities.

200. *Notice to SBA.* The Commission will send a copy of the *Auction 112 Procedures Public Notice*, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA.

Federal Communications Commission.

**William Huber,**

*Associate Chief, Auctions Division, Office of Economics and Analytics.*

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