

*Needs and Uses:* The Commission will submit this expiring information collection (IC) to the OMB during this comment period. There is no change in the reporting, recordkeeping and/or third party disclosure requirements. There are no changes to the Commission's previous burden estimates.

The Commission is seeking a revision for approval from the Office of Management and Budget (OMB) because the Commission will be requesting a certification and/or showing of compliance of narrowband equivalency as an attachment and correcting chief financial officers on Schedule B.

*OMB Control Number:* 3060-1058.

*Title:* FCC Application or Notification for Spectrum Leasing Arrangement or Private Commons Arrangement: Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau.

*Form No.:* FCC Form 608.

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

*Respondents:* Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

*Number of Respondents:* 991 respondents; 991 responses.

*Estimated Time per Response:* 5 hours.

*Frequency of Response:* On occasion reporting requirement and recordkeeping requirement.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i), 154(j), 155, 158, 161, 301, 303(r), 308, 309, 310, 332, and 503.

*Total Annual Burden:* 4,955 hours.

*Total Annual Cost:* \$910,500.

*Privacy Act Impact Assessment:* N/A.

*Nature and Extent of Confidentiality:* Respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

*Needs and Uses:* The Commission will submit this expiring information collection (IC) to the OMB during this comment period. There is no change in the reporting and/or recordkeeping requirements. The Commission is reporting a 3,200 hourly decrease in burden and a \$423,606 decrease in annual costs. The decrease adjustments are due to fewer respondents than the last submission to the OMB and the estimates have been recalculated.

The Commission is seeking OMB approval for a revision for changes in the wording on the FCC Form 608 data elements, adding a question inquiring if filing is the lead application on the

Main Form, and changing language in the instructions.

The required notifications and applications will provide the Commission with useful information about spectrum usage and help to ensure that licensees and lessees are complying with Commission interference and non-interference related policies and rules. Similar information and verification requirements have been used in the past for licensees operating under authorizations, and such requirements will serve to minimize interference, verify that lessees are legally and technically qualified to hold licenses, and ensure compliance with Commission rules.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

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## FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 10-147; DA 10-2008]

### Auction of VHF Commercial Television Station Construction Permits Scheduled for February 15, 2011; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 90

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the procedures and minimum opening bids for the upcoming auction of certain VHF commercial TV construction permits (Auction 90). This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for the auction.

**DATES:** Applications to participate in Auction 90 must be filed prior to 6 p.m. Eastern Time (ET) on December 15, 2010. Bidding for construction permits in Auction 90 is scheduled to begin on February 15, 2011.

**FOR FURTHER INFORMATION CONTACT:** *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* For legal questions: Howard Davenport or Lynne Milne at (202) 418-0660. For general auction questions: Jeff Crooks at (202) 418-0660 or Barbara Sibert at (717) 338-2829. *Media Bureau, Audio Division:* For licensing information and service rule questions: Shaun Maher or Adrienne Denysyk at (202) 418-2700. To request materials in accessible

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

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction 90 Procedures Public Notice*, which was released on November 1, 2010. The complete text of the *Auction 90 Procedures Public Notice*, including attachments, as well as related Commission documents, are available for public inspection and copying from 8 a.m. to 4:30 p.m. ET Monday through Thursday and from 8 a.m. to 11:30 a.m. ET on Friday in the FCC Reference Information Center, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The *Auction 90 Procedures Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-488-5300, facsimile 202-488-5563, or Web site: <http://www.BCPIWEB.com>, using document number DA 10-2008 for the *Auction 90 Procedures Public Notice*. The *Auction 90 Procedures Public Notice* and related documents are also available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/90/>.

## I. General Information

### A. Introduction

1. The Wireless Telecommunications Bureau and Media Bureau (collectively, the Bureaus) announce the procedures and minimum opening bid amounts for the upcoming auction of two digital very high frequency (VHF) commercial television station construction permits. This auction, which is designated as Auction 90, is scheduled to commence on February 15, 2011. On September 8, 2010, the Bureaus released a public notice seeking comment on competitive bidding procedures to be used in Auction 90. Two parties submitted comments and reply comments in response to the *Auction 90 Comment Public Notice* 75 FR 59747, September 23, 2010.

#### i. Background

2. The Media Bureau recently amended the Post-Transition Table of DTV Allotments by allotting digital VHF commercial television channels in New Jersey and Delaware. The first allotment is channel 4 in Atlantic City, New Jersey and the second allotment is channel 5 in Seaford, Delaware.

ii. Construction Permits in Auction 90

3. Auction 90 will offer construction permits for two VHF commercial television stations. The Commission's competitive bidding rules will be used to select among mutually exclusive applications for these construction permits in Auction 90. When two or more short-form applications (FCC Forms 175) are accepted for filing for the same construction permit in Auction 90, mutual exclusivity exists for auction purposes. Once mutual exclusivity exists for auction purposes, even if only one applicant for a particular construction permit submits an upfront payment, that applicant is required to submit a bid in order to obtain the construction permit. Any applicant that submits a short-form application but fails to timely submit an upfront payment will retain its status as an applicant in Auction 90 and will remain subject to the Commission's rules concerning prohibited communications, but, having purchased no bidding eligibility, will not be eligible to bid.

4. A commenter asked that the Commission to amend the Post-Transition Table of DTV Allotments as set-out in 47 CFR 73.622(i) in order to allow the eventual winner of Auction 90 to license the VHF television station to any community in Delaware or New Jersey provided that such an allotment would not cause harmful interference to other VHF services. The proposal is beyond the scope of this proceeding, which is confined to establishing competitive bidding procedures for this auction of DTV construction permits. This proceeding is not an appropriate forum in which to challenge determinations made in the DTV allocation rulemaking proceeding. Accordingly, the Bureaus are unable to adopt this proposal.

*B. Rules and Disclaimers*

i. Relevant Authority

5. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules, including recent amendments and clarifications, as well as Commission decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees. Potential applicants should also familiarize themselves with the Commission's rules relating to the Television Broadcast Service contained in 47 CFR Part 73.

6. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or

supplement the information contained in its public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction.

ii. Prohibited Communications and Compliance With Antitrust Laws

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

a. Entities Subject to Section 1.2105

8. 47 CFR 1.2105(c)'s prohibition on certain communications will apply to any applicants that submit short-form applications seeking to participate in a Commission auction for construction permits in the same geographic license area. Thus, unless they have identified each other on their short-form applications as parties with whom they have entered into agreements under 47 CFR 1.2105(a)(2)(viii), applicants for any of the same geographic license areas must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy. In some instances, this prohibition extends to communications regarding the post-auction market structure. This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid. The "geographic license area" is the market designation of the particular service. For the Television Broadcast Service, the market designation is the particular vacant DTV allotment (e.g., Atlantic City, NJ, Channel DTV 4, MM-DTV012-4).

9. Applicants are also reminded that, for purposes of this prohibition on certain communications, 47 CFR 1.2105(c)(7)(i) defines applicant as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application. For

example, where an individual served as an officer for two or more applicants, the Bureaus have found that the bids and bidding strategies of one applicant are necessarily conveyed to the other applicant, and, absent a disclosed bidding agreement, an apparent violation of 47 CFR 1.2105(c) occurs.

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

11. Moreover, Auction 90 applicants are encouraged not to use the same individual as an authorized bidder. A violation of 47 CFR 1.2105(c) could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between such applicants. Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or engineering firm or consulting firm), a violation similarly could occur. In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with 47 CFR 1.2105(c).

b. Prohibition Applies Until Down Payment Deadline

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

c. Prohibited Communications

13. Applicants should note that they must not communicate directly or

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

14. The Commission remains vigilant about prohibited communications taking place in other situations. 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. Applicants are hereby placed on notice that public disclosure of information relating to bids, or bidding strategies, or to post auction market structures may violate 47 CFR 1.2105(c), including an applicant's use of the Commission's bidding system or a statement to the press, financial analysts or others.

#### d. Disclosure of Bidding Agreements and Arrangements

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

#### e. Section 1.2105(c) Certification

16. By electronically submitting a short-form application, each applicant in Auction 90 certifies its compliance with 47 CFR 1.2105(c) and 73.5002. However, the Bureaus caution that

merely filing a certifying statement as part of an application will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted. The Commission has stated that it intends to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring. Any applicant found to have violated 47 CFR 1.2105(c) may be subject to sanctions.

#### f. Duty to Report Prohibited Communications: Reporting Procedure

17. 47 CFR 1.2105(c)(6) provides that any applicant that makes or receives a communication that appears to violate 47 CFR 1.2105(c) must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. The Commission has clarified that each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.

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

19. 47 CFR 1.65(a) and 1.2105(c) require applicants in competitive bidding proceedings to furnish additional or corrected information within five days of a significant occurrence, or to amend their short-form applications no more than five days after the applicant becomes aware of the need for amendment. These reporting requirements facilitate the auction process by making the information available promptly to all participants and enabling the Bureaus to act expeditiously on those changes when such action is necessary.

20. A party reporting any communication pursuant to 47 CFR

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

21. 47 CFR 1.2105(c) requires parties to file only a single report and to file that report with Commission personnel expressly charged with administering the Commission auctions. This requirement is designed to minimize the risk of inadvertent dissemination of information in such reports. Pursuant to the amended rule, any reports required by 47 CFR 1.2105(c) must be filed consistent with the instructions set forth in the *Auction 90 Procedures Public Notice*. For Auction 90, such reports should be filed with the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available. Specifically, any such report should be submitted by e-mail to [auction90@fcc.gov](mailto:auction90@fcc.gov) or delivered to the following address: Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room 6423, Washington, DC 20554.

22. A party seeking to report such prohibited communications should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection. Such parties also are encouraged to coordinate with the Auctions and Spectrum Access Division staff if they have any questions about the procedures for submitting such reports. Applicants must be aware that failure to comply with the Commission's rules can result in enforcement action.

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

23. Applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in any bidding consortia, joint venture, partnership; or agreement, understanding, or other arrangement entered into relating to the competitive bidding process.

h. Additional Information Concerning Rule Prohibiting Certain Communications

24. A summary listing of documents issued by the Commission and the Bureaus addressing the application of 47 CFR 1.2105(c) may be found in Attachment D of the *Auction 90 Procedures Public Notice*.

i. Antitrust Laws

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

iii. Due Diligence

26. Potential applicants are reminded that they are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the construction permits for broadcast facilities they are seeking in this auction. Bidders are responsible for assuring themselves that, if they win a construction permit, they will be able to build and operate facilities in accordance with the Commission's rules. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC construction permittee in a broadcast service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success. Applicants should perform their due diligence research and analysis before proceeding, as they would with any new business venture. Applicants are strongly encouraged to conduct their own research prior to Auction 90 in order to determine the existence of any

pending administrative or judicial proceedings, including pending allocations rulemaking proceedings that might affect their decisions regarding participation in the auction. Participants in Auction 90 are strongly encouraged to continue such research throughout the auction. Applicants should perform due diligence to identify and consider all proceedings that may affect the construction permits being auctioned and that could have an impact on the availability of spectrum for Auction 90. 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 90. In addition, potential applicants should review the *Auction 90 Procedures Public Notice* for additional guidance as they plan and undertake their due diligence efforts.

iv. Use of Integrated Spectrum Auction System

27. The Commission will make available a browser-based bidding system to allow bidders to participate in Auction 90 over the Internet using the Commission's Integrated Spectrum Auction System (ISAS or FCC Auction System). The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees, or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning, or use of the FCC Auction System that is accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming, or other advice or service provided in connection with the FCC Auction System.

v. Environmental Review Requirements

28. Permittees or licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other Federal environmental statutes. The construction of a broadcast facility is a Federal action and the permittee or licensee must comply with the Commission's environmental rules for each such facility.

C. Auction Specifics

i. Auction Start Date

29. Bidding in Auction 90 will begin on Tuesday, February 15, 2011, as announced in the *Auction 90 Comment Public Notice*. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all construction permits will be conducted on each business day until bidding has stopped on all construction permits.

ii. Bidding Methodology

30. The bidding methodology for Auction 90 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet using the FCC Auction System, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically via the Internet or by telephone. All telephone calls are recorded.

iii. Pre-Auction Dates and Deadlines

31. The following dates and deadlines apply:

Auction Tutorial Available (via Internet)—December 8, 2010  
 Short-Form Application (FCC Form 175) Filing Window Opens—December 8, 2010; 12 noon ET  
 Short-Form Application (FCC Form 175) Filing Window Deadline—December 15, 2010; prior to 6 p.m. ET  
 Upfront Payments (via wire transfer)—January 21, 2011; 6 p.m. ET  
 Mock Auction—February 11, 2011  
 Auction Begins—February 15, 2011

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

A. General Information Regarding Short-Form Applications

32. An application to participate in an FCC auction, referred to as a short-form application or FCC Form 175, provides information used in determining whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or permits. The short-form application is the first part of the Commission's two-phased auction application process. In the first phase of this process, parties desiring to participate in the auction must file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications. Each applicant must take seriously its duties and responsibilities and carefully determine before filing an application that the applicant has the legal, technical and financial resources to

participate in Auction 90, as well as construct and operate a broadcast station if the auction applicant becomes a licensee as a result of its participation in this auction. Eligibility to participate in bidding is based on the applicants' short-form applications and certifications as well as their upfront payments, as explained below. In the second phase of the process, winning bidders must file more comprehensive long-form applications.

33. Entities and individuals seeking construction permits available in Auction 90 must file a short-form application electronically via the FCC Auction System prior to 6 p.m. ET on December 15, 2010, following the procedures prescribed in Attachment B to the *Auction 90 Procedures Public Notice*. If an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 will be used in determining whether the applicant is eligible for the claimed bidding credit. Applicants filing a short-form application are subject to the Commission's rules prohibiting certain communications beginning on the deadline for filing, as described above.

34. Applicants bear full responsibility for submitting accurate, complete and timely short-form applications. All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically, financially, and otherwise qualified to hold a license. Applicants should read the instructions set forth in Attachment B to the *Auction 90 Procedures Public Notice* carefully and should consult the Commission's rules to ensure that all the information that is required under the Commission's rules is included with their short-form applications.

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

36. Entities seeking to apply for a noncommercial educational station in the Auction 90 allotments should be aware that the Commission policy requires that an application for a noncommercial educational station that is mutually exclusive with any application for a commercial station will be returned as unacceptable for filing. Applications specifying the same television station construction permit are considered mutually exclusive.

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

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

#### *B. Permit Selection*

38. An applicant must select the construction permits on which it wants to bid from the Eligible Permits list on its short-form application. Applicants will not be able to change their construction permit selections after the short-form application filing deadline. Applicants interested in participating in Auction 90 must have selected construction permit(s) available in this auction by the short-form application filing deadline. Applicants must review and verify their construction permit selections before the deadline for submitting short-form applications. The FCC Auction System will not accept bids from an applicant on construction permits that the applicant has not selected on its short-form application.

#### *C. New Entrant Bidding Credit*

39. To promote the objectives of section 309(j) and further its long-standing commitment to the diversification of broadcast facility ownership, the Commission adopted a tiered New Entrant Bidding Credit for broadcast auction applicants with no, or very few, other media interests.

40. The interests of the applicant and of any individuals or entities with an attributable interest in the applicant, in other media of mass communications are considered when determining an applicant's eligibility for the New Entrant Bidding Credit. In Auction 90, the bidder's attributable interests are determined as of the short-form application filing deadline. Thus, the applicant's maximum new entrant bidding credit eligibility will be determined as of the short-form application filing deadline. Applicants intending to divest a media interest or make any other ownership changes, such as resignation of positional interests, in order to avoid attribution for purposes of qualifying for the New Entrant Bidding Credit must have consummated such divestment transactions or have completed such ownership changes by no later than the

short-form filing deadline. Prospective bidders are reminded, however, that events occurring after the short-form filing deadline, such as the acquisition of attributable interests in media of mass communications, may cause diminishment or loss of the bidding credit, and must be reported immediately.

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

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

43. Bidders are also reminded that, by the *New Entrant Bidding Credit Reconsideration Order*, the Commission further refined the eligibility standards for the New Entrant Bidding Credit, judging it appropriate to attribute the media interests held by very substantial investors in, or creditors of, an applicant claiming new entrant status. Specifically, the attributable mass media interests held by an individual or entity with an equity and/or debt interest in an applicant shall be attributed to that bidder for purposes of determining its eligibility for the New Entrant Bidding Credit, if the equity and debt interests, in the aggregate, exceed 33 percent of the total asset value of the applicant, even if such an interest is non-voting.

44. In the *Diversity Order*, the Commission relaxed the equity/debt plus ("EDP") attribution standard, to allow for higher investment opportunities in entities meeting the definition of eligible entities. An eligible entity is defined in Note 2(i) of 47 CFR 73.3555. Pursuant to the *Diversity Order*, the Commission will now allow the holder of an equity or debt interest in the applicant to exceed the above-noted 33 percent threshold without triggering attribution provided (1) the combined equity and debt in the eligible entity is less than 50 percent; or (2) the total debt in the eligible entity does not exceed 80 percent of the asset value, and the interest holder does not hold any equity interest, option, or promise

to acquire an equity interest in the eligible entity or any related entity.

45. Generally, media interests will be attributable for purposes of the New Entrant Bidding Credit to the same extent that such other media interests are considered attributable for purposes of the broadcast multiple ownership rules. However attributable interests held by a winning bidder in existing low power television, television translator or FM translator facilities will not be counted among the bidder's other mass media interests in determining its eligibility for a New Entrant Bidding Credit. A medium of mass communications is defined in 47 CFR 73.5008(b). *Full service noncommercial educational stations, on both reserved and nonreserved channels, are included among media of mass communications as defined in 47 CFR 73.5008(b).*

#### D. Application Requirements

46. In addition to the ownership information required pursuant to 47 CFR 1.2112, applicants seeking a New Entrant Bidding Credit are required to establish on their short-form applications that they satisfy the eligibility requirements to qualify for the bidding credit. In those cases, a certification under penalty of perjury must be provided in completing the applicant's short-form application. An applicant claiming that it qualifies for a 35 percent New Entrant Bidding Credit must certify that neither it nor any of its attributable interest holders have any attributable interests in any other media of mass communications. An applicant claiming that it qualifies for a 25 percent New Entrant Bidding Credit must certify that neither it nor any of its attributable interest holders has any attributable interests in more than three media of mass communications, and must identify and describe such media of mass communications.

##### i. Bidding Credits

47. Applicants that qualify for the New Entrant Bidding Credit, as specified in the applicable rule, are eligible for a bidding credit that represents the amount by which a bidder's winning bid is discounted. The size of a New Entrant Bidding Credit depends on the number of ownership interests in other media of mass communications that are attributable to the bidder-entity and its attributable interest-holders: (1) A 35 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has no attributable interest in any other media of mass communications, as defined in

47 CFR 73.5008; (2) A 25 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has an attributable interest in no more than three mass media facilities, as defined in 47 CFR 73.5008; and (3) No bidding credit will be given if any of the commonly owned mass media facilities serve the same area as the broadcast station 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.

48. Bidding credits are not cumulative; qualifying applicants receive either the 25 percent or the 35 percent bidding credit, but not both. Attributable interests are defined in 47 CFR 73.3555 and note 2 of that section. Applicants should note that unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license or construction permit to an entity not qualifying for the same level of bidding credit.

#### E. Disclosure of Bidding Arrangements

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

50. Applicants also will be required to certify under penalty of perjury in their short-form applications that they have not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application, regarding the amount of their bids, bidding strategies, or the particular construction permits on which they will or will not bid. If an applicant has had discussions, but has not reached an agreement by the short-form application filing deadline, it should not include the names of parties to the discussions on its application and may not continue such discussions with any applicants after the deadline.

51. After the filing of short-form applications, the Commission's rules do not prohibit a party holding a non-controlling, attributable interest in one applicant from acquiring an ownership interest in or entering into a joint bidding arrangement with other applicants, provided that: (i) The

attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While 47 CFR 1.2105(c) of the rules does not prohibit non-auction-related business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies. Such subject areas include, but are not limited to, issues such as management sales, local marketing agreements, rebroadcast agreements, and other transactional agreements. Further, compliance with the disclosure requirements of 47 CFR 1.2105(c) will not insulate a party from enforcement of the antitrust laws.

#### F. Ownership Disclosure Requirements

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

53. In certain circumstances, an applicant's most current ownership information on file with the Commission, if in an electronic format compatible with the short-form application (FCC Form 175) (such as information submitted in an on-line FCC Form 602 or in an FCC Form 175 filed for a previous auction using ISAS) will automatically be entered into the applicant's short-form application. Applicants are responsible for ensuring that the information submitted in their short-form application for Auction 90 is complete and accurate. Accordingly, applicants should carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for filing the short-form application.

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

54. Current defaulters or delinquents are not eligible to participate in Auction 90, but former defaulters or delinquents can participate so long as they are otherwise qualified and make upfront payments that are fifty percent more than the normal upfront payment amounts. An applicant is considered a current defaulter or a current delinquent when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, are in default on any payment for any Commission construction permits or licenses (including down payments) or are delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for short-form applications. An applicant is considered a former defaulter or a former delinquent when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, have defaulted on any Commission construction permit or license or been delinquent on any non-tax debt owed to any Federal agency, but have since remedied all such defaults and cured all of the outstanding non-tax delinquencies.

55. On the short-form application, an applicant must certify under penalty of perjury that it, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by 47 CFR 1.2110 are not in default on any payment for a Commission construction permit or license (including down payments) and that it is not delinquent on any non-tax debt owed to any Federal agency. Each applicant must also state under penalty of perjury whether it, its affiliates, its controlling interests, and the affiliates of its controlling interests, have ever been in default on any Commission construction permit or license or have ever been delinquent on any non-tax debt owed to any Federal agency. Prospective applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution. These statements and certifications are prerequisites to submitting an application to participate in an FCC auction.

56. Applicants are encouraged to review the Bureaus' previous guidance on default and delinquency disclosure requirements in the context of the short-form application process. For example, it has been determined that, to the

extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for purposes of 47 CFR 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline. Therefore, with respect to regulatory or application fees, the provisions of 47 CFR 1.2105(a) and 1.2106(a) regarding default and delinquency in connection with competitive bidding are limited to circumstances in which the relevant party has not complied with a final Commission payment deadline. Parties are also encouraged to consult with the Commission's Office of Managing Director or the Wireless Telecommunications Bureau's Auctions and Spectrum Access Division staff if they have any questions about default and delinquency disclosure requirements.

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

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

59. Moreover, prospective applicants in Auction 90 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.

### *H. Optional Applicant Status Identification*

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

### *I. Minor Modifications to Short-Form Applications*

61. After the deadline for filing initial applications, an Auction 90, applicant is permitted to make only minor changes to its application. Permissible minor changes include, among other things, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons. An applicant is not permitted to make a major modification to its application (*e.g.*, change their construction permit selections, change control of the applicant, change the certifying official, claim eligibility for a higher percentage of bidding credit or change their identification of the application's proposed facilities as noncommercial educational) after the initial application filing deadline. Thus, any change in control of an applicant, resulting from a merger for example, will be considered a major modification to the applicant's application, which will consequently be dismissed.

62. If an applicant wishes to make permissible minor changes to its short-form application, such changes should be made electronically to its short-form application using the FCC Auction System whenever possible. Applicants are reminded to click on the SUBMIT button in the FCC Auction System for the changes to be submitted and considered by the Commission. After the revised application has been submitted, a confirmation page will be displayed that states the submission time, submission date, and a unique file number.

63. An applicant cannot use the FCC Auction System outside of the initial and resubmission filing windows to make changes to its short-form application other than administrative

changes (e.g. changing certain contact information or the name of an authorized bidder). If these or other permissible minor changes need to be made outside of these windows, the applicant must submit a letter briefly summarizing the changes and subsequently update its short-form application in ISAS once the system is available. Moreover, after the filing window has closed, ISAS will not permit applicants to make certain changes, such as the applicant's legal classification and the identification of the application's proposed facilities as noncommercial educational.

64. Any letter describing changes to an applicant's short-form application should be submitted by e-mail to [auction90@fcc.gov](mailto:auction90@fcc.gov). The e-mail summarizing the changes must include a subject or caption referring to Auction 90 and the name of the applicant.

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

66. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System (ECFS), which was used for submitting comments regarding Auction 90.

#### *J. Maintaining Current Information in Short-Form Applications*

67. 47 CFR 1.65 and 1.2105(b) require an applicant to maintain the accuracy and completeness of information in its pending application and to furnish additional or corrected information to the Commission within five days of a significant occurrence, or to amend its short-form application no more than five days after the applicant becomes aware of the need for amendment. Changes that cause a loss of or reduction in the percentage of bidding credit specified on the originally submitted application must be reported immediately. For example, if ownership changes result in the attribution of new interest holders that affect the applicant's qualifications for a new entrant bidding credit, such information must be clearly stated in the applicant's amendment. Events occurring after the

application filing deadline, such as the acquisition of attributable interests in media of mass communications, may also cause diminishment or loss of the bidding credit, and must be reported immediately. If an amendment reporting substantial changes is a major amendment, as defined by 47 CFR 1.2105, the major amendment will not be accepted and may result in the dismissal of the application. After the application filing deadline, applicants may make only minor changes to their applications.

68. After the application filing deadline, applicants may make only minor changes to their applications. Applicants must click on the SUBMIT button in the FCC Auction System for any changes to be submitted and considered by the Commission. If a submission in compliance with 47 CFR 1.65 is needed outside of the initial and resubmission filing windows, applicants must submit a brief letter summarizing the changes in accordance with the instructions specified in the *Auction 90 Procedures Public Notice*.

### **III. Pre-Auction Procedures**

#### *A. Online Auction Tutorial—Available December 8, 2010*

69. On Wednesday, December 8, 2010, the Commission will post an educational auction tutorial on the Auction 90 Web page for prospective bidders to familiarize themselves with the auction process. This online tutorial will provide information about pre-auction procedures, completing short-form applications, auction conduct, the FCC Auction Bidding System, auction rules, and broadcast services rules. The tutorial will also provide an avenue to ask FCC staff questions about the auction, auction procedures, filing requirements, and other matters related to this auction.

70. The Auction 90 online tutorial replaces the live bidder seminars that have been offered for most previous auctions. The Bureaus believe parties interested in participating in Auction 90 will find this interactive, online tutorial a more efficient and effective way to further their understanding of the auction process.

71. The auction tutorial will be accessible from the FCC's Auction 90 Web page at <http://wireless.fcc.gov/auctions/90/> through an Auction Tutorial link. Once posted, this tutorial will remain available for reference in connection with the procedures outlined in the *Auction 90 Procedures Public Notice* and accessible anytime.

#### *B. Short-Form Applications—Due Prior to 6 p.m. ET on December 15, 2010*

72. In order to be eligible to bid in this auction, applicants must first follow the procedures set forth in Attachment B to the *Auction 90 Procedures Public Notice* to submit a short-form application (FCC Form 175) electronically via the FCC Auction System. This short-form application must be submitted through the FCC Auction System prior to 6 p.m. ET on December 15, 2010. Late applications will not be accepted. There is no application fee required when filing an FCC Form 175, but an applicant must submit a timely upfront payment to be eligible to bid.

#### *C. Application Processing and Minor Corrections*

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

74. Non-mutually exclusive applications will not proceed to auction, but will proceed in accordance with instructions set forth in a public notice. All mutually exclusive applications will be considered under the relevant procedures for conflict resolution. Mutually exclusive applications proposing commercial stations will proceed to auction. In the *NCE Second Report and Order*, 68 FR 26220, May 15, 2003, the Commission held that applications for NCE full power television stations on nonreserved spectrum, filed during a television 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 90 filing window identifying the application's proposed station as noncommercial educational is mutually exclusive with any application filed during that window by an applicant for a commercial station, the former will be returned as unacceptable for filing.

75. After the application filing deadline on December 15, 2010, applicants continue to be able to make only minor corrections to their applications. Applicants will not be permitted to make major modifications to their applications (e.g., change their construction permit selections, change

control of the applicant, change the certifying official, claim eligibility for a higher percentage of bidding credit, or change their self-identification as NCE).

76. Applicants should be aware the Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the applicant's short-form application, unless the applicant's certifying official or contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on its behalf. Authorizations may be sent by e-mail to [auction90@fcc.gov](mailto:auction90@fcc.gov).

*D. Upfront Payments—Due January 21, 2011*

77. In order to be eligible to bid in this auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). We note that all applicants for permits must make an upfront payment in order to qualify as a bidder and obtain a permit, whether or not any other applicant in their MX groups becomes a qualified bidder. After completing its short-form application, an applicant will have access to an electronic version of the FCC Form 159 that can be printed and sent by fax to U.S. Bank in St. Louis, Missouri. All upfront payments must be made as instructed in this Public Notice and must be received in the proper account at U.S. Bank before 6 p.m. ET on January 21, 2011.

*i. Making Upfront Payments by Wire Transfer*

78. Wire transfer payments must be received before 6 p.m. ET on January 21, 2011. No other payment method is acceptable. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their bankers several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline.

79. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must fax a completed FCC Form 159 (Revised 2/03) to U.S. Bank at (314) 418-4232. On the fax cover sheet, applicants should write Wire Transfer—Auction Payment for Auction 90. In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account for Auction 90 before the deadline. The applicant is responsible for obtaining confirmation from its financial institution that U.S. Bank has timely

received its upfront payment and deposited it in the proper account.

80. Please note the following information regarding upfront payments: (1) All payments must be made in U.S. dollars; (2) All payments must be made by wire transfer; (3) Upfront payments for Auction 90 go to a lockbox number different from the lockboxes used in previous FCC auctions; and (4) Failure to deliver a sufficient upfront payment as instructed by the January 21, 2011, deadline will result in dismissal of the short-form application and disqualification from participation in the auction.

*ii. FCC Form 159*

81. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be faxed to U.S. Bank to accompany each upfront payment. Proper completion of FCC Form 159 is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment C to the *Auction 90 Procedures Public Notice*. An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payers using the pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed electronically, but must be filed with U.S. Bank by fax.

*iii. Upfront Payments and Bidding Eligibility*

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

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

84. Applicants must make upfront payments sufficient to obtain bidding eligibility on the construction permits on which they will bid. The Bureaus proposed, in the *Auction 90 Comment Public Notice*, that the amount of the upfront payment would determine a bidder's initial bidding eligibility, the maximum number of bidding units on

which a bidder may place bids. Under the Bureaus' proposal, in order to bid on a particular construction permit, a qualified bidder must have selected the construction permit on its FCC Form 175 and must have a current eligibility level that meets or exceeds the number of bidding units assigned to that construction permit. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits selected on its FCC Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all construction permits the applicant selected on its FCC Form 175, but only enough to cover the maximum number of bidding units that are associated with construction permits on which the bidder wishes to place bids and hold provisionally winning bids at any given time.

85. In the *Auction 90 Comment Public Notice*, the Bureaus proposed upfront payments for each construction permit taking into account various factors related to the efficiency of the auction process and the potential value of similar spectrum and sought comment on this proposal. The Bureaus received no comments on the proposal that the upfront payment amount would determine a bidder's initial bidding eligibility or in response to the specific upfront payments proposed in the *Auction 90 Comment Public Notice*. Therefore, the Bureaus adopt the upfront payments and bidding units proposed for each construction permit in Auction 90. Upfront payment amounts and bidding units are set forth in Attachment A of the *Auction 90 Procedures Public Notice*.

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

87. If an applicant is a former defaulter, it must calculate its upfront payment for all of its identified construction permits by multiplying the number of bidding units on which it wishes to be active by 1.5. In order to

calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

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

88. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information listed below be supplied. Applicants can provide the information electronically during the initial short-form application filing window after the form has been submitted. (Applicants are reminded that information submitted as part of an FCC Form 175 will be available to the public; for that reason, wire transfer information should not be included in an FCC Form 175.) Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations, Auctions Accounting Group, Attn: Gail Glasser, at (202) 418-2843.

*F. Auction Registration*

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

90. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID® tokens that will be required to place bids, the Integrated Spectrum Auction System (ISAS) Bidder's Guide, and the Auction Bidder Line phone number.

91. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder that has not received this mailing by noon on Wednesday, February 9, 2011, should call (717) 338-2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

92. In the event that SecurID® tokens are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request

replacements. Qualified bidders requiring the replacement of these items must call Technical Support at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY).

*G. Remote Electronic Bidding*

93. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Only qualified bidders are permitted to bid. Each applicant should indicate its bidding preference—electronic or telephonic—on its FCC Form 175. In either case, each authorized bidder must have its own SecurID® token, which the Commission will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. For security purposes, the SecurID® tokens, the telephonic bidding telephone number, and the Integrated Spectrum Auction System (ISAS) Bidder's Guide are only mailed to the contact person at the contact address listed on the FCC Form 175. Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 90.

*H. Mock Auction—February 11, 2011*

94. All qualified bidders will be eligible to participate in a mock auction on Friday, February 11, 2011. The mock auction will enable qualified bidders to become familiar with the FCC Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

**IV. Auction Event**

95. The first round of bidding for Auction 90 will begin on Tuesday, February 15, 2011. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is to be released approximately 10 days before the start of the auction.

*A. Auction Structure*

*i. Simultaneous Multiple Round Auction*

96. In the *Auction 90 Comment Public Notice*, the Bureaus proposed to auction the two construction permits in Auction 90 using the Commission's standard simultaneous multiple-round auction format. This type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual construction permits. A bidder may bid on, and

potentially win, any number of construction permits. The Bureaus received no comment on this proposal; 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.

*ii. Eligibility and Activity Rules*

97. The Bureaus will use upfront payments to determine initial (maximum) eligibility (as measured in bidding units) for Auction 90. The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. Each construction permit is assigned a specific number of bidding units listed in Attachment A of the *Auction 90 Procedures Public Notice*. Bidding units for a given construction permit do not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific construction permits. Rather, a bidder may place bids on any of the construction permits selected on its short-form application as long as the total number of bidding units associated with those construction permits does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. 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.

98. In order to ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction.

99. A bidder's activity level in a round is the sum of the bidding units associated with any construction permits covered by new and provisionally winning bids. A bidder is considered active on a construction permit in the current round if it is either

the provisionally winning bidder at the end of the previous bidding round or if it submits a bid in the current round.

100. The Bureaus received no comments on the proposed eligibility and activity rules. Therefore, in order to ensure that the auction closes within a reasonable period of time, the Bureaus adopt the proposal with the following activity requirement: A bidder is required to be active on 100 percent of its current eligibility during each round of the auction. That is, a bidder must place a bid (or bids) and/or have a provisionally winning bid (or bids) 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 additional bids in the auction.

### iii. Activity Rule Waivers

101. In the *Auction 90 Comment Public Notice*, the Bureaus proposed that each bidder in the auction be provided with three activity rule waivers. The Bureaus received no comments on this issue. Therefore, the Bureaus adopt this proposal to provide each bidder with three activity rule waivers.

102. Bidders may use an activity rule waiver in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum activity level. The FCC Auction System will automatically apply a waiver at the end of any bidding round where a bidder's activity level is below the minimum required unless (1) there are no activity rule waivers available or (2) the bidder overrides the automatic application of a waiver by reducing eligibility. If a bidder has no waivers remaining and does not satisfy the activity requirement, the FCC Auction System will permanently reduce the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction. It is important for bidders to understand that applying a waiver is irreversible. Once a bidder submits a proactive waiver, the bidder cannot unsubmit the waiver even if the round has not yet ended.

### iv. Auction Stopping Rules

103. For Auction 90, the Bureaus proposed to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all construction permits remain available for bidding until bidding closes

simultaneously on all construction permits. More specifically, bidding will close simultaneously on all construction permits after the first round in which no bidder submits any new bids or applies a proactive waiver.

104. The Bureaus also sought comment on three alternative versions of the simultaneous stopping rule for Auction 90. The Bureaus received no comment on these proposals and adopt them for Auction 90 as specified in the *Auction 90 Comment Public Notice*. The Bureaus retain the discretion to exercise any of these options with or without prior announcement during the auction.

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

105. In the *Auction 90 Comment Public Notice*, the Bureaus proposed that, by public notice or by announcement during the auction, they may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. The Bureaus received no comment on this issue. Because this approach to notification of delay during an auction has proven effective in resolving exigent circumstances in previous auctions, the Bureaus adopt these proposed rules regarding auction delay, suspension, or cancellation.

### B. Bidding Procedures

#### i. Round Structure

106. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted in a given day.

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

#### ii. Reserve Price and Minimum Opening Bids

108. Section 309(j) of the Communications Act of 1934, as amended, calls upon the Commission to

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

109. In the *Auction 90 Comment Public Notice*, the Bureaus did not propose to establish a reserve price for the construction permits to be offered in Auction 90. This is consistent with policy applied in earlier broadcast spectrum auctions. The Bureaus, however, did propose to establish minimum opening bids for each construction permit, reasoning that a minimum opening bid, which has been used in other auctions, is an effective bidding 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 VHF commercial television station and any other relevant factors. The Bureaus sought comment on the proposed minimum opening bids. A Commenter requests that the minimum opening bid for the new television channel in Seaford, Delaware, be lowered from the proposed \$200,000 to \$50,000. The Commenter points out that Seaford, with a population of roughly 10,000 people, is in the Salisbury Designated Market Area, and that Atlantic City is in the Philadelphia, PA DMA. The Commenter suggests that the minimum opening bid should be lower for the Seaford permit than for the Atlantic City permit on account of the larger population of the Philadelphia DMA. On that basis, the Commenter concludes that the opening bid for Seaford, DE should be less than a station in the Philadelphia market. The Bureaus' are not persuaded that the minimum opening bid previously proposed for the Seaford construction permit is too high. In Commission auctions, minimum opening bids are intended to serve as useful starting points for bidding. Based on the Bureaus' experience using minimum opening bids in other auctions, they believe that minimum opening bids speed the course of the

auction and ensure that valuable assets are not sold for nominal prices, without unduly interfering with the efficient awarding of construction permits. Accordingly, the Bureaus adopt the minimum opening bid amounts as proposed in the *Auction 90 Comment Public Notice*.

110. The specific minimum opening bid amounts for the construction permits available in Auction 90 are set forth below and in Attachment A to the *Auction 90 Procedures Public Notice*.

### iii. Bid Amounts

111. In the *Auction 90 Comment Public Notice*, the Bureaus proposed that in each round, eligible bidders be able to place a bid on a given construction permit in any of up to nine different amounts. Under the proposal, the FCC Auction System interface will list the nine acceptable bid amounts for each construction permit. The Bureaus received no comments on this proposal; therefore, this proposal is adopted.

112. The first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid on the construction permit. After there is a provisionally winning bid for a permit, the minimum acceptable bid amount will be a percentage higher.

113. In the *Auction 90 Comment Public Notice*, the Bureaus proposed to use a minimum acceptable bid percentage of 10 percent. The Bureaus did not receive any comments on this proposal. The Bureaus' experience in previous broadcast auctions assures that a minimum acceptable bid percentage of 10 percent is sufficient to ensure active bidding. Therefore, the Bureaus will begin the auction with a minimum acceptable bid percentage of 10 percent.

114. The eight additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage. In the *Auction 90 Comment Public Notice*, the Bureaus proposed to use a bid increment percentage of 5 percent, and received no comment on this issue. The Bureaus believe that a bid increment percentage of 5 percent will give bidders the flexibility to speed up the pace of the auction, if appropriate. The Bureaus therefore adopt this proposal, and will begin the auction with a bid increment percentage of 5 percent.

115. The Bureaus proposed to retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the bid increment percentage, and the number

of acceptable bid amounts if the Bureaus determine that circumstances so dictate. Further, the Bureaus proposed to retain the discretion to do so on a construction permit-by-construction permit basis. The Bureaus 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.

116. The Bureaus did not receive any comments on their proposal to retain the discretion to change bid amounts if they determine that circumstances so dictate. The Bureaus adopt this proposal. If the Bureaus exercise this discretion, they will alert bidders by announcement in the FCC Auction System during the auction.

### iv. Provisionally Winning Bids

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

118. In the *Auction 90 Comment Public Notice*, the Bureaus proposed to use a random number generator to select a single provisionally winning bid in the event of identical high bid amounts being submitted on a construction permit in a given round (*i.e.*, tied bids). No comments were received on this proposal.

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

### v. Bidding

120. All bidding will take place remotely either through the FCC Auction System or by telephonic bidding. There will be no on-site

bidding during Auction 90. 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 ten minutes.

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

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

123. In each round, eligible bidders will be able to place bids on a given construction permit in any of up to nine pre-defined bid amounts. For each construction permit, the FCC Auction System will list the acceptable bid amounts in a drop-down box. Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC Auction System also includes an upload function that allows bidders to upload text files containing bid information.

124. Until a bid has been placed on a construction permit, the minimum acceptable bid amount for that construction permit will be equal to its minimum opening bid amount. Once there is a bid on a construction permit, the minimum acceptable bid for that construction permit for the following round will be determined.

125. During a round, an eligible bidder may submit bids for as many construction permits as it wishes (provided that it has enough bidding eligibility), remove bids placed in the current bidding round, or permanently reduce eligibility. If a bidder submits multiple bids for the same construction permit in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with construction permits for which the bidder has removed bids do not count toward the bidder's current activity.

## vi. Bid Removal and Bid Withdrawal

126. In the *Auction 90 Comment Public Notice*, the Bureaus proposed bid removal procedures. The Bureaus proposed to provide each bidder with the option of removing any bids placed in a round provided that such bids are removed before the close of that bidding round. By using the remove bids function in the FCC Auction System, a bidder may effectively unsubmit any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is removed does not count toward bidding activity. The Bureaus received no comments on this issue of bid removals. These removal procedures will enhance bidder flexibility during the auction. Therefore, the Bureaus adopt their proposed procedures to permit bid removals for Auction 90.

127. Once a round closes, a bidder may no longer remove a bid. In the *Auction 90 Comment Public Notice*, the Bureaus proposed to prohibit bidders from withdrawing any bids after the round in which bids were placed has closed. This proposal was made in recognition that bid withdrawals, particularly those made late in this auction, could result in delays in licensing of digital broadcast television service to the public in these two markets. The Bureaus received no comments on the issue of bid withdrawal. Accordingly, the Bureaus will prohibit bid withdrawals in Auction 90. Bidders are cautioned to select bid amounts carefully because no bid withdrawals will be allowed in Auction 90, even if a bid was mistakenly or erroneously made.

## vii. Round Results

128. Reports reflecting bidders' identities for Auction 90 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

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

## viii. Auction Announcements

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

## V. Post-Auction Procedures

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

## A. Down Payments

132. Within ten business days after release of the auction closing public notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 90 to 20 percent of the net amount of its winning bids (gross bids less any applicable new entrant bidding credits).

## B. Final Payments

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

## C. Long-Form Application (FCC Form 301)

134. The Commission's rules currently provide that within thirty days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 301, Application for Construction Permit for Commercial Broadcast Station), and required exhibits for each construction permit won through Auction 90. 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

135. Any winning bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). The payments include both a deficiency

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

136. 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 90 Comment Public Notice*, the Bureaus proposed to set the additional default payment for this auction at twenty percent of the applicable bid. The Bureaus received no comments on this proposal, and therefore, adopt the proposal.

137. 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, 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

138. After the auction, applicants that are not winning bidders or are winning bidders whose upfront payment exceeded the total net amount of their winning bids may be entitled to a refund of some or all of their upfront payment. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise. Bidders that drop out of the auction completely (have exhausted all of their activity rule waivers and have no remaining bidding eligibility) may request a refund of their upfront payments before the close of the auction.

Federal Communications Commission.

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