

FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 08–22; Report No. AUC–08–85–F (Auction 85); DA 08–1944]

Auction of LPTV and TV Translator Digital Companion Channels Scheduled for November 5, 2008; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction 85

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of LPTV and TV Translator Digital Companion Channels (Auction 85). This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for the auction.

DATES: Auction 85 is scheduled to begin on November 5, 2008.

FOR FURTHER INFORMATION CONTACT:

Wireless Telecommunications Bureau, Auctions Spectrum and Access Division: For legal questions: Lynne Milne at (202) 418–0660. For general auction question: Roy Knowles or Linda Sanderson at (717) 338–2868. Media Bureau, Video Division: For licensing information and service rule questions: Shaun Maher (legal) or Hossein Hashemzadeh (engineering) at (202) 418–1600. To request materials in accessible formats (Braille, large print, electronic files or audio format) for people with disabilities, send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 or (202) 418–0432 (TTY).

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction 85 Procedures Public Notice*, which was released on September 2, 2008. The complete texts of the *Auction 85 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 Fridays in the FCC Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Auction 85 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>. The *Auction 85 Procedures Public Notice* and related documents are also available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/85/>.

I. General Information

A. Introduction

1. The Wireless Telecommunications Bureau and the Media Bureau (collectively, the Bureaus) announce the procedures and minimum opening bid amounts for the upcoming auction of construction permits for Low Power Television (LPTV), including Class A Television (TV), and TV Translator digital companion channels. This auction, which is designated Auction 85, is scheduled to commence on November 5, 2008. On July 17, 2008, in accordance with Section 309(j)(3) of the Communications Act of 1934, as amended, the Bureaus released a public notice seeking comment on minimum opening bid amounts and the procedures to be used in Auction 85. In addition, the Bureaus proposed an additional settlement period for applicants to use engineering solutions, dismissal requests or settlements to resolve conflicts among their digital companion channel engineering proposals. No comments were submitted in response to the *Auction 85 Comment Public Notice*, 73 FR 43230, July 24, 2008.

i. Construction Permits To Be Offered in Auction 85

2. Auction 85 will offer 44 construction permits for specified LPTV, including Class A TV, and TV Translator digital companion channels. Participation in this auction will be limited to those applicants for construction permits identified in Attachment A of the *Auction 85 Procedures Public Notice*.

3. Attachment A specifies the MX Groups accompanied by their respective minimum opening bids and upfront payments. Attachment A also lists the names of the applicants for construction permits in each MX Group. For each MX Group identified in Attachment A, competing applications were filed during the relevant filing period. All applications within an identified MX Group are directly mutually exclusive with one another, and therefore, a single construction permit will be auctioned for each MX Group identified in Attachment A.

B. Rules and Disclaimers

i. Relevant Authority

4. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules, including recent amendments and clarifications, as well as Commission decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees. Broadcasters should also familiarize themselves with the Commission's rules relating to the television broadcast service contained in 47 CFR 73.601–73.699 and 73.1001–73.4280. Prospective applicants must also be familiar with the rules relating to competitive bidding proceedings contained in 47 CFR 1.2001–1.2112 and broadcast auctions contained in 47 CFR 73.3555, 73.5000–73.5009. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, terms) contained in the *Auction 85 Procedures Public Notice* and the Commission's decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees.

ii. Prohibition of Collusion

5. Applicants for Auction 85 are reminded that they remain subject to the Commission's anti-collusion rule until the down payment deadline after the auction, which will be announced in a future public notice. This prohibition applies to all applicants listed in Attachment A regardless of whether such applicants become qualified bidders or actually bid. Applicants are also reminded that, for purposes of this prohibition, 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.

6. Parties subject to the anti-collusion rule are prohibited 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). Thus, competing applicants must affirmatively avoid all communications with each other that affect or, in their reasonable assessment,

have the potential to affect, bids or bidding strategy, which may include communications regarding the post-auction market structure. The anti-collusion rule 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 the anti-collusion rule provisions do not prohibit 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.

7. The Bureaus also remind Auction 85 applicants that they must not communicate indirectly to other applicants about bids or bidding strategy. Accordingly, Auction 85 applicants are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between 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 the anti-collusion rule. Moreover, the Commission has found a violation of the anti-collusion rule where an applicant used the Commission's bidding system to disclose its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets, and has placed auction participants on notice that the use of its bidding system to disclose market information to competitors will not be tolerated and will subject bidders to sanctions. Applicants are cautioned that 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.

8. 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 the Commission's anti-collusion rule will not insulate a party from enforcement of the antitrust laws.

9. If an applicant makes or receives a communication that appears to violate the anti-collusion rule, it 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 recently 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.

10. In addition, 47 CFR 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, 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. Applicants are therefore required by 47 CFR 1.65 to report to the Commission any communications they have made to or received from another applicant after the short-form application filing deadline that affect or have the potential to affect bids or bidding strategy unless such communications are made to or received from parties to agreements identified under 47 CFR 1.2105(a)(2)(viii).

iii. Due Diligence

11. 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 broadcast facilities they are seeking in this auction. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

12. Applicants are strongly encouraged to conduct their own research prior to Auction 85 in order to determine the existence of pending administrative or judicial proceedings that might affect their decisions regarding participation in the auction. Potential bidders for any new television facility in this auction are also reminded that full service television stations are in

the process of converting from analog to digital operation and that stations may have pending applications to construct and operate digital television facilities, construction permits and/or licenses for such digital facilities. All LPTV and TV translator stations are secondary to full service stations and are subject to displacement by such stations. Bidders should investigate the impact such applications, permits and licenses may have on their ability to operate facilities based on the construction permits offered in this auction.

iv. Use of Integrated Spectrum Auction System

13. The Commission will make available a browser-based bidding system to allow bidders to participate in Auction 85 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

14. Permittees or licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other Federal environmental statutes.

C. Auction Specifics

i. Auction Date

15. Bidding in Auction 85 will begin on Wednesday, November 5, 2008.

16. 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 construction permits will be conducted on each business day until bidding has stopped on all construction permits.

ii. Bidding Methodology

17. The bidding methodology for Auction 85 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. All telephone calls are recorded.

iii. Pre-Auction Dates and Deadlines

18. Dates and Deadlines

Auction Seminar	October 1, 2008.
Upfront Payments (via wire transfer)	October 10, 2008; 6 p.m. ET.
Mock Auction	November 3, 2008.
Auction Begins	November 5, 2008.

iv. Requirements for Participation

19. Those wishing to participate in the auction must: (1) Be listed on Attachment A; (2) submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) before 6 p.m. ET, October 10, 2008, following the procedures and instructions set forth in Attachment B to the *Auction 85 Procedures Public Notice*; and (3) comply with all provisions outlined in the Public Notice and applicable Commission rules.

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

A. Minor Modifications to Short-Form Applications (FCC Forms 175)

20. Since the deadline for filing short-form applications (FCC Forms 175) passed on June 30, 2006, Auction 85 applicants may now make only minor changes to their applications.

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

21. 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 within 30 days of any substantial change that may be of decisional significance to that application.

III. Pre-Auction Procedures

A. Auction Seminar

22. On Wednesday, October 1, 2008, the FCC will sponsor a seminar for Auction 85 at the FCC headquarters, located at 445 12th Street, SW., Washington, DC. The seminar will provide attendees with information about pre-auction procedures, auction rules and conduct, and the FCC Auction System. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff concerning the auction, auction procedures, and other matters related to this auction.

B. Minor Corrections to Applications

23. The Commission will issue a future public notice identifying: (1)

Those applications which are complete; (2) those applications rejected; and (3) those applications which have minor defects that may be corrected, and the deadline for resubmitting corrected applications. Mutually exclusive commercial applications will proceed to auction.

C. Upfront Payments—Due October 10, 2008

24. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). Applicants in Auction 85 have access to an electronic version of the FCC Form 159 that can be printed and sent by facsimile to U.S. Bank in St. Louis, Missouri. All upfront payments must be received in the proper account at U.S. Bank before 6 p.m. ET on October 10, 2008.

i. Making Auction Payments by Wire Transfer

25. Wire transfer payments must be received before 6 p.m. ET on October 10, 2008, consistent with instructions set forth in the *Auction 85 Procedures Public Notice*.

ii. FCC Form 159

26. A completed FCC Remittance Advice Form (FCC Form 159, Revised 07/05) must be sent by facsimile to U.S. Bank to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/03) is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment B of the *Auction 85 Procedures Public Notice*. The FCC Form 159 can be completed electronically, but must be filed with U.S. Bank via facsimile.

iii. Upfront Payments and Bidding Eligibility

27. The Commission has delegated to the Bureaus the authority and discretion to determine appropriate upfront payment(s) 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.

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

29. 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 85 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 a current eligibility level that meets or exceeds the number of bidding units assigned to one or more of the construction permits listed in Attachment A for which it has submitted an engineering proposal. 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 designated for that applicant in Attachment A 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 designated for the applicant in Attachment A, 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.

30. 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 upfront payments for all construction permits on which it seeks to be active in any given round. Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline.

31. If an applicant is a former defaulter, it must calculate its upfront payment for all construction permits by multiplying the number of bidding units on which they wish to be active by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit. If a former defaulter fails to submit a sufficient upfront payment to establish eligibility to bid on at least one of the construction permits associated with that applicant in Attachment A, the applicant will not be eligible to participate in the auction.

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

32. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that such requests include all pertinent information listed in the *Auction 85 Procedures Public Notice*. Applicants can provide the information electronically through the FCC Auction System.

D. Auction Registration

33. 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 timely-submitted short-form applications that are deemed complete and timely upfront payments that are sufficient to make them eligible to bid.

E. Remote Electronic Bidding

34. 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 short-form application. In either case, each authorized bidder must have its own SecurID® token, which the Commission will provide at no charge.

F. Mock Auction—November 3, 2008

35. All qualified bidders will be eligible to participate in a mock auction on Monday, November 3, 2008. The mock auction will enable 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

36. The first round of bidding for Auction 85 will begin on Wednesday, November 5, 2008. 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

37. In the *Auction 85 Comment Public Notice*, the Bureaus proposed to auction all construction permits in Auction 85 in a single auction using the Commission's standard simultaneous multiple-round (SMR) 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. Typically, bidding remains open on all construction permits until bidding stops on every construction permit. The Bureaus received no comment on this issue.

ii. Eligibility and Activity Rules

38. The Bureaus will use upfront payments to determine the initial (maximum) eligibility (as measured in bidding units) for Auction 85. 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. As noted earlier, each construction permit is assigned a specific number of bidding units listed in Attachment A. 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 designated for that applicant 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 licenses 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.

39. 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.

40. A bidder's activity level in a round is the sum of the bidding units associated with any construction permits covered by that bidder's 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.

41. 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 either place a bid and/or be the provisionally winning bidder during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place bids in the auction.

iii. Activity Rule Waivers

42. Each bidder in the auction will be provided with three activity rule waivers. The Bureaus received no comments on this issue.

iv. Auction Stopping Rules

43. For Auction 85, the Bureaus will employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all construction permits remain available for bidding until bidding closes simultaneously on all construction permits. More specifically, bidding will close simultaneously on all construction permits after the first round in which no bidder submits any new bids or applies a proactive waiver.

44. Auction 85 will begin under the simultaneous stopping rule approach, and the Bureaus will retain the discretion to employ the other proposed versions of the stopping rule. Moreover, the Bureaus will retain the discretion to use the modified stopping rule with or without prior announcement during the auction.

v. Auction Delay, Suspension, or Cancellation

45. The Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction.

B. Bidding Procedures

i. Round Structure

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

47. 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 the bidding activity level and other factors.

ii. Reserve Price and Minimum Opening Bids

48. The specific minimum opening bid amounts for each construction permit available in Auction 85 are set forth in Attachment A.

iii. Bid Amounts

49. The Bureaus proposed that in each round, eligible bidders will be able to place a bid on a given construction permit in any of up to nine different amounts. The FCC Auction System interface will list the nine acceptable bid amounts for each construction permit.

iv. Provisionally Winning Bids

50. 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.

51. The Bureaus will use a random number generator to select a single provisionally winning bid in the event of identical high bid amounts being submitted on a construction permit in a given round (i.e., tied bids).

52. 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 bides 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.

53. 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 85. 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.

54. A bidder's ability to bid on specific construction permits is determined by two factors: (1) The construction permits designated for that applicant; and (2) the bidder's eligibility. The bid submission screens will allow bidders to submit bids on only those construction permits designated for that bidder on Attachment A.

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

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

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

v. Bid Removal and Bid Withdrawal

58. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By removing selected bids in the FCC Auction System, a bidder may effectively unsubmit any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, i.e., a bid that is removed does not count toward bidding activity. Once a round closes, a bidder may no longer remove a bid.

vi. Round Results

59. Reports reflecting bidders' identities for Auction 85 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.

60. 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.

vii. Auction Announcements

61. 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

62. 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, long-form applications, and final payments, the long-form application (FCC Forms 301-CA or 346).

A. Down Payments

63. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 85 to 20 percent of the net amount of its winning bids (gross bids less any applicable new entrant bidding credits).

B. Final Payments

64. Each winning bidder will be required to submit the balance of the net amount of its winning bids within 10 business days after the applicable deadline for submitting down payments.

C. Long-Form Application

65. Within thirty days after the release of the auction closing notice, winning bidders must submit electronically a properly completed long-form application (FCC Forms 301-CA or 346), and required exhibits for each construction permit won through Auction 85. A winning bidder claiming new entrant status must include an exhibit demonstrating its eligibility for the bidding credit. Further filing instructions will be provided to auction winners at the close of the auction.

D. Default and Disqualification

66. 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 final payment within the prescribed period of time, 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.

67. 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. The Bureaus have set the additional default payment for this auction at twenty percent (20%) of the applicable bid.

68. Finally, in the event of a default, the Commission may 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

69. All applicants that submit upfront payments but after the close of the auction are not winning bidders for a construction permit in Auction 85 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. All refunds will be returned to the payor of record, as identified on the FCC Form 159, unless the payor submits written authorization instructing otherwise.

70. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers and have no remaining bidding eligibility may also be eligible for a refund of their upfront payment before the close of the auction.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

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FEDERAL RESERVE SYSTEM**Formations of, Acquisitions by, and Mergers of Bank Holding Companies**

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank

holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 9, 2008.

A. Federal Reserve Bank of Chicago
(Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Tompkins Bancorp, Inc., Avon, Illinois*; to acquire 100 percent of the voting shares of Community Bank of Galesburg, Galesburg, Illinois.

B. Federal Reserve Bank of Dallas
(W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Lone Star First Holdings, Inc., Dallas, Texas*; to become a bank holding company by acquiring 100 percent of the voting shares of Kent County State Bank, Jayton, Texas.

Board of Governors of the Federal Reserve System, September 9, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8-21300 Filed 9-12-08; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Disease Control and Prevention****The National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health; Interagency Committee on Smoking and Health**

Notice of Cancellation: This notice was published in the **Federal Register** on August 15, 2008, Volume 73, Number 159, page 47952. The meeting previously scheduled to convene on September 16, 2008 has been cancelled.

For Further Information Contact: Ms. Monica L. Swann, Management and Program Analyst, Office on Smoking and Health, Centers for Disease Control and Prevention, 4770 Buford Highway, M/S K50, Atlanta, GA 30341; telephone (770) 488-5278, fax (770) 488-5767; E-mail mswann@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and