



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Fax-On-Demand 202 / 418-2830
TTY 202 / 418-2555
Internet: <http://www.fcc.gov>
<ftp.fcc.gov>

DA 04-1699
June 10, 2004

AUCTION OF FM BROADCAST CONSTRUCTION PERMITS SCHEDULED FOR NOVEMBER 3, 2004

Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures

Report No. AUC-04-37-K (Auction No. 37)

I.	GENERAL INFORMATION	4
A.	Introduction.....	4
1.	Background.....	4
2.	Construction Permits to Be Auctioned	5
B.	Rules and Disclaimers.....	6
1.	Relevant Authority.....	6
2.	Prohibition of Collusion.....	6
3.	Due Diligence	8
4.	Bidder Alerts.....	10
5.	National Environmental Policy Act (NEPA) Requirements.....	10
C.	Auction Specifics	11
1.	Auction Date.....	11
2.	Auction Title.....	11
3.	Bidding Methodology	11
4.	Pre-Auction Dates and Deadlines	11
5.	Requirements for Participation	12
6.	General Contact Information	13
II.	SHORT-FORM (FCC FORM 175) APPLICATION REQUIREMENTS	14
A.	Permit Selection.....	14
B.	Ownership Disclosure Requirements (FCC Form 175 Exhibit A)	14

C.	Consortia and Joint Bidding Arrangements (FCC Form 175 Exhibit B).....	14
D.	New Entrant Bidding Credit (FCC Form 175 Exhibit C)	15
1.	Eligibility	15
2.	Application Requirements	16
3.	Bidding Credits	17
E.	Provisions Regarding Defaulters and Former Defaulters (FCC Form 175 Exhibit D).....	18
F.	Installment Payments	19
G.	Other Information (FCC Form 175 Exhibits E and F).....	19
I.	Maintaining Current Information in Short-Form Applications (FCC Form 175).....	19
III.	PRE-AUCTION PROCEDURES	19
A.	Auction Seminar	19
B.	Short-Form Application (FCC Form 175) — Due August 6, 2004	20
1.	Electronic Filing	20
2.	Completion of the FCC Form 175	20
3.	Electronic Review of FCC Form 175	21
C.	Application Processing and Minor Corrections	21
D.	Upfront Payments — Due September 24, 2004.....	21
1.	Making Auction Payments by Wire Transfer	22
2.	FCC Form 159	22
3.	Amount of Upfront Payment	23
4.	Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments	24
E.	Auction Registration	25
F.	Remote Electronic Bidding.....	25
G.	Mock Auction	25
IV.	AUCTION EVENT	26
A.	Auction Structure	26
1.	Simultaneous Multiple Round Auction	26
2.	Maximum Eligibility and Activity Rules.....	26
3.	Activity Rule Waivers and Reducing Eligibility	27
4.	Auction Stopping Rules	28
5.	Auction Delay, Suspension, or Cancellation	29
B.	Bidding Procedures.....	29
1.	Round Structure	29
2.	Reserve Price or Minimum Opening Bid.....	29
3.	Minimum Acceptable Bids and Bid Increments	31
4.	High Bids	32
5.	Bidding	32
6.	Bid Removal and Bid Withdrawal	33
7.	Round Results	35

8.	Auction Announcements.....	35
9.	Maintaining the Accuracy of FCC Form 175 Information	35
V.	POST-AUCTION PROCEDURES.....	35
A.	Down Payments and Withdrawn Bid Payments	35
B.	Final Payments.....	36
C.	Long-Form Application	36
D.	Default and Disqualification	36
E.	Refund of Remaining Upfront Payment Balance	37
VI	Attachment A: Construction Permits to be Auctioned.....	A-1
VII.	Attachment B: FCC Auction Seminar Registration Form	B-1
VIII.	Attachment C: Electronic Filing and Review of the FCC Form 175	C-1
IX.	Attachment D: Guidelines for Completion of FCC Form 175 and Exhibits.....	D-1
X.	Attachment E: Auction-Specific Instructions for FCC Remittance Advice (FCC Form 159- February 2003 Edition)	E-1
XI.	Attachment F: Summary Listing of Commission and Bureau Documents Addressing Application of the Anti-Collusion Rule	F-1

I. GENERAL INFORMATION

A. Introduction

By this public notice, the Media Bureau (“MB”) and Wireless Telecommunications Bureau (“WTB”) (collectively the “Bureaus”) announce the procedures and minimum opening bids for the upcoming auction of certain FM Broadcast construction permits (“Auction No. 37”). On April 15, 2004, in accordance with the Balanced Budget Act of 1997,¹ the Bureaus released a public notice seeking comment on previously announced procedures for Auction No. 37.² The Bureaus received eight comments and no reply comments in response to the *2004 Auction No. 37 Revised Comment Public Notice*.³

1. Background

As described in detail in the *2004 Auction No. 37 Revised Comment Public Notice*, Auction No. 37 was originally scheduled for February 21, 2001, but was subsequently postponed.⁴ Before Auction No. 37 was postponed in September 2001, on September 25, 2000, the Bureaus released the *Auction No. 37 Comment Public Notice*,⁵ seeking comment on the establishment of reserve prices and/or minimum opening bids and procedures for Auction No. 37, in accordance with the Balanced Budget Act of 1997.⁶ On September 29, 2000, the Bureaus released a second Public Notice, adding eight additional vacant FM allotments to the auction inventory and seeking comment on auction procedures and minimum opening bids with respect to the additional allotments.⁷ On January 19, 2001, the Bureaus released the *2001 Procedures Public Notice*,⁸ in which the Bureaus, *inter alia*, reduced the minimum opening bids for the Auction No. 37 construction permits, and set forth the procedures to be followed in Auction No. 37.

¹ Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251, § 3002(a) (1997) (codified at 47 U.S.C. § 309(j)(4)(F)) (“Balanced Budget Act”).

² See “Revised Inventory and Auction Start Date for FM Broadcast Construction Permits, Auction Rescheduled for November 3, 2004; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures,” *Public Notice*, 19 FCC Rcd 6907 (WTB/MB 2004) (“*2004 Auction No. 37 Revised Comment Public Notice*”). The comment and reply comment deadlines were extended in “Auction for FM Broadcast Construction Permits Deadlines Extended for Comments and Reply Comments,” *Public Notice*, DA 04-1275 (MB/WTB rel. May 5, 2004).

³ Comments were filed by: American Handicapped Defense Union (“AHDU”); Reddy, Begley & McCormick, LLP (“Reddy Begley”); Summit Media Broadcasting, LLC (“Summit Media”); Hodson Broadcasting (“Hodson”); Langley Broadcast Consulting (“Langley”); Kevin M. Fitzgerald (“Fitzgerald”); Richard Van Zandt (“Van Zandt”); and Minority Media and Telecommunications Council (“MMTC”).

⁴ See *2004 Auction No. 37 Revised Comment Public Notice*, 19 FCC Rcd at 6908-10.

⁵ See “FM Broadcast Auction Scheduled for February 21, 2001; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedural Issues,” *Public Notice*, 15 FCC Rcd 18081 (WTB/MMB 2000) (“*Auction No. 37 Comment Public Notice*”).

⁶ The Commission's authority to establish a reserve price or minimum opening bid is set forth in 47 C.F.R. § 1.2104 (c) and (d).

⁷ See “Auction of Additional FM Broadcast Construction Permits to be Included In Auction No. 37 Scheduled For February 21, 2001,” *Public Notice*, 15 FCC Rcd 25486 (WTB/MMB 2000) (“*Auction No. 37 Additional Comment Public Notice*”). Because the market numbers were revised to reflect the addition of these eight vacant FM allotments, the Attachment A in the *Auction No. 37 Additional Comment Public Notice* superseded the Attachment A in the *Auction No. 37 Comment Public Notice*. The Bureaus received twenty comments and three reply comments in response to the *Auction No. 37 Comment Public Notice* and the *Auction No. 37 Additional Comment Public Notice*.

⁸ “Auction Notice and Filing Requirements for FM Broadcast Construction Permits; Auction Rescheduled from February 21, 2001 to May 9, 2001; Minimum Opening Bids and Other Procedural Issues,” *Public Notice*, 16 FCC Rcd 928 (WTB/MMB 2001) (“*2001 Procedures Public Notice*”).

In the *NCE Second Report and Order*, the Commission established revised procedures through which NCE applicants could seek to reserve non-reserved FM channels.⁹ Pursuant to a Public Notice released September 30, 2003, MB opened a window to permit NCE reservation showings for certain FM allotments.¹⁰ By the reservation filing deadline, NCE applicants had filed petitions to reserve 60 of the channels previously included in the Auction No. 37 inventory. Those channels have been removed from the auction inventory while reservation showings are being evaluated. Auction No. 37 will proceed with the remaining vacant FM allotments. In the *2004 Auction No. 37 Revised Comment Public Notice*, the Bureaus again sought comment on the minimum opening bids and procedures for Auction No. 37.

2. Construction Permits to Be Auctioned

Auction No. 37 will consist of 290 construction permits in the FM Broadcast service for stations throughout the United States, Guam, and American Samoa. These construction permits are for vacant FM allotments, reflecting FM channels assigned to the Table of FM Allotments, 47 C.F.R. § 73.202(b), pursuant to the Commission's established rulemaking procedures, designated for use in the indicated community. Pursuant to the policies established in the *Broadcast First Report and Order*, applicants may apply for any vacant FM allotment, as specified in Attachment A;¹¹ applicants specifying the same FM allotment will be considered mutually exclusive and, thus, the construction permit for the FM allotment will be awarded by competitive bidding procedures.¹² The reference coordinates for each vacant FM allotment are also listed in Attachment A.¹³ When two or more short-form applications (FCC Form 175) for an FM allotment are accepted for filing, mutual exclusivity ("MX") exists for auction purposes.¹⁴ Once mutual exclusivity exists for auction purposes, even if only one applicant within an MX Group submits an upfront payment, that applicant is required to submit a bid in order to obtain the construction permit.¹⁵

⁹ Reexamination of the Comparative Standards for Noncommercial Educational Applicants, MM Docket 95-31, *Report and Order*, 15 FCC Rcd 7386 (2000) ("*NCE Report and Order*"); *Memorandum Opinion and Order*, 16 FCC Rcd 5074 (2001) ("*NCE MO&O*"); *Second Report and Order*, 18 FCC Rcd 6691 (2003) ("*NCE Second Report and Order*"). Petitions for reconsideration of the *NCE Second Report and Order* are pending with the Commission. See "Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding," *Public Notice*, Report No. 2614 (rel. July 1, 2003).

¹⁰ "Media Bureau Opens Window to Permit Noncommercial Educational Reservation Showings for Certain Vacant FM Allotments," *Public Notice*, 18 FCC Rcd 19600 (MB 2003). The *Public Notice* established a November 21, 2003, deadline for filing petitions for rulemaking to amend the FM Table of Allotments, 47 C.F.R. § 73.202, to reserve FM channels.

¹¹ Attachment A to this Public Notice reflects the channel substitutions or reference coordinate modifications made after the release of the *2004 Auction No. 37 Revised Comment Public Notice*.

¹² See Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, *First Report and Order* in MM Docket No. 97-234, GC Docket No. 92-52 and GEN Docket No. 90-264, 13 FCC Rcd 15920, 15961, 15974-15975 (1998) ("*Broadcast First Report and Order*"), *on recon.*, *Memorandum Opinion and Order*, 14 FCC Rcd 8724 (1999), *on further recon.*, *Memorandum Opinion and Order*, 14 FCC Rcd 14521(1999).

¹³ With regard to the FM service, the Commission gave applicants the opportunity to submit a set of preferred site coordinates as an alternative to the reference coordinates for the vacant FM allotment upon which they intend to bid. See *Broadcast First Report and Order*, 13 FCC Rcd at 15974 and n.153. Further information regarding preferred site coordinates may be found in Attachment D to this Public Notice.

¹⁴ *Broadcast First Report and Order*, 13 FCC Rcd at 15978-80, ¶¶ 149-154. See also Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-252, *Second Report and Order*, 9 FCC Rcd 2348, 2376, ¶ 165 (1994).

¹⁵ Any applicant that submits a short-form application that is accepted for filing but fails to timely submit an upfront payment will retain its place in the MX Group but, having purchased no bidding eligibility, will not be eligible to bid.

B. Rules and Disclaimers

1. Relevant Authority

Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to the FM broadcast service contained in Title 47, Part 73 of the Code of Federal Regulations. Prospective bidders must also be familiar with the rules relating to broadcast auctions and competitive bidding proceedings contained in Title 47, Part 1, Subpart Q, and Part 73, Subpart I of the Code of Federal Regulations. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions contained in this Public Notice,¹⁶ the *2004 Auction No. 37 Revised Comment Public Notice* and the *Broadcast First Report and Order*,¹⁷ the *Broadcast Reconsideration Order*,¹⁸ and the *New Entrant Bidding Credit Reconsideration Order*.¹⁹ In particular, broadcasters should also familiarize themselves with the Commission's recent amendments and clarifications to its general competitive bidding rules.²⁰

The terms contained in the Commission's rules, relevant orders and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at <http://wireless.fcc.gov/auctions>. Additionally, documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. Documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554, 202-488-5300 (telephone), 202-488-5563 (facsimile), or fcc@bcpiweb.com (e-mail). When ordering documents from Best Copy and Printing, Inc., please provide the appropriate FCC document number (for example, FCC 98-194 for the *Broadcast First Report and Order* and FCC 99-74 for the *Broadcast Reconsideration Order*).

2. Prohibition of Collusion

To ensure the competitiveness of the auction process, the Commission's Part 1 rules prohibit applicants for any of the same geographic license areas from communicating with each other during the auction about bids, bidding strategies, or settlements unless such applicants have identified each other on their FCC Form 175 applications as parties with whom

¹⁶ This Public Notice supercedes the *2001 Procedures Public Notice*.

¹⁷ See generally *Broadcast First Report and Order*.

¹⁸ See Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, *Memorandum Opinion and Order*, 14 FCC Rcd 8724 (1999) (“*Broadcast Reconsideration Order*”).

¹⁹ See Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, *Memorandum Opinion and Order*, 14 FCC Rcd 12541 (1999) (“*New Entrant Bidding Credit Reconsideration Order*”).

²⁰ See, e.g., Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd 15293 (2000) (“*Part 1 Recon. Order and Part 1 Fifth Report and Order, Fourth Further Notice of Proposed Rule Making*”); Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, *Seventh Report and Order*, 16 FCC Rcd 17546 (2001) (“*Part 1 Seventh Report and Order*”); Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, *Eighth Report and Order*, 17 FCC Rcd 2962 (2002); Amendment of Part 1 of the Commission's Rules - Competitive Bidding Procedures, WT Docket No. 97-82, *Second Order on Reconsideration of the Third Report and Order, and Order on Reconsideration of the Fifth Report and Order*, 18 FCC Rcd 10180 (2003).

they have entered into agreements under Section 1.2105(a)(2)(viii).²¹ Thus, applicants for any of the same geographic license areas must affirmatively avoid all discussions with each other that affect, or in their reasonable assessment, have the potential to affect, bids or bidding strategy. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. The “geographic license area” is the market designation of the particular service.²² For the FM service, the market designation is the particular vacant FM allotment (e.g., Bethel, Alaska Channel 252C3, Market FM001). In Auction No. 37, for example, the rule would apply to applicants bidding for any of the same FM allotments. Therefore, applicants that apply to bid for an FM construction permit for the same allotment would be precluded from engaging in prohibited communications after the FCC Form 175 short-form application deadline. In addition, even if auction applicants are each eligible to bid on only one common FM allotment, they may not discuss with each other their bids or bidding strategies relating to any FM allotment that either is eligible to bid on. For purposes of this prohibition, Section 1.2105(c)(7)(i) defines applicant as including all controlling interests in the entity submitting a short-form application to participate in the auction, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application, and all officers and directors of that entity.²³

Bidders competing for construction permits for any of the same designated markets are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he or she is authorized to represent in the auction. Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or consulting firm), a violation could similarly 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.²⁴

However, the Bureaus caution that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted.²⁵ The Commission’s anti-collusion rules allow applicants to form certain agreements during the auction, provided the applicants have not applied for construction permits in the same designated market. However, applicants may enter into bidding agreements *before* filing their FCC Form 175, as long as they disclose the existence of the agreement(s) in their FCC Form 175.²⁶ If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application under Section 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other applicants for the same designated market.²⁷ By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with Sections 1.2105(c) and 73.5002.

²¹ See 47 C.F.R. §§ 1.2105(a)(2)(viii); 1.2105(c). See also 47 C.F.R. § 73.5002; *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17546.

²² *Id.* at 17549 n.12.

²³ 47 C.F.R. § 1.2105(c)(7)(i);

²⁴ See *In re Application of Nevada Wireless for a License to Provide 800 MHz Specialized Mobile Radio Service in the Farmington, NM-CO Economic Area (EA-155) Frequency Band A*, *Memorandum Opinion and Order*, 13 FCC Rcd 11973, 11977, ¶ 11 (1998) (“*Nevada Wireless*”).

²⁵ See *id.* at 11978.

²⁶ See 47 C.F.R. § 1.2105(c)(7)(i).

²⁷ See “Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules,” *Public Notice*, DA 95-2244, 11 FCC Rcd 9645 (1995).

Section 1.65 of the Commission's rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application.²⁸ Thus, Section 1.65 requires auction applicants that engage in communications of bids or bidding strategies that result in a bidding agreement, arrangement or understanding not already identified on their short-form applications to promptly disclose any such agreement, arrangement or understanding to the Commission by amending their pending applications. In addition, Section 1.2105(c)(6) requires all auction applicants to report prohibited discussions or disclosures regarding bids or bidding strategy to the Commission in writing immediately, but in no case later than five business days after the communication occurs, even if the communication does not result in an agreement or understanding regarding bids or bidding strategy that must be reported under Section 1.65.²⁹

Applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in all bidding consortia, joint ventures, partnerships, and other arrangements entered into relating to the competitive bidding process.³⁰ Any applicant found to have violated the anti-collusion rule may be subject to sanctions, including forfeiture of its upfront payment, down payment or full bid amount, and may be prohibited from participating in future auctions.³¹ In addition, applicants are reminded that they are subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. If an applicant is found to have violated the antitrust laws in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions.³²

A summary listing of documents from the Commission and the Bureaus addressing the application of the anti-collusion rules may be found in Attachment F.

3. Due Diligence

Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and market place factors that may have a bearing on the value of the broadcast facilities in this auction. **The 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 permittee in the 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 individual due diligence before proceeding as they would with any new business venture.³³

In particular, potential bidders are strongly encouraged to review all underlying Commission orders, such as the specific *Report and Order* amending the FM Table of Allotments and allotting the FM channel(s) on which they plan to bid.³⁴

²⁸ 47 C.F.R. § 1.65.

²⁹ 47 C.F.R. § 1.2105(c)(6); *see also Part 1 Seventh Report and Order*, 16 FCC Rcd at 17555, ¶ 17.

³⁰ 47 C.F.R. § 1.2107(d).

³¹ *See* 47 C.F.R. § 1.2109(d).

³² *Id.*

³³ One commenter suggests that we allow potential applicants time to perform due diligence before the short-form application deadline. Langley Comments at 1. The list of FM allotments available for auction was released with the *2004 Auction No. 37 Revised Comment Public Notice* on April 15, 2004, providing sufficient time for potential applicants to perform due diligence before the short form application filing deadline on August 6, 2004.

³⁴ *See* 47 C.F.R. § 73.202.

Reports and Orders adopted in FM allotment rulemaking proceedings often include anomalies such as site restrictions or expense reimbursement requirements.³⁵ Bidders are also responsible for reviewing all pending rulemaking petitions and open proceedings that might affect the FM allotment(s) on which they plan to bid.³⁶ Additionally, potential bidders should perform technical analyses sufficient to assure them that, should they prevail in competitive bidding for a given FM allotment, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements.

Potential bidders are also strongly encouraged to conduct their own research prior to Auction No. 37 in order to determine the existence of any pending administrative or judicial proceedings that might affect their decision to participate in the auction. Participants in Auction No. 37 are strongly encouraged to continue such research throughout the auction.

Potential bidders should also be aware that certain pending and future applications (including those for modification), petitions for rulemaking, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal oppositions, and applications for review before the Commission may relate to particular applicants or incumbent permittees or the construction permits available in Auction No. 37. In addition, pending and future judicial proceedings may relate to particular applicants or incumbent permittees, or the construction permits available in Auction No. 37. Prospective bidders are responsible for assessing the likelihood of the various possible outcomes, and considering their potential impact on construction permits available in this auction.

Prospective bidders should perform due diligence to identify and consider all proceedings that may affect the construction permits being auctioned. We note that resolution of such matters could have an impact on the availability of spectrum for Auction No. 37. In addition, although the Commission may continue to act on various pending applications, informal objections, petitions, and other requests for Commission relief, some of these matters may not be resolved by the time of the auction.

Bidders are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the construction permits available in Auction No. 37. Potential bidders are strongly encouraged to physically inspect any sites located in, or near, the FM allotment for which they plan to bid.

Potential bidders may research the licensing database for the Media Bureau on the Internet in order to determine which channels are already licensed to incumbent licensees. Licensing records for the Media Bureau are contained in the Media Bureau's Consolidated Data Base System (CDBS) and may be researched on the Internet at <http://www.fcc.gov/mb/>. Potential bidders may query the database online and download a copy of their search results if desired. Detailed instructions on using Search for Station Information, Search for Ownership Report Information and Search for Application Information and downloading query results are available online by selecting the CDBS Public Access (main) button at the bottom of the Electronic Filing and Public Access list section. The database searches return either station or application data. The application search provides an application link that displays the complete electronically filed application in application format. An AL/TC search under the application search link permits searching for Assignment

³⁵ See, e.g., *Charlotte Amalie, Frederiksted, and Christiansted, U.S. Virgin Islands*, 19 FCC Rcd 30 (MB 2004); *Cheyenne, Wyoming and Gering, Nebraska*, 15 FCC Rcd 7528 (MMB 2000); *Circleville, Ohio*, 9 F.C.C.2d 159 (1967).

³⁶ See, e.g., *Fort Collins, Westcliffe and Wheat Ridge, Colorado*, 19 FCC Rcd 4821 (MB 2004), in which the Commission substituted Channel 249A for vacant Channel 227A at Westcliffe, Colorado, FM 061. The reference coordinates for Channel 249A at Westcliffe are 38-03-21 and 105-30-02 (effective date is May 3, 2004). In *Arthur and Hazelton, North Dakota*, MB Docket No. 03-208, DA 04-1542 (rel. May 28, 2004), the Commission substituted Channel 277C for vacant Channel 280C at Hazelton, North Dakota, FM 197. The reference coordinates for Channel 277C at Hazelton are 46-22-06 and 100-55-49 (effective date is July 12, 2004). In *Dinosaur and Rangely, Colorado et al.*, MB Docket No. 02-290, DA 04-1650 (rel. June 10, 2004), the Commission substituted Channel 266C1 for vacant Channel 247C1 at Dinosaur, Colorado, FM 047; Channel 264C2 for vacant Channel 257C2 at Monroe, Utah, FM 316; Channel 250C2 for vacant Channel 259C1 at Green River, Wyoming, FM 348; and Channel 258A for vacant Channel 259A at Saratoga, Wyoming, FM 357 (effective date is July 27, 2004). Attachment A to this Public Notice reflects the new channel substitutions and reference coordinate changes.

of License/Transfer of Control groups using the AL/TC group lead application. For further details, click on the [Help](#) file. Potential bidders should direct questions regarding the search capabilities of CDBS to the Media Bureau help line at (202) 418-2662, or via e-mail at mbinfo@fcc.gov.

The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by a bidder, bidders may obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the database.

4. Bidder Alerts

All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a construction permit, and not in default on any payment for Commission construction permits or licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency.³⁷ Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, construction permit or license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 37 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a “cold call” from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of investment is less than \$25,000.
- The sales representative makes verbal representations that: (a) the Internal Revenue Service (“IRS”), Federal Trade Commission (“FTC”), Securities and Exchange Commission (“SEC”), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326-2222 and from the SEC at (202) 942-7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876-7060. Consumers who have concerns about specific proposals regarding Auction No. 37 may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225-5322).

5. National Environmental Policy Act (NEPA) Requirements

Permittees must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA).³⁸ The construction of a broadcast facility is a federal action and the permittee must comply with the Commission's NEPA rules

³⁷ See 47 C.F.R. § 1.2105.

³⁸ 47 C.F.R. Chapter 1, Part 1, Subpart I.

for each such facility.³⁹ The Commission's NEPA rules require among other things, that the permittee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corp of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The permittee must prepare environmental assessments for broadcast facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The permittee must also prepare environmental assessments for broadcast facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

1. Auction Date

The auction will begin on Wednesday, November 3, 2004. 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.

2. Auction Title

Auction No. 37 — FM Broadcast

3. Bidding Methodology

The bidding methodology for Auction No. 37 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. As a contingency plan, bidders may also dial in to the FCC Wide Area Network. Qualified bidders are permitted to bid telephonically or electronically.

4. Pre-Auction Dates and Deadlines

Auction Seminar	July 22, 2004
Short-Form Application (FCC FORM 175) Filing Window Opens	July 22, 2004; noon, ET
Short-Form Application (FCC FORM 175) Filing Window Deadline	August 6, 2004; 6:00 p.m. ET
Upfront Payments (via wire transfer).....	September 24, 2004; 6:00 p.m. ET
Mock Auction	October 29, 2004
Auction Begins.....	November 3, 2004

³⁹ *Id.* §§ 1.1305-1.1319.

5. Requirements for Participation

Those wishing to participate in the auction must:

- Submit a short form application (FCC Form 175) electronically by 6:00 p.m. ET, August 6, 2004. No other application may be substituted for the FCC Form 175.
- Submit a sufficient upfront payment and a FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, September 24, 2004.
- Comply with all provisions outlined in this public notice and applicable Commission rules.

Two commenters suggest that we establish restrictions on which entities are eligible to participate in Auction No. 37. Hodson suggests that the top 25 national radio broadcast business conglomerates should be prohibited from participating in Auction No. 37.⁴⁰ Hodson further suggests that any regional or local broadcast entities with attributable interests in any broadcast license within 250 kilometers of a specified vacant FM allotment, should be ineligible to bid on that particular allotment.⁴¹ Van Zandt proposes that we limit the number of construction permits on which existing broadcasters and large corporations may bid.⁴² We will not impose any eligibility restrictions in Auction No. 37. Barring certain entities from participating in an auction based on the number of facilities they own would constitute a *de facto* amendment of the Commission's broadcast ownership rules.⁴³ Rules concerning eligibility to hold a license are established in service rules adopted by the Commission. The Bureau's process for seeking comment on auction procedures is not the appropriate forum to address such rule changes. Such an issue should have been raised in the context of a rulemaking proceeding establishing license eligibility rules for the FM Broadcast service.⁴⁴

⁴⁰ Hodson Comments at 6-7.

⁴¹ *Id.* at 7.

⁴² Van Zandt Comments at 1-2.

⁴³ 47 C.F.R. § 73.3555(a).

⁴⁴ Moreover, petitions for reconsideration of a final action in a notice and comment rulemaking proceeding must be filed within 30 days from the date of public notice of such action. *See* 47 C.F.R. § 1.429(a), (d).

6. General Contact Information

GENERAL AUCTION INFORMATION

General Auction Questions
Seminar Registration

FCC Auctions Hotline
(888) 225-5322, Press Option #2
or direct (717) 338-2888
Hours of service: 8 a.m. – 5:30 p.m. ET
Monday through Friday

AUCTION LEGAL INFORMATION

Auction Rules, Policies, Regulations

Auctions and Spectrum Access Division
(202) 418-0660

LICENSING INFORMATION

Rules, Policies, Regulations
Licensing Issues, Engineering Issues,
Due Diligence, Incumbency Issues

Audio Division
(202) 418-2700

TECHNICAL SUPPORT

Electronic Filing
FCC Automated Auction System

FCC Auctions Technical Support Hotline
(202) 414-1250 (Voice),
(202) 414-1255 (TTY)
Hours of service: 8 a.m. to 6:00 p.m. ET,
Monday through Friday

PAYMENT INFORMATION

Wire Transfers
Refunds

FCC Auctions Accounting Group
(202) 418-0578
(202) 418-2843 (Fax)

TELEPHONIC BIDDING

Will be furnished only to qualified bidders

FCC COPY CONTRACTOR

Additional Copies of
Commission Documents

Best Copy and Printing, Inc.
445 12th Street, SW, Room CY-B402
Washington, DC 20554
(202) 488-5300
(202) 488-5563 (Fax)
fcc@bcpiweb.com (E-mail)

PRESS INFORMATION

Lauren Patrich at (202) 418-7944

FCC FORMS

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

FCC INTERNET SITES

<http://www.fcc.gov>
<http://wireless.fcc.gov/auctions>
<http://www.fcc.gov/mb/audio>
<ftp://ftp.fcc.gov>

II. SHORT-FORM (FCC FORM 175) APPLICATION REQUIREMENTS

Guidelines for completion of the short-form application (FCC Form 175) are set forth in Attachment D to this public notice. The short-form application seeks the applicant's name and address, legal classification, status, new entrant bidding credit eligibility, identification of the construction permit(s) sought, the authorized bidders and contact persons. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license and, as discussed below in Section II.E (Provisions Regarding Defaulters and Former Defaulters), that they are not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. To participate in Auction No. 37, no other application may be substituted for the FCC Form 175.⁴⁵

A. Permit Selection

In the FCC Form 175 for certain previous non-broadcast auctions, applicants could use a "Save All Licenses" function to indicate that they wanted to pursue all markets being auctioned. One commenter suggests we not include a "Save All Licenses" function in the Form 175 for Auction No. 37. The commenter claims that inclusion of this function will increase the likelihood that applicants will use the function rather than selecting only those allotments that they wish to construct and operate.⁴⁶ We agree that a "Save All Licenses" function is appropriate for wireless auctions, but it is inappropriate in the broadcast context. Thus, on the FCC Form 175 for Auction No. 37, applicants must indicate FM construction permits that they want to pursue by selecting the FM allotments individually.

B. Ownership Disclosure Requirements (FCC Form 175 Exhibit A)

The Commission indicated in the *Broadcast First Report and Order* that, for purposes of determining eligibility to participate in a broadcast auction, the uniform Part 1 ownership disclosure standards would apply. Therefore, in completing the FCC Form 175, all applicants will be required to file an "Exhibit A" and provide information required by Sections 1.2105 and 1.2112 of the Commission's rules, thus providing a full and complete statement of the ownership of the bidding entity. The ownership disclosure standards for the short-form are set forth in Section 1.2112 of the Commission's rules.⁴⁷

C. Consortia and Joint Bidding Arrangements (FCC Form 175 Exhibit B)

Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings that relate in any way to the construction permits being auctioned, including any agreements relating to post-auction market structure.⁴⁸ Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the

⁴⁵ As discussed generally in the *NCE Second Report and Order*, a window open for nonreserved vacant FM allotments provides a filing opportunity for both NCE and commercial FM applicants. However, as discussed in Section III.C., *infra*, while non-mutually exclusive applications will not be resolved through competitive bidding, any applications specifying NCE facilities that are mutually exclusive with any applications specifying commercial facilities will be returned as unacceptable for filing. See 47 C.F.R. § 73.5002(b).

⁴⁶ Reddy Begley Comments at 2.

⁴⁷ Section 73.5002 of the Commission's rules specifies the bidding procedures, certification requirements and the anti-collusion rules applicable to mutually exclusive applications for commercial broadcast services subject to auction. Subsection (b) of that rule requires the timely submission of short-form applications, along with all required certifications, information, and exhibits, pursuant to the provisions of 47 C.F.R. § 1.2105(a) and any Commission public notices. Section 1.2105, in turn, requires the disclosure on the short form of applicant ownership information as set forth in Section 1.2112. Note that both of the aforementioned Part 1 rule sections were revised in the *Part 1 Fifth Report and Order*.

⁴⁸ 47 C.F.R. §§ 1.2105(a)(2)(viii), (c)(1).

amount of their bids, bidding strategies, or the particular construction permits on which they will or will not bid.⁴⁹ As discussed above, if an applicant has had discussions, but has not reached a joint bidding agreement by the short-form deadline, it would not include the names of parties to the discussions on its applications and may not continue discussions with applicants for the same market after the deadline.⁵⁰ Where applicants have entered into consortia or joint bidding arrangements, applicants must submit an “Exhibit B” to the FCC Form 175.

A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for construction permits in the same market provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants.⁵¹ While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.⁵² Such subject areas include, but are not limited to, issues such as management, sales, local marketing agreements, rebroadcast agreements, and other transactional agreements.

D. New Entrant Bidding Credit (FCC Form 175 Exhibit C)

To fulfill its obligations under 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.

1. Eligibility

The interests of the bidder, and of any individuals or entities with an attributable interest in the bidder, in other media of mass communications shall be considered when determining a bidder's eligibility for the New Entrant Bidding Credit.⁵³ The bidder's attributable interests shall be determined as of the short-form application (FCC Form 175) filing deadline – August 6, 2004. Bidders intending to divest a media interest or make any other ownership changes, such as resignation of positional interests, in order to avoid attribution for purposes of qualifying for the New Entrant Bidding Credit must have consummated such divestment transactions or have completed such ownership changes by no later than the short-form filing deadline – August 6, 2004.⁵⁴

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

⁴⁹ 47 C.F.R. § 1.2105(a)(2)(ix).

⁵⁰ *See supra* Section 1.B.2.

⁵¹ 47 C.F.R. § 1.2105(c)(4)(i), (ii).

⁵² *See In re Application of Todd Stuart Noordyk, for a New FM Station on Channel 260A at Manistique, Michigan, Memorandum Opinion and Order*, 16 FCC Rcd 18113, 18117 (2001); *see also* Amendment of Part 1 of the Commission's Rules - Competitive Bidding Procedures, WT Docket No. 97- 82, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz, ET Docket No. 94-32, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 467 (1997).

⁵³ “Media of mass communication” include both commercial and NCE full-power broadcast stations.

⁵⁴ The fact that, on August 6, 2004, a bidder has a pending or granted application to assign or transfer control of a media interest shall not be sufficient to avoid attribution. Bidders must have consummated the transaction by August 6, 2004 to avoid attribution. Thus, a bidder could not qualify for a bidding credit, nor upgrade a previously claimed bidding credit, based upon ownership or positional changes occurring after the short-form filing deadline. *See Liberty Productions, a Limited Partnership*, 16 FCC Rcd 12061 (2001) (“*Liberty Productions*”).

- all officers and directors of a corporate bidder;
- any owner of 5 percent or more of the voting stock of a corporate bidder;
- all partners and limited partners of a partnership bidder, unless the limited partners are sufficiently insulated; and
- all members of a limited liability company, unless sufficiently insulated.⁵⁵

In cases where a bidder's spouse or close family member holds other media interests, such interests are not automatically attributable to the bidder. The Commission decides attribution issues in this context based on certain factors traditionally considered relevant.⁵⁶ Bidders should note that the mass media attribution rules were recently revised.⁵⁷

Bidders are also reminded that, by the *New Entrant Bidding Credit Reconsideration Order*, the Commission further refined the eligibility standards for the New Entrant Bidding Credit, judging it appropriate to attribute the media interests held by very substantial investors in, or creditors of, a bidder claiming new entrant status. Specifically, the attributable mass media interests held by an individual or entity with an equity and/or debt interest in a bidder shall be attributed to that bidder for purposes of determining its eligibility for the New Entrant Bidding Credit, if the equity and debt interests, in the aggregate, exceed 33 percent of the total asset value of the bidder, even if such an interest is non-voting.⁵⁸

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.⁵⁹ However, attributable interests held by a winning bidder in existing low power television, television translator or FM translator facilities will not be counted among the bidders' other mass media interests in determining its eligibility for a New Entrant Bidding Credit.⁶⁰ A medium of mass communications is defined in 47 C.F.R. § 73.5008(b). Full service noncommercial educational stations, on both reserved and non-reserved channels, are included among "media of mass communications" as defined in Section 73.5008(b).⁶¹

2. Application Requirements

In addition to the ownership information required on Exhibit A, applicants are required to file supporting documentation on Exhibit C to their FCC Form 175 applications to establish that they satisfy the eligibility requirements to qualify for a New Entrant Bidding Credit.⁶² In those cases where a New Entrant Bidding Credit is being sought, a certification under penalty of perjury must be set forth in Exhibit C. An applicant claiming that it qualifies for a 35 percent new entrant bidding credit must provide a certification, under penalty of perjury, 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

⁵⁵ See 47 C.F.R. § 73.3555 Note 2.

⁵⁶ See *Clarification of Commission Policies Regarding Spousal Attribution*, 7 FCC Rcd 1920 (1992).

⁵⁷ See *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, Report and Order*, MM Docket No. 94-150, 14 FCC Rcd 12559 (1999) (prior history omitted).

⁵⁸ See 47 C.F.R. § 73.5008(c).

⁵⁹ Further, *any* bidder asserting new entrant status must have *de facto* as well as *de jure* control of the entity claiming the bidding credit. 47 C.F.R. § 73.5007. Typically, *de jure* control is evidenced by ownership of at least 50.1 percent of an entity's voting stock or equivalent level of interest in cases where the bidder is not a corporate entity. *De facto* control is determined on a case-by-case basis.

⁶⁰ *Broadcast Reconsideration Order*, 14 FCC Rcd at 8764 ¶ 75; 47 C.F.R. § 73.5007.

⁶¹ See *Minnesota Christian Broadcasters, Inc.*, 18 FCC Rcd 614 (2003), *aff'd sub nom. Carol DeLaHunt v. F.C.C.*, No. 03-1029 (D.C. Cir. Feb. 4, 2004).

⁶² See 47 C.F.R. §§ 1.2105, 73.5007, 73.5008.

for a 25 percent new entrant bidding credit must provide a certification, under penalty of perjury, that neither it nor any of its attributable interest holders have any attributable interests in more than three media of mass communications, and must identify and describe such media of mass communications.

3. Bidding Credits

Applicants that qualify for the New Entrant Bidding Credit, as set forth in 47 C.F.R. § 73.5007, are eligible for a bidding credit that represents the amount by which a bidder's winning bid is discounted. The size of a New Entrant Bidding Credit depends on the number of ownership interests in other media of mass communications that are attributable to the bidder-entity and its attributable interest-holders:

- A 35 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has no attributable interest in any other media of mass communications, as defined in 47 C.F.R. § 73.5008;
- A 25 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has an attributable interest in no more than three mass media facilities, as defined in 47 C.F.R. § 73.5008;
- No bidding credit will be given if any of the commonly owned mass media facilities serve the same area as the proposed broadcast station, as defined in 47 C.F.R. § 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.

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 C.F.R. § 73.3555 and Note 2 of that section. Bidders should note that unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license or construction permit to an entity not qualifying for the same level of bidding credit.⁶³

Several commenters request that we revise the new entrant bidding credits available for Auction No. 37. MMTC suggests we adopt certain measures to prevent what it terms “bidding credit fraud,” whereby certain bidders initially claim eligibility for new entrant bidding credits and thereafter change their status to the alleged disadvantage of other bidders.⁶⁴ Hodson suggests that we revise the eligibility criteria for new entrant bidding credits.⁶⁵ A third commenter, Van Zandt, suggests a graduated scale of bidding credits ranging from a 10 to 50 percent discount for bidders with no commercial stations and proposes that bidders with a large number of commercial stations pay up to five times the amount of their winning bid.⁶⁶

Several commenters provide suggestions relating to the broad context of bidding credits and bidding preferences in Auction No. 37. For example, MMTC requests that the Commission provide bidding credits for minority-owned businesses in Auction No. 37.⁶⁷ AHDU requests that we first auction the construction permits offered in Auction No. 37

⁶³ See *id.* § 73.5007(c).

⁶⁴ MMTC Comments at 2.

⁶⁵ Hodson suggests that we replace the bidding credits set forth in Section 73.5007 with (i) a 45 percent bidding credit for applicants with no attributable interest in any other media of mass communication and less than \$1 million in annual revenues, and (ii) a 30 percent bidding credit for applicants with attributable interests in five or fewer media of mass communication, none of which are within 250 kilometers of the allotment on which the applicant is bidding, if none of the facilities owned has over \$4 million in gross annual revenue. Hodson Comments at 4.

⁶⁶ Van Zandt Comments at 1-2.

⁶⁷ MMTC Comments at 5-10.

to minority businesses before the announced start date for Auction No. 37.⁶⁸ Summit Media suggests a bidding credit for an applicant that has its main office within 50 miles of the allotment on which it is bidding.⁶⁹

First, we disagree with the assumption underlying MMTC's comments that applicants that lose or change their new entrant bidding credit status have necessarily engaged in fraudulent misrepresentation. To the extent that an applicant makes a misrepresentation or lacks candor in the course of its claim for a bidding credit, the Commission has sufficient mechanisms to address such conduct, including the petition to deny process. We therefore find no reason to adopt special measures to address MMTC's concerns.

We also reject various suggestions by commenters to revise the criteria for and the amount of the new entrant bidding credit and to adopt new bidding credits based on other criteria. Implementation of these proposals would require amendment of the Commission's competitive bidding and broadcast service rules, which can only be accomplished through a Commission rulemaking proceeding. The Bureau's process for seeking comment on auction procedures is not the appropriate forum to address such rule changes. Such rule changes should have been raised in the context of the rulemaking proceeding establishing bidding credits for the FM Broadcast service.

E. Provisions Regarding Defaulters and Former Defaulters (FCC Form 175 Exhibit D)

Each applicant must certify on its FCC Form 175 application under penalty of perjury that the applicant, its controlling interests, its affiliates, and the affiliates of its controlling interests, as defined by Section 1.2110, are not in default on any payment for Commission licenses (including down payments) and not delinquent on any non-tax debt owed to any Federal agency.⁷⁰ In addition, each applicant must include in its FCC Form 175 application a statement made under penalty of perjury indicating whether or not the applicant, its affiliates, its controlling interests, or the affiliates of its controlling interest, as defined by Section 1.2110, have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any federal agency.⁷¹ **Applicants must include this statement as Exhibit D of the FCC Form 175.** 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.

"Former defaulters" — *i.e.*, applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies — are eligible to bid in Auction No. 37, provided that they are otherwise qualified. However, as discussed *infra* in Section III.D.3, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.⁷² One commenter, although agreeing with the current defaulter and former defaulter certification requirement, suggests as an alternative that if a former defaulter has remedied all defaults, cured all outstanding delinquencies and remained debt-free for at least ten years, it only be required to pay the standard upfront payment.⁷³ However, implementation of this suggestion would require amendment of Section 1.2106(a) of the Commission's rules, which can only be accomplished through a Commission rulemaking proceeding.

⁶⁸ AHDU Comments at 1.

⁶⁹ Summit Media Comments at 1.

⁷⁰ 47 C.F.R. § 1.2105(a)(2)(x); *Order on Reconsideration of the Part 1 Third Report and Order*, 15 FCC Rcd at 15317, ¶ 42.

⁷¹ 47 C.F.R. § 1.2105(a)(2)(xi); *Order on Reconsideration of the Part 1 Third Report and Order*, 15 FCC Rcd at 15317, n.142.

⁷² 47 C.F.R. § 1.2106(a).

⁷³ Hodson Comments at 5-6.

F. Installment Payments

One commenter suggests we allow small businesses to pay for their licenses by making installment payments throughout the eight-year initial license period.⁷⁴ In the *Part 1 Third Report and Order*, the Commission suspended the use of installment payments for the foreseeable future.⁷⁵ Accordingly, installment payment plans will not be available in Auction No. 37.

G. Other Information (FCC Form 175 Exhibits E and F)

Applicants owned by minorities or women, as defined in 47 C.F.R. § 1.2110(b)(2), may attach an exhibit (Exhibit E) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of “designated entities” in its auctions. Applicants wishing to submit additional information may do so on Exhibit F (Miscellaneous Information) to the FCC Form 175.

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

After the short-form filing deadline (6:00 p.m. ET on August 6, 2004), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their construction permit selections, change the certifying official, change control of the applicant). *See* 47 C.F.R. § 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of certain exhibits. Applicants should make these modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: auCTION37@fcc.gov. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 37. The Bureaus request that parties format any attachments to electronic mail as Adobe[®] Acrobat[®] (pdf) or Microsoft[®] Word documents.

A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338-2850. Questions about other changes should be directed to Kenneth Burnley of the Auctions and Spectrum Access Division at (202) 418-0660.

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

Section 1.65 of the Commission’s rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application.⁷⁶ Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications, as defined by 47 C.F.R. § 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

III. PRE-AUCTION PROCEDURES

A. Auction Seminar

On Thursday, July 22, 2004, the FCC will sponsor a seminar for Auction No. 37 at the Federal Communications Commission, located at 445 12th Street, S.W., Washington, D.C. The seminar will provide attendees with information

⁷⁴ *Id.*

⁷⁵ Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, *Third Report and Second Further Notice of Proposed Rule Making*, 13 FCC Red 374, 397-401, ¶¶ 38-43 (1997).

⁷⁶ For example, if ownership changes result in the attribution of new interest holders that affect the applicant’s qualifications for a new entrant bidding credit, such information must be clearly stated in the bidder’s amendment. *See Liberty Productions, supra* note 55, 16 FCC Red at 12078.

about pre-auction procedures, auction conduct, the FCC Automated Auction System, auction rules, and the FM broadcast service rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

To register, complete the registration form attached hereto as Attachment B and submit it by Monday, July 19, 2004. Registrations are accepted on a first-come, first-served basis. The seminar is free of charge.

For potential bidders who are unable to attend, Audio/Video of this seminar will be webcast live from the FCC's Audio/Video Events page at <http://www.fcc.gov/realaudio/>. A recording of the webcast will also be available for playback from the FCC's A/V Archives Page following the meeting.

B. Short-Form Application (FCC Form 175) — Due August 6, 2004

In order to be eligible to bid in this auction, applicants must first submit a FCC Form 175 application. This application must be submitted electronically and received at the Commission no later than 6:00 p.m. ET on August 6, 2004. Late applications will not be accepted.

There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment. *See* Section III.D, *infra*. Applicants must submit only one FCC Form 175, regardless of the number of vacant FM allotments selected.

Pursuant to procedures established in the *Broadcast First Report and Order*, the Media Bureau will impose a temporary freeze on the filing of FM minor modification applications during the period that FCC Form 175 applications may be filed for FM Auction No. 37.⁷⁷ A separate public notice addressing this temporary freeze has been released.⁷⁸

1. Electronic Filing

Applicants must file their FCC Form 175 applications electronically.⁷⁹ Applications may generally be filed at any time beginning at noon ET on July 22, 2004, until 6:00 p.m. ET on August 6, 2004. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on August 6, 2004.

Applicants must press the "SUBMIT Application" button on the "Submission" page of the electronic form to successfully submit their FCC Form 175s. Any form that is not submitted will not be reviewed by the FCC. Information about accessing the FCC Form 175 is included in Attachment C. Technical support is available at (202) 414-1250 (voice) or (202) 414-1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET. In order to provide better service to the public, *all calls to the hotline are recorded*.

Applicants can also contact Technical Support via e-mail. To obtain the address, click the **Support** tab on the Form 175 Homepage.

2. Completion of the FCC Form 175

Applicants should carefully review 47 C.F.R. §§ 1.2105 and 73.5002, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment D of this public notice. Applicants are encouraged to

⁷⁷ *See Broadcast First Report and Order*, 13 FCC Rcd at 15989, ¶ 177. The temporary freeze on FM minor modification applications eliminates potential mutual exclusivity with applications submitted by FM auction applicants during the Auction No. 37 filing window.

⁷⁸ "Auction No. 37 Freezes Announced for FM Minor Change Applications and Certain Rulemaking Filings," *Public Notice*, DA 04-1642 (rel. June 7, 2004).

⁷⁹ 47 C.F.R. § 1.2105(a).

begin preparing the required attachments for FCC Form 175 prior to submitting the form. Attachments C and D to this public notice provide information on the required attachments and appropriate formats.

3. Electronic Review of FCC Form 175

The FCC Form 175 electronic review system may be used to locate and print applicants' FCC Form 175 information. There is no fee for accessing this system. *See* Attachment C for details on accessing the review system.

Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed, and the FCC has issued a public notice explaining the status of the applications. **NOTE: Applicants should not include their TIN/EIN or other sensitive information on any exhibit/attachment to be uploaded. Contents of exhibits/attachments become available for public access once the Status Public Notice is released.**

C. Application Processing and Minor Corrections

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

Non-mutually exclusive applications will be listed in a subsequent Public Notice to be released by the Bureaus. Such applications will not proceed to auction, but will proceed in accordance with instructions set forth in the Public Notice.⁸⁰ All mutually exclusive applications will be considered under the relevant procedures for conflict resolution. Mutually exclusive commercial applications will proceed to auction.⁸¹ In the *NCE Second Report and Order*, the Commission held that applications for NCE FM stations on non-reserved spectrum, filed during an FM filing window, will be returned as unacceptable for filing if mutually exclusive with any application for a commercial station.⁸² Accordingly, if an FCC Form 175 filed during the Auction No. 37 filing window identifying the applicant as noncommercial educational is mutually exclusive with any application filed during that window by an applicant for a commercial station, the former will be returned as unacceptable for filing.⁸³

As described more fully in the Commission's rules, after the August 6, 2004, short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their construction permit selections, change the certifying official, change control of the applicant, or change New Entrant Bidding Credit eligibility).⁸⁴

D. Upfront Payments — Due September 24, 2004

In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic

⁸⁰ *Id.* § 73.3573(f)(4).

⁸¹ In the *NCE Second Report and Order*, the Commission determined that short-form applicants that do not identify themselves on their FCC Form 175 as "noncommercial educational" will be considered as a matter of law, applicants for commercial broadcast stations. *NCE Second Report and Order*, 18 FCC Rcd at 6700 ¶ 22.

⁸² *Id.* at 6699-6701. *See also* 47 C.F.R. § 73.5002(b).

⁸³ *NCE Second Report and Order*, 18 FCC Rcd at 6699-6701. *See also* 47 C.F.R. § 73.5002(b).

⁸⁴ 47 C.F.R. §§ 1.2105, 73.5002(c); *see also Two Way Radio of Carolina, Inc., Memorandum Opinion and Order*, 14 FCC Rcd 12035 (1999) (rejecting amendment purporting to increase bidder's designated entity status, based on applicant's mistaken calculation as to its small business size).

version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6:00 p.m. ET on September 24, 2004.

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 37 go to a lockbox number different from the lockboxes used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the September 24, 2004, deadline will result in dismissal of the application and disqualification from participation in the auction.

1. Making Auction Payments by Wire Transfer

Wire transfer payments must be received by 6:00 p.m. ET on September 24, 2004. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261
Receiving Bank: Mellon Pittsburgh
BENEFICIARY: FCC/Account # 910-1211
OBI Field: (Skip one space between each information item)
"AUCTIONPAY"
FCC REGISTRATION NUMBER (FRN): (same as FCC Form 159, block 11 and/or 21)
PAYMENT TYPE CODE: (same as FCC Form 159, block 24A: A37U)
FCC CODE 1: (same as FCC Form 159, block 28A: "37")
PAYER NAME: (same as FCC Form 159, block 2)
LOCKBOX NO.: # 358435

NOTE: The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

Applicants must fax a completed FCC Form 159 (Revised Feb. 2003) to Mellon Bank at (412) 209-6045 **at least one hour before** placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer - Auction Payment for Auction Event No. 37." In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account by the deadline.⁸⁵ **Applicants are responsible for obtaining confirmation from their financial institution that Mellon Bank has timely received their upfront payment and deposited it in the proper account.**

2. FCC Form 159

A completed FCC Remittance Advice Form (FCC Form 159, Revised Feb. 2003) must be faxed to Mellon Bank in order to accompany each upfront payment. Proper completion of FCC Form 159 (Revised Feb. 2003) is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment E to this public notice. An electronic version of the FCC Form 159 is available after filing the FCC Form 175. The FCC

⁸⁵ Letter from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, to Patrick Shannon, Esq., Counsel for Lynch 3G Communications Corporation, 18 FCC Rcd 11552 (2003).

Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

3. Amount of Upfront Payment

In the *Part 1 Order* the Commission delegated to the Bureaus the authority and discretion to determine appropriate upfront payment(s) for each auction.⁸⁶ In addition, in the *Part 1 Fifth Report and Order*, the Commission ordered that “former defaulters,” *i.e.*, applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, be required to pay upfront payments 50 percent greater than non-“former defaulters.”⁸⁷ 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 Section 1.2110 of the Commission’s rules (as amended in the *Part 1 Fifth Report and Order*).⁸⁸

In the *Auction No. 37 Comment Public Notice* and the *2004 Auction No. 37 Revised Comment Public Notice*, we proposed that the amount of the upfront payment would determine the number of bidding units on which a bidder may place bids.⁸⁹ In order to bid on a construction permit, otherwise qualified bidders that applied for that construction permit on FCC Form 175 must have an 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 permit applied for on FCC Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all construction permits for which the applicant has applied on its FCC Form 175, but rather to cover the maximum number of bidding units that are associated with construction permits on which the bidder wishes to place bids and hold high bids at any given time.

In the *2001 Procedures Public Notice*, after reviewing comments received in response to the *Auction No. 37 Comment Public Notice*, we reduced the upfront payments originally proposed in that *Public Notice*, setting forth the revised upfront payment amounts in Attachment A to the *2001 Procedures Public Notice*. One commenter, in response to the *2004 Auction No. 37 Revised Comment Public Notice*, suggests we further reduce the upfront payments so that none is greater than \$125,000, and that any allotment representing the first local transmission service to a community with a population under 10,000 have an upfront payment not to exceed \$5,000, regardless of station class.⁹⁰ Van Zandt suggests that the upfront payments be reduced to 10 percent of the minimum opening bid values listed in the *2004 Auction No. 37 Revised Comment Public Notice*, and that a bidder’s upfront payment should be no higher than the single highest minimum opening bid for any allotment the bidder has selected in its FCC Form 175.⁹¹ We do not adopt these suggestions. The Media Bureau has evaluated each allotment and assigned an upfront payment amount, taking into account various factors related to the efficiency of the auction and the potential value of the spectrum, including the type of service and class of facility offered, market size, population covered by the proposed FM broadcast facility, industry cash flow data, and recent broadcast transactions. Having once revised these amounts, in the *2001 Procedures Public Notice*, the Media Bureau has determined that the revised upfront payment amounts set forth in Attachment A to the *2004 Auction No. 37 Revised Comment Public Notice* are appropriate for these allotments. We reject Van Zandt’s suggestion because it does not provide an adequate mechanism for establishing bidding eligibility and would be detrimental to the transparency of the

⁸⁶ Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Proceeding, WT Docket No. 97-82, *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, 12 FCC Rcd 5686, 5697-5698, ¶ 16 (1997). *See also Broadcast First Report and Order*, 13 FCC Rcd at 15967-68, ¶ 127-128.

⁸⁷ *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15316-17, ¶¶ 40-42 (2000); 47 C.F.R. § 1.2106(a); *see also* 47 C.F.R. § 1.2105(a)(2)(xi).

⁸⁸ *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15316-17, ¶¶ 40-42.

⁸⁹ *Auction No. 37 Comment Public Notice*, 15 FCC Rcd at 18083; *2004 Auction No. 37 Revised Comment Public Notice*, 19 FCC Rcd at 6911.

⁹⁰ Hodson Comments at 6.

⁹¹ Van Zandt Comments at 1.

auction process. We also reject adoption of a valuation system, such as that suggested by Hodson, that places caps on minimum opening bids and upfront payments without regard to the individual attributes of the FM allotments.

We adopt our proposal. The specific upfront payments and bidding units for each construction permit are set forth in Attachment A of this Public Notice.

In calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to be active (bidding units associated with construction permits on which the bidder has the standing high bid from the previous round and construction permits on which the bidder places a bid in the current round) in any single round, and submit an upfront payment 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 bid in any given round. **Bidders should check their calculations carefully, as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.**

Example: Upfront Payments and Bidding Flexibility				
Market Number	Channel/Class	Market Name	Bidding Units	Upfront Payment
FM008	246A	Calico Rock, AR	15,000	\$15,000
FM009	257A	Cotton Plant, AR	15,000	\$15,000

If a bidder wishes to bid on both construction permits in a round, it must have selected both on its FCC Form 175 and purchased at least 30,000 bidding units (15,000 + 15,000). If a bidder only wishes to bid on one in a given round, but not both, purchasing 15,000 bidding units would meet the requirement for either construction permit. The bidder would be able to bid on either construction permit in a given round, but not both at the same time.

Former defaulters should calculate their upfront payment for all construction permits by multiplying the number of bidding units they wish to purchase 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.

NOTE: An applicant's actual bidding in any round will be limited by the bidding units reflected in its upfront payment, notwithstanding the number of construction permits the applicant has indicated in its FCC Form 175.

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

The Commission will use wire transfers for all Auction No. 37 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed below be supplied to the FCC. Applicants can provide the information electronically during the initial short-form filing window after the form has been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Gail Glasser, at (202) 418-2843 by September 24, 2004. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call Gail Glasser at (202) 418-0578.

- Name of Bank
- ABA Number
- Contact and Phone Number
- Account Number to Credit
- Name of Account Holder
- FCC Registration Number (FRN)

Taxpayer Identification Number (see below)
Correspondent Bank (if applicable)
ABA Number
Account Number

Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds. Eligibility for refunds is discussed in Section V.E., *infra*.

E. Auction Registration

Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the construction permits for which they applied.

All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, each containing the confidential bidder identification number (BIN) and the other containing the SecurID cards, both of which are required to place bids. **These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.**

Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Wednesday, October 27, 2004, should contact the Auctions Hotline at (717) 338-2888. Receipt of both registration mailings is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

Qualified bidders should note that lost bidder identification numbers or SecurID cards can be replaced only by appearing in person at the FCC Headquarters located at 445 12th Street, S.W., Washington, D.C. 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacements. Qualified bidders requiring replacements must call technical support prior to arriving at the FCC.

F. Remote Electronic Bidding

The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. As a contingency plan, bidders may also dial in to the FCC Wide Area Network. Qualified bidders are permitted to bid telephonically or electronically. Each applicant should indicate its bidding preference – electronic or telephonic – on the FCC Form 175. In either case, **each authorized bidder** must have its own SecurID card, which the FCC will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID cards, while applicants with two or three authorized bidders will be issued three cards. For security purposes, the SecurID cards and the FCC Automated Auction System user manual are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID card is tailored to a specific auction; therefore, SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 37. The telephonic bidding phone number will be supplied in the first overnight mailing, which also includes the confidential bidder identification number.

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

G. Mock Auction

All qualified bidders will be eligible to participate in a mock auction on Friday, October 29, 2004. The mock auction will enable applicants to become familiar with the FCC Automated Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. AUCTION EVENT

The first round of bidding for Auction No. 37 will begin on Wednesday, November 3, 2004. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

A. Auction Structure

1. Simultaneous Multiple Round Auction

In the *2004 Auction No. 37 Revised Comment Public Notice*, we proposed to award all construction permits in Auction No. 37 in a simultaneous multiple round auction.⁹² One commenter objects to the simultaneous multiple round bidding methodology, claiming that it is unfair for individuals and small groups who wish to bid on multiple construction permits.⁹³ Bidding rounds at the beginning of the auction should provide sufficient time for bidders to enter bids on as many allocations as they have selected. We will modify the round schedule as the auction continues, making rounds shorter and more frequent as bidding activity decreases, which is typical as auctions progress. Any changes to the round schedule will be done based on our analysis of the bidding activity and should not prevent bidders from being able to place their bids before the conclusion of a round.⁹⁴ We adopt our proposal. We conclude that it is operationally feasible and appropriate to auction the FM broadcast stations construction permits through a simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all construction permits in each round of the auction.

2. Maximum Eligibility and Activity Rules

In the *Auction No. 37 Comment Public Notice* and the *2004 Auction No. 37 Revised Comment Public Notice*, we proposed that the amount of the upfront payment submitted by a bidder would determine the initial (maximum) eligibility (as measured in bidding units) for each bidder.⁹⁵ No comments were received concerning the eligibility rule, and we adopted the proposal in the *2001 Procedures Public Notice*.

For Auction No. 37, we adopt the maximum eligibility proposal. The amount of the upfront payment submitted by a bidder determines the initial eligibility (in bidding units) for each bidder. Note again that each construction permit is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A on a bidding unit per dollar basis. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid and hold high bids in a round. As there is no provision for increasing a bidder's eligibility after the upfront payment deadline, applicants are cautioned to calculate their upfront payments carefully. **The total upfront payment does not affect the total dollar amount a bidder may bid on any given construction permit.**

In addition, we received no comments on our proposal for a single stage auction, and therefore adopted this proposal in the *2001 Procedures Public Notice*. In response to the *2004 Auction No. 37 Revised Comment Public Notice*, one commenter disagreed with the 100 percent activity level requirement and the potential eligibility reduction for failure to maintain a 100 percent activity level, on the ground that "these procedures appear not only complicated, but confusing" to potential Auction No. 37 participants."⁹⁶ In order to ensure that the auction closes within a reasonable period of time, an

⁹² *2004 Auction No. 37 Revised Comment Public Notice*, 19 FCC Rcd at 6910.

⁹³ Van Zandt Comments at 1.

⁹⁴ Bidders should not wait until late in a round before attempting to submit bids. Also, the bidding software includes an import function that can help facilitate bidding on a large number of construction permits relatively quickly.

⁹⁵ *Auction No. 37 Comment Public Notice*, 15 FCC Rcd at 18083; *2004 Auction No. 37 Revised Comment Public Notice*, 19 FCC Rcd at 6911.

⁹⁶ Hodson Comments at 8.

activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Therefore, we adopt this proposal with the following activity requirement: In each round of the auction, a bidder desiring to maintain its current eligibility is required to be active on construction permits representing one hundred (100) percent of its current eligibility. A bidder's activity will be the sum of the bidding units associated with the construction permits upon which it places a bid during the current round and the bidding units associated with construction permits upon which it is the standing high bidder. That is, a bidder must either place a bid and/or be the standing high bidder during each round of the auction.

In response to the *2004 Auction No. 37 Revised Comment Public Notice*, another commenter suggests the activity rules "should be written to provide ample time for a single individual who needs to place bids on numerous construction permits."⁹⁷ Commenters that believe the activity rules do not provide sufficient time to bid on multiple allotments should refer to the previous section (*see* Section IV.A.1, *supra*), for our explanation, in response to a similar comment, of the bidding round schedule.

Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a permanent reduction in the bidder's bidding eligibility, possibly eliminating the bidder from further bidding in the auction. To the extent that potential bidders require assistance in understanding these rules, we encourage them to attend the July 22, 2004, auction seminar, and participate in the October 29, 2004, mock auction.

3. Activity Rule Waivers and Reducing Eligibility

In the *Auction No. 37 Comment Public Notice* and the *2004 Auction No. 37 Revised Comment Public Notice*, we proposed that each bidder in the auction would be provided five activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction.⁹⁸ In the *2001 Procedures Public Notice* we adopted this proposal after receiving no comments on it. In response to the *2004 Auction No. 37 Revised Comment Public Notice*, one commenter suggests we provide three automatic and three proactive waivers in the auction, with the proactive waivers being reusable if unsubmitted before the round closes.⁹⁹

Based upon our experience in previous auctions, **we adopt our proposal that each bidder will be provided five activity rule waivers that may be used 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 level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit. We are satisfied that our practice of providing five waivers over the course of the auction provides a sufficient number of waivers and flexibility to the bidders, while safeguarding the integrity of the auction.

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

A bidder that is eligible to bid on more than one construction permit and has insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding period by using the reduce eligibility function in the bidding system. In this case,

⁹⁷ Van Zandt Comments at 1.

⁹⁸ *Auction No. 37 Comment Public Notice*, 15 FCC Rcd at 18084; *2004 Auction No. 37 Revised Comment Public Notice*, 19 FCC Rcd at 6912.

⁹⁹ Hodson Comments at 7.

the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in "Maximum Eligibility and Activity Rules" (*see* Section IV.A.2. *above*). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the FCC Automated Auction System) during a bidding period in which no bids or withdrawals are submitted, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver invoked in a round in which there are no new bids or withdrawals will not keep the auction open. The submission of a proactive waiver cannot occur after a bid has been submitted in a round and will preclude a bidder from placing any bids later in that round. **Note: Once a proactive waiver is submitted during a round, that waiver cannot be unsubmitted.**

4. Auction Stopping Rules

For Auction No. 37, the Bureaus proposed to employ a simultaneous stopping rule.¹⁰⁰ Under this rule, bidding will remain open on all construction permits until bidding stops on every construction permit. The auction will close for all construction permits when one round passes during which no bidder submits a proactive waiver, a withdrawal, or a new bid on any construction permit. After the first such round, bidding closes simultaneously on all construction permits.

The Bureaus also sought comment on a modified version of the stopping rule. The modified version of the stopping rule would close the auction for all construction permits after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on a construction permit when it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the standing high bidder would not keep the auction open under this modified stopping rule.¹⁰¹

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

In addition, we proposed that the Bureaus reserve the right to declare that the auction will end after a designated number of additional rounds ("special stopping rule"). If the Bureaus invoke this special stopping rule, they will accept bids in the final round(s) only for construction permits on which the high bid increased in at least one of the preceding specified number of rounds. We proposed to exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time.¹⁰² Before exercising this option, the Bureaus are likely to attempt to increase the pace of the auction by, for example, increasing the number of rounds per day, and/or adjusting the minimum acceptable bids and bid increments for the construction permits. In 2004, one commenter objected to the modified stopping rule, special stopping rule, and option to keep the auction open, supporting only the simultaneous stopping rule.¹⁰³ Another commenter states that the stopping rules are "too complicated with too many variables," and suggests instead that the auction for an individual allocation close when no new high bid has been received for a period of 24 consecutive hours.¹⁰⁴

¹⁰⁰ *Auction No. 37 Comment Public Notice*, 15 FCC Rcd at 18087; *2004 Auction No. 37 Revised Comment Public Notice*, 19 FCC Rcd at 6916.

¹⁰¹ We received comments in 2000 supporting us on these issues. *Wild West Comments* at 2; *Dominant* at 2.

¹⁰² *Auction No. 37 Comment Public Notice*, 15 FCC Rcd at 18087; *2004 Auction No. 37 Revised Comment Public Notice*, 19 FCC Rcd at 6916-17.

¹⁰³ *Hodson Comments* at 8.

¹⁰⁴ *Van Zandt Comments* at 1.

We adopt all of our proposals, set forth above, concerning the auction stopping rules. Auction No. 37 will begin under the simultaneous stopping rule, and the Bureaus will retain the discretion to invoke the other versions of the stopping rule. We believe that these stopping rules are most appropriate for Auction No. 37, because our experience in prior auctions demonstrates that the auction stopping rules balance the interests of administrative efficiency and maximum bidder participation.

5. Auction Delay, Suspension, or Cancellation

In the *Auction No. 37 Comment Public Notice* and the *2004 Auction No. 37 Revised Comment Public Notice*, we proposed that, by public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding.¹⁰⁵

Because this approach has proven effective in resolving exigent circumstances in previous auctions, we adopt our proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureaus, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

1. Round Structure

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

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

2. Reserve Price or Minimum Opening Bid

The Balanced Budget Act calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when 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.¹⁰⁶ 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.¹⁰⁷ Among other factors, the Bureaus

¹⁰⁵ *Auction No. 37 Comment Public Notice*, 15 FCC Rcd at 18084; *2004 Auction No. 37 Revised Comment Public Notice*, 19 FCC Rcd at 6912.

¹⁰⁶ See Balanced Budget Act, section 3002(a), 47 U.S.C. § 309(j)(4)(F).

¹⁰⁷ See Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd at 141, 455-456 (1998) ("*Part 1 Third Report*

must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on the spectrum being auctioned.¹⁰⁸ The Commission concluded that the Bureaus should have the discretion to employ either or both of these mechanisms for future auctions.¹⁰⁹ This is consistent with policy applied in earlier spectrum auctions, including Closed Broadcast Auctions Nos. 25, 27, and 54, and AM Broadcast Auction No. 32.

In the *Auction No. 37 Comment Public Notice* and the *2004 Auction No. 37 Revised Comment Public Notice*, the Bureaus proposed to establish minimum opening bids for Auction No. 37, reasoning that a minimum opening bid, successfully used in other broadcast auctions, is a valuable bidding tool, effectively regulating the pace of the auction.¹¹⁰ Specifically, a minimum opening bid was proposed for each FM allotment listed in Attachment A. The minimum opening bid was determined by taking into account various factors relating to the efficiency of the auction and the potential value of the spectrum, including the type of service and class of facility offered, market size, population covered by the proposed FM broadcast facility, industry cash flow data, and recent broadcast transactions. Based on our experience in using minimum opening bids in other auctions, we 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.¹¹¹

Several commenters in 2000 asserted that the minimum opening bids and/or upfront payments identified in Attachment A of the *Auction No. 37 Additional Comment Public Notice* were excessive, and sought reductions thereof. In general, most commenters claimed that the minimum opening bids, as well as the upfront payments, may not accurately reflect the value of the proposed FM construction permits, as determined by class of facility, market size, and anticipated population coverage, and that many of the proposals were not consistent with the minimum opening bids and upfront payments for similar facilities auctioned in Auction No. 25. After careful consideration of the concerns raised by commenters, we adjusted the minimum opening bids and upfront payments in the *2001 Procedures Public Notice*, to reduce the possibility of unsold construction permits and the likelihood that excessive minimum opening bid and upfront payment amounts could discourage auction participation. In the *2004 Auction No. 37 Revised Comment Public Notice*, we sought comment on the minimum opening bid amounts as set forth in the *2001 Procedures Public Notice*.¹¹² One commenter suggests that the minimum opening bid for any allotment be based on a formula of \$2,500 per 5000 persons within a given allotment's projected 70 dBμ contour, except in certain "high value" areas, and provides a list of specific allotments that he contends should have their minimum opening bid amounts reduced.¹¹³

Upon consideration of the comments received, we adopt our proposed minimum opening bids for Auction No. 37. We note that the minimum opening bids adopted here are 50 percent less than those originally proposed for this auction. Based on this reduction and the other considerations, we believe the proposed minimum opening bids are appropriate.

and Order"). See also *Broadcast First Report and Order*, 13 FCC Rcd at 15971, ¶ 134. The Commission has concluded that either or both of these mechanisms may be employed for auctions and has delegated the requisite authority to make determinations regarding the appropriateness of employing either or both.

¹⁰⁸ *Part 1 Third Report and Order*, 13 FCC Rcd at 455-456; *Broadcast First Report and Order*, 13 FCC Rcd at 15971, ¶ 134.

¹⁰⁹ *Part 1 Third Report and Order*, 13 FCC Rcd at 455-456.

¹¹⁰ *Auction No. 37 Comment Public Notice*, 15 FCC Rcd at 18085; *2004 Auction No. 37 Revised Comment Public Notice*, 19 FCC Rcd at 6913-14.

¹¹¹ See 47 U.S.C. 309(j)(3)(C).

¹¹² See *2004 Auction No. 37 Revised Comment Public Notice*, 19 FCC Rcd at 6920.

¹¹³ Fitzgerald Comments at 1. Fitzgerald specifically suggests we reduce the minimum opening bids for allotments FM17, FM18, FM23, FM64, FM224, FM234, FM241, and FM262.

Thus, for these reasons and those set forth in our discussion of Auction No. 37 upfront payments,¹¹⁴ we are not persuaded that the proposed minimum opening bids are unreasonable.¹¹⁵

The minimum opening bids we adopt for Auction No. 37 are reducible at the discretion of the Bureaus. We emphasize, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureaus will not entertain any requests to reduce the minimum opening bid on specific construction permits.

The specific minimum opening bids for each construction permit available in Auction No. 37 are set forth in Attachment A.

3. Minimum Acceptable Bids and Bid Increments

In the *Auction No. 37 Comment Public Notice* and again in the *2004 Auction No. 37 Revised Comment Public Notice*, the Commission proposed to apply a minimum bid increment of 10 percent.¹¹⁶ We further proposed to retain the discretion to change the minimum acceptable bids and bid increments if circumstances so dictate.¹¹⁷ After receiving a comment in 2000 in support of this proposal,¹¹⁸ we adopted the proposal in the *2001 Procedures Public Notice*. Having received no further comments, we adopt this proposal here as well.

In each round, each eligible bidder will be able to place a bid on a particular construction permit for which it applied in any of nine different amounts.¹¹⁹ The FCC Automated Auction System will list the nine bid amounts for each construction permit.

Once there is a standing high bid on a construction permit, the FCC Automated Auction System will calculate a minimum acceptable bid for that construction permit for the following round, as described below. The difference between the minimum acceptable bid and the standing high bid for each construction permit will define the **bid increment** – *i.e.*, bid increment = (minimum acceptable bid) – (standing high bid). The nine acceptable bid amounts for each construction permit consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

As noted above, for Auction No. 37 we will use a 10 percent bid increment. This means that the minimum acceptable bid for a construction permit will be approximately 10 percent greater than the previous standing high bid received on the construction permit. The minimum acceptable bid amount will be calculated by multiplying the standing high bid times one plus the increment percentage — *i.e.*, (standing high bid) * (1.10). We will round the result using our standard rounding procedure for minimum acceptable bid calculations: results above \$10,000 are rounded to the nearest \$1,000;

¹¹⁴ See *supra* Section III.D.3.

¹¹⁵ Commenter Richard Van Zandt also suggests we reduce the “reserve price” by 50 percent of the listed minimum opening bid amounts. Van Zandt Comments at 1. In the *2004 Auction No. 37 Revised Comment Public Notice*, Section III(B), we proposed to use minimum opening bids instead of reserve prices. Because we have not adopted reserve prices herein, we cannot adopt Van Zandt’s suggestion.

¹¹⁶ *Auction No. 37 Comment Public Notice*, 15 FCC Rcd at 180866; *2004 Auction No. 37 Revised Comment Public Notice*, 19 FCC Rcd at 6914.

¹¹⁷ *Auction No. 37 Comment Public Notice*, 15 FCC Rcd at 180866; *2004 Auction No. 37 Revised Comment Public Notice*, 19 FCC Rcd at 6915.

¹¹⁸ Wild West at 2.

¹¹⁹ Bidders must have sufficient eligibility to place a bid on the particular construction permit. See Section III.D.3. (“Amount of Upfront Payment”), *supra*.

results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10.

At the start of the auction and until a bid has been placed on a construction permit, the minimum acceptable bid for that construction permit will be equal to its minimum opening bid. Corresponding additional bid amounts are calculated using bid increments defined as the difference between the minimum opening bid times one plus the percentage increment, rounded as described above, and the minimum opening bid. That is, the increment used to calculate additional bid amounts = (minimum opening bid)(1 + percentage increment){rounded} - (minimum opening bid). Therefore, when the percentage increment equals 0.1 (*i.e.*, 10%), the first additional bid amount will be approximately ten percent higher than the minimum opening bid; the second, twenty percent higher; the third, thirty percent higher; etc.

In the case of a construction permit for which the standing high bid has been withdrawn,¹²⁰ the minimum acceptable bid will equal the second highest bid received for the construction permit. The additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid.

The Bureaus retain the discretion to change the minimum acceptable bids and bid increments and the methodology for determining the minimum acceptable bids and bid increments if they determine that circumstances so dictate. The Bureaus will do so by announcement in the FCC Automated Auction System. The Bureaus may also use their discretion to adjust the minimum bid increment without prior notice if circumstances warrant.

4. High Bids

At the end of a bidding round, the high bids will be determined based on the highest gross bid amount received for each construction permit. A high bid from a previous round is sometimes referred to as a “standing high bid.” A “standing high bid” will remain the high bid until there is a higher bid on the same construction permit at the close of a subsequent round. Bidders are reminded that standing high bids are counted as activity for purposes of the activity rule.¹²¹

In the *2004 Auction No. 37 Revised Comment Public Notice*, the Bureaus proposed to use a random number generator to select a high bid in the event of identical high bids on a construction permit in a given round (*i.e.*, tied bids).¹²² No comments were received on this proposal. Therefore, the Bureaus adopt their proposal. A Sybase® SQL pseudo-random number generator based on the L’Ecuyer algorithms will be used to assign a random number to each bid. The tied bid having the highest random number will become the standing high bid. The remaining bidders, as well as the high bidder, will be able to submit a higher bid in a subsequent round. If no bidder submits a higher bid in a subsequent round, the high bid from the previous round will win the construction permit. If any bids are received on the construction permit in a subsequent round, the high bid will once again be determined on the highest gross bid amount received for the construction permit.

5. Bidding

During a round, a bidder may submit bids for as many construction permits as it wishes (subject to its eligibility), withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each round. If a bidder submits multiple bids for a single construction permit in the same round, the system takes the last bid entered as that bidder’s bid for the round. Bidders should note that the bidding units associated with construction permits for which the bidder has removed or withdrawn its bid do not count towards the bidder’s activity at the close of the round.

¹²⁰ See *supra* Section IV.A.2-5.

¹²¹ *Id.*

¹²² *2004 Auction No. 37 Revised Comment Public Notice* at 9.

Please note that all bidding will take place remotely either through the FCC Automated Auction System or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 37.

A bidder's ability to bid on specific construction permits in the first round of the auction is determined by two factors: (1) the construction permits applied for on FCC Form 175 and (2) the upfront payment amount deposited. The bid submission screens will allow bidders to submit bids on only those construction permits for which the bidder applied on its FCC Form 175.

In order to access the bidding functions of the FCC Automated Auction System, bidders must be logged in during the bidding round using the bidder identification number provided in the registration materials, and the password generated by the SecurID card. Bidders are strongly encouraged to print bid confirmations for each round after they have completed all of their activity for that round.

In each round, eligible bidders will be able to place bids on a given construction permit in any of nine different amounts.¹²³ For each construction permit, the FCC Automated Auction System interface will list the nine acceptable bid amounts in a drop-down box. Bidders may use the drop-down box to select from among the nine bid amounts. The FCC Automated Auction System also includes an import function that allows bidders to upload text files containing bid information and a Type Bids function that allows bidders to enter specific construction permits for filtering.

Until a bid has been placed on a construction permit, the minimum acceptable bid for that construction permit will be equal to its minimum opening bid. Once there is a standing high bid on a construction permit, the FCC Automated Auction System will calculate a minimum acceptable bid for that construction permit for the following round, as described in Section IV.B.3.

Finally, bidders are cautioned to select their bid amounts carefully because, as explained in the following section, bidders that withdraw a standing high bid from a previous round, even if the bid was mistakenly or erroneously made, are subject to bid withdrawal payments.

6. Bid Removal and Bid Withdrawal

In the *Auction No. 37 Comment Public Notice* and the *2004 Auction No. 37 Revised Comment Public Notice*, the Commission proposed bid removal and bid withdrawal procedures.¹²⁴ With respect to bid withdrawals, the Commission proposed limiting each bidder to withdrawals in no more than two rounds during the course of the auction. The two rounds in which withdrawals are used would be at the bidder's discretion. We received no comments on this issue in 2000, and in the *2001 Procedures Public Notice* adopted the proposal limiting withdrawal of bids to two rounds.

Procedures. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bid" function in the bidding 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 towards bidding activity. These procedures will enhance bidder flexibility during the auction, and having received no comments on this proposal, we adopt these procedures for Auction No. 37.

¹²³ Bidders must have sufficient eligibility to place a bid on the particular construction permit. See Section III.D.3 "Amount of Upfront Payment," *supra*.

¹²⁴ *Auction No. 37 Comment Public Notice*, 15 FCC Rcd at 18086; *2004 Auction No. 37 Revised Comment Public Notice*, 19 FCC Rcd at 6915-16.

Once a round closes, a bidder may no longer remove a bid. However, in later rounds, a bidder may withdraw standing high bids from previous rounds using the withdraw bid function in the FCC Automated Auction System (assuming that the bidder has not reached its withdrawal limit). A high bidder that withdraws its standing high bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 C.F.R. § 1.2104(g). **Note: Once a withdrawal is submitted during a round, that withdrawal cannot be unsubmitted.**

In previous auctions, we have detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While we continue to recognize the important role that bid withdrawals play in an auction, *i.e.*, reducing risk associated with efforts to secure various construction permits in combination, we conclude that, for Auction No. 37, adoption of a limit on the use of withdrawals to two rounds per bidder is appropriate. By doing so we believe we strike a reasonable compromise that will allow bidders to use withdrawals. Our decision on this issue is based upon our experience in prior auctions, particularly the PCS D, E and F block auctions, and 800 MHz SMR auction, and is in no way a reflection of our view regarding the likelihood of any speculation or “gaming” in this auction.

The Bureaus will therefore limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder’s discretion and there will be no limit on the number of bids that may be withdrawn in either of the rounds. Withdrawals during the auction will be subject to the bid withdrawal payments specified in 47 C.F.R. § 1.2104(g). Bidders should note that abuse of the Commission’s bid withdrawal procedures could result in the denial of the ability to bid on a construction permit.

If a high bid is withdrawn, the minimum acceptable bid will equal the second highest bid received for the construction permit, which may be less than, or equal to, in the case of tied bids, the amount of the withdrawn bid.¹²⁵ To set the additional bid amounts, the second highest bid also will be used in place of the standing high bid in the formula used to calculate bid increments. The Commission will serve as a “place holder” high bidder on the construction permit until a new bid is submitted on that construction permit.

Calculation. Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction.¹²⁶ If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the high bid in the same or subsequent auction(s).¹²⁷ In the case of multiple bid withdrawals on a single construction permit, within the same or subsequent auctions(s), the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids, in either the same or subsequent auctions(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any withdrawal payments if there is a subsequent higher bid in the same or subsequent auction(s).¹²⁸ This policy allows bidders most efficiently to allocate their resources as well as to evaluate their bidding strategies and business plans during an auction while, at the same time, maintaining the integrity of the auction process. The Bureaus retain the discretion to scrutinize multiple bid withdrawals on a single construction permit for evidence of anti-competitive strategic behavior and take appropriate action when deemed necessary.

In the *Part 1 Fifth Report and Order*, the Commission modified Section 1.2104(g)(1) of the rules regarding assessments

¹²⁵ The Bureaus retain the discretion to lower the minimum acceptable bid on such construction permits in the next round or in later rounds.

¹²⁶ 47 C.F.R. §§ 1.2104(g), 1.2109.

¹²⁷ The payment will equal the lower of: (1) the difference between the net withdrawn bid and the subsequent net winning bid; or (2) the difference between the gross withdrawn bid and the subsequent gross winning bid. *See* 47 C.F.R. § 1.2104(g)(1).

¹²⁸ See following paragraph for discussion of interim bid withdrawal payments.

of interim bid withdrawal payments.¹²⁹ As amended, Section 1.2104(g)(1) provides that in instances in which bids have been withdrawn on a construction permit that is not won in the same auction, the Commission will assess an interim withdrawal payment equal to 3 percent of the amount of the withdrawn bids. The 3 percent interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the construction permit. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment. The *Part 1 Fifth Report and Order* provides specific examples showing application of the bid withdrawal payment rule.¹³⁰

7. Round Results

Bids placed during a round will not be made public until the conclusion of that bidding period. After a round closes, the Bureaus will compile reports of all bids placed, bids withdrawn, current high bids, new minimum accepted bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities for Auction No. 37 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.

8. Auction Announcements

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

9. Maintaining the Accuracy of FCC Form 175 Information

As noted in Section II.H., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and certain revision of exhibits. Applicants must make these modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: auction37@fcc.gov. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 37. The Bureaus request that parties format any attachments to electronic mail as Adobe[®] Acrobat[®] (.pdf) or Microsoft[®] Word (.doc) documents.

A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338-2850. Questions about other changes should be directed to Kenneth Burnley of the Auctions and Spectrum Access Division at (202) 418-0660.

V. POST-AUCTION PROCEDURES

A. Down Payments and Withdrawn Bid Payments

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

Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction No. 37 to 20 percent of the net amount of its winning bids (gross bids less any applicable new entrant bidding credits).¹³¹ In addition, by the same deadline all bidders must pay any bid withdrawal payments due under 47 C.F.R. § 1.2104(g), as discussed in “Bid Removal and Bid Withdrawal,” Part IV.B.6, *supra*. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

¹²⁹ See *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15302 ¶ 15; 47 C.F.R. § 1.2104(g)(1).

¹³⁰ See *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15302 ¶ 15.

¹³¹ 47 C.F.R. §§ 1.2107(b).

B. Final Payments

After the termination of the pleading cycle for petitions to deny,¹³² the Commission will issue a public notice announcing that it is prepared to award the construction permits to the winning bidders, if the applications are uncontested.¹³³ Within ten business days after the date of that public notice, the uncontested winning bidders will be required to make full payment of the balance of their winning bids.¹³⁴ Broadcast construction permits will be granted only after the full and timely payment of winning bids and any applicable late fees, in accordance with Section 1.2109(a).¹³⁵ The previously filed long-form applications of the unsuccessful competing bidders will be dismissed following the grant of the winning bidder's construction permit.

WTB now employs a final payment deadline different from that described above.¹³⁶ Consistent with current WTB practice, for Auction No. 37, the Bureaus are considering rule changes to conform Sections 73.3573(f)(5)(ii) and 73.5006(d) to analogous Part 1 auction rules.¹³⁷ If adopted, each winning bidder would be required to submit the balance of the net amount of its winning bids within 10 business days after the deadline for submitting down payments.

C. Long-Form Application

Within thirty days after the release of the auction closing notice, winning bidders must electronically submit a properly completed Form 301, Application for FM Construction Permit, and required exhibits for each construction permit won through Auction No. 37. Winning bidders claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit.¹³⁸ Further filing instructions will be provided to auction winners at the close of the auction.¹³⁹

D. Default and Disqualification

Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is

¹³² See 47 C.F.R. § 73.5006.

¹³³ In cases where petitions to deny are filed, final payment public notices shall be promptly issued for the associated construction permits after the Media Bureau disposes of petitions to deny and is otherwise satisfied that an applicant is qualified to hold the construction permit. See 47 C.F.R. § 73.5006(d).

¹³⁴ 47 C.F.R. § 1.2109.

¹³⁵ 47 C.F.R. § 1.2109(a).

¹³⁶ See, e.g., "Auction of Licenses in the Multichannel Video Distribution and Data Service rescheduled for January 14, 2004, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures," *Public Notice*, 18 FCC Rcd 17553 (2003); "Auction of 900 MHz Specialized Mobile Radio Service Licenses Scheduled for February 11, 2004, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures," *Public Notice*, 18 FCC Rcd 21176 (2003); "Auction of 24 GHz Service Licenses Scheduled for July 28, 2004, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures," *Public Notice*, DA 04-633 (rel. March 12, 2004).

¹³⁷ See 47 C.F.R. §§ 1.2109(a); 73.3573(f)(5)(ii); 73.5006(d).

¹³⁸ *Id.* §§ 1.2112(b) and 73.5005.

¹³⁹ One commenter suggests that winning bidders be required to build their facilities and operate them for two years before they can be sold in order to discourage speculation. Langley Comments at 1. The Commission has not adopted anti-trafficking rules for broadcast service construction permits or licenses acquired through competitive bidding. Such rules are outside the scope of the Bureau's process for seeking comment on auction procedures.

otherwise disqualified) will be subject to the payments described in 47 C.F.R. § 1.2104(g)(2).¹⁴⁰ In such event the Commission may re-auction the construction permit or offer it to the next highest bidder (in descending order) at its final bid.¹⁴¹ In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses or construction permits held by the applicant.¹⁴²

E. Refund of Remaining Upfront Payment Balance

All applicants that submit upfront payments but are not winning bidders for a construction permit in Auction No. 37 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from the applicant after any applicable bid withdrawal payments have been paid. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions, Taxpayer Identification Number (“TIN”) and FCC Registration Number (“FRN”). Send refund request to:

Federal Communications Commission
Financial Operations Center
Auctions Accounting Group
Gail Glasser
445 12th Street, S.W., Room 1-C864
Washington, D.C. 20554

Bidders are encouraged to file their refund information electronically using the refund information portion of the FCC Form 175, but bidders can also fax their information to the Auctions Accounting Group at (202) 418-2843. Once the information has been approved, a refund will be sent to the party identified in the refund information.

NOTE: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Gail Glasser at (202) 418-0578.

¹⁴⁰ See *Abundant Life, Inc.*, 17 FCC Rcd 4006 (2002) (“*Abundant Life*”); *Winstar Broadcasting Corp.*, 17 FCC Rcd 6126 (2002); *Delta Radio, Inc.*, 18 FCC Rcd 16889 (2003).

¹⁴¹ 47 C.F.R. § 1.2109(b) and (c).

¹⁴² *Id.* § 1.2109(d).

Media Contact:

For press inquiries: Lauren Patrich at (202) 418-7944

Auctions and Spectrum Access Division, WTB:

For legal questions: Kenneth Burnley at (202) 418-0660

For general auction questions: Jeff Crooks at (202) 418-0660 or Linda Sanderson at (717) 338-2888

Audio Division, MB:

For legal and service rule questions: Lisa Scanlan or Tom Nessinger at (202) 418-2700

- FCC -

VI ATTACHMENT A

Construction Permits to be Auctioned (Place holder for Excel file Attachment A)

VII. ATTACHMENT B

FCC AUCTION SEMINAR REGISTRATION FORM

Auction No. 37

The FCC will sponsor a one-day seminar for the Auction No. 37 applicants. The seminar is free of charge and will provide information about pre-auction procedures, radio service and auction rules, conduct of the auction, and the FCC Automated Auction System.

Representatives from each company may attend on a reservation basis, first-come first-served basis until room capacity is filled. Additional seating may be available on a stand-by basis the day of the seminar. The seminar will be held:

Thursday, July 22, 2004
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554

Registration: 9:00 a.m. - 10:00 a.m.

Seminar: 10:00 a.m. – 2:00 p.m.

If hotel accommodations are needed

Please contact 1-888-225-5322 (option #2) for a list of hotels in the area

To register, complete the form below and
return no later than
Monday, July 19, 2004 to:

FCC Auction 37
Auctions Operations Branch
1270 Fairfield Road
Gettysburg, PA 17325-7245

FAX: 717-338-2850

Phone: 717-338-2888

I/We will attend the Auction No. 37 Seminar, scheduled for Thursday, July 22, 2004.

Name of attendee: _____

Name of attendee: _____

Company name: _____

Company address: _____

Phone: _____ Fax: _____

VIII. ATTACHMENT C

**ELECTRONIC FILING AND REVIEW
OF THE FCC FORM 175**

Applicants must submit their FCC Form 175 applications electronically. The FCC recommends submitting your FCC Form 175 via the Internet. As a contingency, you can submit via the FCC Wide-Area Network. FCC Form 175 applications must be submitted and confirmed by **6:00 p.m. ET on Friday, August 6, 2004**. Late applications or unconfirmed submissions of electronic data will not be accepted.

Applicants must click the **SUBMIT Application** button on the *Submission* page to successfully submit their FCC Form 175. The electronic filing process consists of an initial filing period and a resubmission period to make minor corrections. During each filing period, submitted applications may be updated and amended multiple times until the filing deadline.

A. Software Requirements

Applicants will need to meet the following minimum software requirements:

- Web Browser, either of the following:
 - ◆ Microsoft® Internet Explorer 4.0 or higher (recommended). Your browser must have either Microsoft VM or Java Plug-In Version 1.3.1_08 installed.
 - ◆ Netscape® Communicator™ 4.0 or higher, with Java Plug-In Version 1.3.1_08.

Java Plug-In Version 1.3.1_08 is available for downloading at
<https://java.sun.com/products/archive/index.html>

- PDF Viewer: Adobe Acrobat Reader 5.0 or higher (available at <http://www.adobe.com>)
- If you wish to use the download feature on the Search Results page, you will need a .tar file extraction utility, e.g., Winzip (available at <http://www.winzip.com>) or Pkzip for Windows (available at <http://www.pkware.com/shareware>).

B. Submitting FCC Form 175 Applications

You can submit FCC Form 175 applications electronically via the Internet. Start your web browser and point it to either <http://auctions.fcc.gov/> (primary location) or <http://auctions2.fcc.gov/> (secondary location). On the FCC Auctions page, click **Form 175 Application & Search** to obtain the Form 175 Homepage.

Note: As a contingency, you may submit FCC Form 175 applications via the FCC Wide Area Network, using Dial-Up Networking. To access the Wide Area Network, configure your dial-up network to dial either **202-408-7835** or **717-338-0735**. These phone numbers are located in the Washington, DC, and Gettysburg, PA, respectively. Thus, they may be long-distance calls, depending on where you reside.

1. Logging On

The Form 175 Homepage has a Form 175 Logon area at the top right. This area provides fields that let you identify yourself to the system. In these fields, type your assigned FRN (*without* the hyphens) and the password you created in CORES, respectively, then click the **Logon** button.

Once you have logged on with your FRN, you can click the **New Form** link to obtain the *Profile* page for the auction.

2. Uploading Attachments

When uploading attachments from the Form 175 *Attachments* page, you may use a variety of file formats--including Word 2000 or earlier, WordPerfect 6.x or earlier, Adobe PDF, and ASCII text--and you should verify that the files contain all exhibit information. Also note the following about files to be uploaded:

- Files may be no larger than 1.5 Mb.
- Graphics files (e.g., *.bmp*, *.tiff*, *.jpg*) and spreadsheets (e.g., Excel, Lotus) are not supported.
- Word processing files that are uploaded may not contain graphic images.
- You may include hyphens (-) and underscore (_) symbols in the name of a file to be uploaded, but do not use other punctuation marks or blank spaces. The FCC system will not be able to convert that file.
- The path to a file (i.e., the file name and its directory) must not exceed 60 characters.
- Do not upload a password-protected file. The FCC system will not be able to open it or convert it.
- Do not include your TIN in any attachment to be uploaded. Contents of attachments become public once the Status PN is released.

The system converts each uploaded attachment to PDF format. (The conversion process generally completes within 30 minutes.) Until the system has converted your file to PDF format, the description field shows *Not converted*.

Repeat this procedure for each additional attachment you want to add. When you have finished adding attachments, click the **Continue to CERTIFICATION** button to obtain the *Certification* page.

a. Unreadable Attachment Files

If you are unable to read an attachment file after it has been converted, please do the following:

1. Re-upload the attachment.
2. If the file still has not been converted properly, then simplify the formatting of the file.

For example, if you are using a Table structure in a WordPerfect document, remove the Table structure and leave the contents of the table, then re-upload the attachment.

After you have successfully re-uploaded an attachment, please delete the old, unreadable attachment files using their **Delete** links.

3. Completing the Submission Procedure

Applicants must press the **SUBMIT Application** button on the *Submission* page to successfully submit their FCC Form 175. Pressing **SUBMIT Application** produces a *Submission Confirmation* page showing the assigned FCC Account Number. During each filing period, submitted applications may be updated and amended multiple times until the filing deadline.

C. Reviewing FCC Form 175 Applications

Once the FCC has completed the 175 Review process, you can view FCC Form 175 applications electronically by searching for them in the FCC database. Start your web browser and point it to either <http://auctions.fcc.gov/> (primary location) or <http://auctions2.fcc.gov/> (secondary location). Click the **Form 175 Application & Search** link, then click the **SEARCH** link at the top of the page. When the *Form 175 Search* page appears, select the search criteria you want and then click the **Submit** button.

D. Help

For technical assistance with using FCC software, contact the FCC Technical Support Hotline at (202) 414-1250 (V) or (202) 414-1255 (TTY). The FCC Technical Support Hotline is generally available Monday through Friday from 8 a.m. to 6 p.m. ET. *All calls to the FCC Technical Support Hotline are recorded.*

You can also contact Technical Support via e-mail. To obtain the address, click the **Support** tab on the Form 175 Homepage.

IX. ATTACHMENT D

GUIDELINES FOR COMPLETION OF FCC FORM 175 AND EXHIBITS

A. FCC Form 175

Because of the significance of the FCC Form 175 application to the auction, bidders should especially note the following:

Applicant: Name given is used as your bidder name in the auction.

Address: Applicants must provide a street address (not a Post Office box number) for the applicant, suitable for mail or private parcel delivery.

Legal Classification: Applicants must indicate their legal classification. The FCC Form 175 requires the applicant to classify itself as an individual, joint venture, partnership, trust, corporation, consortium, association, limited liability company (LLC) or government entity.

Applicant Status: Applicants are requested to indicate their status as a rural telephone company, minority- and/or women-owned business, so that the FCC can monitor its performance in promoting economic opportunities for these designated entities. Applicants that seek a noncommercial educational (“NCE”) permit must indicate their status as a noncommercial educational applicant and must select “Noncommercial Educational” on the Profile page.

Contact person/address: If the Commission wishes to communicate with the applicant by telephone or fax, those communications will be directed to the contact person identified on the FCC Form 175. Space is provided for an address, telephone number, fax number, and e-mail address. **All written communication and registration information will be directed to the applicant’s contact person at the address specified on the FCC Form 175.** Applicants must provide a street address for the contact person; **no P.O. Box addresses may be used.**

Authorized Bidders: Applicants must list the name(s) of the person(s) (no more than three) authorized to represent them at the auction. Only those individuals listed on the FCC Form 175 will be authorized to place or withdraw bids for the applicant during the auction.

Bidding Credit Eligibility: Applicants that qualify for the New Entrant Bidding Credit must select the applicable bidding credit (25 percent or 35 percent) in the bidding credit eligibility item on the Form 175. Applicants are advised that this is the sole opportunity to select “New Entrant” status and claim a bidding credit level (if applicable). There is no opportunity to change the election once the short-form filing deadline passes on August 6, 2004.

Electronic or Telephonic Bidding Options: Bidders may participate in the auction either electronically or telephonically, and must specify their preference. To participate in the auction, every authorized bidder must have a SecurID card, which the FCC will provide free of charge.

Construction Permits: Applicants should select all construction permit preferences for vacant FM allotments on which they want to be eligible to bid in the auction. Be advised that there is no opportunity to change this list once the short-form filing deadline passes on August 6, 2004. It is critically important that you confirm the construction permits that you have selected because the auction system will not accept a bid on construction permits for which an applicant has not applied on its FCC Form 175.

The reference coordinates are also displayed for each listed FM allotment. Once you have saved a

selection, the reference coordinates are followed by a “Modify” link. Clicking this link produces a page on which you can change the reference coordinate values to preferred site coordinates.¹⁴³

B. Exhibits and Attachments

In addition to the FCC Form 175, applicants must submit additional information required by the FCC's rules. If attachments are not uploaded, the FCC Form 175 application submission process cannot be completed. Although the FCC does not require a particular format for this information, it has developed the following guidelines that will facilitate the processing of short-form applications. The FCC encourages applicants to submit this information using the following format. The electronic FCC Form 175 allows an applicant to upload exhibits/attachments with the FCC Form 175, for FCC review. Once an attachment has been uploaded, the auctions system converts it to Adobe PDF format and makes it available for viewing. The applicant should then try viewing the attachment to verify that it converted successfully.

If you find that an attachment has not converted properly to Adobe PDF format, take the following steps:

- 1) *Simplify the formatting of the file. For example, if using a Table structure in a WordPerfect document, remove the Table structure leaving the contents of the table, re-save the document.*
- 2) *Re-upload the attachment.*
- 3) *When the re-loaded attachment has successfully converted, delete the failed attachment.*

Exhibit A -- Applicant Identity and Ownership Information: Section 73.5002 of the broadcast competitive bidding procedural rules specifies the bidding procedures, certification requirements, and anti-collusion rules applicable to applications for commercial broadcast services that are subject to auction. Subsection (b) of that rule requires the timely submission of short-form applications along with all required certifications, information and exhibits pursuant to the provisions of 47 C.F.R. § 1.2105(a) and any Commission public notices. Section 1.2105, in turn, requires the disclosure on the short-form of applicant ownership information, as set forth in Section 1.2112. Specifically, 47 C.F.R. § 1.2105(a)(2)(ii) requires each applicant to fully disclose the real party or parties-in-interest, and the addresses and citizenship of the parties, in an exhibit to its FCC Form 175 application. In addition, the Section 1.2112 ownership disclosure requirements include, *inter alia*, a listing of FCC-licensed entities and a description of each such entity's relationship to the applicant and the applicant's real parties-in-interest.

Furthermore, each applicant applying for a New Entrant Bidding Credit must provide detailed ownership information for itself and its attributable interest holders, as defined by Section 73.3555 of the Commission's rules and by Note 2 to that Section. Regardless of whether a New Entrant Bidding Credit is being sought, all applicants must provide the above-mentioned identification and ownership information.

Exhibit B -- Agreements with Other Parties/Joint Bidding Arrangements: Applicants must attach an exhibit identifying all parties with whom they have entered into any agreements, arrangements or understandings of any kind that relate to the construction permits being auctioned, including any relating to the post-auction market structure. *See* 47 C.F.R. § 1.2105(a)(2)(viii).

Be aware that pursuant to Certification (4) on the FCC Form 175, the applicant certifies that it has not entered and will not enter into any explicit or implicit agreements or understandings of any kind with parties not identified in the application regarding bid amounts, bidding strategies, or the particular construction permits on which the applicant will or will not bid. *See* 45 C.F.R. § 1.2105(a)(2)(ix). *Except*

¹⁴³ *See Broadcast First Report and Order*, 13 FCC Rcd at 15974 and n.153.

to the extent provided in 47 C.F.R. § 73.5002 (d), the prohibition of collusion set forth in 47 C.F.R. § 1.2105 (c) becomes effective upon the filing of short-form applications. *To prevent collusion, the Commission's Rules generally prohibit competing applicants from communicating concerning bids, bidding strategies, or settlements during the period between the initial short-form applications filing deadline and the deadline for down payments on construction permits/licenses won in the auction.* 47 C.F.R. § 1.2105(c).

Exhibit C -- Status as a New Entrant Bidding Credit Recipient: An applicant claiming that it qualifies for a 35 percent new entrant bidding credit must provide a certification, under penalty of perjury, that neither it nor any of its attributable interest holders have any attributable interests in any other media of mass communications, as defined in 47 C.F.R. § 73.5008. An applicant claiming that it qualifies for a 25 percent new entrant bidding credit must provide a certification, under penalty of perjury, that neither it nor any of its attributable interest holders have attributable interests in more than three media of mass communications, as defined in 47 C.F.R. § 73.5008. In addition, applicants claiming a 25 percent credit shall identify and describe such media of mass communications. *See* 47 C.F.R. §§ 73.5007 and 73.5008.

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 eligibility for a bidding credit.¹⁴⁴ However, the new entrant bidding credit is not available to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, have an attributable interest in any existing media of mass communications, as defined by 47 C.F.R. § 73.5008, in the same area as the proposed broadcast facility.¹⁴⁵ Full-service noncommercial educational stations, on both reserved and non-reserved channels, are included among "media of mass communications" as defined in Section 73.5008(b).¹⁴⁶

Exhibit D – Information Required of All Applicants Regarding Prior Defaults and Prior Delinquencies: Each applicant must include an Exhibit D containing a statement made under penalty of perjury indicating whether the applicant, its affiliates, its controlling interests, or the affiliates of its controlling interests have ever been in default on any Commission construction permits or licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. The applicant must provide such information for itself, for each of its controlling interests and affiliates, and for each affiliate of its controlling interests as defined in 47 C.F.R. § 1.2110 of the Commission's rules (as amended in the *Part 1 Fifth Report and Order*).

Exhibit E -- Information Requested of Designated Entities: Applicants owned by minorities or women, as defined in 47 C.F.R. § 1.2110(c), or that are rural telephone companies, may attach an exhibit regarding this status. This information, in conjunction with the information requested on the FCC Form 175, will assist the Commission in monitoring the participation of these "designated entities" in its auctions.

Exhibit F – Miscellaneous Information: Applicants wishing to submit additional information may do so in Exhibit F.

Waivers: Applicants requesting waiver of any rules must submit a statement of reasons sufficient to justify

¹⁴⁴ *See id.* § 73.5007(a).

¹⁴⁵ *See id.* § 73.5007(b).

¹⁴⁶ *See Minnesota Christian Broadcasters, Inc.*, 18 FCC Rcd 614 (2003), *aff'd sub nom, Carol DeLaHunt v. F.C.C.*, No. 03-1029 (D.C. Cir. Feb. 4, 2004).

the waiver sought. *See* 47 C.F.R. § 1.3.

Certifications: Applicants should carefully read the list of certifications on the FCC Form 175. These certifications help to ensure a fair and competitive auction and require, among other things, disclosure to the Commission of certain information on applicant ownership and agreements or arrangements concerning the auction. Submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application and its attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

Completeness: Applicants must submit all information required by the FCC Form 175 and by applicable rules. Failure to submit required information by the resubmission date will result in dismissal of the application and inability to participate in the auction. *See* 47 C.F.R. § 1.2105(b).

NOTE: Applicants must press the “SUBMIT Application” button on the “Submission” page of the electronic form to successfully submit their FCC Form 175.

Continuing Accuracy: Section 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending FCC Form 175 short-form application and exhibits and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Applicants are reminded that they consent to be audited in the certification section of the FCC Form 175 (see certification item number 6).

Applicants are reminded that all information required in connection with applications to participate in spectrum auctions is necessary to determine the applicants' qualifications, and as such will be available for public inspection. Required proprietary information may be redacted, or confidentiality may be requested, following the procedures set forth in 47 C.F.R. § 0.459. Such requests must be submitted by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: auction37@fcc.gov, in which case the applicant must indicate in Exhibit F that it has filed a confidentiality request. Because the required information bears on applicants' qualifications, the FCC envisions that confidentiality requests will not be routinely granted.

In addition, Section 1.2105(c)(6) requires all auction applicants to report prohibited discussions or disclosures regarding bids or bidding strategy to the Commission in writing immediately but in no case later than five business days after the communication occurs, even if the communication does not result in an agreement or understanding regarding bids or bidding strategy that must be reported under Section 1.65.¹⁴⁷

The electronic mail summarizing any changes must include a subject or caption referring to Auction No. 37. The Bureaus request that parties format any attachments to electronic mail as Adobe[®] Acrobat[®] (pdf) or Microsoft[®] Word documents.

A separate copy of the notice of any changes should be faxed to the attention of Kathryn Garland at (717) 338-2850.

¹⁴⁷ 47 C.F.R. § 1.2105(c)(6); *see also Part 1 Seventh Report and Order*, 16 FCC Rcd at 17555, ¶ 17.

X. ATTACHMENT E

AUCTION-SPECIFIC INSTRUCTIONS FOR FCC REMITTANCE ADVICE (FCC FORM 159-February 2003 Edition)

A. Upfront Payments

The following information supplements the standard instructions for FCC Form 159 (Revised 2/03), and is provided to help ensure correct completion of FCC Form 159 for upfront payments for Auction No. 37. Applicants need to complete FCC Form 159 carefully, since:

- **Mistakes may affect their bidding eligibility; and**
- **Lack of consistency between information set forth in FCC Form 159 (Revised 2/03), FCC Form 175, long-form application, and correspondence about an application may cause processing delays.**

Therefore appropriate cross-references between the FCC Form 159 Remittance Advice and the FCC

Form 175 Short Form Application are described below:

Block Number	Required Information
1	LOCKBOX # - Enter "358435"
2	Payer Name - Enter the name of the person or company making the payment. If the applicant itself is the payer, this entry would be the same as FCC Form 175.
3	Total Amount Paid - Enter the amount of the upfront payment associated with the FCC Form 159 (Revised 2/03).
4-8	Street Address, City, State, ZIP Code - Enter the street mailing address (not Post Office box number) where mail should be sent to the payer. If the applicant is the payer, these entries would be the same as FCC Form 175 from the Applicant Information section.
9	Daytime Telephone Number - Enter the telephone number of a person knowledgeable about this upfront payment.
10	Country Code - For addresses outside the United States, enter the appropriate postal country code (available from the Mailing Requirements Department of the U.S. Postal Service).
11	Payer FRN – Enter the payer's ten-digit FCC Registration Number (FRN)

registered in the Commission Registration System (CORES).

- 24A Payment Type Code – Enter “A37U”
- 25A Quantity - Enter the number “1”
- 26A Fee Due - Amount of Upfront Payment
- 27A Total Fee - Will be the same amount as 26A.
- 28A FCC Code 1 - Enter the number “37” (indicating Auction No. 37).

NOTES:

- Do not use Remittance Advice (Continuation Sheet), FCC Form 159-C, for upfront payments.
- If applicant is different from the payer, complete blocks 13 through 21 for the applicant, using the same information shown on FCC Form 175. Otherwise leave them blank.
- Since credit card payments will not be accepted for this auction, leave Section E blank.

B. Winning Bidder Requirements, Down Payments and Final Payments

Specific information regarding down payments and final payments will be included in a post-auction public notice announcing the winning bidders.

XI. ATTACHMENT F

SUMMARY LISTING OF DOCUMENTS FROM THE COMMISSION AND THE WIRELESS TELECOMMUNICATIONS BUREAU ADDRESSING APPLICATION OF THE ANTI-COLLUSION RULES

A. Commission Decisions:

Second Report and Order in PP Docket No. 93-253, FCC 94-61, 9 FCC Rcd 2348, 2386-2388 (1994), paragraphs 221-226.

Fifth Report and Order in PP Docket No. 93-253, FCC 94-178, 9 FCC Rcd. 5532, 5570-5571 (1994), paragraphs 91-92.

Fourth Memorandum Opinion and Order in PP Docket No. 93-253, FCC 94-264, 9 FCC Rcd. 6858, 6866-6869 (1994), paragraphs 47-60.

Second Memorandum Opinion and Order in PP Docket No. 93-253, FCC 94-215, 9 FCC Rcd. 7245, 7253-7255 (1994), paragraphs 48-55.

Memorandum Opinion and Order in PP Docket No. 93-253, FCC 94-295, 9 FCC Rcd. 7684, 7687-7689 (1994), paragraphs 8-12.

In re Commercial Realty St. Pete, *Notice of Apparent Liability for Forfeiture*, 10 FCC Rcd. 4277 (1995),
In re Commercial Realty St. Pete, *Memorandum Opinion and Order*, 11 FCC Rcd. 15,374 (1996).

In re Applications of Mercury PCS II, LLC, *Notice of Apparent Liability for Forfeiture*, 12 FCC Rcd. 17,970 (1997) (petition for partial reconsideration pending).

Amendment of Part 1 of the Commission's rules -- Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz, WT Docket No. 97-82, ET Docket No. 94-32, FCC 97-413, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd. 374, 463-469 (1997), paragraphs 155-166.

In re Application of US West Communications, Inc., *Notice of Apparent Liability for Forfeiture*, 13 FCC Rcd 8286 (1998); In the Matter of Notice of Apparent Liability for Forfeiture of US West Communications, Inc., *Order*, FCC 99-90 (May 7, 1999).

In re Application of Western PCS BTA I Corporation, *Notice of Apparent Liability for Forfeiture*, FCC 98-42 (March 16, 1998); In the Matter of Notice of Apparent Liability for Forfeiture of Western PCS BTA I Corporation, *Memorandum Opinion and Order*, 14 FCC Rcd 21571, 21577-78, ¶ 20 (rel. Dec. 13, 1999).

In the Matter of Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures, *Seventh Report and Order*, 16 FCC Rcd 17546 (2001).

In re Application of Todd Stuart Noordyk, for a New FM Station on Channel 260A at Manistique, Michigan, *Memorandum Opinion and Order*, 16 FCC Rcd 18113 (2001).

B. Wireless Telecommunications Bureau Decisions:

Amendment of Parts 21 and 74 of the Commission's rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, *Order*, 11 FCC Rcd. 9655 (Wireless Tel. Bur. 1995).

In re Applications of GWI PCS, Inc. For Authority to Construct and Operate Broadband PCS Systems Operating on Frequency Block C, *Memorandum Opinion and Order*, 12 FCC Rcd. 6441 (Wireless Tel. Bur. 1997).

In re Applications of Mercury PCS II, LLC, For Facilities in the Broadband Personal Communications Services in the D, E, and F Blocks, *Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd. 18,093 (Wireless Tel. Bur. 1997).

In the Matter of Applications of High Plains Wireless, L.P., For Authority to Construct and Operate Broadband PCS Systems on Frequency Blocks D, E, and F, *Memorandum Opinion and Order*, 12 FCC Rcd. 19,627 (Wireless Tel. Bur. 1997).

In the Matter of Applications of Mercury PCS II, LLC, For Authority to Construct and Operate Broadband PCS Systems on Frequency Blocks D, E, and F, *Memorandum Opinion and Order*, 13 FCC Rcd. 5756 (Wireless Tel. Bur. 1997).

1. Public Notices:

Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, 11 FCC Rcd. 9645 (1995).

FCC Staff Clarifies Application of Anti-Collusion Rule to Broadband PCS 'C' Block Reauction, *Public Notice*, 11 FCC Rcd. 7031 (1996).

Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E and F Block Bidders, *Public Notice*, 11 FCC Rcd. 10,134 (1996).

Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction, *Public Notice*, DA 98-37 (rel. January 9, 1998).

2. Letters from the Office of General Counsel and the Wireless Telecommunications Bureau:

Letter to Gary M. Epstein and James H. Barker from William E. Kennard, General Counsel, Federal Communications Commission (released October 25, 1994).

Letter to Alan F. Ciamporcero from William E Kennard, General Counsel, Federal Communications Commission (released October 25, 1996).

Letter to R. Michael Senkowski from Rosalind K. Allen, Acting Chief, Commercial Radio Division, Wireless Telecommunications Bureau (released December 1, 1994).

Letter to Leonard J. Kennedy from Rosalind K. Allen, Acting Chief, Commercial Radio Division, Wireless Telecommunications Bureau (released December 14, 1994).

Letter to Jonathan D. Blake and Robert J. Rini from Kathleen O'Brien Ham, Chief, Auctions Division, Wireless Telecommunications Bureau, DA 95-2404 (released November 28, 1995).

Letter to Mark Grady from Kathleen O'Brien Ham, Chief, Auctions Division, Wireless Telecommunications Bureau, 11 FCC Rcd. 10,895 (1996).

Letter to David L. Nace from Kathleen O'Brien Ham, Chief, Auctions Division, Wireless Telecommunications Bureau, 11 FCC Rcd. 11,363 (1996).

Letter to Elliott J. Greenwald from Christopher J. Wright, General Counsel, Federal Communications Commission (released April 6, 1998).

Letter to Robert Pettit, Wiley, Rein & Fielding from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, DA 00-2905 (released December 26, 2000).

3. Civil Actions Initiated by U.S. Department of Justice:

U.S. v. Omnipoint Corp., Proposed Final Judgments and Competitive Impact Statements, Department of Justice, 63 FR 65,228 (November 25, 1998).

"Justice Department Sues Three Firms Over FCC Auction Practices," *Press Release, U.S. Department of Justice* (November 10, 1998).

Complaint, *U.S. v. Omnipoint Corp.*, No. 1:98CV02750 (D.D.C. November 10, 1998).

Complaint, *U.S. v. Mercury PCS II, L.L.C.*, No. 1:98CV02751 (D.D.C. November 10, 1998).

Complaint, *U.S. v. 21st Century Bidding Corp.*, No. 1:98CV02752 (D.D.C. November 10, 1998).

How to Obtain Copies of the Anti-Collusion Decisions:

Many of the documents listed in this attachment can be retrieved from the following Commission web site: <http://wireless.fcc.gov/auctions/anticollusion>

The documents may be located by using our search engine (select the link "search"). Documents retrieved from the web site are available in various formats including Word, WordPerfect, Acrobat Reader, Excel, and ASCII Text. To review a document in its entirety, including footnotes, it is necessary to access the document in WordPerfect, MS Word, or Acrobat Reader.

Additionally, all of the documents can be ordered in hard copy for a fee from the Commission's contractor, Best Copy and Printing, Inc., at (202) 488-5300.