



# PUBLIC NOTICE

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## **AUCTION OF LOW POWER TELEVISION CONSTRUCTION PERMITS SCHEDULED FOR SEPTEMBER 14, 2005**

### **Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 81**

Report No. AUC-05-81-E (Auction No. 81)

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## 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 bid amounts for the upcoming auction of construction permits for certain low power television (LPTV), television translator and Class A television broadcast stations scheduled to begin on September 14, 2005 (Auction No. 81). On February 28, 2005, in accordance with Section 309(j)(4) of the Communications Act of 1934, as amended,<sup>1</sup> the Bureaus released a public notice seeking comment on reserve prices or minimum opening bid amounts and the procedures to be used in Auction No. 81.<sup>2</sup> The Bureaus received comments and reply comments from the National Translator Association in response to the *Auction No. 81 Comment Public Notice*.<sup>3</sup>

#### 1. Background

On June 23, 2000, the Mass Media Bureau and Wireless Telecommunications Bureau announced a limited auction filing window for certain LPTV, television translator, and Class A television broadcast stations.<sup>4</sup> The deadline for electronic submission of short-form applications (FCC Forms 175) was August 4, 2000. After an extension of time was granted by public notice, the deadline for submission of paper copies of engineering proposals by Auction No. 81 applicants was August 31, 2000.<sup>5</sup> A later public notice provided a list of engineering proposals that had been determined to be non-mutually exclusive.<sup>6</sup> Several settlement periods were announced subsequently by public notice, which included an opportunity

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<sup>1</sup> 47 U.S.C. § 309(j)(4)(F).

<sup>2</sup> See Low Power Television Auction No. 81 Scheduled for September 14, 2005; Auction No. 81 Applicants Must Provide Supplemental Information by March 18, 2005; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures, *Public Notice*, DA 05-506 (Feb. 28, 2005) (“*Auction No. 81 Comment Public Notice*”). A summary of this public notice appears at 70 Fed.Reg. 11975 (Mar. 10, 2005). 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).

<sup>3</sup> The National Translator Association filed comments on March 18 and reply comments on March 28, 2005. We address these comments later in this public notice. A number of requests to correct the auction inventory were submitted after release of the *Auction No. 81 Comment Public Notice*. See *infra* note 9.

<sup>4</sup> Applicants were required to file an FCC Form 175 and certain portions of either FCC Form 301-CA (for Class A television facilities) or FCC Form 346 (for low power television and television translator facilities), which permitted the staff to determine mutual exclusivities between the engineering proposals submitted by auction applicants. See Notice and Filing Requirements Regarding July 31 through August 4, 2000 Limited Low Power Television/Television Translator/Class A Television Auction Filing Window, *Public Notice*, 15 FCC Rcd 10854 (Mass Media & Wireless Telecom. Burs. 2000) (“*Auction No. 81 Filing Window Public Notice*”).

<sup>5</sup> See Limited Low Power Television/Television Translator/Class A Television Auction Filing Window Partially Extended to August 31, 2000, *Public Notice*, 15 FCC Rcd 13808 (Mass Media & Wireless Telecom. Burs. 2000).

<sup>6</sup> See Low Power Television Auction No. 81 Non-Mutually Exclusive Proposals, Mass Media Bureau Announces March 15, 2001, FCC Form 346 Application Deadline, *Public Notice*, 16 FCC Rcd 3128 (Video Serv. Div. 2001).

for auction applicants to submit amendments to their engineering proposals.<sup>7</sup> On February 28, 2005, the Bureaus by public notice required each auction applicant listed in an auction inventory released that same day to submit its FCC registration number (FRN).<sup>8</sup> After release of the *Auction No. 81 Comment Public Notice*, the Bureaus received numerous requests to revise the Auction Inventory.<sup>9</sup> On April 13, 2005, the Bureaus by public notice revised the auction inventory.<sup>10</sup>

## 2. Construction Permits to be Auctioned

Auction No. 81 will offer 113 construction permits for specified LPTV, television translator and Class A television broadcast stations.<sup>11</sup> These construction permits are the subject of pending mutually-exclusive (MX) short-form applications (FCC Forms 175) filed on or before August 4, 2000. Participation in this auction will be limited to those applicants and engineering proposals identified in Attachment A of this public notice. Qualifying applicants will be eligible to bid only on those construction permits for which the applicant's engineering proposal is specified in the particular mutually exclusive group ("MX group")

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<sup>7</sup> See Low Power Television Auction No. 81 Mutually Exclusive Proposals Subject to Auction, Mass Media Bureau Announces 60-Day Settlement Period Ending July 24, 2001, *Public Notice*, 16 FCC Rcd 11633 (Mass Media & Wireless Telecom. Burs. 2001); Auction No. 81 Settlement Period Extended to August 23, 2001, *Public Notice*, 16 FCC Rcd 13120 (Mass Media & Wireless Telecom. Burs. 2001); Auction No. 81 Additional Settlement Period Announced, Period to Close January 22, 2002, *Public Notice*, 16 FCC Rcd 20427 (Mass Media & Wireless Telecom. Burs. 2001); Auction No. 81 Final Settlement Window Announced, Window to Close March 5, 2004, *Public Notice*, 18 FCC Rcd 25141 (Media & Wireless Telecom. Burs. 2003).

<sup>8</sup> See Applicants for Low Power Television Construction Permits to be Awarded in Auction No. 81 Must Submit Supplemental Information by March 18, 2005, *Public Notice*, DA 05-505 (Feb. 28, 2005) ("*Auction No. 81 FRN Public Notice*"). A summary of this public notice appears at 70 Fed.Reg. 11974 (Mar. 10, 2005).

<sup>9</sup> After release of the *Auction No. 81 Comment Public Notice*, requests for changes to the auction inventory were submitted by or on behalf of the following individuals or entities: Amanda Orrick, Avelino and Cathy Moreia, Carbon County, Charles C. Townsend III, Cooperative Television Association of Southern Minnesota, Core Group International, Inc., Darold K. Smith, David R. Bates, Federated Rural Electric Association, Harold W. Tegtmeier, Iglesia Jesuchristo Es Mi Refugio, Inc., Iron County, Joseph R. Liska, Julie Mintz, Julie St. Clair, Laurie Mintz, Mark Silberman, Meyer H. Feldman, National Translator Association, Prism Broadcasting, Region 1 Translators Association, Robert A. Naismith, Robert Reynolds, San Juan County, Summit County, SW Colorado Translator Association, Three Angels Broadcasting Network, Inc., Troy Tumm, West Central Minnesota Educational Television Company, and William Germano. Most, but not all, of these requests resulted in changes to the auction inventory. A description of the categories of changes made to the inventory is provided in the *Auction No. 81 Inventory Public Notice*. See Low Power Television Auction No. 81 Scheduled for September 14, 2005; Auction Inventory Revised; Applicants Proposing "Non-Commercial Educational Broadcast Station" Must Respond by May 13, 2005, *Public Notice*, DA 05-1048 (Apr. 13, 2005) ("*Auction No. 81 Inventory Public Notice*"). A summary of this public notice appears at 70 Fed.Reg. 22042 (Apr. 28, 2005).

<sup>10</sup> See *Auction No. 81 Inventory Public Notice*.

<sup>11</sup> Upon further review, we determined that the auction inventory contained two sets of duplicate engineering proposals. Two engineering proposals of Lawrence Howard Mintz for channel 59 at Corpus Christi, Texas in MX group 33 were duplicates. For this reason, we removed from the auction inventory the engineering proposal identified as File No. BNPTTL-20000807AHR, Facility Identification No. 132047. In addition, two engineering proposals of TCCSA, Inc. d/b/a Trinity Broadcasting Network for channel 51 at Brainerd, Minnesota in MX group 177 were duplicates. The removal of one of these engineering proposals, File No. BNPTT-20000830BAW, Facility Identification No. 129497, rendered the remaining engineering proposal a singleton. For this reason, MX group 177 was removed from the auction inventory.

as set forth in Attachment A to this public notice.<sup>12</sup> All engineering proposals within an MX group are directly mutually exclusive with one another, and therefore a single construction permit will be auctioned for each MX group identified in Attachment A.

The National Translator Association (NTA) submitted comments and reply comments concerning the treatment of “daisy-chain” MX groups.<sup>13</sup> For LPTV, television translator and Class A television broadcast stations, a daisy chain occurs when two or more non-table, site-based applications propose stations with projected contours that do not directly overlap, but are linked together into a chain by the overlapping projected contours of other proposed stations.<sup>14</sup> A daisy chain may contain numerous proposals in a long link proposing facilities in communities of differing population sizes.<sup>15</sup> The NTA argues that, when the Commission addresses the issue of daisy chain applications, it should “develop auction procedures whereby the daisy chain will be offered as an MX group, and at the conclusion of the auction those applications which are then not mutually exclusive with the auction winner would be processed for further grant or auction, as appropriate.”<sup>16</sup> The issues raised by the NTA with respect to daisy chain applications would be raised more appropriately when the auction for the daisy chain applications is announced. As the NTA acknowledges, none of the MX groups in Auction No. 81 contain daisy chains and, therefore, we will not resolve those issues here.

As stated in the *Broadcast First Report and Order*, all pending mutually exclusive applications for broadcast services must be resolved through a system of competitive bidding.<sup>17</sup> When two or more short-form applications are accepted for filing within an MX group, mutual exclusivity exists for auction purposes.<sup>18</sup> Once mutual exclusivity exists for auction purposes, even if only one applicant within an MX

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<sup>12</sup> Each engineering proposal was submitted in specified portions of FCC Forms 301-CA or 346.

<sup>13</sup> See Comments of the National Translator Association; see also Statement concerning Auction 81 from B.W. St. Clair, President, National Translator Association (“NTA Statement”).

<sup>14</sup> See 47 C.F.R. §§ 74.703 and 74.707. See also 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, *First Report and Order*, 13 FCC Rcd 15920, 15966 ¶ 124 (1998) (“*Broadcast First Report and Order*”), *id.*, *Memorandum Opinion and Order*, 14 FCC Rcd 8724 (1999) (“*Broadcast First Reconsideration Order*”), *id.*, *Memorandum Opinion and Order*, 14 FCC Rcd 12541 (1999); *aff’d*, *Orion Communications Ltd. v. FCC*, 221 F.3d 196, No. 98-1424, slip op. (D.C. Cir. June 13, 2000) (unpublished opinion available at 2000 WL 816046 (D.C. Cir.); *aff’d*, *Orion Communications Ltd. v. FCC*, 213 F.3d 761 (D.C. Cir. 2000). MX groups with a daisy chain of mutual exclusivity are not proceeding to auction at this time, and therefore daisy chain MX groups have been removed from the auction inventory. A separate auction of construction permits for the daisy chain MX groups will be announced at a later date. See *Auction No. 81 Comment Public Notice* at 1 n.1.

<sup>15</sup> For example, the NTA points out that one proposal in the chain may be for a medium-sized city while another proposal farther along in the chain may be for a rural community. Comments of the National Translator Association at 3-4.

<sup>16</sup> *Id.* at 4; see also NTA Statement at 1-2.

<sup>17</sup> See *Broadcast First Report and Order*, 13 FCC Rcd at 15961-62, 15974-15975.

<sup>18</sup> *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. 93-253, *Second Report and Order*, 9 FCC Rcd 2348, 2376 ¶ 165 (1994).

group submits an upfront payment, that applicant is required to submit a bid in order to obtain the construction permit.<sup>19</sup>

We note that some MX groups contain multiple engineering proposals submitted by a single applicant. In such cases, bidders with multiple engineering proposals in an MX group may only bid for a single construction permit in the MX group. That is, a bidder with multiple engineering proposals in an MX group would submit a single bid for that MX group in a given bidding round, and, if that bidder is the winning bidder for that MX group at the conclusion of the auction, the bidder would file a long-form application for no more than one of its engineering proposals. Note: In no instance will more than a single construction permit be licensed to the winning bidder for a particular MX group, even if that bidder had submitted more than one engineering proposal that is included in that MX group.

## **B. Rules and Disclaimers**

### **1. Relevant Authority**

Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules, including recent amendments and clarifications.<sup>20</sup> Broadcasters should also familiarize themselves with the Commission's rules relating to broadcast auctions contained in 47 C.F.R. §§ 73.5000–73.5009. Prospective applicants must also be thoroughly familiar with the procedures, terms and conditions (collectively, “terms”) contained in this public notice; the *Auction No. 81 Inventory Public Notice*; the *Auction No. 81 Comment Public Notice*; the *Auction No. 81 Filing Window Public Notice*; the *Broadcast First Report and Order*,<sup>21</sup> the *Broadcast First Reconsideration Order*,<sup>22</sup> the *New Entrant Bidding Credit Reconsideration Order*,<sup>23</sup> and the *NCE Second Report and Order*.<sup>24</sup>

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

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<sup>19</sup> 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.

<sup>20</sup> See, e.g., Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *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) (“*Fifth Report and Order*”); *id.*, *Seventh Report and Order*, 16 FCC Rcd 17546 (2001) (“*Seventh Report and Order*”); *id.*, *Eighth Report and Order*, 17 FCC Rcd 2962 (2002); *id.*, *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).

<sup>21</sup> See generally *Broadcast First Report and Order*, 13 FCC Rcd at 15920.

<sup>22</sup> See *Broadcast First Reconsideration Order*, 14 FCC Rcd at 8724.

<sup>23</sup> 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*”).

<sup>24</sup> See Reexamination of the Comparative Standard for Noncommercial Educational Applicants, MM Docket No. 95-31, *Second Report and Order*, 18 FCC Rcd 6691 (2003) (“*NCE Second Report and Order*”), recons. pending.

retrieved from the FCC Auctions Internet site at <http://wireless.fcc.gov/auctions>. Additionally, documents are available for public inspection and copying between 8:00 a.m. and 4:30 p.m. Eastern Time (ET) Monday through Thursday or 8:00 a.m. to 11:30 a.m. on Fridays 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. ("BCPI"), 445 12th Street, SW, Room CY-B402, Washington, DC 20554, (800) 378-3160 or <http://www.bcpweb.com>.<sup>25</sup>

## 2. Prohibition of Collusion

Auction No. 81 applicants are reminded that the anti-collusion rules found at Section 1.2105(c) and 73.5002(d) of the Commission's rules are in effect. These rules prohibit applicants competing for construction permits in either the same geographic license area or the same MX group from communicating with each other during the auction about bids, bidding strategies, or settlements unless they have identified each other on their short-form applications (FCC Forms 175) filed in 2000 as parties with whom they have entered into agreements under Section 1.2105(a)(2)(viii).<sup>26</sup> Thus, applicants competing for construction permits in either the same geographic license area or the same MX group must affirmatively avoid all communications with each other that affect, or in their reasonable assessment have the potential to affect, bids or bidding strategy. In some instances, this prohibition extends to communications regarding the post-auction market structure. For Auction No. 81, this prohibition became effective at the short-form application filing deadline on August 4, 2000, and will end on the post-auction down payment deadline, which will be announced in a future public notice.<sup>27</sup> **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.**<sup>28</sup> 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.<sup>29</sup> Under Section 1.2105(c), if parties had agreed in principle on all material terms of an agreement, those parties must have been identified on the short-form application filed in 2000, even if the agreement had not been reduced to writing. If parties had not agreed in principle on all material terms by the 2000 filing deadline, an applicant should not have included the names of those parties on its application, and must not have continued negotiations, discussions or communications with other applicants for construction permits in the same geographic area or the same MX group.<sup>30</sup>

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<sup>25</sup> When ordering documents from BCPI, please provide the appropriate FCC document number (for example, FCC 98-194 for the *Broadcast First Report and Order*, FCC 99-74 for the *Broadcast First Reconsideration Order*, and DA 05-1337 for this public notice).

<sup>26</sup> 47 C.F.R. §§ 1.2105(a)(2)(viii), 1.2105(c)(1), 73.5002(c); *Seventh Report and Order*, 16 FCC Rcd at 17546.

<sup>27</sup> 47 C.F.R. § 1.2105(c)(1).

<sup>28</sup> See e.g., Application of Star Wireless, LLC, *Forfeiture Order*, 19 FCC Rcd 18626 (Enf. Bur. 2004) (imposing monetary forfeiture due to collusive communications between qualified bidder and applicant who never became a qualified bidder); Letter to Robert Pettit from Margaret W. Wiener, 16 FCC Rcd 10080 (Auctions Div. 2000) (declining to exempt an applicant's controlling interest from coverage by the anti-collusion rule, even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder).

<sup>29</sup> 47 C.F.R. § 1.2105(c)(7)(i).

<sup>30</sup> See Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, 11 FCC Rcd 9645 (Wireless Telecom. Bur. 1995).

Applicants competing for construction permits in either the same geographic license area or the same MX group 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 applicants the authorized bidder 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 engineering firm or consulting firm), a violation similarly could occur.<sup>31</sup>

By electronically submitting their FCC Form 175 short-form applications, applicants certified their compliance with Sections 1.2105(c) and 73.5002. However, the Bureaus caution that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted.<sup>32</sup>

In addition, 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.<sup>33</sup> Thus, Section 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Applicants are therefore required by Section 1.65 to make such notification to the Commission immediately upon discovery. In addition, Section 1.2105(c)(6) requires that any applicant that makes or receives a communication prohibited by Section 1.2105(c) must report such communication to the Commission in writing immediately, and in no case later than five business days after the communication occurs.<sup>34</sup>

A summary listing of documents issued by the Commission and the Bureaus addressing the application of the anti-collusion rule may be found in Attachment E and these documents are available on the Commission's auction anti-collusion web page.<sup>35</sup>

### 3. Due Diligence

Potential bidders 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 construction 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.

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<sup>31</sup> See 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 (Wireless Telecom. Bur. 1998).

<sup>32</sup> *Id.*, 13 FCC Rcd at 11978.

<sup>33</sup> 47 C.F.R. § 1.65.

<sup>34</sup> 47 C.F.R. § 1.2105(c)(6); *see also Seventh Report and Order*, 16 FCC Rcd at 17555.

<sup>35</sup> <http://wireless.fcc.gov/auctions/anticollusion>.



Potential bidders are strongly encouraged to conduct their own research prior to the beginning of bidding in Auction No. 81 in order to determine the existence of pending proceedings that might affect their decisions regarding participation in bidding in the auction. Participants in Auction No. 81 are strongly encouraged to continue such research during the auction. In addition, potential bidders should perform technical analyses sufficient to assure themselves that, should they prevail in competitive bidding for a specific construction permit, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements.

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 incumbent licensees or the engineering proposals included in Auction No. 81. In addition, pending and future judicial proceedings may relate to particular applicants, incumbent permittees, or incumbent licensees, or the engineering proposals included in Auction No. 81. 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.

Potential bidders should also note that LPTV and television translator stations are authorized with "secondary" frequency use status. These stations may not cause interference to, and must accept interference from, full service television stations, certain land mobile radio operations, and other primary services.<sup>36</sup>

**Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the construction permits available in Auction No. 81. Potential applicants are strongly encouraged to physically inspect any sites located in, or near, the service area for which they plan to bid, and also to familiarize themselves with the environmental assessment obligations described in Section I.B.5.**

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 or previously authorized to construction permittees. 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 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](mailto: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

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<sup>36</sup> See, e.g., 47 C.F.R. §§ 74.703, 74.709 and 90.303.

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**

As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 81 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. 81 may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225-5322).

#### **5. National Environmental Policy Act Requirements**

Construction permittees or licensees must comply with the Commission’s rules regarding implementation of the National Environmental Policy Act (“NEPA”).<sup>37</sup> The construction of a broadcast facility is a federal action and the permittee must comply with the Commission’s NEPA rules for each such facility.<sup>38</sup> 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 Corps 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 facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

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<sup>37</sup> 47 C.F.R. Part 1, Subpart I.

<sup>38</sup> 47 C.F.R. §§ 1.1305-1.1319.

**C. Auction Specifics**

**1. Auction Date**

The competitive bidding in this auction will begin on Wednesday, September 14, 2005, as announced in the *Auction No. 81 Comment Public Notice*.<sup>39</sup> 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. 81 – LPTV.

**3. Bidding Methodology**

The bidding methodology for Auction No. 81 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet using the FCC’s Integrated Spectrum Auction system (“ISAS” or “FCC Auction System”), and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically via the Internet or by telephone.

**4. Pre-Auction Dates and Deadlines**

Auction Seminar .....	June 24, 2005
FCC Form 175 Remedial Filing Window Opens.....	June 24, 2005; 12:00 p.m. ET
FCC Form 175 Remedial Filing Window Deadline .....	July 8, 2005; 6:00 p.m. ET
Upfront Payments (via wire transfer).....	August 12, 2005; 6:00 p.m. ET
Mock Auction .....	September 12, 2005
Auction Begins.....	September 14, 2005

**5. Requirements for Participation**

Those wishing to participate in the auction must:

- Be listed on Attachment A of this public notice.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) before 6:00 p.m. ET, August 12, 2005.
- Comply with all provisions outlined in this public notice and applicable Commission rules.

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<sup>39</sup> *Auction No. 81 Comment Public Notice*.

## 6. General Contact Information

### GENERAL AUCTION INFORMATION

General Auction Questions  
Seminar Registration

FCC Auctions Hotline  
(888) 225-5322, option two;  
or (717) 338-2888  
Hours of service: 8:00 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

Video Division  
(202) 418-1600

### TECHNICAL SUPPORT

Electronic Filing  
FCC Auction System

FCC Auctions Technical Support Hotline  
(877) 480-3201, option nine; or (202) 414-1250  
(202) 414-1255 (TTY)  
Hours of service: 8:00 a.m. – 6:00 p.m. ET,  
Monday through Friday

### PAYMENT INFORMATION

Wire Transfers  
Refunds

FCC Auctions Accounting Branch  
(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 12<sup>th</sup> Street, SW, Room CY-B402  
Washington, DC 20554  
(800) 378-3160  
<http://www.bcpweb.com>

### PRESS INFORMATION

Lauren Patrich (202) 418-7944

### FCC FORMS

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

### ACCESSIBLE FORMATS

Braille, large print, electronic files, or  
audio format for people with disabilities

Consumer and Governmental Affairs Bureau  
(202) 418-0530 or (202) 418-0432 (TTY)  
[fcc504@fcc.gov](mailto:fcc504@fcc.gov)

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

### A. Transition of Applicant's FCC Form 175 to Integrated Spectrum Auction System — Remedial Filing Window Closes July 8, 2005

Applicants seeking construction permits available in Auction No. 81 were required to file a short-form application, FCC Form 175, by the filing deadline on August 4, 2000. At that time, the Commission used the FCC's Automated Auction System (AAS). However, the Commission will conduct Auction No. 81 using the FCC's new Integrated Spectrum Auction System (ISAS). Each Auction No. 81 applicant will need to provide some additional information in its FCC Form 175 to comply with current Commission requirements. Each applicant must review its FCC Form 175 in ISAS to assure that all relevant information is provided. It is possible that an applicant may need to revise information previously submitted to keep its FCC Form 175 accurate and complete as required by 47 C.F.R. § 1.65 or other rule requirements. To accommodate these needs, the Commission will open a remedial filing window to allow each applicant in Auction No. 81 to provide required new information in its FCC Form 175 and to review, update and confirm information previously submitted. Applicants listed in Attachment A of this public notice must use ISAS to review the information previously submitted and provide required new and corrected information from noon ET on Friday, June 24, 2005, until 6:00 p.m. ET on Friday, July 8, 2005.

**To insure that the FCC Form 175 is accurate and complete, each applicant must review carefully all of the information provided in this public notice, including the section regarding declarations as to former defaults and delinquencies.<sup>40</sup> In addition, applicants will find a description of the new information which must be submitted during this remedial window, as well as the review of information previously submitted, in Attachment C of this public notice.** In this same attachment, we also provide instructions on how to submit new information or revise information previously submitted.

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

Following the deadline for filing short-form applications (FCC Forms 175) on August 4, 2000, applicants in Auction No. 81 are permitted to make only minor changes to their applications. Applicants are not permitted to make major modifications to their applications (*e.g.*, change their construction permit selections, change control of the applicant, or seek additional bidding credit eligibility).<sup>41</sup> Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and phone numbers of the applicants and their contact persons.

In addition, applicants should 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: [auction81@fcc.gov](mailto:auction81@fcc.gov). The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 81 and the name of the applicant. A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338-2850. The Bureaus request that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Questions about short-form application (FCC Form 175) amendments should be directed to Lynne Milne of the Auctions and Spectrum Access Division at (202) 418-0660.

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<sup>40</sup> See *infra* Section II. E.

<sup>41</sup> See 47 C.F.R. § 1.2105.

### **C. Maintaining the Accuracy of FCC Form 175 Information**

Section 1.65 of the Commission's rules requires each 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.<sup>42</sup> If an amendment reporting substantial changes is a "major amendment" as defined by 47 C.F.R. § 1.2105, the major amendment will not be accepted and may, in some instances, result in the dismissal of the FCC Form 175 application.<sup>43</sup>

Applicants must report these modifications to their FCC Form 175 by electronic mail and submit a letter briefly summarizing the changes to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: [auCTION81@fcc.gov](mailto:auCTION81@fcc.gov). The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 81 and the name of the applicant. 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 Lynne Milne of the Auctions and Spectrum Access Division at (202) 418-0660.

In addition, an applicant must make these changes to its short-form application (FCC Form 175) on-line during the remedial window announced in this public notice or during the time period that will be specified in the public notice explaining the status of the applications in Auction No. 81. During the remedial window announced in this public notice or during the time period specified in a subsequent public notice explaining the status of the applications in Auction No. 81, applicants must click on the SUBMIT button in the FCC Auction System for the changes to be submitted and considered by the Commission. After the revised application has been submitted, a confirmation page will be displayed that states the submission time and date, along with a unique file number.

### **D. Requirements for Logging on to the FCC Auction System**

Although applicants submitted their original FCC Form 175 applications by using a Taxpayer Identification Number (TIN), any review of and updates to these applications will require the use of an FCC Registration Number (FRN). On February 28, 2005, the Bureaus required the filing of FRN information from Auction No. 81 applicants.<sup>44</sup> Use of an FRN is mandatory for all applicants for Auction No. 81 so that each applicant may log on to the FCC Auction System to review its FCC Form 175 and continue to participate in the auction process.

A remedial filing window for review of FCC Form 175 applications and the submission of required information will be open from noon ET on Friday, June 24, 2005, until 6:00 p.m. ET on Friday, July 8, 2005. In Attachment C of this public notice, we provide specific instructions about logging on to the FCC Auction System.

For further information, contact: FCC Technical Support at (877) 480-3201, option 9; (202) 414-1250; or (202) 414-1255 (TTY). Hours of service: Monday through Friday 8:00 a.m. to 6:00 p.m. ET.

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<sup>42</sup> 47 C.F.R. § 1.65.

<sup>43</sup> See 47 C.F.R. § 1.2105(b)(2).

<sup>44</sup> *Auction No. 81 Comment Public Notice. See also Auction No. 81 FRN Public Notice.*

## E. Provisions Regarding Former Defaulters

Pursuant to current Commission rules, each applicant in Auction No. 81 now must submit a statement, under penalty of perjury, as part of its short-form application (FCC Form 175), regarding whether or not the applicant, its affiliates, its controlling interests, or any affiliates of its controlling interests, as defined by 47 C.F.R. § 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.<sup>45</sup> **Each applicant in Auction No. 81 must make this statement as provided on the current FCC Form 175 and must attach to its FCC Form 175 information identifying the person making the statement.**

The new format of FCC Form 175 in ISAS provides a screen where the applicant must select one of two form statements describing the status of the applicant, its affiliates, its controlling interests, or any affiliates of its controlling interests regarding former defaults or delinquencies. In addition, because the statement must be made under penalty of perjury, each applicant in Auction No. 81 must submit an attachment identifying the party responsible for making the statement on behalf of the applicant. The party identified may be the same party that certified the applicant's FCC Form 175 when it was filed in 2000. Applicants in Auction No. 81 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, as of the day the statement is submitted to the Commission, 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. 81, provided that they are otherwise qualified. However, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.<sup>46</sup>

Applicants are reminded that “current defaulters” — *i.e.*, applicants, including their attributable interest holders, that are in default on any payment for Commission licenses (including down payments) or are delinquent on any non-tax debt owed to any Federal agency — are not eligible to bid in Auction No. 81.<sup>47</sup>

Applicants are encouraged to review the Wireless Telecommunications Bureau’s previous guidance on default and delinquency disclosure requirements in the context of our short-form application process.<sup>48</sup> Applicants are reminded that the Commission’s Red Light Display System, which provides information

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<sup>45</sup> 47 C.F.R. § 1.2105(a)(2)(x) and (xi); *Fifth Report and Order*, 15 FCC Rcd at 15317 ¶ 42 and n.142.

<sup>46</sup> 47 C.F.R. § 1.2106(a).

<sup>47</sup> 47 C.F.R. §§ 1.2105(a)(2)(x) and (b)(1); *see Fifth Report and Order*, 15 FCC Rcd at 15317 n.142 (“If any one of an applicant’s controlling interests or their affiliates...is in default on any Commission licenses or is delinquent on any non-tax debt owed to any Federal agency at the time the applicant files it[s] Form 175, the applicant will not be able to make the certification required by Section 1.2105(a)(2)(x)...and will not be eligible to participate in Commission auctions.”)

<sup>48</sup> *See* “Wireless Telecommunications Bureau Reminds Prospective Broadband PCS Spectrum Auction Applicants of Default and Delinquency Disclosure Requirements,” *Public Notice*, 19 FCC Rcd 21920 (Wireless Telecom. Bur. 2004) (“*Auction Default Disclosure Public Notice*”); Letter to Cheryl A. Tritt, Esq. from Margaret Wiener, 19 FCC Rcd 22907 (Auctions Div. 2004) (clarifying the term “debt” or “non-tax debt” as referenced in 47 C.F.R. §§ 1.2105(a) and 1.2106(a)).

regarding debts owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of 47 C.F.R. § 1.2105.<sup>49</sup>

**The applicants listed in Attachment A of this public notice must file the additional information identified above from noon ET on Friday, June 24, 2005, until 6:00 p.m. ET on Friday, July 8, 2005.**

The following instructions are provided for this additional information, with further details about this particular submission provided in Attachment C of this public notice.

#### **F. Electronic Review of Short –Form Applications (FCC Forms 175)**

During the remedial window, an applicant may review and update its own completed FCC Form 175 application in the FCC Auction System. There is no fee for accessing this system. See Attachment C for details on accessing the FCC's ISAS.

Applicants will also be able to view other applicants' completed FCC Form 175 applications after the Commission has issued a subsequent public notice concerning the status of the Auction No. 81 applications. Instructions for electronic review of FCC Form 175 applications will be discussed in the public notice concerning the status of the applications.

#### **G. Installment Payments**

In 1997, the Commission suspended the use of auction installment payments. Installment payment plans will not be available in Auction No. 81.<sup>50</sup>

### **III. PRE-AUCTION PROCEDURES**

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

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 resubmitting such corrected applications.

Section 309(j)(2)(C) of the Communications Act (the Act) exempts from competitive bidding applications for construction permits for noncommercial educational broadcast stations ("NCE stations").<sup>51</sup> For purposes of this auction, this exemption applies to a proposal for a new LPTV, television translator or Class A television broadcast station that "is owned and operated by a municipality and which transmits only noncommercial programs for educational purposes."<sup>52</sup> In the *NCE Second Report and Order*, the Commission held that LPTV and television translator facilities qualify as NCE stations under section

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<sup>49</sup> See *Auction Default Disclosure Public Notice*, 19 FCC Rcd at 21920 (addressing relationship between Commission's Red Light Display System and Form 175 default and delinquency disclosure requirements for auction applicants).

<sup>50</sup> 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 374, 397-401 ¶¶ 38-43 (1997) ("*Third Report and Order*").

<sup>51</sup> See 47 U.S.C. §§ 309(j)(2)(C) and 397(6)(B).

<sup>52</sup> See 47 U.S.C. § 397(6)(B).



397(6)(B) of the Act, only if they are owned and operated by municipalities and transmit only NCE programs.<sup>53</sup> Applications for such NCE stations are exempt from auction.

The Commission also stated that proposals for NCE stations may be submitted for non-reserved spectrum in a filing window, subject to being returned as unacceptable for filing if there is any mutually exclusive application for a commercial station.<sup>54</sup> Accordingly, we provided applicants in Auction No. 81 with an opportunity to designate their status as an NCE station applicant under the definition set forth in section 397(6)(B) of the Act.<sup>55</sup> If any Auction No. 81 applicants make such a claim and one or more of the NCE applicant's engineering proposals is determined to be mutually exclusive with one or more engineering proposals filed by an applicant for a commercial station, the NCE station engineering proposal(s) will be returned as unacceptable for filing.

As briefly explained previously in this public notice and described more fully in the Commission's rules, after the short-form filing deadline on August 4, 2000, applicants in Auction No. 81 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 control of the applicant, or seek additional New Entrant Bidding Credit eligibility).<sup>56</sup>

#### **B. Auction Seminar — June 24, 2005**

On Friday, June 24, 2005, the FCC will sponsor a seminar for parties interested in participating in Auction No. 81 at the Federal Communications Commission, located at 445 12<sup>th</sup> Street, SW, Washington, DC. The seminar will provide attendees with information about pre-auction procedures, revision of FCC Form 175 during the remedial window, auction conduct, the FCC Auction System, auction rules, and the LPTV, television translator and Class A television broadcast service rules. The seminar will also provide an opportunity for prospective bidders to ask questions of Commission staff.

To register, complete the registration form attached hereto as Attachment B and submit it no later than Tuesday, June 21, 2005. Registrations are accepted on a first-come, first-served basis. The seminar is free of charge.

For individuals who are unable to attend, an Audio/Video of this seminar will be available via webcast from the FCC's Auction 81 web page at <http://wireless.fcc.gov/auctions/81/>. Select "Auction Seminar."

#### **C. Upfront Payments — Due August 12, 2005**

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). As explained in Attachment C, the applicants listed in Attachment A of this public notice will have access to an electronic version of the FCC Form 159 that

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<sup>53</sup> See *NCE Second Report and Order*, 18 FCC Rcd at 6697; see also 47 C.F.R. § 73.5002(b).

<sup>54</sup> *NCE Second Report and Order*, 18 FCC Rcd at 6699.

<sup>55</sup> See *Auction No. 81 Inventory Public Notice*. For the submission of a claim of NCE status by an Auction No. 81 applicant, that public notice specified a deadline of May 13, 2005. *Id.* No written statements claiming status as an NCE applicant in Auction No. 81 were received by the May 13 deadline.

<sup>56</sup> 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).

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 August 12, 2005.**

### 1. Making Auction Payments by Wire Transfer

Wire transfer payments must be received by 6:00 p.m. ET on August 12, 2005. 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  
500 Ross St.  
Pittsburgh, PA 15262  
BENEFICIARY: FCC/Account # 910-1174  
Originating Bank Information (OBI Field): (Skip one space between each information item)  
APPLICANT FCC REGISTRATION NUMBER (FRN): (same as FCC Form 159, block 21)  
PAYMENT TYPE CODE (same as FCC Form 159, block 24A: A81U)  
FCC CODE 1 (same as FCC Form 159, block 28A: "81")  
PAYER NAME (same as FCC Form 159, block 2)  
LOCKBOX NO. # 358405

**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 2/03) 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. 81." 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.<sup>57</sup> **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.**

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. 81 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 deadline on August 12, 2005 will result in dismissal of the application and disqualification from participation in the auction.

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<sup>57</sup> See Letter from Margaret W. Wiener to Patrick Shannon, Esq., Counsel for Lynch 3G Communications Corporation, 18 FCC Rcd 11552 (Auctions Div. 2003).

## 2. FCC Form 159

A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be faxed to Mellon Bank to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/03) is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment D to this public notice. An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175 during the remedial period. Payors using a pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

## 3. Amount of Upfront Payment

In the *Part 1 Order*, the Commission delegated to the Wireless Telecommunications Bureau the authority and discretion to determine appropriate upfront payment(s) for each auction.<sup>58</sup> In addition, in the *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, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies, be required to pay upfront payments 50 percent greater than non-“former defaulters.”<sup>59</sup> 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.<sup>60</sup>

In the *Auction No. 81 Comment Public Notice*, we proposed that the amount of the upfront payment would determine a bidder’s initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids.<sup>61</sup> In order to bid on a construction permit, otherwise qualified bidders that are designated in Attachment A of this public notice for that construction permit must have a current eligibility level that meets or exceeds the number of bidding units assigned to that construction permit. At a minimum, therefore, an applicant’s total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits designated for that applicant in Attachment A of this public notice, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all construction permits designated for that applicant in Attachment A of this public notice, 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 provisionally winning bids at any given time.<sup>62</sup>

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<sup>58</sup> 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, 5697-98 ¶ 16 (1997) (“*Part 1 Order*”).

<sup>59</sup> *Fifth Report and Order*, 15 FCC Rcd at 15316-17 ¶¶ 40-42; 47 C.F.R. § 1.2106(a); *see* 47 C.F.R. § 1.2105(a)(2)(xi).

<sup>60</sup> 47 C.F.R. § 1.2110(b).

<sup>61</sup> *Auction No. 81 Comment Public Notice* at 3.

<sup>62</sup> Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round. (*See infra* Section IV.B.4).

In the *Auction No. 81 Comment Public Notice*, the Bureaus proposed upfront payments for each construction permit, taking into account various factors related to the efficiency of the auction process and the potential value of similar spectrum. No comments were received; therefore, we adopt our proposal. The specific upfront payments and bidding units for each construction permit are specified in Attachment A of this public notice.<sup>63</sup>

In calculating its upfront payment amount, an applicant should determine the **maximum** number of bidding units on which it may wish to be active on (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all construction permits on which it seeks to be active in any given round.<sup>64</sup> **Applicants should check their calculations carefully, as there is no provision for increasing a bidder’s eligibility after the upfront payment deadline.**

<b>Example: Upfront Payments and Bidding Flexibility</b>				
<b>Market Number</b>	<b>Channel</b>	<b>Location</b>	<b>Bidding Units</b>	<b>Upfront Payment</b>
MX001	11	Port Arthur, TX	1,000	\$1,000
MX007	43	Aberdeen, SD	1,000	\$1,000

If a bidder wishes to bid on both construction permits in a round, it must be identified on Attachment A for both and have purchased at least 2,000 bidding units (1,000 + 1,000). If a bidder only wishes to bid on one, but not both, purchasing 1,000 bidding units would meet the requirement for either construction permit. The bidder would be able to bid on either construction permit, but not both at the same time.

Former defaulters should calculate their upfront payment by multiplying the number of bidding units on which they wish to be active by 1.5.<sup>65</sup> In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit. If a former defaulter fails to submit a sufficient upfront payment to establish eligibility to bid on at least one of the construction permits designated for that applicant in Attachment A of this public notice, the applicant will not be eligible to participate in the auction.

#### **4. Applicant’s Wire Transfer Information for Purposes of Refunds of Upfront Payments**

The Commission will use wire transfers for all Auction No. 81 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 remedial period designated in this public notice. Wire Transfer Instructions can

<sup>63</sup> Results are rounded using our standard rounding procedure: results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10.

<sup>64</sup> A bidder can only bid for one construction permit in an MX group. Therefore, a bidder that wishes to bid on the construction permit in an MX group in which it has two engineering proposals only needs to purchase 1,000 bidding units and not 2,000 bidding units.

<sup>65</sup> 47 C.F.R. § 1.2106(a).

also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Gail Glasser, at (202) 418-2843. 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  
Address of Bank  
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.<sup>66</sup> Eligibility for refunds is discussed in Section V.E., *below*.

#### **D. Auction Registration**

Approximately ten (10) days before the auction, the Commission 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 overnight mail. **The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID cards which will be required to place bids (or access the FCC Auction System) and the telephonic bidding phone number.**

Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder that has not received this mailing by noon on Thursday, September 8, 2005, should telephone (717) 338-2888. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

Qualified bidders should note that lost SecurID cards can be replaced only by appearing **in person** at the FCC headquarters, located at 445 12<sup>th</sup> St., SW, Washington, DC 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 government-issued photo identification) in order to receive replacements. Qualified bidders requiring replacements must call technical support prior to arriving at the FCC.

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<sup>66</sup> 47 C.F.R. §1.1910.

#### **E. Remote Electronic Bidding**

The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Qualified bidders are permitted to bid telephonically and electronically through the FCC Auction System, but each applicant should indicate its 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, the telephonic bidding phone number, and the Integrated Spectrum Auction System (ISAS) Bidder's Guide are only mailed to the contact person at the contact address listed on the FCC Form 175.

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. 81. 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.

#### **F. Mock Auction — September 12, 2005**

All qualified bidders will be eligible to participate in a mock auction on Monday, September 12, 2005. The mock auction will enable bidders to become familiar with the FCC Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by a future public notice.

### **IV. AUCTION EVENT**

The first round of bidding for Auction No. 81 will begin on Wednesday, September 14, 2005. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately ten (10) days before the start of the auction.

#### **A. Auction Structure**

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

In the *Auction No. 81 Comment Public Notice*, we proposed to award all construction permits in Auction No. 81 in a simultaneous multiple round auction.<sup>67</sup> In a simultaneous multiple round auction, all construction permits are available during the entire auction, and bids are accepted on any construction permit until bidding in the auction concludes. We received no comment on this proposal. We conclude that it is operationally feasible and appropriate to auction the LPTV, television translator and Class A television broadcast stations through a simultaneous multiple round auction. We adopt our proposal. Unless otherwise announced, bids will be accepted on all construction permits in each round of the auction.

##### **2. Eligibility and Activity Rules**

In the *Auction No. 81 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.<sup>68</sup> We received no comments on this issue.

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<sup>67</sup> *Auction No. 81 Comment Public Notice* at 2.

<sup>68</sup> *Id.* at 3.

For Auction No. 81 we adopt this proposal. The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, which is the maximum number of bidding units on which a bidder may place bids. Note again that each construction permit is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of this public notice on a bidding unit per dollar basis. Bidding units for a given construction permit do not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific construction permits. Rather, a bidder may place bids on any combination of construction permits as long as the total number of bidding units associated with those construction permits does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units on which it may wish to bid and hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. **The total upfront payment does not affect the total dollar amount a bidder may bid on any given construction permit.**

In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders in Auction No. 81 are required to be active on a specific percentage of their current bidding eligibility during each round of the auction.

A bidder's activity level in a round is the sum of the bidding units associated with construction permits on which the bidder is active. A bidder is considered active on a construction permit in the current round if it is either the provisionally winning bidder at the end of the previous bidding round and does not withdraw the provisionally winning bid in the current round, or if it submits a bid in the current round (*see* "Minimum Acceptable Bid Amounts and Bid Increment Amounts" in Section IV.B.3, *below*). The minimum required activity is expressed as a percentage of the bidder's current eligibility, and increases by stage as the auction progresses. Because these activity and bidding unit eligibility procedures have proven successful in maintaining the pace of previous auctions (as set forth under "Auction Stages" in Section IV.A.3 and "Stage Transitions" in Section IV.A.4, *below*), we adopt them for Auction No. 81.

### 3. Auction Stages

In the *Auction No. 81 Comment Public Notice*, we proposed to conduct the auction in two stages and employ an activity rule. We further proposed that, in each round of Stage One, a bidder desiring to maintain its current bidding eligibility would be required to be active on construction permits representing at least 80 percent of its current bidding eligibility.<sup>69</sup> Finally, we proposed that in each round of Stage Two, a bidder desiring to maintain its current bidding eligibility would be required to be active on at least 95 percent of its current bidding eligibility. We received no comments on this proposal.

We adopt our proposals for the activity rules and auction stages. Below are the activity levels for each stage of the auction. The Bureau reserves the discretion to further alter the activity percentages before and/or during bidding in the auction.

**Stage One:** During the first stage of the auction, a bidder desiring to maintain its current bidding eligibility will be required to be active on construction permits representing at least 80 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility for the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by

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<sup>69</sup> *Id.* at 3-4.

multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by five-fourths (5/4).

**Stage Two:** During the second stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility for the next round of bidding (unless an activity rule waiver is used). During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by twenty-nineteenths (20/19).

**CAUTION:** Since activity requirements increase in Stage Two, bidders must carefully check their activity during the bidding period of the first round following a stage transition to ensure that they are meeting the increased activity requirement. This is especially critical for bidders that have provisionally winning bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not verify their activity status at stage transitions. Bidders may check their activity against the required activity level by either logging in to the FCC Auction System or by accessing the "Bidder Summaries" on the public results page.

Because the foregoing procedures for activity levels, bidding unit eligibility and auction stages have proven successful in maintaining proper pace in previous auctions, we adopt them for Auction No. 81.

#### 4. Stage Transitions

In the *Auction No. 81 Comment Public Notice*, we proposed that the auction would generally advance to the next stage (*i.e.*, from Stage One to Stage Two) when the auction activity level, as measured by the percentage of bidding units receiving new provisionally winning bids, is approximately 20 percent or below for three consecutive rounds of bidding in Stage One. We further proposed that the Bureaus would retain the discretion to change stages unilaterally by announcement during the auction. We received no comments on this issue.

We adopt our proposal. Thus, the auction will start in Stage One and will generally advance to the next stage (*i.e.*, from Stage One to Stage Two) when, in each of three consecutive rounds of bidding, the provisionally winning bids have been placed on 20 percent or less of the construction permits being auctioned (as measured in bidding units). In addition, the Bureaus will retain the discretion to regulate the pace of the auction by announcement. As proposed in the *Auction No. 81 Comment Public Notice*,<sup>70</sup> this determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of construction permits (as measured in bidding units) on which there are new bids,<sup>71</sup> the number of new bids, and the percentage increase in revenue. We believe that these stage transition rules, having proven successful in prior auctions, are appropriate for use in Auction No. 81.

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<sup>70</sup> *Id.* at 3-4.

<sup>71</sup> When monitoring activity for determining when to change stages, we may consider the percentage of bidding units of the construction permits receiving new provisionally winning bids, excluding any FCC-held construction permits.



## 5. Activity Rule Waivers and Reducing Eligibility

In the *Auction No. 81 Comment Public Notice*, we proposed that each bidder in the auction would be provided three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction.<sup>72</sup> We received no comments on this issue.

Based upon our experience in previous auctions, we adopt our proposal that each bidder be provided three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum activity level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit. Activity rule waivers can be either applied proactively by the bidder (known as a "proactive waiver") or applied automatically by the FCC Auction System (known as an "automatic waiver") and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round. We are satisfied that our use of three 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 Auction System assumes that bidders with insufficient activity would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any round where a bidder's activity level is below the minimum required unless: (1) there are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements. If a bidder has no waivers remaining and does not satisfy the required activity level, the bidder's eligibility will be permanently reduced, possibly eliminating the bidder from further bidding in the auction.

A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the bidding round by using the "reduce eligibility" function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in "Auction Stages" (*see* Section IV.A.3 *above*). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

Finally, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity rule waiver (using the "apply waiver" function in the FCC Auction System) during a bidding round 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 applied by the FCC Auction System 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 bidder has submitted a bid in a round and will preclude a bidder from placing any bids later in that round. **Note: Applying a waiver is irreversible; once a proactive waiver is submitted that waiver cannot be unsubmitted, even if the round has not yet closed.**

## 6. Auction Stopping Rules

For Auction No. 81, the Bureaus proposed to employ a simultaneous stopping rule approach.<sup>73</sup> The Bureaus also sought comment on a modified version of the simultaneous stopping rule. The modified

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<sup>72</sup> *Auction No. 81 Comment Public Notice* at 4-5.

<sup>73</sup> *Id.* at 8-9.

version of the stopping rule would close the auction for all construction permits simultaneously after the first round in which no bidder applies a waiver, places a withdrawal, or submits any new bids on any construction permit on which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule.

The Bureaus further proposed retaining the discretion to keep the auction open even if no new bids or proactive waivers are submitted and no previous provisionally winning bids are withdrawn in a round. In this event, the effect will be the same as if a bidder had applied a waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either 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 specified number of additional rounds (“special stopping rule”). If the Bureaus invoke this special stopping rule, it will accept bids in the specified final round(s) and the auction will close.

We proposed to exercise this special stopping rule 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.<sup>74</sup> Before exercising this option, the Bureaus are likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of construction permits where there is still a high level of bidding activity.

We received no comments concerning the auction stopping rules; therefore we adopt the above proposals. Auction No. 81 will begin under the simultaneous stopping rule approach, 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. 81, because our experience in prior auctions demonstrates that the auction stopping rules balance the interests of administrative efficiency and maximum bidder participation.

## **7. Auction Delay, Suspension, or Cancellation**

In the *Auction No. 81 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 or competitive conduct of bidding.<sup>75</sup>

Because our approach to notification of delay during an auction 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 or competitive conduct of 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.

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<sup>74</sup> *Id.* at 8-9.

<sup>75</sup> *Id.* at 5.

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

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**

Section 309(j) of the Communications Act of 1934, as amended, calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when applications for FCC licenses or construction permits are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest.<sup>76</sup> 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.<sup>77</sup> Among other factors, the Bureaus 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.<sup>78</sup> The Commission concluded that the Bureaus should have the discretion to employ either or both of these mechanisms for future auctions.<sup>79</sup> This is consistent with policy applied in earlier spectrum auctions, including Closed Broadcast Auctions Nos. 25, 27, and 54, AM Broadcast Auction No. 32, and FM Broadcast Auction No. 37.

In the *Auction No. 81 Comment Public Notice*, the Bureaus proposed to establish minimum opening bids for Auction No. 81, reasoning that a minimum opening bid, successfully used in other broadcast auctions, is a valuable tool, effectively regulating the pace of the auction.<sup>80</sup> Specifically, a minimum opening bid was proposed for each MX group listed in Attachment A. The minimum opening bid amounts were 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 LPTV, television translator or Class A television 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

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<sup>76</sup> 47 U.S.C. § 309(j)(4)(F).

<sup>77</sup> See *Third Report and Order*, 13 FCC Rcd at 455-456 ¶ 141; see also *Broadcast First Report and Order*, 13 FCC Rcd at 15971 ¶ 134.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Auction No. 81 Comment Public Notice* at 5-6.

valuable assets are not sold for nominal prices, without unduly interfering with the efficient awarding of construction permits.<sup>81</sup>

In the alternative, the Bureaus sought comment on whether, consistent with the Section 309(j), the public interest would be served by having no minimum opening bid or reserve price.<sup>82</sup>

We adopt our proposed minimum opening bids for Auction No. 81. The minimum opening bid amounts we adopt for Auction No. 81 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 requests to reduce the minimum opening bid amount on specific construction permits.

The specific minimum opening bid amounts for each construction permit available in Auction No. 81 are specified in Attachment A of this public notice.

### 3. Minimum Acceptable Bid Amounts and Bid Increment Amounts

In the *Auction No. 81 Comment Public Notice*, we proposed to use a minimum acceptable bid increment of 10 percent. This means that the minimum acceptable bid amount for a construction permit will be approximately 10 percent greater than the provisionally winning bid amount for the construction permit. The minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount times one plus the minimum acceptable bid percentage – *i.e.*, (provisionally winning bid amount) \* (1.10). We will round the result using our standard rounding procedures.<sup>83</sup> We further proposed to retain the discretion to change the minimum acceptable bid amounts and bid increments amounts if it determines that circumstances so dictate.<sup>84</sup> We received no comment on this issue. We adopt our proposal and will begin the auction with a minimum acceptable bid percentage of 10%.

In each round, each eligible bidder will be able to place a bid on a particular construction permit for which it is designated in Attachment A of this public notice in any of nine different amounts.<sup>85</sup> The FCC Auction System will list the nine acceptable bid amounts for each construction permit. Until a bid has been placed on a construction permit, the minimum acceptable bid amount for that construction permit will be equal to its minimum opening bid amount.

The nine acceptable bid amounts for each construction permit consist of the minimum acceptable bid amount and eight other bid amounts based on the bid increment percentage. The first additional acceptable bid amount, above the minimum acceptable bid amount, equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded – *e.g.*, if the bid increment percentage is 10 percent, then the next bid amount will equal (minimum acceptable bid amount) \* 1.10, rounded, the

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<sup>81</sup> See 47 U.S.C. 309(j)(3)(C).

<sup>82</sup> *Auction No. 81 Comment Public Notice* at 5-6.

<sup>83</sup> Results are rounded using our standard rounding procedure: results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10.

<sup>84</sup> *Auction No. 81 Comment Public Notice* at 6-7.

<sup>85</sup> Bidders must have sufficient eligibility to place a bid on the particular construction permit. See *supra* Section III.C.3, “Amount of Upfront Payment.”

second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) \* 1.20, rounded; the third additional acceptable bid amount equals the minimum acceptable bid amount times one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) \* 1.30, rounded, etc. We will begin the auction with a bid increment percentage of 10%. Note that the bid increment percentage need not be the same as the minimum acceptable bid percentage.

In the case of a construction permit for which the provisionally winning bid amount has been withdrawn,<sup>86</sup> the minimum acceptable bid amount will equal the amount of 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. The additional bid amounts above the minimum acceptable bid amount are calculated using the bid increment percentage as described in the previous paragraph.

The Bureaus retains the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, and the bid increment percentage if it determines that circumstances so dictate. The Bureaus will do so by announcement in the FCC Auction System. The Bureaus may also use their discretion to adjust these amounts without prior notice if circumstances warrant.

#### **4. Provisionally Winning Bids**

At the end of each bidding round, a provisionally winning bid amount will be determined based on the highest bid amount received for each construction permit. A high bid from a previous round is referred to as a “provisionally winning bid.” A “provisionally winning bid” will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round. Bidders are reminded that the bidding units of provisionally winning bids are counted as activity for purposes of the activity rule.<sup>87</sup>

In the *Auction No. 81 Comment Public Notice*, the Bureaus proposed to use a random number generator to select a provisionally winning bid in the event of identical high bid amounts being submitted on a construction permit in a given round (*i.e.*, tied bids).<sup>88</sup> 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.<sup>89</sup> The tied bid having the highest random number will become the provisionally winning bid. Eligible bidders, including the provisionally winning bidder, will be able to submit a higher bid in a subsequent round. If no bidder submits a higher bid in subsequent rounds, the provisionally winning bid from the previous round will win the construction permit, unless that provisionally winning bid was withdrawn. If any bids are received on the construction permit in a subsequent round, the provisionally winning bid will once again be determined based on the highest bid amount received for the construction permit.

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<sup>86</sup> See *infra* Section IV.B.6, “Bid Removal and Bid Withdrawal.”

<sup>87</sup> See *supra* Section IV.A.2.

<sup>88</sup> *Auction No. 81 Comment Public Notice* at 7-8.

<sup>89</sup> A description of the L’Ecuyer algorithms can be found in L’Ecuyer, P. (1999) “Good Parameters and Implementations for Combined Multiple Recursive Random Number Generators” *Operations Research* 47 (1), pp.159-164. A longer version of this paper and the C code for the algorithms can be found on the author’s website at <http://www.iro.umontreal.ca/~lecuyer/papers.html>.

## 5. Bidding

During a round, a bidder may submit bids for as many construction permits as it wishes (subject to its eligibility), withdraw provisionally winning 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.

Please note that all bidding will take place remotely either through the FCC 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, at least five to ten minutes are necessary to complete a telephonic bid submission). There will be no on-site bidding during Auction No. 81.

A qualified 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 designated for that applicant in Attachment A of this public notice, 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's engineering proposal is specified in the particular MX group as listed in the revised Attachment A of this public notice.

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

In each round, eligible bidders will be able to place bids on a given construction permit in any of nine different amounts.<sup>90</sup> For each construction permit, the FCC 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 Auction System also includes an "upload" function that allows bidders to upload text files containing bid information.

Until a bid has been placed on a construction permit, the minimum acceptable bid amount for that construction permit will be equal to its minimum opening bid amount. Once there is a provisionally winning bid on a construction permit, the FCC Auction System will calculate a minimum acceptable bid amount 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 provisionally winning 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. 81 Comment Public Notice*, the Commission proposed bid removal and bid withdrawal procedures.<sup>91</sup> With respect to bid withdrawals, the Commission proposed limiting each bidder to

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<sup>90</sup> Bidders must have sufficient eligibility to place a bid on the particular construction permit. *See supra* Section III.C.3, "Amount of Upfront Payment."

<sup>91</sup> *Auction No. 81 Comment Public Notice* at 8.

withdrawals in no more than one round during the course of the auction. The round in which withdrawals are used would be at each bidder's discretion. We received no comments on this issue. These procedures will enhance bidder flexibility during the auction, and therefore we adopt them for Auction No. 81.

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. 81, adoption of a limit on the use of withdrawals to one round 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, 800 MHz SMR, and FM Broadcast auctions, 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 one round. The round will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in the round. 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.

**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 bids" function in the FCC Auction System, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is removed does not count toward bidding activity.

Once a round closes, a bidder may no longer remove a bid. However, in one later round, a bidder may withdraw any provisionally winning bids from previous rounds using the "withdraw bids" function in the FCC Auction System (assuming that the bidder has not reached its withdrawal limit). A provisionally winning bidder that withdraws its provisionally winning 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: Submitting a withdrawal is irreversible; once a withdrawal is submitted during a round, that withdrawal cannot be unsubmitted.**

If a provisionally winning bid is withdrawn, the minimum acceptable bid amount will equal the amount of the second highest bid received for the construction permit, which may be less than, or in the case of tied bids, equal to, the amount of the withdrawn bid.<sup>92</sup> To set the additional bid amounts, the second highest bid amount also will be used in place of the provisionally winning bid in the formula used to calculate bid increment amounts. The Commission will serve as a "place holder" provisionally winning 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.<sup>93</sup> 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

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<sup>92</sup> The Bureau retains the discretion to lower the minimum acceptable bid on such construction permits in the next round or in later rounds.

<sup>93</sup> 47 C.F.R. §§ 1.2104(g), 1.2109.

withdrawn bid and the provisionally winning bid in the same or subsequent auction(s).<sup>94</sup> 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).<sup>95</sup> 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.

Section 1.2104(g)(1) of the rules specifies the payment obligations of a bidder that withdraws a high bid on a construction permit during the course of an auction, and provides for the assessment of interim bid withdrawal payments.<sup>96</sup> 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. Section 1.2104(g) provides specific examples showing application of the bid withdrawal payment rule.<sup>97</sup>

## **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 provisionally winning bids, new minimum acceptable bid amounts, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities for Auction No. 81 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 and stage transitions. All FCC auction announcements will be available by clicking a link in the FCC Auction System.

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<sup>94</sup> 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).

<sup>95</sup> See following paragraph for discussion of interim bid withdrawal payments.

<sup>96</sup> 47 C.F.R. § 1.2104(g)(1); *see Fifth Report and Order*, 15 FCC Rcd at 15302 ¶ 15.

<sup>97</sup> 47 C.F.R. § 1.2104(g).



## 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, final 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. 81 to 20 percent of the net amount of its winning bids (gross bids less any applicable new entrant bidding credits). 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,” Section IV.B.6. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

### B. Final Payments

If a winning bidder's long-form application is uncontested, after the termination of the pleading cycle for petitions to deny, the Commission will issue a public notice announcing that it is prepared to grant the winning bidder's long-form application.<sup>98</sup> If a petition to deny is filed within the pleading cycle for petitions to deny, and if the petition to deny is dismissed or denied, the Commission will issue a public notice announcing that it is prepared to grant the winning bidder's long-form application promptly after the Media Bureau disposes of any such petition to deny and is otherwise satisfied that the applicant is qualified to hold the specified construction permit.<sup>99</sup> Within ten (10) business days after the date of the release of the public notice announcing that the Commission is prepared to grant a winning bidder's long-form application, each winning bidder will be required to submit the balance of the net amount of its winning bids (gross bids less any applicable new entrant bidding credits).<sup>100</sup> Broadcast construction permits will be granted only after the full and timely payment of winning bids and any applicable late fees, in accordance with 47 C.F.R. § 1.2109(a).

### C. Long-Form Application

Within thirty business days after release of the auction closing notice, winning bidders must electronically submit a properly completed FCC Form 346 or FCC Form 301-CA, as appropriate, for each construction permit won through Auction No. 81. Winning bidders claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit.<sup>101</sup> Further filing instructions will be provided to auction winners at the close of the auction.<sup>102</sup>

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<sup>98</sup> See 47 C.F.R. § 73.5006.

<sup>99</sup> See 47 C.F.R. § 73.5006(d).

<sup>100</sup> 47 C.F.R. §§ 1.2109. The Wireless Telecommunications Bureau now employs for wireless service auctions a final payment deadline which is different from the final payment deadline employed in Auction No. 81. 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, 17588 (Wireless Telecom. Bur. 2003).

<sup>101</sup> See 47 C.F.R. §§ 1.2109(a); 73.3573(f)(5)(ii); 73.5006(d).

<sup>102</sup> See 47 C.F.R. §§ 1.2112(b) and 73.5005.

#### **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 otherwise disqualified) will be subject to the payments described in 47 C.F.R. § 1.2104(g)(2).<sup>103</sup> 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.<sup>104</sup> In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission has the discretion to 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.<sup>105</sup>

#### **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. 81 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 provisionally winning 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 and FCC Registration Number (FRN). Send refund requests to:

Federal Communications Commission  
Financial Operations Center  
Auctions Accounting Group  
Gail Glasser  
445 12th Street, SW, Room 1-C864  
Washington, DC 20554

Bidders are encouraged to file their refund information electronically using the **Refund Information** icon in 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 payer of record, as identified on the FCC Form 159.

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

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<sup>103</sup> See *Abundant Life, Inc.*, 17 FCC Rcd 4006 (2002); *Winstar Broadcasting Corp.*, 17 FCC Rcd 6126 (2002); *Delta Radio, Inc.*, 18 FCC Rcd 16889 (2003).

<sup>104</sup> See 47 C.F.R. § 1.2109(b) and (c).

<sup>105</sup> 47 C.F.R. § 1.2109(d).

**Media Contact:**

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

**Video Division, Media Bureau:**

For service rule questions: Shaun Maher or Hossein Hashemzadeh at (202) 418-1600

**Auctions and Spectrum Access Division, Wireless Telecommunications Bureau:**

For legal questions: Lynne Milne at (202) 418-0660

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

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

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## **VI. ATTACHMENT A**

This page was intentionally inserted as a placeholder for Attachment A, which is available as a separate file in Microsoft® Excel format.

**VII. ATTACHMENT B**

**FCC AUCTION SEMINAR REGISTRATION FORM**

**Auction No. 81**

The FCC will sponsor a one-day seminar for Auction No. 81 applicants. The seminar is free of charge and will provide information about pre-auction procedures, service and auction rules, conduct of the auction, and the FCC Auction System.

Representatives from each company may attend on a reservation basis, first-come first-served until room capacity is filled. The seminar will be held:

Friday, June 24, 2005  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554  
Registration 9:30 a.m. - 10:00 a.m.  
Seminar 10:00 a.m. - 2:00 p.m.

If hotel accommodations are needed  
Please contact (888) 225-5322 (option #2) for a list of hotels in the area.

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To register, complete the form below and  
return no later than  
Tuesday, June 21, 2005, by fax to:

FCC Auction 81  
Auctions and Spectrum Access Division  
1270 Fairfield Road  
Gettysburg, PA 17325-7245

FAX: (717) 338-2850  
Phone: (717) 338-2888

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I/We will attend the Auction No. 81 Seminar, scheduled for Friday, June 24, 2005.

Name of attendee: \_\_\_\_\_

Name of attendee: \_\_\_\_\_

Company name: \_\_\_\_\_

Company address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

## VIII. ATTACHMENT C

### ELECTRONIC REVIEW AND UPDATING OF THE FCC FORM 175

Applicants seeking construction permits available in Auction No. 81 filed electronic FCC Form 175, the short-form application to participate in Commission auctions, prior to the August 4, 2000 filing deadline. Since August 4, 2000, the Commission has revised rules applicable to applicants to participate in Commission auctions, as well as the format of FCC Form 175. Information applicants previously submitted in FCC Form 175 that remains relevant under current rules will be displayed in the new format of FCC Form 175, to the extent feasible.

Given changes since August 4, 2000, all applicants will need to provide some additional information in Form 175 to comply with current Commission rules; all applicants should review Form 175 to assure that all relevant information is provided; and some applicants may need to update information previously submitted to keep their FCC Form 175's accurate and complete. To accommodate these needs, the Commission will open a remedial filing window to allow applicants to provide required new information in FCC Form 175 and to review, update, and confirm previously submitted information.

Applicants may review the information previously submitted, now displayed in the new format of the FCC Form 175, to the extent feasible, and remedy any insufficiencies in the information provided, beginning noon ET, June 24, 2005, and until 6:00 p.m. ET, July 8, 2005. **Note: Applicants should not include their Taxpayer Identification Number (TIN) or other sensitive information on any exhibit or attachment to be uploaded.** Contents of exhibits or attachments become available for public access upon release of the public notice concerning the status of the Auction No. 81 applications.

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. If necessary, applicants may request that information submitted not be made routinely available for public inspection following the procedures established in 47 C.F.R. § 0.459. Pursuant to Section 0.459(a), such requests must be included as an attachment to the FCC Form 175 and identify the information to which the request applies. Because the required information bears on applicants' qualifications, confidentiality requests will not be routinely granted.

#### **New Information**

Pursuant to current Commission rules, all applicants now must submit a statement, under penalty of perjury, regarding whether they, their affiliates, their controlling interests, and any affiliates of their controlling interests have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency.<sup>106</sup> Applicants associated with a relevant entity that has been in default or delinquent may participate in an auction, if otherwise qualified. However, such applicants must submit an upfront payment equal to 50 percent more than otherwise required.<sup>107</sup>

The new format of FCC Form 175 provides a screen where the applicant must select a statement describing the status of the applicant and related entities regarding former defaults and delinquencies. In

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<sup>106</sup> See 47 C.F.R. § 1.2105(a)(2)(xi).

<sup>107</sup> See 47 C.F.R. § 1.2106(a).

addition, because the statement must be made under penalty of perjury, applicants must submit an attachment identifying the party responsible for making the statement on behalf of the applicant. The party may be the same party that certified the FCC Form 175 when previously submitted. (Section 5, Attaching Additional Information, describes how to add and submit an attachment.)

### **Previously Submitted Information**

**Applicants are reminded that they are not permitted to make major modifications to their applications (e.g., change their permit selections, change control of the applicant, or seek additional bidding credit eligibility).**<sup>108</sup>

Applicants to participate in Auction No. 81 originally submitted FCC Form 175 by filling in fields of data to create an information profile and by providing other required information in free-form attachments to the application. The current FCC Form 175 requests much of the information previously provided in free-form attachments in new data fields, thereby standardizing information provided and reducing the number of incomplete applications filed. Information entered in data fields in the prior FCC Form 175 will be displayed in the format of the new FCC Form 175. However, information previously provided in free-form attachments to FCC Form 175 cannot be automatically transferred to the data fields in the new FCC Form 175. Accordingly, the information previously filed in attachments to FCC Form 175 remains in attachments to each applicant's FCC Form 175.

To simplify reviewing, updating, and confirming information previously submitted in FCC Form 175 for Auction No. 81, the Commission will continue to use attachments with respect to certain information in FCC Form 175 for Auction No. 81. In particular, the Commission will continue to accept information in free-form attachments regarding bidding agreements and ownership information.

For purposes of Auction No. 81, the Commission will not use the series of screens in the newly formatted FCC Form 175 that provide data fields related to bidding agreements and ownership. Instead, applicants may rely on their previously filed attachments providing such information. To the extent that applicants need to make any changes to information contained in such attachments, they may do so by uploading new attachments. Applicants should note that they may view their previously filed attachments, but to keep the original filing intact, applicants may not delete any previously filed attachments during the remedial filing window.

To avoid any uncertainties that might arise from contradictory attachments, the Commission will treat any new attachment as superceding the original attachment. Accordingly, applicants should repeat all the information that continues to remain accurate in any new attachment. This can be done by copying all the information in the original attachment and then making any necessary edits. For example, if an applicant needed to change an address in an attachment providing ownership information, the applicant should make a copy of the original attachment, revise the relevant address, and upload all the information as a new attachment.

Applicants that claim eligibility for new entrant bidding credits will see the amount of the claimed credit displayed in screens that are part of the new format of FCC Form 175. Applicants that claim eligibility for a twenty-five percent (25%) new entrant bidding credit previously provided information regarding their claimed eligibility, including information regarding attributable mass media facilities in the same area as construction permits available in the auction, in an attachment to FCC Form 175. Applicants claiming eligibility for a twenty-five percent (25%) new entrant bidding credit now must provide such

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<sup>108</sup> See 47 C.F.R. § 1.2105.

information regarding their claimed eligibility in data fields that are part of the new format of FCC Form 175.

Unlike information regarding bidding arrangements and ownership, information regarding same area facilities for participants claiming a twenty-five percent (25%) new entrant bidding credit directly affects bidding, because the location of the same area facilities affects whether the applicant is eligible for the new entrant bidding credit on a permit-by-permit basis. That is, the applicant's credit may vary by permit during the auction. The new format of FCC Form 175 has been integrated with the Commission's bidding system, so that this information is reflected in results during the course of bidding. Accordingly, applicants claiming eligibility for a twenty-five percent (25%) new entrant bidding credit now must enter information regarding same area facilities in the data fields in FCC Form 175. Providing such information in an attachment is not sufficient and applicants will not be able to submit an updated FCC Form 175 without providing the information in the new format.

### **Reviewing and Submitting FCC Form 175**

Applicants must submit their FCC Form 175 applications electronically, via the Internet. **FCC Form 175 applications must be submitted and confirmed before 6:00 p.m. ET on Friday, July 8, 2005.** Late applications or unconfirmed submissions of electronic data will not be accepted.

Applicants may make changes to their FCC Form 175 applications multiple times and until the close of the filing window. However, applicants must press the **SUBMIT** button in the FCC Auction System for the changes to be submitted and considered by the Commission.

### **Software Requirements**

Applicants are reminded to meet the following minimum software requirements:

- Web Browser, either of the following:
  - Microsoft® Internet Explorer 6.0 or higher (recommended). Your browser must have either Microsoft VM or Java Plug-In Version 1.4.2\_05 installed.
  - Netscape® Communicator™ 6.0 or higher, with Java Plug-In Version 1.4.2\_05.

Java Plug-In Version 1.4.2\_05 is available for downloading at [http://java.sun.com/products/archive/j2se/1.4.2\\_05/index.html](http://java.sun.com/products/archive/j2se/1.4.2_05/index.html) (choose the JRE version).

- PDF Viewer: Adobe Acrobat Reader 5.0 or higher (available at <http://www.adobe.com>)

#### **A. Logging On**

To submit an FCC Form 175 application 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). Once on the FCC *Integrated Spectrum Auction System* page, applicants may log in using their FRNs and passwords. On the *My Auctions* page, click the Enter Auction Application Manager link and select the Auction 81 link to view/update your electronic FCC Form 175.



## B. Application Filing Instructions

The on-line FCC Form 175 requests information needed to determine whether an applicant qualifies to participate in competitive bidding for Commission licenses or construction permits.<sup>109</sup> Pursuant to Section 1.2105(a), FCC Form 175 must be submitted electronically. For purposes of Auction No. 81, the screens comprising FCC Form 175 consist of four series, each requesting four separate types of information: 1) *Applicant Information*; 2) *Permit Selection*; 3) *New Entrant Eligibility*; and 4) *Certify and Submit*. In addition, *Summary* screens, a fifth series, appear prior to the *Certify and Submit* screens. The *Summary* screens provide an overview of an applicant's FCC Form 175 that facilitates reviewing and revising specific information, as well as an automated check for certain inconsistencies and omissions in submitted information.

To simplify filling out FCC Form 175, certain initial information applicants provide will be used to determine what additional information is needed. In such circumstances, the applicant's initial information will determine what subsequent screens appear as part of FCC Form 175. For example, a corporate applicant, unlike an individual applicant, must identify a corporate officer or director responsible for the application. If initial information identifies an applicant as an individual, no additional information is needed regarding an additional responsible party. Consequently, in such case, screens requesting information regarding a responsible party will not appear. However, if initial information identifies an applicant as a corporation, subsequent screens in the FCC Form 175 will ask for information regarding the responsible party for the application. Accordingly, at points in the process of filling out FCC Form 175, applicants must provide initial information before they can proceed to subsequent screens.

Applicants should be able to fill out FCC Form 175 by following the instructions below. Additional help in filling out FCC Form 175 can be accessed from FCC Form 175 in two ways: 1) by clicking on the **Help** link in the upper right of any screen, which will open Auction Application Online Filing Help; or 2) by clicking on the text of any **Common Question** link appearing on the right side of the screen. The common questions displayed relate to the current screen and vary from screen to screen. Additional information is provided in the Procedures Public Notice. In the event the assistance provided by these sources is insufficient, filers should use the contact information provided in the Procedures Public Notice to obtain additional assistance.

### 1. Applicant Information

The *Applicant Information* screens are the first series of screens in FCC Form 175. In the *Applicant Information* screens, the applicant may view information regarding the applicant's legal classification, *e.g.*, individual, corporation, etc.; optional information regarding the applicant's status as a minority- or woman-owned business or as a rural telephone company; the applicant's name, which will be the bidder name during the auction, citizenship (or jurisdiction of formation for legal entities) and address; for applicants that are legal entities, *e.g.*, corporations and partnerships, the name and related information regarding the entity's responsible individual; the name and address of a contact person for communicating with the Commission regarding the applicant's FCC Form 175; the names of up to three persons authorized to bid for the applicant in the auction; the applicant's preference for electronic or telephonic bidding; and whether the applicant claims eligibility for certain types of bidding credits.<sup>110</sup>

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<sup>109</sup> See generally 47 C.F.R. § 1.2105.

<sup>110</sup> See generally 47 C.F.R. § 1.2105(a)(2)(ii)(A), (iii), and (iv).

Each screen will specify the information that the applicant must provide. Please note the following with respect to particular information requested:

- Applicants must indicate their legal classification before continuing to subsequent screens, because the legal classification will determine which subsequent screens will appear.
- A P.O. Box may not be used for an applicant's address.
- To simplify filling out FCC Form 175, applicants that have the same address as their contact person can click on the **COPY APPLICANT ADDRESS** button to automatically fill in the contact person's address. P.O. Boxes may not be used for a contact person's address.
- Applicants must identify at least one authorized bidder. Applicants may change their authorized bidders at a later date.
- Any qualified bidder may bid either via the Internet or telephone during the auction. Specifying a preference for electronic or telephonic bidding helps the Commission determine the staff required for telephonic bidding

## 2. Permit Selection

The *Permit Selection* screens make up the second series of screens in FCC Form 175. The initial *Permit Selection* screen will be the *View/Edit Permit Selection* screen. This screen lists the permits previously selected for this auction. Because the initial deadline for filing FCC Form 175 has passed, applicants will not be able to change their selections. Applicants are not obligated to bid on all permits previously selected; however, applicants will not be able to bid on any permits for which the applicant's engineering proposal is not specified in the particular mutual exclusivity group as listed in Attachment A of this public notice.<sup>111</sup>

## 3. New Entrant Eligibility

The *New Entrant Eligibility* screens make up the third series of screens in FCC Form 175. On the initial screen, applicants will view whether they previously indicated they are not claiming the New Entrant bidding credit; are claiming a New Entrant bidding credit of 35%; or are claiming a New Entrant bidding credit of 25%.

Applicants indicating either that no New Entrant bidding credit is claimed or a New Entrant bidding credit of 35% is claimed will not need to provide additional information in FCC Form 175 regarding their claimed New Entrant bidding credit. Such applicants will continue to the next series of screens.

Applicants claiming a New Entrant bidding credit of 25%, however, will provide additional information. Such applicants will continue to a screen to provide information regarding mass media facilities in which the applicant or a party with an attributable interest in the applicant has an interest. Applicants will identify the mass media facility; the party with an interest in the facility; the interest in the facility; and whether any proposed broadcast facilities are in the 'same area' as existing mass media facilities, as defined by applicable Commission rules. *See* 47 C.F.R. §§ 73.5007, 5008. In the event that the applicant indicates that any of the proposed broadcast facilities are in the 'same area' as the identified mass media

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<sup>111</sup> *See generally* 47 C.F.R. § 1.2105(a)(2)(i).

facility, the applicant will continue to an additional screen where the applicant will indicate which proposed broadcast facilities in the auction are in the same area as the identified mass media facility.

Once the applicant has identified all relevant mass media facilities, and all proposed broadcast facilities in the ‘same area’ as each relevant mass media facility, applicants will continue to the View/Edit All Facilities screen. This screen lists the applicant’s claimed New Entrant bidding credit of 25%, the relevant mass media facilities, and the proposed broadcast facilities in the ‘same area’ facilities as each relevant mass media facility. From this screen, options include:

- Clicking the **Edit** icon or the **Modify bidding credit selection** link to return to the initial New Entrant eligibility screen.
- Modifying information about relevant mass media facilities by clicking on them.
- Clicking the **Delete This Facility** link to delete a facility and identified proposed broadcast facilities in the ‘same area.’
- Modifying information regarding a proposed broadcast facility by clicking on its identifier.
- Clicking the **Remove** icon next to information about a particular proposed broadcast facility in the ‘same area’ to remove the corresponding facility.
- Clicking the **Add a proposed ‘Same Area’ Facility to [an existing mass media facility]** link to add a new proposed broadcast facility in the ‘same area.’
- Clicking the **CREATE NEW MASS MEDIA FACILITY** button to add additional mass media facilities.

When all relevant mass media facilities and proposed broadcast facilities in the ‘same area’ as each relevant mass media facility have been identified, click the **CONTINUE** button.

#### 4. Summary

The *Summary* screens are the fourth series of screens in FCC Form 175. The *Summary* screens summarize information applicants have provided in previous screens, offering an overview of an applicant’s FCC Form 175 to help you locate specific information. The *Summary* screens will appear prior to the *Certify and Submit* screens, in order to permit the applicant to review all the information entered in previous screens and to provide an opportunity to check for errors in the information submitted.

The first *Summary* screen, the *Summary Overview* screen, lists the first three series of screens in the application and provides a **VIEW/EDIT** button to access each one. Here is what happens if you click **VIEW/EDIT** for each series:

- Clicking **VIEW/EDIT** for Applicant Information produces a *Detail for Applicant Information* screen showing what you entered for each data entry field. To change any data item, click the **Edit** icon for the relevant data field.
- Clicking **VIEW/EDIT** for Permit Selection takes you to the *View/Edit Permit Selection* screen discussed above in the Permit Selection section.
- Clicking **VIEW/EDIT** for New Entrant Eligibility takes you to the *View/Edit New Entrant Eligibility* screen discussed above in the New Entrant Eligibility section.

Clicking on the **CHECK ERRORS** button initiates an automated check of the application. If the automated check encounters any errors that must be corrected before submitting the application, the error(s) will be listed in an Error box at the top of the screen. To correct one of these errors, click its corresponding **EDIT** button. In addition, if the automated check encounters any apparent errors that might render the application incomplete if the application is submitted with current information, the apparent error will be listed in a Warning box. To revise the information related to the apparent error, click its corresponding **EDIT** button.

Applicants are solely responsible for providing complete and accurate information in FCC Form 175. The automated check is provided to assist applicants in completing FCC Form 175. However, the automated check cannot be relied upon to determine whether the information provided in the FCC Form 175 is complete or accurate; the automated check may not catch all errors or apparent errors and applicants cannot rely on the automated check to determine the completeness or the accuracy of submitted information.

If the automated check does not encounter any errors, a box will appear displaying the message “**No Errors found - You may continue to Certify and Submit.**” Applicants may then click the **CONTINUE TO CERTIFY** button.

## **5. Attaching Additional Information**

If an applicant needs to provide additional information not requested directly in the screens comprising the FCC Form 175, additional information can be provided in an attachment. For purposes of Auction No. 81, applicants can update or revise information in previously submitted attachments in a new attachment that will supercede the previously submitted one. Applicants should note that they may view their previously filed attachments, but to keep the original filing intact, applicants may not delete any previously filed attachments during the remedial filing window.

The screen for adding an attachment to FCC Form 175 can be accessed by clicking on the **Attachments** link in the upper right of any screen. The *Add Attachment* screen requests information regarding the type of attachment to be added, the name of the file to be attached, and a brief description of the attachment. If the attachment is a request for a waiver of any of the Commission’s rules or procedures, the applicant should identify the “Type” of attachment as a “Waiver” to facilitate prompt processing. For purposes of Auction No. 81, applicants should identify the “Type” of attachment for any other attachment as “Other.” Once the requested information is provided, applicants can add the attachment to the application by clicking on the **ADD ATTACHMENT** button.

A list of any attachments already uploaded along with the applicant’s FCC Form 175 appears at the bottom of the screen.

When uploading attachments, applicants may use a variety of file formats-- including (but not limited to) Word 2000 or earlier, WordPerfect 5.x or later, Adobe PDF, and ASCII text--and must verify that the files contain all exhibit information. Files may be no larger than 10 Mb. Graphics files (e.g., .bmp, .tiff, .jpg) and spreadsheets (e.g., Excel, Lotus) are supported but not recommended. Files must not be password-protected.

## 6. Certify and Submit

The *Certify and Submit* screens are the fifth and final series of screens in FCC Form 175. In the *Certify and Submit* screens, applicants will provide certifications required of all participants in the Commission's competitive bidding.<sup>112</sup>

The first *Certify and Submit* screen requires applicants to indicate whether they, their affiliates, their controlling interests, and any affiliates of their controlling interests have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency.<sup>113</sup> Applicants associated with a relevant entity that has been in default or delinquent may participate in an auction, if otherwise qualified. However, such applicants must submit an upfront payment equal to 50 percent more than otherwise required.<sup>114</sup>

**Note:** As mentioned in the New Information section at the beginning of this document, every applicant must submit an attachment identifying the party responsible for making the statement regarding former defaults and delinquencies.

The second *Certify and Submit* screen lists the certifications required of all applicants in the Commission's competitive bidding and displays the applicant's certifying official and electronic signature.

Once the two *Certify and Submit* screens have been filled out and reviewed, the application may be submitted by clicking on the **SUBMIT** button. **Note: Applicants must click the SUBMIT button for changes to be submitted and considered by the Commission.**

After the application has been submitted, a confirmation screen will be displayed that states the submission time and date, along with a unique file number. It is recommended that you print a copy of the confirmation page for your records. You may then view and print a copy of your submitted application by clicking on Print Preview.

## 7. Updating Previously Submitted Information in the Form 175

Once you have logged into the Auction Application Manager, the *Create or Review Auction Applications* page displays any application you have created or submitted within a filing window. **Note:** This page shows the application status, the date and time the application was last updated; and the date and time the application was last submitted. You may use this page as a reference to confirm the date and time of your most recent submission of the application.

To review or continue working on an existing application, click its auction number. This produces the application's Summary page and places you in a view/edit mode. Applicants must go to the *Certify and Submit* screens and click the **SUBMIT** button to submit any changes made to their Form 175. After the revised application has been submitted, a confirmation page will be displayed that states the submission time and date, along with your unique file number. It is recommended that you print a copy of the confirmation page for your records. You may then view and print a copy of your submitted application by clicking on Print Preview.

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<sup>112</sup> See generally 47 C.F.R. § 1.2105(a)(2) (iv)-(vii) and (ix)-(xi).

<sup>113</sup> See 47 C.F.R. § 1.2105(a)(2)(xi); see also 47 C.F.R. § 1.2110.

<sup>114</sup> See 47 C.F.R. § 1.2106(a).

Applicants will not be permitted to make major modifications to their applications (e.g., change their permit selections, change control of the applicant, or seek additional bidding credit eligibility).<sup>115</sup>

## 8. Upfront Payment Calculator and Form 159

You may access the **Upfront Payment Calculator and Form 159** icon from the *Create or Review Auction Applications* page or from the *Auction Application Submit Confirmation* page. When you click the **Upfront Payment Calculator and Form 159** icon or link, a page will be displayed where you can determine the appropriate upfront payment amount to submit with the Form 159. From the *Calculate Upfront Payment* page, you may click the **Carry to 159** button to obtain the Form 159.

## 9. Refund of Upfront Payment

On *My Auctions* page, click on the **See Wire Transfer for Refund Purposes** link to provide your wire transfer instructions for purposes of refunds of upfront payments. The Commission will use this information to refund excess funds on deposit upon receipt of a written refund request.

### C. Application Review

Once the FCC has completed the 175 Application Review process, you can view FCC Form 175 applications electronically by searching for them in the FCC Auction System. Start your web browser and point it to either <http://auctions.fcc.gov/> (primary location) or <http://auctions2.fcc.gov/> (secondary location). Click the **Auction Applications** link in the Public Access area on the FCC Integrated Spectrum Auction System page to start your search.

### D. Technical Support

For technical assistance with using FCC software, contact the FCC Technical Support Hotline at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY). The FCC Technical Support Hotline is available Monday through Friday from 8 a.m. to 6 p.m. ET. **All calls to the FCC Technical Support Hotline are recorded.**

FCC Technical Support can also be contacted electronically by filling out a help request form at <https://esupport.fcc.gov/request.htm>.

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<sup>115</sup> See 47 C.F.R. § 1.2105.

## IX. ATTACHMENT D

### 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. 81. Applicants need to complete FCC Form 159 carefully, because:

- **Mistakes may affect bidding eligibility; and**
- **Lack of consistency between information provided 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 Short Form Application (FCC Form 175) are described below:

Block Number	Required Information
1	LOCKBOX # - Enter "358405"
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 ( <b>not Post Office box number</b> ) 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).
21	Applicant FRN (Complete only if applicant is different than payer.) – Enter the applicant's ten-digit FCC Registration Number (FRN) registered in the Commission Registration System (CORES).
24A	Payment Type Code - Enter "A81U"

- 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 "81" (indicating Auction No. 81).

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.



## X. ATTACHMENT E

### SUMMARY LISTING OF COMMISSION AND BUREAU DOCUMENTS ADDRESSING APPLICATION OF THE ANTI-COLLUSION RULE

#### A. Commission Decisions:

Implementation of Section 309(j) of the Communications Act- Competitive Bidding, PP Docket No. 93-253, FCC 94-61, *Second Report and Order*, 9 FCC Rcd 2348, 2386-2388 ¶¶ 221-226 (1994).

Implementation of Section 309(j) of the Communications Act - Competitive Bidding, *Fifth Report and Order*, PP Docket No. 93-253, 9 FCC Rcd 5532, 5570-5571 ¶¶ 91-92 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Fourth Memorandum Opinion and Order*, PP Docket No. 93-253, 9 FCC Rcd 6858, 6866-6869 ¶¶ 47-60 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Second Memorandum Opinion and Order*, PP Docket No. 93-253, 9 FCC Rcd 7245, 7253-7255 ¶¶ 48-55 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Memorandum Opinion and Order*, PP Docket No. 93-253, 9 FCC Rcd 7684, 7687-7689 ¶¶ 8-12 (1994).

Commercial Realty St. Pete, *Notice of Apparent Liability for Forfeiture*, 10 FCC Rcd 4277 (1995),  
Commercial Realty St. Pete, *Memorandum Opinion and Order*, 11 FCC Rcd 15374 (1996).

Applications of Mercury PCS II, LLC, *Notice of Apparent Liability for Forfeiture*, 12 FCC Rcd 17970 (1997); Application of Mercury PCS II, L.P. for Facilities in the Broadband PCS D, E and F Blocks, *Memorandum Opinion and Order*, 13 FCC Rcd. 23755 (1998).

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, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 463-469 ¶¶ 155-166 (1997).

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

Application of Western PCS BTA I Corporation, *Notice of Apparent Liability for Forfeiture*, FCC 98-42 (March 16, 1998); Notice of Apparent Liability for Forfeiture of Western PCS BTA 1 Corporation, *Memorandum Opinion and Order*, 14 FCC Rcd 21571, 21577-78 ¶ 20 (1999).

Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Procedures, *Seventh Report and Order*, 16 FCC Rcd 17546 (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 (WTB 1995).

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 (WTB 1997).

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 18093 (WTB 1997).

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 19627 (WTB 1997).

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 (WTB 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 10134 (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. Ciampornero 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).*

**C. Enforcement Bureau Decisions:**

Application of Star Wireless, LLC for C Block Facilities in the 710-716 and 740-746 MHz Bands, *Notice of Apparent Liability for Forfeiture*, DA 03-2722 (released August 27, 2003) (recon. pending).

Application of Northeast Communications of Wisconsin, Inc. for C Block Facilities in the 710-716 and 740-746 MHz Bands, *Notice of Apparent Liability for Forfeiture*, DA 03-2723 (released August 27, 2003) (recon. pending).

**D. 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 duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554, (800) 378-3160 (telephone) or <http://www.bcpweb.com>.