



# PUBLIC NOTICE

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## Auction of LPTV and TV Translator Digital Companion Channels Scheduled for November 5, 2008

### Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction 85

**AU Docket No. 08-22**

**Report No. AUC-08-85-F (Auction 85)**

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ATTACHMENT A: Construction Permits to Be Auctioned

ATTACHMENT B: Auction-Specific Instructions for FCC Remittance Advice (FCC Form 159)

ATTACHMENT C: Summary Listing of Judicial, Commission and Bureau Documents Addressing Application of the Anti-Collusion Rule

ATTACHMENT D: Auction 85 Seminar Registration Form

## I. GENERAL INFORMATION

### A. Introduction

1. By this Public Notice, the Wireless Telecommunications Bureau (“WTB”) and the Media Bureau (“MB”) (collectively, the “Bureaus”) announce the procedures and minimum opening bid amounts for the upcoming auction of construction permits for Low Power Television (LPTV), including Class A Television (TV), and TV Translator digital companion channels. This auction, which is designated Auction 85, is scheduled to commence on November 5, 2008 (Auction 85). On July 17, 2008, in accordance with Section 309(j)(3) of the Communications Act of 1934, as amended (the Act),<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 85.<sup>2</sup> In addition, the Bureaus proposed an additional settlement period for applicants to use engineering solutions, dismissal requests or settlements to resolve conflicts among their digital companion

<sup>1</sup> 47 U.S.C. § 309(j)(3)(E)(i)(requirement to seek comment on proposed auction procedures); *see* 47 U.S.C. § 309(j)(4)(F)(authorization to prescribe reserve price or minimum bid); *see also* 47 C.F.R. § 1.2104(c) and (d).

<sup>2</sup> “Auction of LPTV and TV Translator Digital Companion Channels Scheduled for November 5, 2008; Announcement of Settlement Period Ending July 31, 2008; Comment Sought on Competitive Bidding Procedures for Auction 85,” AU Docket No. 08-22, *Public Notice*, DA 08-460 (July 17, 2008) (“*Auction 85 Comment Public Notice*”). A summary of the *Auction 85 Comment Public Notice* was published at 73 Fed. Reg. 43230 (July 24, 2008).

channel engineering proposals. No comments were submitted in response to the *Auction 85 Comment Public Notice*.

### 1. Background of Proceeding

2. In 2006, the Media Bureau by public notice announced a filing window for digital companion channel applications.<sup>3</sup> Requirements for filing such applications were announced by public notice, and the Bureaus conducted a public seminar to provide potential applicants with information about this digital transition opportunity.<sup>4</sup> During this filing window, 1,915 engineering proposals were filed. Subsequently, the Media and Wireless Telecommunications Bureaus announced the determinations of which proposed digital companion channel engineering proposals were mutually exclusive and provided an opportunity for applicants to use engineering solutions, requests for dismissal or settlements to resolve conflicts among their engineering proposals.<sup>5</sup> Through settlements, dismissal requests and engineering solutions, conflicts among these engineering proposals were resolved in 2006 for approximately 130 mutually exclusive groups (“MX Groups”).

3. The Bureaus provided applicants with an additional opportunity to resolve conflicts among their digital companion channel engineering proposals — using engineering solutions, requests for dismissal, and settlements — during a window that extended from July 17 through August 14, 2008.<sup>6</sup> After review of submissions filed during that window, mutual exclusivity remains in the 44 MX Groups that are listed in Attachment A.

### 2. Construction Permits to be Offered in Auction 85

4. Auction 85 will offer 44 construction permits for specified LPTV, including Class A TV, and TV Translator digital companion channels. The construction permits to be auctioned are the subject of pending, mutually exclusive applications for the referenced broadcast services for which the Commission has not approved settlement agreements, dismissal requests or engineering amendments. Participation in this auction will be limited to those applicants for construction permits identified in Attachment A of this Public Notice. Applicants will be eligible to bid only on the corresponding construction permits listed in Attachment A.

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

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<sup>3</sup> “Announcement of Filing Window for LPTV and TV Translator Digital Companion Channel Applications from May 1, 2006 through May 12, 2006,” *Public Notice*, DA 06-123, 21 FCC Rcd 418 (MB 2006).

<sup>4</sup> This public notice also rescheduled the filing period for digital companion channel applications. “LPTV and TV Translator Digital Companion Channel Applications Filing Window for Auction No. 85,” *Public Notice*, DA 06-874, 21 FCC Rcd 4100 (MB/WTB 2006) (*Auction 85 Filing Requirements Public Notice*).

<sup>5</sup> “LPTV and TV Translator Digital Companion Channel Applications Mutually Exclusive Proposals,” *Public Notice*, DA 06-2034, 21 FCC Rcd 11720 (MB/WTB 2006). On August 31, 2006, the Video Division of the Media Bureau released a public notice listing engineering proposals that were not mutually exclusive with any other engineering proposal filed during this auction’s initial filing period (and thus were deemed “singleton” proposals). See “LPTV and TV Translator Digital Companion Channel Applications Non-Mutually Exclusive Proposals (Auction No. 85),” *Public Notice*, DA 06-1748, 21 FCC Rcd 9830 (MB Video Div. 2006).

<sup>6</sup> See *Auction 85 Comment Public Notice* (announcing opening of settlement period); “Auction of LPTV and TV Translator Digital Companion Channels Scheduled for November 5, 2008; Settlement Period Extended to August 14, 2008,” AU Docket No. 08-22, *Public Notice*, DA 08-1681 (July 31, 2008) (extending settlement period).

another, and therefore, a single construction permit will be auctioned for each MX Group identified in Attachment A.<sup>7</sup>

## B. Rules and Disclaimers

### 1. Relevant Authority

6. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules, including recent amendments and clarifications, as well as Commission decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees.<sup>8</sup> Broadcasters should also familiarize themselves with the Commission's rules relating to the television broadcast service contained in 47 C.F.R. §§ 73.601 – 73.699 and 73.1001 – 73.4280. Prospective applicants must also be familiar with the rules relating to competitive bidding proceedings contained in 47 C.F.R. §§ 1.2001 – 1.2112 and broadcast auctions contained in 47 C.F.R. §§ 73.3555, 73.5000 – 73.5009. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, “terms”) contained in this public notice, the *Auction 85 Comment Public Notice* and the *Broadcast Competitive Bidding First Report and Order*,<sup>9</sup> the *Broadcast Competitive Bidding First Reconsideration Order*<sup>10</sup> the *New Entrant Bidding Credit Reconsideration Order*<sup>11</sup> and the *Noncommercial Educational Second Report and Order*.<sup>12</sup>

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<sup>7</sup> When two or more short-form applications (FCC Forms 175) are accepted for filing for a construction permit within the same MX group in Auction 85, mutual exclusivity exists for auction purposes. 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, 15978-80 ¶¶ 149-154 (1998) (“*Broadcast Competitive Bidding First Report and Order*”); *id.*, *Memorandum Opinion and Order*, 14 FCC Rcd 8724 (1999) (“*Broadcast Competitive Bidding 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). *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) (“*Competitive Bidding Second Report and Order*”). Once mutual exclusivity exists for auction purposes, then, even if only one applicant for a particular construction permit in Auction 85 submits an upfront payment, that applicant is required to submit a bid in order to obtain the construction permit. Any applicant that submits a short-form application that is accepted for filing but fails to timely submit an upfront payment will retain its status as an applicant in Auction 85 and will remain subject to the anti-collusion rules, but, having purchased no bidding eligibility, will not be eligible to bid. *Broadcast Competitive Bidding First Report and Order*, 13 FCC Rcd at 15980 ¶ 153.

<sup>8</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) (“*Part 1 Fifth Report and Order*”)(modified by Erratum, DA 00-2475 (rel. Nov. 3, 2000)); *id.*, *Seventh Report and Order*, 16 FCC Rcd 17546 (2001) (“*Part 1 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); *id.*, *Second Order on Reconsideration of the Fifth Report and Order*, 20 FCC Rcd 1942 (2005). *See also* Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, WT Docket No. 05-211, *Report and Order*, 21 FCC Rcd 891 (2006) (“*CSEA/Part 1 Report and Order*”), petitions for recon. pending.

<sup>9</sup> *Broadcast Competitive Bidding First Report and Order*, 13 FCC Rcd at 15920.

<sup>10</sup> *Broadcast Competitive Bidding First Reconsideration Order*, 14 FCC Rcd at 8724.

<sup>11</sup> 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>12</sup> 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*”), petitions for recon. pending.

7. 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 auctions-related Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at <http://wireless.fcc.gov/auctions>. Additionally, documents are available for public inspection and copying 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. ET 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 at <http://www.bcpweb.com>.<sup>13</sup>

## 2. Prohibition of Collusion

8. Applicants for Auction 85 are reminded that they remain subject to the Commission's anti-collusion rule until the down payment deadline after the auction, which will be announced in a future public notice.<sup>14</sup> This prohibition applies to all applicants listed on Attachment A of this Public Notice **regardless of whether such applicants become qualified bidders or actually bid**.<sup>15</sup> Applicants are also reminded that, for purposes of this prohibition, Section 1.2105(c)(7)(i) defines "applicant" as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application.<sup>16</sup>

9. Parties subject to the anti-collusion rule are prohibited from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications (FCC Form 175) as parties with whom they have entered into agreements pursuant to Section 1.2105(a)(2)(viii).<sup>17</sup> Thus, competing applicants must affirmatively avoid all communications with each other that affect or, in their reasonable assessment, have the potential to affect, bids or bidding strategy, which may include communications regarding the post-auction market structure.<sup>18</sup> The anti-collusion rule prohibits not only a communication about an applicant's own bids or bidding strategy, but also a communication of another applicant's bids or bidding strategy.<sup>19</sup> While the anti-collusion rule provisions do not prohibit business

<sup>13</sup> When ordering documents from BCPI, please provide the appropriate FCC document number (for example, DA 08-460 for the *Auction 85 Comment Public Notice*, or DA 08-1944 for this Public Notice).

<sup>14</sup> 47 C.F.R. § 1.2105(c)(1). Auction 85 applicants' anti-collusion requirements were initially described in the *Auction 85 Filing Requirements Public Notice*. See *Auction 85 Filing Requirements Public Notice*, 21 FCC Rcd at 4100.

<sup>15</sup> See, e.g., *Star Wireless, LLC, Forfeiture Order*, 19 FCC Rcd 18626, 18628 ¶ 4, n.19 (EB 2004), upheld on review, *Star Wireless, LLC and Northeast Communications of Wisconsin, Inc., Order on Review*, FCC 07-80, 22 FCC Rcd 8943 (2007), review denied, *Star Wireless, LLC v. FCC*, 522 F.3d 469 (D.C. 2008) (collusion rule applies to applicants regardless of whether they are qualified to bid); Letter to Robert Pettit, Esquire, from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 16 FCC Rcd 10080 (WTB 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>16</sup> 47 C.F.R. § 1.2105(c)(7)(i).

<sup>17</sup> See 47 C.F.R. §§ 1.2105(a)(2)(viii), 1.2105(c)(1); see also 47 C.F.R. § 73.5002; Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17546; *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15297-98 ¶¶ 7-8.

<sup>18</sup> See, e.g., "Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E, and F Block Bidders," *Public Notice*, DA 96-1460 (rel. August 28, 1996).

<sup>19</sup> See *Western PCS BTA 1 Corp.*, 14 FCC Rcd 21571 (1999).



negotiations among auction applicants, applicants must remain vigilant so as not to communicate directly or indirectly information that affects, or could affect, bids or bidding strategy, or the negotiation of settlement agreements.

10. Applicants are hereby placed on notice that public disclosure of information relating to bids or bidding strategies, or post auction market structure may violate the anti-collusion rule.<sup>20</sup> Applicants should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become a conduit for the communication of prohibited bidding information. For example, an applicant's statement to the press that it intends to stop bidding in the auction could give rise to a finding of an anti-collusion rule violation.<sup>21</sup> Similarly, a listed applicant's public statement of intent not to participate in Auction 85 bidding could also violate the rule.

11. Moreover, individuals and entities subject to the anti-collusion rule should take special care in circumstances where their employees may receive information directly or indirectly from a competing applicant relating to any competing applicant's bids or bidding strategies. Where an individual served as an officer for two or more applicants, the Bureaus have found that the bids and bidding strategies of one applicant are necessarily conveyed to the other applicant, and, absent a disclosed bidding agreement, an apparent violation of the anti-collusion rule occurs.<sup>22</sup> The Bureaus have not addressed situations where employees who do not qualify as the applicant (such as, individuals who are not officers or directors) receive information regarding a competing applicant's bids or bidding strategies and whether that information might be deemed to necessarily convey to the applicant. We note that the exception to the anti-collusion rule providing that non-controlling interest holders may have interests in more than one competing applicant without violating the anti-collusion rule, provided specified conditions are met (including a certification that no prohibited communications have occurred or will occur), does not extend to controlling interest holders.<sup>23</sup>

12. The Bureaus also remind Auction 85 applicants that they must not communicate indirectly to other applicants about bids or bidding strategy.<sup>24</sup> Accordingly, Auction 85 applicants are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between such applicants. Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or engineering firm or consulting firm), a violation similarly could occur.<sup>25</sup> In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that

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<sup>20</sup> Thus, communication or disclosure by an applicant to another applicant for one or more of the same construction permits, or of the fact that the applicant does or does not hold provisionally winning bids on particular construction permits, may well violate the anti-collusion rule.

<sup>21</sup> *Compare* Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction, *Public Notice*, 13 FCC Rcd 341, 347-48 (1998) ("Public statements can give rise to collusion concerns. This has occurred in the antitrust context, where certain public statements can support other evidence which tends to indicate the existence of a conspiracy.").

<sup>22</sup> *See, e.g.*, Letter to Colby M. May, TCCSA, Inc., d/b/a Trinity Broadcasting Network, from Barbara A. Kreisman, Chief, Video Division, Media Bureau, and Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, 20 FCC Rcd 14648 (WTB/MB 2005) (finding apparent violation of anti-collusion rule where applicants with mutually exclusive applications reported sharing same individual as an officer and director and reported having no bidding agreement).

<sup>23</sup> 47 C.F.R. § 1.2105(c)(4).

<sup>24</sup> *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17549-50 ¶ 6.

<sup>25</sup> Application of Nevada Wireless for a License to Provide 800 MHz Specialized Mobile Radio Service in the Farmington, NM-CO Economic Area (EA-155) Frequency Band A, *Memorandum Opinion and Order*, 13 FCC Rcd 11973, 11977 ¶ 11 (1998) ("*Nevada Wireless Order*").

applicants and their bidding agents will comply with the anti-collusion rule.<sup>26</sup> Moreover, the Commission has found a violation of the anti-collusion rule where an applicant used the Commission's bidding system to disclose "its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets,"<sup>27</sup> and has placed auction participants on notice that the use of its bidding system "to disclose market information to competitors will not be tolerated and will subject bidders to sanctions."<sup>28</sup> Applicants are cautioned that the Commission remains vigilant about prohibited communications taking place in other situations. For example, the Commission has warned that prohibited "communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly."<sup>29</sup>

13. By electronically submitting its short-form application, each applicant in Auction 85 certified its compliance with Sections 1.2105(c) and 73.7002. However, the Bureau cautions 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>30</sup> The Commission has stated that it "intend[s] to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring."<sup>31</sup> Any applicant found to have violated the anti-collusion rule may be subject to sanctions.<sup>32</sup>

14. **Applicants are also reminded that, regardless of compliance with the Commission's rules, they remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace.**<sup>33</sup> **Compliance with the disclosure requirements of the Commission's anti-collusion rule will not insulate a party from enforcement of the antitrust laws.**<sup>34</sup> For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submitted a short-form application.<sup>35</sup> The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws: for example, actual or potential competitors may not agree to divide territories horizontally in order to minimize competition, regardless of whether they split a market in which they both do

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<sup>26</sup> *Id.*

<sup>27</sup> Mercury PCS II, LLC, *Notice of Apparent Liability for Forfeiture*, 12 FCC Rcd 17970, 17976 ¶ 12 (1997).

<sup>28</sup> Mercury PCS II, LLC, *Memorandum Opinion and Order*, 13 FCC Rcd 23755, 23760 ¶ 11 (1998).

<sup>29</sup> Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, 9 FCC Rcd 7684, 7689 ¶ 12 (1994).

<sup>30</sup> *Nevada Wireless Order*, 13 FCC Rcd at 11978 ¶ 13.

<sup>31</sup> Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, 9 FCC Rcd 7684, 7689 ¶ 12 (1994).

<sup>32</sup> See 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

<sup>33</sup> See Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Further Notice of Proposed Rule Making*, 14 FCC Rcd 21558, 21560 ¶ 4 and n. 4 (1999) citing Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, 9 FCC Rcd 7684, 7689 ¶ 12 (1994) ("[W]e wish to emphasize that all applicants and their owners continue to be subject to existing antitrust laws. Applicants should note that conduct that is permissible under the Commission's Rules may be prohibited by the antitrust laws."); Implementation of Section 309(j) of the Communications Act-Competitive Bidding, PP Docket No. 93-253, *Fourth Memorandum Opinion & Order*, 9 FCC Rcd 6858, 6869 n. 134 (1994)("[A]pplicants will also be subject to existing antitrust laws.") ("*Fourth Memorandum Opinion and Order*").

<sup>34</sup> See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226. See also "Justice Department Sues Three Firms Over FCC Auction Practices," *Press Release* 98-536 (DOJ Nov. 10, 1998).

<sup>35</sup> See, e.g., Implementation of Section 309(j) of the Communications Act-Competitive Bidding, PP Docket No. 93-253, *Fourth Memorandum Opinion & Order*, 9 FCC Rcd 6858, 6869 n. 134 (1994).

business, or whether they merely reserve one market for one and another market for the other.<sup>36</sup> Similarly, the Wireless Telecommunications Bureau previously has reminded potential applicants and others that “[e]ven where the applicant discloses parties with whom it has reached an agreement on the short-form application, thereby permitting discussions with those parties, the applicant is nevertheless subject to existing antitrust laws.”<sup>37</sup> To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation.<sup>38</sup> If an applicant is found to have violated the antitrust laws or the Commission’s rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.<sup>39</sup>

15. If an applicant makes or receives a communication that appears to violate the anti-collusion rule, it must report such communication in writing to the Commission immediately and in no case later than five business days after the communication occurs.<sup>40</sup> The Commission recently clarified that each applicant’s obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five day period.<sup>41</sup>

16. 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>42</sup> Thus, Section 1.65 requires an auction applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. Applicants are therefore required by Section 1.65 to report to the Commission any communications they have made to or received from another applicant after the short-form application filing deadline that affect or have the potential to affect bids or bidding strategy unless such communications are made to or received from parties to agreements identified under Section 1.2105(a)(2)(viii).

17. Parties reporting communications pursuant to Sections 1.2105(a)(2) or 1.2105(c)(6) must take care to ensure that any reports of prohibited communications do not themselves give rise to a violation of the anti-collusion rule. For example, a party’s report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection. A party seeking to report such prohibited communications should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection.<sup>43</sup> Such parties also are encouraged to coordinate with the Auctions and Spectrum Access Division staff, if they have any questions about the procedures for submitting

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<sup>36</sup> *Id.*

<sup>37</sup> Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, 11 FCC Rcd 9645 (1995) (“*Anti-Collusion Public Notice*”).

<sup>38</sup> See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226.

<sup>39</sup> See 47 C.F.R. § 1.2109(d); see also *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226.

<sup>40</sup> 47 C.F.R. § 1.2105(c)(6).

<sup>41</sup> See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, *Second Report and Order*, FCC 07-132, 22 FCC Rcd 15289, 15403-04 ¶¶ 285-86 (2007).

<sup>42</sup> 47 C.F.R. § 1.65; see also *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17555 ¶ 17.

<sup>43</sup> See 47 C.F.R. § 0.459 (requests that materials or information submitted to the Commission be withheld from public inspection). Filers requesting confidential treatment of documents must be sure that the cover page of the filing prominently displays that the documents seek confidential treatment. For example, a filing might include a cover page stamped with “Request for Confidential Treatment Attached” or “Not for Public Inspection.” Any such request must cover all of the material to which the request applies. See 47 C.F.R. § 0.459 (a).



such reports.<sup>44</sup> This Public Notice provides additional guidance on procedures for submitting application-related information below.<sup>45</sup>

18. Applicants must be aware that failure to comply with the Commission's rules can result in enforcement action. A partial listing of documents issued by the Commission and the Bureaus addressing the application of the anti-collusion rule may be found in Attachment C. These documents are available on the Commission's auction anti-collusion web page.<sup>46</sup>

### 3. Due Diligence

19. Potential applicants are reminded that they are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the broadcast facilities they are seeking in this auction. **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.

20. Applicants are strongly encouraged to conduct their own research prior to Auction 85 in order to determine the existence of pending administrative or judicial proceedings that might affect their decisions regarding participation in the auction.<sup>47</sup> Prospective bidders should perform due diligence to identify and consider all proceedings that may affect the digital companion channel facilities they are seeking. We note that resolution of such matters could have an impact on the availability of their specified channel. In addition, although the Commission may continue to act on various pending applications, informal objections, petitions, and other requests for Commission relief, some of these matters may not be resolved by the time bidding commences in this auction. Participants in Auction 85 are strongly encouraged to continue such research throughout the auction. In addition, applicants 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.

21. **Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to obtain their specified channel. Potential applicants are strongly encouraged to physically inspect any sites located in, or near, the service area for which they filed, and also to familiarize themselves with the Commission's environmental assessment obligations.**<sup>48</sup>

22. Potential bidders are reminded that digital companion channels are licensed on a secondary interference basis, and these channels may be displaced by full-power television stations. In addition, LPTV stations operating on Channels 52-69 may be displaced by new 700 MHz operations. Low power displacement applications (both analog and digital) have processing priority over all other low power applications including digital companion channel applications.<sup>49</sup> Displacement applications may be filed at any time. Therefore, the pending digital companion channel proposals in Auction 85 may be affected by newly-filed displacement

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<sup>44</sup> See Section VI. "Contact Information", below.

<sup>45</sup> See Section II. B. "Maintaining Current Information in Short-Form Applications", below.

<sup>46</sup> <http://wireless.fcc.gov/auctions/anticollusion>

<sup>47</sup> See e.g., 47 C.F.R. § 73.606.

<sup>48</sup> Construction permittees must comply with the Commission's rules regarding the National Environmental Policy Act ("NEPA"). 47 C.F.R. Ch. 1, Subpart I.

<sup>49</sup> See 47 C.F.R. § 73.3572.

applications. Bidders should continue to examine the effect that newly-filed displacement applications may have on their engineering proposals. Once a low power television application for construction permit is granted, any subsequent displacement applications must protect that permit from interference.

23. In addition, in November 1999, Congress enacted the Community Broadcasters Protection Act of 1999 (CBPA) which established a new Class A television service.<sup>50</sup> In response to the enactment of the CBPA, the Commission adopted rules to establish the new Class A television service. In the *Class A Report and Order*, the Commission adopted rules to provide interference protection for eligible Class A television stations from new full power television stations.<sup>51</sup> Given the Commission's ruling in the *Class A Report and Order*, a winning bidder in Auction 85, upon submission of its long-form application (FCC Form 346 or 301-CA), will have to provide interference protection to qualified Class A television stations. Therefore, potential bidders are encouraged to perform engineering studies to determine the existence of Class A television stations and their effect on the ability to operate the channel they seek in this auction.<sup>52</sup> 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, and to find information about the identity and location of Class A television stations. 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>.<sup>53</sup> 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).

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

25. Potential bidders for any new television facility in this auction are also reminded that full service television stations are in the process of converting from analog to digital operation and that stations may have pending applications to construct and operate digital television facilities, construction permits and/or licenses for such digital facilities.<sup>54</sup> As mentioned above, all LPTV and TV translator stations are secondary to full service stations and are subject to displacement by such stations. Bidders should investigate the impact such

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<sup>50</sup> Pub.L.No. 106-113, 113 Stat. Appendix I at 1501A-594 – 598 (1999), codified at 47 U.S.C. § 336(f).

<sup>51</sup> Establishment of a Class A Television Service, MM Docket No. 00-10, *Report and Order*, 15 FCC Rcd 6355 (2000).

<sup>52</sup> Bidders should also note that the Commission recently lifted the freeze on the filing of applications for displacement relief and major changes for Class A stations. See "Commission Lifts the Freeze on the Filing of Certain Class A Television Applications Effective August 4, 2008," *Public Notice*, DA 08-1644 (rel. July 14, 2008).

<sup>53</sup> The Media Bureau also has a web page titled "LIST OF ENTITIES THAT HAVE FILED STATEMENTS OF ELIGIBILITY FOR CLASS A LOW POWER TELEVISION STATION STATUS ON OR BEFORE JANUARY 28, 2000," which is available at <http://www.fcc.gov/mb/video/files/classa.html>.

<sup>54</sup> See 47 C.F.R. § 73.622.

applications, permits and licenses may have on their ability to operate facilities based on the construction permits offered in this auction.

#### **4. Use of Integrated Spectrum Auction System**

26. The Commission will make available a browser-based bidding system to allow bidders to participate in Auction 85 over the Internet using the Commission's Integrated Spectrum Auction System ("ISAS" or "FCC Auction System"). The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning or use of the FCC Auction System that is accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming or other advice or service provided in connection with the FCC Auction System.

#### **5. Environmental Review Requirements**

27. Permittees or licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other federal environmental statutes.<sup>55</sup> The construction of a broadcast facility is a federal action and the permittee or licensee must comply with the Commission's environmental rules for each such facility.<sup>56</sup> The Commission's environmental rules require, among other things, that the permittee or licensee consult with expert agencies having environmental responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the U.S. Army Corps of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). In assessing the effect of facilities construction on historic properties, the permittee or licensee must follow the provisions of the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process.<sup>57</sup> The permittee or licensee must prepare environmental assessments for 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 or licensee also must prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

### **C. Auction Specifics**

#### **1. Auction Date**

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

29. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on construction permits will be conducted on each business day until bidding has stopped on all construction permits.

#### **2. Auction Title**

30. Auction 85 – LPTV and TV Translator Digital Companion Channels

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<sup>55</sup> 47 C.F.R. Ch. 1, Subpart I.

<sup>56</sup> 47 C.F.R. §§ 1.1305-1.1319.

<sup>57</sup> See 47 C.F.R. Part 1, Appendix C.

### 3. Bidding Methodology

31. As discussed in more detail below, the bidding methodology for Auction 85 will be simultaneous multiple round bidding.<sup>58</sup> The Commission will conduct this auction over the Internet using the FCC Auction System, and telephonic bidding will be available as well. All telephone calls are recorded.

### 4. Pre-Auction Dates and Deadlines

#### 32. Dates and Deadlines

Auction Seminar.....	October 1, 2008
Upfront Payments (via wire transfer).....	October 10, 2008; 6:00 p.m. ET
Mock Auction.....	November 3, 2008
Auction Begins.....	November 5, 2008

### 5. Requirements for Participation

33. 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, October 10, 2008, following the procedures and instructions set forth in Attachment B to this Public Notice.
- Comply with all provisions outlined in this Public Notice and applicable Commission rules.

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

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

34. Since the deadline for filing short-form applications (FCC Forms 175) passed on June 30, 2006, Auction 85 applicants may now make only minor changes to their applications. Applicants are not permitted to make major modifications to their applications (e.g., make major changes to their engineering proposals, change control of the applicant, change the certifying official, claim eligibility for a higher percentage of bidding credit or change their identification of the application's proposed facilities as noncommercial educational).<sup>59</sup> Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons.

35. Any application amendment and related statements of fact must be certified by (1) the applicant, if the applicant is an individual, (2) one of the partners if the applicant is a partnership, (3) an officer, director, or duly authorized employee, if the applicant is a corporation, (4) by a member who is an officer, if the applicant is an unincorporated association, (5) the trustee if the applicant is an amateur radio service club, or (6) a duly elected or appointed official who is authorized to make such certifications under the laws of the applicable jurisdiction, if the applicant is a governmental entity.<sup>60</sup>

36. An applicant must make permissible minor changes to its short-form application, as defined by Section 1.2105(b), online. 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.

<sup>58</sup> See *infra* Section IV.A.1. "Simultaneous Multiple Round Auction."

<sup>59</sup> See 47 C.F.R. § 1.2105(b); see also *NCE Second Report and Order*, 18 FCC Rcd at 6700.

<sup>60</sup> See 47 C.F.R. § 1.917; see also 47 C.F.R. § 73.3513.

37. In addition, in the event that changes cannot be made immediately in the FCC Auction System for any reason, an applicant must submit a letter, briefly summarizing the changes and subsequently update their short-form applications in the FCC Auction System as soon as possible. Any letter describing changes to an applicant's short-form application must be submitted by electronic mail to the following address: [auction85@fcc.gov](mailto:auction85@fcc.gov). The electronic mail summarizing the changes must include a subject or caption referring to Auction 85 and the name of the applicant (e.g., "RE: Changes to Auction 85 Short-Form Application of ABC Corp."). 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.

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

38. 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>61</sup> Changes that cause a loss of or reduction in eligibility for a new entrant bidding credit must be reported immediately.<sup>62</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 result in the dismissal of the short-form application.<sup>63</sup>

39. During the resubmission period announced in a future public notice, an applicant may review and update the applicant's own completed short-form application in the FCC Auction System. Applicants are reminded that the *Auction 85 Filing Requirements Public Notice*, including its Attachment B, provided important information for this update process.<sup>64</sup>

40. In the event that Section 1.65 modifications cannot be made in the FCC Auction System for any reason, applicants must report Section 1.65 modifications to their short-form application by electronic mail and submit a letter, briefly summarizing the changes, to the following address: [auction85@fcc.gov](mailto:auction85@fcc.gov). The electronic mail summarizing the changes must include a subject or caption referring to Auction 85 and the name of the applicant. The Bureaus requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Questions about such changes should be directed to Lynne Milne of the Auctions and Spectrum Access Division at (202) 418-0660.

41. It is possible for an applicant to make certain changes to its short-form application, such as a change of applicant address or contact information, on-line at any time after the initial short-form application deadline. Applicants must click on the SUBMIT button in the FCC Auction System for such 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.

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

#### **A. Auction Seminar**

42. On Wednesday, October 1, 2008, the FCC will sponsor a seminar for Auction 85 at the FCC headquarters, located at 445 12<sup>th</sup> Street, SW, Washington, DC. The seminar will provide attendees with information about pre-auction procedures, auction rules and conduct, and the FCC Auction System. The

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<sup>61</sup> See 47 C.F.R. § 1.65.

<sup>62</sup> For example, if ownership changes result in the attribution of new interest holders that affect the applicant's qualifications for a new entrant bidding credit, such information must be clearly stated in the bidder's amendment. See *Liberty Productions*, Memorandum Opinion and Order, 16 FCC Rcd 12061, 12078 (2001). Events occurring after the short-form filing deadline, such as the acquisition of attributable interests in media of mass communications, may also cause diminishment or loss of the bidding credit, and must be reported immediately.

<sup>63</sup> See 47 C.F.R. § 1.2105(b)(2).

<sup>64</sup> *Auction 85 Filing Requirements Public Notice*, DA 06-874, 21 FCC Rcd at 4100.



seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff concerning the auction, auction procedures, and other matters related to this auction.

43. To register, complete the attached registration form (Attachment D) and submit it by Monday, September 29, 2008. Registrations are accepted on a first-come, first-served basis. The seminar is free of charge.

44. For individuals who are unable to attend, a webcast of this seminar will be available from the FCC's Auction 85 web page at <http://wireless.fcc.gov/auctions/85/>. Select the "Auction Seminar" link. The seminar webcast will be archived for future viewing.

#### **B. Minor Corrections to Applications**

45. The Commission will issue a future public notice identifying (1) those applications which are complete; (2) those applications rejected; and (3) those applications which have minor defects that may be corrected, and the deadline for resubmitting corrected applications. Mutually exclusive commercial applications will proceed to auction.<sup>65</sup>

46. As described more fully in the Commission's rules, after the short-form filing deadline on June 30, 2006, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (e.g., change their construction permit selections, change control of the applicant, claim eligibility for a higher percentage of bidding credit, change the certifying official, or change their proposed station's identification as NCE).<sup>66</sup>

#### **C. Upfront Payments — Due October 10, 2008**

47. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). Applicants in Auction 85 have access to an electronic version of the FCC Form 159 that can be printed and sent by facsimile to U.S. Bank in St. Louis, Missouri. **All upfront payments must be received in the proper account at U.S. Bank before 6:00 p.m. ET on October 10, 2008.**

##### **1. Making Auction Payments by Wire Transfer**

48. Wire transfer payments must be received before 6:00 p.m. ET on October 10, 2008. 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: 081000210

Receiving Bank: U.S. Bank  
St. Louis, MO

BENEFICIARY: FCC/Account # 152307774819

Originating Bank Information (OBI Field): (Skip one space between each information item)  
"AUCTIONPAY"

APPLICANT FCC REGISTRATION NUMBER (FRN): (same as FCC Form 159, block 21)

PAYMENT TYPE CODE: (same as FCC Form 159, block 24A: "A85U")

FCC CODE 1: (same as FCC Form 159, block 28A: "85")

<sup>65</sup> In the *NCE Second Report and Order*, the Commission held that applications for noncommercial educational (NCE) broadcast stations on nonreserved spectrum, filed during a filing window, will be returned as unacceptable for filing if mutually exclusive with any application for a commercial station. In the same order, the Commission determined that short-form applicants that do not identify on their FCC Form 175 the proposed station's programming as noncommercial educational will be considered, as a matter of law, applicants for commercial broadcast stations. *NCE Second Report and Order*, 18 FCC Rcd at 6700 ¶ 22.

<sup>66</sup> See 47 C.F.R. § 1.2105(b); see also *NCE Second Report and Order*, 18 FCC Rcd at 6700; Two Way Radio of Carolina, Inc., *Memorandum Opinion and Order*, 14 FCC Rcd 12035 (1999).

PAYER NAME: (same as FCC Form 159, block 2)  
LOCKBOX NO.: # 979085

49. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must send by facsimile a completed FCC Form 159 (Revised 7/05) to U.S. Bank at (314) 418-4232. On the cover sheet of the facsimile, write “Wire Transfer — Auction Payment for Auction 85.” In order to meet the Commission’s upfront payment deadline, an applicant’s payment must be credited to the Commission’s account before the deadline.<sup>67</sup> **Applicants are responsible for obtaining confirmation from their financial institution that U.S. Bank has timely received their upfront payment and deposited it in the proper account.**

50. Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction 85 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 specified deadline on October 10, 2008, will result in dismissal of the application and disqualification from participation in the auction.

## 2. FCC Form 159

51. A completed FCC Remittance Advice Form (FCC Form 159, Revised 07/05) must be sent by facsimile to U.S. Bank to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/03) is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment B to this Public Notice. An electronic pre-filled version of the FCC Form 159 is available to applicants completing FCC Form 175 who are listed in Attachment A of this Public Notice. Payers 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 U.S. Bank via facsimile.

52. Each applicant may access the **Upfront Payment Calculator and Form 159** from the *Create or Review Auction Applications* page and 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 FCC Form 159. From the *Calculate Upfront Payment* page, you may click the Form 159 button to obtain the FCC Form 159.

## 3. Upfront Payments and Bidding Eligibility

53. The Commission has delegated to the Bureaus the authority and discretion to determine appropriate upfront payment(s) for each auction.<sup>68</sup> Upfront payments help deter frivolous or insincere bidding, and provide the Commission with a source of funds in the event that the bidder incurs liability during the auction.

54. Applicants that are former defaulters, as described in the *Auction 85 Filing Requirements Public Notice*, must pay upfront payments 50 percent greater than non-former defaulters.<sup>69</sup> For purposes of this

<sup>67</sup> See Letter to Patrick Shannon, Counsel for Lynch 3G Communications Corp., 18 FCC Rcd 11552 (WTB 2003).

<sup>68</sup> Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Proceeding, *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, 12 FCC Rcd 5686, 5697-98 ¶ 16 (1997) (“*Part 1 Order*”).

<sup>69</sup> See *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15316-17 ¶¶ 40-42; 47 C.F.R. § 1.2106(a); see *supra* Section III.C.3. “Upfront Payments and Bidding Eligibility.”

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>70</sup>

55. Applicants must make upfront payments sufficient to obtain bidding eligibility on the construction permits on which they will bid. The Bureaus proposed, in the *Auction 85 Comment Public Notice*, that the amount of the upfront payment would determine a bidder’s initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids.<sup>71</sup> Under the Bureaus’ proposal, in order to bid on a particular construction permit, a qualified bidder must have a current eligibility level that meets or exceeds the number of bidding units assigned to one or more of the construction permits listed in Attachment A for which it has submitted an engineering proposal. **At a minimum, therefore, an applicant’s total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits designated for that applicant in Attachment A 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 the applicant in Attachment A, but only enough to cover the maximum number of bidding units that are associated with construction permits on which the bidder wishes to place bids and hold provisionally winning bids at any given time.<sup>72</sup>

56. In the *Auction 85 Comment Public Notice*, the Bureaus proposed upfront payments for each construction permit taking into account various factors related to the efficiency of the auction process and the potential value of similar spectrum, and sought comment on this proposal. The Bureaus did not receive any comments in response to the proposed upfront payments, or on its proposal that the upfront payment amount would determine a bidder’s initial bidding eligibility. Therefore, we adopt the upfront payments and bidding units we proposed for each construction permit in Auction 85, which are set forth in Attachment A of this Public Notice.

57. In calculating its upfront payment amount, an applicant should determine the **maximum** number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units.<sup>73</sup> In order to make this calculation, an applicant should add together the upfront payments for all construction permits on which it seeks to be active in any given round. **Applicants should check their calculations carefully, as there is no provision for increasing a bidder’s eligibility after the upfront payment deadline.**

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<sup>70</sup> 47 C.F.R. § 1.2110(c).

<sup>71</sup> *Auction 85 Comment Public Notice* at 8-9.

<sup>72</sup> Provisionally winning bids are bids that would become final winning bids if the auction were to close after the given round. See *infra* Section IV.B.4. “Provisionally Winning Bids.”

<sup>73</sup> In some cases, a qualified bidder’s maximum eligibility may be less than the amount of its upfront payment because the qualified bidder has either previously been in default on a Commission construction permit or license or delinquent on non-tax debt owed to a Federal agency (see 47 C.F.R. § 1.2106(a)), or has submitted an upfront payment that exceeds the total amount of bidding units associated with the construction permits designated for that applicant in Attachment A of this Public Notice.

<b>Example: Upfront Payments and Bidding Flexibility</b>			
<b>Construction Permit</b>	<b>MX Group Description</b>	<b>Bidding Units</b>	<b>Upfront Payment</b>
MX-248	Arizona 2 - Lake Havasu City	500	\$500
MX-249	Arizona 3 - Phoenix	1,000	\$1,000

If a bidder wishes to bid on both construction permits in a round, the applicant's name must be designated for both MX groups in Attachment A of this Public Notice, and the applicant must have purchased at least 1,500 bidding units (500 + 1,000). If a bidder only wishes to bid on one, but not both, purchasing 1,000 bidding units would meet the initial eligibility requirement for either construction permit.<sup>74</sup> The bidder would be able to bid on either construction permit, **but not both at the same time**. If the bidder purchased only 500 bidding units, it would have enough eligibility for the Arizona 2 construction permit but not for the Arizona 3 construction permit.

58. If an applicant is a former defaulter, it must calculate its upfront payment for all construction permits by multiplying the number of bidding units on which it wishes to be active by 1.5.<sup>75</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 associated with 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**

59. The Commission will use wire transfers for all Auction 85 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, each applicant should supply all pertinent information listed below. Applicants can provide the information electronically through the FCC Auction System. (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.)

60. Wire Transfer Instructions can also be manually sent by facsimile to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Gail Glasser, at (202) 418-2843. Eligibility for refunds is discussed in Section V.E., below. All refunds will be returned to the payor of record as identified on the FCC Form 159 unless the payor submits a 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)  
 Correspondent Bank (if applicable)  
 ABA Number

<sup>74</sup> Bidders must also remain mindful of the need to maintain sufficient bidding activity during the auction. Discussion of the activity rule requirements may be found in Section IV.A.2. "Eligibility and Activity Rules," *infra*.

<sup>75</sup> See 47 C.F.R. § 1.2106(a).

Account Number

#### D. Auction Registration

61. Approximately ten days before the auction, the Bureaus will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants with timely-submitted short-form applications that are deemed complete and timely upfront payments that are sufficient to make them eligible to bid.

62. 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 short-form application** and will include the SecurID® tokens that will be required to place bids, the Integrated Spectrum Auction System (ISAS) Bidder's Guide, and the Auction Bidder Line phone number.

63. 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, October 30, 2008, should call (717) 338-2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

64. In the event that SecurID® cards are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacements. Qualified bidders requiring the replacement of these items must call Technical Support at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY).

#### E. Remote Electronic Bidding

65. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Only qualified bidders are permitted to bid. Each applicant should indicate its bidding preference – electronic or telephonic – on its short-form application. In either case, each authorized bidder must have its own SecurID® token, which the Commission will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. **For security purposes, the SecurID® tokens, the telephonic bidding telephone number, and the Integrated Spectrum Auction System (ISAS) Bidder's Guide are mailed only to the contact person at the contact address listed on the short-form application.** Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 85.

66. Please note that the SecurID® tokens can be recycled, and the Bureaus encourage bidders to return the tokens to the FCC. The Bureaus will provide pre-addressed envelopes that bidders may use to return the tokens once the auction is closed.

67. Bidders are solely responsible for ensuring the security of their computer systems and their registration materials and for ensuring that only authorized bidders place bids on their behalf. The Commission assumes no responsibility or liability for these matters.

#### F. Mock Auction – November 3, 2008

68. All qualified bidders will be eligible to participate in a mock auction on Monday, November 3, 2008. The mock auction will enable bidders to become familiar with the FCC Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

### IV. AUCTION EVENT

69. The first round of bidding for Auction 85 will begin on Wednesday, November 5, 2008. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is to be released approximately 10 days before the start of the auction.



## A. Auction Structure

### 1. Simultaneous Multiple Round Auction

70. In the *Auction 85 Comment Public Notice*, the Bureaus proposed to auction all construction permits in Auction 85 in a single auction using the Commission's standard simultaneous multiple-round ("SMR") auction format.<sup>76</sup> This type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual construction permits. A bidder may bid on, and potentially win, any number of construction permits. Typically, bidding remains open on all construction permits until bidding stops on every construction permit.

71. The Bureaus received no comment on this issue. The Commission has found that in most circumstances an SMR auction format is the best method to advance the goals of competitive bidding.<sup>77</sup> This format generates the information about relative prices during the course of the auction and provides bidders with flexibility to pursue back-up strategies. Furthermore, an SMR auction format is likely to place construction permits in the hands of the bidders that are most likely to put the spectrum to effective and efficient use. We therefore conclude that it is operationally feasible and appropriate to auction the LPTV and TV Translator digital companion channel construction permits through a simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all construction permits in each round of the auction until bidding stops on every construction permit.

### 2. Eligibility and Activity Rules

72. As discussed above, we will use upfront payments to determine the initial (maximum) eligibility (as measured in bidding units) for Auction 85.<sup>78</sup> The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. As noted earlier, each construction permit is assigned a specific number of bidding units listed in Attachment A. Bidding units for a given construction permit do not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific construction permits. Rather, a bidder may place bids on any of the construction permits designated for that applicant as long as the total number of bidding units associated with those construction permits does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. At a minimum, an applicant's upfront payment must cover the bidding units for at least one of the licenses it selected on its short-form application. The total upfront payment does not affect the total dollar amount a bidder may bid on any given construction permit.

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

74. A bidder's activity level in a round is the sum of the bidding units associated with any construction permits covered by that bidder's new and provisionally winning bids. A bidder is considered active on a construction permit in the current round if it is either the provisionally winning bidder at the end of the previous bidding round or if it submits a bid in the current round (*see* "Bid Amounts" in Section IV.B.3, *below*).

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<sup>76</sup> *Auction 85 Comment Public Notice* at 6.

<sup>77</sup> *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2366.

<sup>78</sup> *Auction 85 Comment Public Notice* at 9.

75. In addition, we received no comments on our proposal for a single stage auction. Therefore, in order to ensure that the auction closes within a reasonable period of time, we adopt our proposal with the following activity requirement: a bidder is required to be active on 100 percent of its current eligibility during each round of the auction. That is, a bidder must either place a bid and/or be the provisionally winning bidder during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place bids in the auction.<sup>79</sup>

### 3. Activity Rule Waivers

76. In the *Auction 85 Comment Public Notice*, the Bureaus proposed that each bidder in the auction be provided with three activity rule waivers.<sup>80</sup> The Bureaus received no comments on this issue.

77. Therefore, we adopt our proposal to provide bidders with 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 (a "proactive waiver") or applied automatically by the FCC Auction System (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.

78. 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 bidding round where a bidder's activity level is below the minimum required unless (1) there are no activity rule waivers available, or (2) the bidder overrides the automatic application of a waiver by reducing eligibility. If a bidder has no waivers remaining and does not satisfy the activity requirement, the FCC Auction System will permanently reduce the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

79. 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 "Eligibility and Activity Rules" (*see* Section IV.A.2 *above*). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility, even if the round has not yet ended.

80. 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 waiver (using the "apply waiver" function in the FCC Auction System) during a bidding round in which no bids are placed, 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 proactive waivers will not keep the auction open. A bidder cannot submit a proactive waiver after submitting a bid in a round, and submitting a proactive waiver will preclude a bidder from placing any bids in that round. **It is important for bidders to understand that applying a waiver is irreversible. Once a bidder submits a proactive waiver, the bidder cannot unsubmit the waiver, even if the round has not yet ended.**

### 4. Auction Stopping Rules

81. For Auction 85, the Bureaus proposed to employ a simultaneous stopping rule approach.<sup>81</sup> A simultaneous stopping rule means that all construction permits remain available for bidding until bidding closes

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<sup>79</sup> *See supra* Section IV.A.3. "Activity Rule Waivers."

<sup>80</sup> *Auction 85 Comment Public Notice* at 9-10.

<sup>81</sup> *Id.* at 7-8.

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

82. The Bureaus also sought comment on alternative versions of the simultaneous stopping rule for Auction 85:

Option 1. The auction would close for all construction permits after the first round in which no bidder applies a waiver 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.

Option 2. The auction would end after a specified number of additional rounds. If the Bureaus invoke this special stopping rule, they will accept bids in the specified final round(s) and the auction will close.

Option 3. The auction would remain open, even if no bidder places any new bids or applies a waiver. In this event, the effect would be the same as if a bidder had applied a waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

83. The Bureaus propose to exercise these options only in circumstances such as where the auction is proceeding unusually slowly or quickly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time or will close prematurely.<sup>82</sup> Before exercising these options, the Bureaus likely may attempt to change the pace of the auction by, for example, changing the number of bidding rounds per day, and/or changing the amount of the minimum acceptable bids.

84. The Bureaus received no comments on the proposals about stopping rules. The Bureaus find that the proposed stopping rules are appropriate for Auction 85, because experience in prior auctions demonstrates that these stopping rules balance the interests of administrative efficiency and maximum bidder participation. Therefore, the Bureaus adopt the proposals made in the *Auction 85 Comment Public Notice*. Auction 85 will begin under the simultaneous stopping rule approach, and the Bureaus will retain the discretion to employ the other proposed versions of the stopping rule. Moreover, the Bureaus will retain the discretion to use the modified stopping rule with or without prior announcement during the auction.

## 5. Auction Delay, Suspension, or Cancellation

85. In the *Auction 85 Comment Public Notice*, the Bureaus proposed that, by public notice or by announcement during the auction, they may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding.<sup>83</sup> The Bureaus received no comment on this issue.

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

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<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 8.

## B. Bidding Procedures

### 1. Round Structure

87. 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 bidder's public notice.

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

### 2. Reserve Price and Minimum Opening Bids

89. In the *Auction 85 Comment Public Notice*, the Bureaus did not propose to establish a reserve price for the construction permits to be offered in Auction 85. The Bureaus, however, did propose to establish minimum opening bids for each construction permit, reasoning that a minimum opening bid, which has been used in other auctions, is an effective bidding tool for accelerating the competitive bidding process.<sup>84</sup> Specifically, a minimum opening bid was proposed for each construction permit listed in Attachment A. The minimum opening bid was determined by taking into account the type of service and class of facility offered, and the number of potential over-the-air viewers covered by the proposed LPTV or TV translator broadcast facility. The Bureaus sought comment on the proposed minimum opening bids. In the alternative, the Bureaus sought comment on whether, consistent with the Section 309(j) of the Communications Act of 1934, as amended,<sup>85</sup> the public interest would be served by having no minimum opening bid or reserve price.<sup>86</sup> The Commission did not receive any comments addressing the proposed minimum opening bids. Accordingly, the Bureaus adopt the proposed minimum opening bids.

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

### 3. Bid Amounts

91. In the *Auction 85 Comment Public Notice*, the Bureaus proposed that in each round, eligible bidders be able to place a bid on a given construction permit in any of up to nine different amounts. Under this proposal, the FCC Auction System interface will list the nine acceptable bid amounts for each construction permit.<sup>87</sup> The Bureaus received no comments on this proposal; therefore, we adopt our proposal.

92. The first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid for the construction permit. After there is a provisionally winning bid for a permit, the minimum acceptable bid amount will be a certain percentage higher. That is, the minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount times one plus the minimum acceptable bid percentage. For example, if the minimum acceptable bid percentage is 10 percent, the minimum acceptable bid amount will equal (provisionally winning bid amount) \* (1.10), rounded.<sup>88</sup>

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<sup>84</sup> *Auction 85 Comment Public Notice* at 10-11.

<sup>85</sup> 47 U.S.C. § 309(j)(4)(F); see also *Part 1 Third Report and Order*, 13 FCC Rcd at 455-456 ¶ 141.

<sup>86</sup> *Auction 85 Comment Public Notice* at 10-11.

<sup>87</sup> In the event of duplicate bid amounts due to rounding, the FCC Auction System will omit the duplicates and will list fewer than nine acceptable bid amounts for the construction permit.

<sup>88</sup> 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 \$100 are rounded to the nearest \$10.

93. In the *Auction 85 Comment Public Notice*, we proposed to use a minimum acceptable bid percentage of 10 percent. The Bureaus did not receive any comments on this proposal. Our experience in the previous broadcast auctions assures us that a bid increment percentage of 10 percent is sufficient to ensure active bidding. Therefore, we will begin the auction with a minimum acceptable bid percentage of 10 percent.

94. The eight additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded. If, for example, the increment percentage is 10 percent, the calculation is (minimum acceptable bid amount) \* (1 + 0.10), rounded, or (minimum acceptable bid amount) \* 1.10, rounded; the 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 round the results of these calculations using our standard rounding procedures.<sup>89</sup> Note that the bid increment percentage need not be the same as the minimum acceptable bid percentage.

95. In the *Auction 85 Comment Public Notice*, we proposed to use a bid increment percentage which also is 10 percent. We received no comment on this issue. We believe that a bid increment percentage of 10 percent will give bidders the flexibility to speed up the pace of the auction, if appropriate. We therefore adopt our proposal, and will begin the auction with a bid increment percentage of 10 percent.

96. The Bureaus did not receive any comments on their proposal to retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, and the bid increment percentage if they determine that circumstances so dictate. The Bureaus will do so by announcement in the FCC Auction System during the auction.

#### 4. Provisionally Winning Bids

97. At the end of each bidding round, a “provisionally winning bid” will be determined based on the highest bid amount received for each construction permit. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.<sup>90</sup>

98. In the *Auction 85 Comment Public Notice*, the Bureaus proposed to use a random number generator to select a single provisionally winning bid in the event of identical high bid amounts being submitted on a construction permit in a given round (i.e., tied bids).<sup>91</sup> No comments were received on this proposal. Therefore, the Bureaus adopt their proposal.

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

100. All bidding will take place remotely either through the FCC Auction System or by telephonic bidding. There will be no on-site bidding during Auction 85. Please note that telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of ten minutes.

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<sup>89</sup> *Id.*

<sup>90</sup> See *supra* Section IV.A.2. “Eligibility and Activity Rules.”

<sup>91</sup> *Auction 85 Comment Public Notice* at 12.



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

102. In order to access the bidding function of the FCC Auction System, bidders must be logged in during the bidding round using the passcode generated by the SecurID® 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.

103. In each round, eligible bidders will be able to place bids on a given construction permit in any of nine different bid amounts.<sup>92</sup> For each construction permit, the FCC Auction System will list the nine acceptable bid amounts in a drop-down box.<sup>93</sup> Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC Auction System also includes an "upload" function that allows bidders to upload text files containing bid information.

104. Until a bid has been placed on a construction permit, the minimum acceptable bid amount for that construction permit will be equal to its minimum opening bid amount. Once there are bids on a construction permit, minimum acceptable bids for a construction permit for the following round will be determined as described in Section IV.B.3, above.

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

## 5. Bid Removal and Bid Withdrawal

106. In the *Auction 85 Comment Public Notice*, the Bureaus proposed bid removal procedures.<sup>94</sup> Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By removing selected bids in the FCC Auction System, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, i.e., a bid that is removed does not count toward bidding activity. Once a round closes, a bidder may no longer remove a bid. We received no comments on the issue of bid removals. These removal procedures will enhance bidder flexibility during the auction. Therefore, the Bureaus adopt their proposed procedures concerning bid removals for Auction 85.

107. Once a round closes, a bidder may no longer remove a bid. In the *Auction 85 Comment Public Notice*, the Bureaus proposed bid withdrawal procedures.<sup>95</sup> The Bureaus proposed to prohibit bidders from withdrawing any bids after the round in which bids were placed has closed. The Bureaus received no comments on the issue of bid withdrawal. In recognition that the permits that are subject of this auction are being offered as a means of facilitating the transition of existing analog LPTV and TV translator stations to digital operation and are not intended to provide opportunity for expansion of LPTV and TV translator service by existing licensees into new markets, the Bureaus adopt their proposal. Bid withdrawals are prohibited in

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<sup>92</sup> Bidders must have sufficient eligibility to place a bid on the particular construction permit. *See supra* Section III.C.3. "Upfront Payments and Bidding Eligibility"

<sup>93</sup> In the event of duplicate bid amounts due to rounding, the FCC Auction System will omit the duplicates and will list fewer than nine acceptable bid amounts for the construction permit.

<sup>94</sup> *Auction 85 Comment Public Notice* at 13.

<sup>95</sup> *Id.*

Auction 85.

## 6. Round Results

108. Reports reflecting bidders' identities for Auction 85 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

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

## 7. Auction Announcements

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

# V. POST-AUCTION PROCEDURES

111. Shortly after bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, long-form applications, and final payments, the long-form application (FCC Forms 301-CA or 346).

### A. Down Payments

112. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 85 to 20 percent of the net amount of its winning bids (gross bids less any applicable new entrant bidding credits).<sup>96</sup>

### B. Final Payments

113. Each winning bidder will be required to submit the balance of the net amount of its winning bids within 10 business days after the applicable deadline for submitting down payments.<sup>97</sup>

### C. Long-Form Application

114. Within thirty days after the release of the auction closing notice, winning bidders must submit electronically a properly completed long-form application (FCC Forms 301-CA or 346), and required exhibits for each construction permit won through Auction 85. A winning bidder claiming new entrant status must include an exhibit demonstrating its eligibility for the bidding credit.<sup>98</sup> Further filing instructions will be provided to auction winners at the close of the auction.

### D. Default and Disqualification

115. Any winning bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full final payment within the prescribed period of time, or is otherwise disqualified) will be subject to the payments described in 47 C.F.R. § 1.2104(g)(2). The payments include both a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

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<sup>96</sup> See 47 C.F.R. § 1.2107(b).

<sup>97</sup> See *id.*

<sup>98</sup> 47 C.F.R. §§ 1.2112(b) and 73.5005.

116. The percentage of the applicable bid to be assessed as an additional payment for defaults in a particular auction is established in advance of the auction. Accordingly, in the *Auction 85 Comment Public Notice*, the Bureaus proposed to set the additional default payment for this auction at twenty percent (20%) of the applicable bid. The Bureaus sought comment on our proposal. No comments were received on this proposal. Based on prior experience and the record on this issue, the Bureaus will set the additional default payment for this auction at twenty percent (20%) of the applicable bid.

117. Finally, in the event of a default, the Commission may re-auction the construction permit or offer it to the next highest bidder (in descending order) at its final bid amount.<sup>99</sup> In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing authorizations held by the applicant.<sup>100</sup>

#### E. Refund of Remaining Upfront Payment Balance

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

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

120. Bidders are encouraged to file their refund information electronically using the **Refund Information** icon found on the *Auction Application Manager* page or through the **Wire Transfer for Refund Purposes** link available in various locations throughout the FCC Auction System. If an applicant has completed the refund instructions electronically, the refund will be sent automatically. If an applicant has not completed the refund instructions electronically, the applicant may send a written request for the refund, including wire transfer instructions and FCC Registration Number (FRN) by facsimile to the Auctions Accounting Group at (202) 418-2843 or by mail to:

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

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

## VI. CONTACT INFORMATION

121. Contact Information Table:

<sup>99</sup> See 47 C.F.R. § 1.2109(b) and (c).

<sup>100</sup> 47 C.F.R. § 1.2109(d).

**General Auction Information**

General Auction Questions  
Seminar Registration

**FCC Auctions Hotline**

(888) 225-5322, option two;  
or (717) 338-2868

**Auction 85 Process and Procedures****Auctions and Spectrum Access Division  
(202) 418 -0660**

Roy Knowles (Analyst)  
Linda Sanderson (Project Manager)

**Auction 85 Legal Information**

Auction Rules, Policies, Regulations

**Auctions and Spectrum Access Division  
(202) 418-0660**

Lynne Milne (Attorney)

**Licensing Information**

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

**Video Division (202) 418-1600**

Shaun Maher (Attorney)  
Hossein Hashemzadeh (Engineer)

**Technical Support**

Electronic Filing  
FCC Auction System (Hardware/Software Issues)

**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

**FCC Auctions Accounting Branch**

Gail Glasser  
(202) 418-0578  
(202) 418-2843 (Fax)

Refunds

Will be furnished only to qualified bidders

**Auction Bidder Line****FCC Copy Contractor**

Additional Copies of  
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445 12th Street, SW, Room CY-B402  
Washington, DC 20554  
(800) 378-3160  
<http://www.bcpiweb.com>

**Press Information**

Matt Nodine (202) 418-1646

**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)

**FCC Internet Sites**

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

## ATTACHMENT A

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



## ATTACHMENT B

### Auction-Specific Instructions for FCC Remittance Advice (FCC Form 159-July 2005 Edition)

#### Upfront Payments

The following information supplements the standard instructions for FCC Form 159 (Revised 7/05), and is provided to help ensure correct completion of FCC Form 159 for upfront payments for Auction 85. 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 7/05), 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 (FCC Form 175) are described below:

Block Number	Required Information
1	LOCKBOX # - Enter "979085"
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 7/05).
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 FRN registered in CORES.
24A	Payment Type Code - Enter "A85U"
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 "85" (indicating Auction 85).

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.

**Winning Bidder Requirements, Down Payments and Final Payments**

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

## ATTACHMENT C

### Summary Listing of Judicial, Commission and Bureau Documents Addressing Application of the Anti-Collusion Rule

#### A. Judicial Decisions:

*USA v. Northeast Communications of Wisconsin, Inc.*, No. 07-C-715, slip op. (E.D.Wis. June 15, 2008).

*Star Wireless, LLC v. FCC*, 522 F.3d 469 (D.C. Cir. 2008).

*High Plains Wireless, L.P. v. FCC*, 276 F.3d 599 (D.C. Cir. 2002).

#### B. Commission Decisions:

Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, *Second Report and Order*, FCC 07-123, 22 FCC Rcd 15289, 15395 ¶¶ 285-86, 15489 (2007).

Star Wireless, LLC and Northeast Communications of Wisconsin, Inc., *Order on Review*, FCC 07-80, 22 FCC Rcd 8943 (2007).

Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Seventh Report and Order*, FCC 01-270, 16 FCC Rcd 17546 (2001).

Notice of Apparent Liability for Forfeiture of Western PCS BTA I Corp., *Memorandum Opinion and Order*, FCC 99-385, 14 FCC Rcd 21571 (1999); Application of Western PCS BTA I Corp., *Notice of Apparent Liability for Forfeiture*, FCC 98-42, 13 FCC Rcd 8305 (1998).

Notice of Apparent Liability for Forfeiture of US West Communications, Inc., *Order*, FCC 99-90, 14 FCC Rcd 8816 (1999); Application of US West Communications, Inc., *Notice of Apparent Liability for Forfeiture*, FCC 98-41, 13 FCC Rcd 8286 (1998).

Application of Mercury PCS II, LLC, *Memorandum Opinion and Order*, FCC 98-203, 13 FCC Rcd 23755 (1998); Applications of: Mercury PCS II, LLC, *Notice of Apparent Liability for Forfeiture*, FCC 97-388, 12 FCC Rcd 17970 (1997).

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*, FCC 97-413, 13 FCC Rcd 374, 463-469 ¶¶ 155-166 (1997).

Commercial Realty St. Pete, Inc., *Memorandum Opinion and Order*, FCC 96-400, 11 FCC Rcd 15374 (1996); Commercial Realty St. Pete, Inc., *Notice of Apparent Liability for Forfeiture*, FCC 95-58, 10 FCC Rcd 4277 (1995).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, FCC 94-295, 9 FCC Rcd 7684, 7687-7689 ¶¶ 8-12 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Fourth Memorandum Opinion and Order*, FCC 94-264, 9 FCC Rcd 6858, 6866-6869 ¶¶ 47-60 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Second Memorandum Opinion and Order*, FCC 94-215, 9 FCC Rcd 7245, 7253-7254 ¶¶ 48-53 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order*, FCC 94-178, 9 FCC Rcd 5532, 5570-5571 ¶¶ 91-92 (1994).

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

### **C. Wireless Telecommunications Bureau Decisions:**

Lotus Communications Corp., *Order*, DA 08-1364 (Wireless Telecom. Bur. rel. June 9, 2008).

Application of Nevada Wireless, *Memorandum Opinion and Order*, DA 98-1137, 13 FCC Rcd 11973 (Wireless Telecom. Bur. 1998).

Applications of High Plains Wireless, L.P., *Memorandum Opinion and Order*, DA 97-2451, 12 FCC Rcd 19627 (Wireless Telecom. Bur. 1997).

Applications of Mercury PCS II, LLC, *Memorandum Opinion and Order on Reconsideration*, DA 97-2324, 12 FCC Rcd 18093 (Wireless Telecom. Bur. 1997); Applications of Mercury PCS II, LLC, *Memorandum Opinion and Order*, DA 97-1782, 13 FCC Rcd 5756 (Wireless Telecom. Bur. 1997).

Applications of GWI PCS, Inc., *Memorandum Opinion and Order*, DA 97-674, 12 FCC Rcd 6441 (Wireless Telecom. Bur. 1997).

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, MM Docket No. 94-131, *Order*, DA 95-2292, 11 FCC Rcd 9655 (Wireless Telecom. Bur. 1995).

#### **1. Public Notices:**

Wireless Telecommunications Bureau Reminder of Anti-Collusion Rule Obligations, *Public Notice*, DA 04-3677, 19 FCC Rcd 22880 (Wireless Telecom. Bur. 2004).

Wireless Telecommunications Bureau Staff Provides Guidance on Completing the Short-Form Application (FCC Form 175) for Auction No. 40, Auction of Licenses for Lower and Upper Paging Bands, *Public Notice*, DA 01-2122, 16 FCC Rcd 16391 (Wireless Telecom. Bur. 2001).

Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction, *Public Notice*, DA 98-37, 13 FCC Rcd 341 (Wireless Telecom. Bur. 1998).

Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E and F Block Bidders, *Public Notice*, DA 96-1460, 11 FCC Rcd 10134 (Wireless Telecom. Bur. 1996).

FCC Staff Clarifies Application of Anti-Collusion Rule to Broadband PCS "C" Block Reauction, *Public Notice*, DA 96-929, 11 FCC Rcd 7031 (Auc. Div. 1996).

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

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

Letter to John Cooper, Aurora Communications, Inc., from Margaret W. Wiener, DA 06-157, 21 FCC Rcd 523 (Auc. Div. 2006).

Letter to Howard A. Kalmenson, Lotus Communications Corp., from Margaret W. Wiener, DA 06-156, 21 FCC Rcd 520 (Auc. Div. 2006).

Letter to Colby M. May from Barbara A. Kreisman and Margaret W. Wiener, DA 05-2445, 20 FCC Rcd 14648 (Video and Auc. Divs. 2005).

Letter to Robert Pettit from Margaret W. Wiener, DA 00-2905, 16 FCC Rcd 10080 (Auc. Div. 2000).

Letter to John Reardon, Mobex Communications, Inc., from Amy J. Zoslov, DA 98-1861, 13 FCC Rcd 17877 (Auc. Div. 1998).

Letter to Elliott J. Greenwald from Christopher J. Wright, DA 98-644, 13 FCC Rcd 7132 (Gen. Counsel 1998).

Letter to David L. Nace from Kathleen O'Brien Ham, DA 96-1566, 11 FCC Rcd 11363 (Auc. Div. 1996).

Letter to Mark Grady from Kathleen O'Brien Ham, DA 96-587, 11 FCC Rcd 10895 (Auc. Div. 1996).

Letter to Jonathan D. Blake from Kathleen O'Brien Ham, DA 95-2404, 10 FCC Rcd 13783 (Auc. Div. 1995).

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

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

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

Letter to Alan F. Ciamporcero from William E. Kennard, General Counsel, Federal Communications Commission (released October 25, 1994).



**D. Enforcement Bureau Decisions:**

Application of Star Wireless, LLC, *Forfeiture Order*, DA 04-3026, 19 FCC Rcd 18626 (Enf. Bur. 2004); Application of Star Wireless, LLC, *Notice of Apparent Liability for Forfeiture*, DA 03-2722, 18 FCC Rcd 17648 (Enf. Bur. 2003).

Application of Northeast Communications of Wisconsin, Inc., *Forfeiture Order*, DA 04-3027, 19 FCC Rcd 18635 (Enf. Bur. 2004); Application of Northeast Communications of Wisconsin, Inc., *Notice of Apparent Liability for Forfeiture*, DA 03-2723, 18 FCC Rcd 17672 (Enf. Bur. 2003).

**E. 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 Fed. Reg. 65,228 (Nov. 25, 1998).

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

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

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

Complaint, *U.S. v. 21st Century Bidding Corp.*, No. 1:98CV02752 (D.D.C. Nov. 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>.

ATTACHMENT D

Auction 85 Seminar Registration Form

The FCC will sponsor a one-day seminar for Auction 85 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.

The seminar will be held:

Wednesday, October 1, 2008
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Registration 12:30 p.m. - 1:00 p.m.

Seminar 1:00 p.m. - 3:00 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, please provide the information listed below no later than
Monday, September 29, 2008,
by either:

E-mail: auchelp@fcc.gov

Facsimile: 717-338-2850

Phone: 717-338-2868

Note: The seminar will also be available via webcast and may be viewed by clicking on the Auction Seminar link on the Auction 85 web page, http://wireless.fcc.gov/auctions/85/. For further information about accessing FCC webcasts, please visit http://www.fcc.gov/realaudio/.

I/We will attend the Auction 85 Seminar, scheduled for Wednesday, October 1, 2008.

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

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

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

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

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