



PUBLIC NOTICE

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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

Comments Due: July 31, 2008

Reply Comments Due: August 7, 2008

Report No. AUC-08-85-D (Auction 85)

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I. INTRODUCTION

1. By this Public Notice, the Wireless Telecommunications Bureau (“WTB”) and the Media Bureau (“MB”) (collectively, the “Bureaus”) announce an 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. By this Public Notice, the Bureaus also seek comment on a variety of auction-specific procedures for Auction 85. In addition, the Bureaus propose in this public notice an additional settlement period for applicants to use engineering solutions or settlements to resolve conflicts among their proposed stations.

II. BACKGROUND

2. The Commission established the LPTV service in 1982 to provide opportunities for locally-oriented television service in small communities.¹ These communities may be in rural areas or may be individual communities within larger urban areas. Class A TV stations are former LPTV stations that have certain interference protection rights not available to LPTV stations.² Class A TV stations are similar technically to LPTV stations, but, unlike LPTV stations, must air at least three hours of locally-produced programming each week and comply with most of the non-technical regulations applicable to full-power television stations. In contrast, a TV translator station rebroadcasts the programs of a full-power TV station. Translator stations typically serve communities that cannot receive the signals of free over-the-air TV stations because they are too far away from a full-power TV station or because of geography, such as uneven terrain or mountains.³ There are more than 7,000 licensed LPTV, Class A Television, and TV Translator stations in operation.

3. Although Congress created a deadline of February 17, 2009, for full-power stations to cease analog operations and to begin digital operations, this statutory deadline does not apply to low power television stations.⁴ In furtherance of the digital broadcast television (DTV) transition and to enable more viewers to realize the many benefits of DTV, the Commission established rules and policies to facilitate the digital transition for LPTV, TV translator and Class A TV stations.⁵ In its *Digital LPTV*

¹ LPTV programming can include satellite-delivered programming services, syndicated programs, movies, and a wide range of locally-produced programs.

² See Establishment of a Class A Television Service, MM Docket No. 00-10, *Report and Order*, 15 FCC Rcd 6355 (2000) (*Class A Report and Order*); *Memorandum Opinion and Order on Reconsideration*, 16 FCC Rcd 8244 (2001).

³ Many of the licensed TV translator stations operate in mountainous or more remote areas of the country.

⁴ See Digital Television and Public Safety Act of 2005 (“*DTV Act*”), which is Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006) (*codified at* 47 U.S.C. §§ 309(j)(14) and 337(e)). *DTV Act* § 3002(a) amends Section 309(j)(14) of the Communications Act to establish February 17, 2009, as a new hard deadline for the end of analog transmissions by full-power stations. 47 U.S.C. § 309(j)(14)(A).

⁵ See Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator and Television Booster Stations and to Amend Rules for Digital Class A Television Stations, *Report and Order*, 19 FCC Rcd 19331 (2004) (*Digital LPTV Report and Order*), *recons. pending*.

Report and Order, the Commission adopted rules and policies to provide flexible and affordable opportunities for digital LPTV and TV translator service, both through the conversion of existing analog service and, where there was available spectrum, new digital stations.⁶ Those rules provided that existing permittees and licensees in these services would be given the flexibility to choose one (and only one) of two methods to convert their existing analog stations to digital. Existing permittees and licensees in these services either could implement an on-channel digital conversion of their analog channel or they could seek a (second) digital companion channel that may be operated simultaneously with their analog channel. Permittees and licensees in these services were not guaranteed a digital companion channel and were required to identify a channel that could be operated consistent with the Commission's interference protection rules.⁷ At a date to be determined in the future, the Commission will require that the permittee or licensee terminate analog operation, return one of their two channels to the Commission, and operate their station only in digital mode.⁸ Permittees and licensees in these services could choose only one of these two methods for converting their existing analog stations to digital.

4. In 2006, the Media Bureau by public notice announced a filing window for digital companion channel applications.⁹ Requirements for filing such applications were announced by public notice, and the Bureau conducted a public seminar to provide potential applicants with information about this digital transition opportunity.¹⁰ 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 stations were mutually exclusive and provided an opportunity for applicants to use engineering solutions or settlements to resolve conflicts among their proposed stations.¹¹ Through settlements and engineering solutions, conflicts among these proposed stations were resolved for approximately 130 mutually exclusive application groups ("MX Groups").

III. CONSTRUCTION PERMITS IN AUCTION 85

5. 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 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.

⁶ *Id.*

⁷ *Id.*, 19 FCC Rcd at 19383 ¶ 153. An application for digital companion channel will not be accepted if it fails to protect the authorized analog or digital facilities of a TV broadcast station or authorized analog facility of TV translator, LPTV, Class A television stations, or 700 MHz public safety and commercial wireless licensees. See 47 C.F.R. §§ 74.703, 74.793. An application for digital companion channel must also protect pending applications of TV translator and LPTV and Class A stations. *Id.*

⁸ *Digital LPTV Report and Order*, 19 FCC Rcd at 19383 ¶ 153.

⁹ "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).

¹⁰ 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*).

¹¹ "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 are 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).

6. Attachment A specifies the MX Groups accompanied by their respective minimum opening bids and upfront payments.¹² Attachment A also lists the names of the applicants for construction permits in each MX Group. For each MX Group identified in Attachment A, competing applications were filed during the relevant filing period. All applications within an identified MX Group are directly mutually exclusive with one another, and therefore, a single construction permit will be auctioned for each MX Group identified in Attachment A.¹³

IV. SETTLEMENT PERIOD

7. The Bureaus announce a settlement window beginning with the release of this Public Notice and ending at 6:00 PM Eastern Time (ET) on Thursday, July 31, 2008, for parties with proposals in the mutually exclusive (MX) groups listed in Attachment A to dismiss their proposals, enter into settlement agreements or otherwise resolve their mutual exclusivities by means of engineering solutions.¹⁴ The parties must submit their requests for dismissal or settlement agreements (including affidavits required by Section 73.3525) and/or engineering submissions by the deadline on July 31, 2008. After approval of the settlement or engineering submission, the proposed permittee(s) must submit an accurate and complete FCC Form 346 by the deadline subsequently specified by staff.

8. Applicants must ensure that their settlement agreements comply with the provisions of Section 311(c) of the Communications Act of 1934, as amended,¹⁵ and the pertinent requirements of Section 73.3525 of the Commission's Rules, including the reimbursement restrictions.¹⁶ Section 73.3525(a) requires that:

- A. Parties must submit a copy of their settlement agreement and any ancillary agreement(s).
- B. Parties must submit a joint request for approval of such agreement.

¹² In the event that the Commission approves any settlements pursuant to the settlement period described below (*see* Section IV, below), certain MX Groups may be modified or deleted. Any such MX Group changes will be announced in a future public notice.

¹³ 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 First Report and Order*”); *id.*, *Memorandum Opinion and Order*, 14 FCC Rcd 8724 (1999) (“*Broadcast First Reconsideration Order*”); *id.*, *Memorandum Opinion and Order*, 14 FCC Rcd 12541 (1999); *aff'd*, *Orion Communications Ltd. v. FCC*, 221 F.3d 196, No. 98-1424, slip op. (D.C. Cir. June 13, 2000) (unpublished opinion available at 2000 WL 816046 (D.C. Cir.); *aff'd*, *Orion Communications Ltd. v. FCC*, 213 F.3d 761 (D.C. Cir. 2000). *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) (“*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.

¹⁴ *See* Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, *Memorandum Opinion and Order*, 14 FCC Rcd 8724, 8758 ¶ 65(1999).

¹⁵ 47 U.S.C. § 311(c).

¹⁶ 47 C.F.R. § 73.3525.

C. Parties must submit an affidavit of each party to the agreement setting forth:

- (a) The reasons why it is considered that such agreement is in the public interest;
- (b) A statement that its application was not filed for the purpose of reaching or carrying out such agreement;
- (c) A certification that neither the applicant nor its principals has received any money or other consideration in excess of the legitimate and prudent expenses of the applicant;
- (d) The exact nature and amount of any consideration paid or promised;
- (e) An itemized accounting of the expenses for which it seeks reimbursement; and
- (f) The terms of any oral agreement relating to the dismissal or withdrawal of its application.

9. Applicants that request dismissal of their proposal or file an engineering amendment that removes the mutual exclusivity to their proposal without having entered a settlement agreement with another applicant must nevertheless submit an affidavit as to whether or not consideration has been promised to or received by such applicant in connection with their dismissal or engineering amendment. Applicants are not permitted to propose technical changes that would be considered a major change.¹⁷

10. **Anti-Collusion Rule.** The prohibition of collusion set forth in 47 C.F.R. § 1.2105(c) became effective upon the short-form application (FCC Form 175) filing deadline on June 30, 2006.¹⁸ However, the Commission's rules provide for a limited opportunity to settle, or otherwise resolve mutual exclusivities by means of engineering solutions, following the filing of the short-form applications. Specifically, parties in MX groups listed in Attachment A may discuss possible settlement agreements or technical solutions with other parties in their group during the limited period which commences with the release of this public notice and ends at 6:00 PM on July 31, 2008. Once the settlement period ends, the anti-collusion restrictions once again take effect. The Commission will proceed to auction with any competing mutually exclusive proposals that are not resolved by the parties during this settlement period.

11. **When and Where to File.** Settlement agreements that are entered into in connection with this settlement period must be filed **prior to 6:00 PM ET on July 31, 2008**, as an attachment to the respective parties' FCC Forms 175 via the FCC Auction System. **All parties to a settlement agreement must attach the requisite documents to their respective FCC Forms 175.** Similarly, applicants proposing engineering amendments in connection with this settlement period must do so by amending the technical portion of their FCC Forms 175 via the FCC Auction System. Engineering amendments also must be submitted **prior to 6:00 PM on July 31, 2008. Late-filed settlement agreements and engineering amendments will not be accepted.** Applicants are strongly encouraged to file their

¹⁷ Applicants may make minor amendments to engineering proposals in order to resolve mutual exclusivity. However, applicants may not modify the following fields of their engineering proposals: Proposal Description, Service Type, Application Purpose, Facility ID, and Channel. See 47 C.F.R. § 1.2105(b) (describing major and minor amendments to auction short-form applications); 47 C.F.R. § 73.3572(a)(1) (describing major and minor engineering changes for Class A TV, Low Power TV, TV Translator and TV booster stations); see also Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, *First Report and Order*, 13 FCC Rcd 15920, 15976 ¶ 145 (1998) (“*Broadcast Competitive Bidding First Report and Order*”).

¹⁸ See 47 C.F.R. § 1.2105(c); see also 47 C.F.R. § 73.5002(d).

settlement agreements and engineering amendments early and are responsible for allowing adequate time for filing. Information about accessing, viewing, completing amendments to, and filing settlement agreements for the FCC Form 175 is included in Attachment B of this Public Notice. Technical support is available at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (text telephony (TTY)); hours of service are Monday through Friday, from 8:00 AM to 6:00 PM ET. In order to provide better service to the public, all calls to the FCC Technical Support hotline are recorded.

12. The staff will withhold further action on the mutually exclusive proposals listed in Attachment A pending submission of settlement agreements or engineering proposals to resolve mutual exclusivity. Following the close of the settlement period and review of the short-form applications and settlement submissions, the Bureaus subsequently will proceed with competitive bidding for the remaining MX groups of engineering proposals. That competitive bidding will start on November 5, 2008, and will be conducted pursuant to procedures to be announced in a subsequent public notice.

V. BUREAUS SEEK COMMENT ON AUCTION PROCEDURES

13. Section 309(j)(3)(E)(i) of the Communications Act of 1934, as amended, requires the Commission to “ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed . . . before issuance of bidding rules, to permit notice and comment on proposed auction procedures”¹⁹ Consistent with the provisions of Section 309(j)(3) and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Commission directed the Bureaus, under delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction.²⁰ The Bureaus therefore seek comment on the following issues relating to Auction 85.

A. Auction Structure

1. Simultaneous Multiple-Round Auction Design

14. The Bureaus propose to auction all construction permits included in Auction 85 using the Commission’s standard simultaneous multiple-round (“SMR”) auction format.²¹ As described further below, 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. Typically, bidding remains open on all construction permits until bidding stops on every construction permit. The Bureaus seek comment on this proposal.

¹⁹ 47 U.S.C. § 309(j)(3)(E)(i).

²⁰ See Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 448 ¶¶ 124-25 (1997) (“*Part 1 Third Report and Order*”) (directing the Wireless Telecommunications Bureau (WTB) to seek comment on specific mechanisms related to day-to-day auction conduct including, for example, the structure of bidding rounds and stages, establishment of minimum opening bids or reserve prices, minimum acceptable bids, initial maximum eligibility for each bidder, activity requirements for each stage of the auction, activity rule waivers, criteria for determining reductions in eligibility, information regarding bid withdrawal and bid removal, stopping rules, and information relating to auction delay, suspension or cancellation); see also *Broadcast First Report and Order*, 13 FCC Rcd at 15967-15968 (consistent with the Part 1 rules, the Commission delegated authority to the Mass Media Bureau [now Media Bureau] to seek comment on and establish an appropriate auction design methodology prior to the start of each broadcast auction). See generally 47 C.F.R. § 0.131; 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*”).

²¹ See *Second Report and Order*, 9 FCC Rcd at 2378-79 ¶¶ 171-76 for a general discussion of competitive bidding design.

2. Round Structure

15. The Commission will conduct Auction 85 over the Internet, and telephonic bidding will be available as well. The toll-free telephone number for the Auction Bidder Line will be provided to qualified bidders.

16. The auction will consist of sequential bidding rounds, each followed by the release of round results. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction. Details on viewing round results, including the location and format of downloadable round results files, will be included in the same public notice.

17. The Bureaus propose to retain 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. Under this proposal, the Bureaus may increase or decrease the amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors. The Bureaus seek comment on this proposal. Commenters may wish to address the role of the bidding schedule in managing the pace of the auction and the tradeoffs in managing auction pace by bidding schedule changes, by changing the activity requirements or bid amount parameters, or by using other means.

3. Stopping Rule

18. The Bureaus have discretion "to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time."²² For Auction 85, the Bureaus propose to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all construction permits remain available for bidding until bidding closes simultaneously on all construction permits. More specifically, bidding will close simultaneously on all construction permits after the first round in which no bidder submits any new bids, applies a proactive waiver, or withdraws any provisionally winning bids (if permitted).²³ Thus, unless the Bureaus announce alternative procedures, bidding will remain open on all construction permits until bidding stops on every construction permit. Consequently, it is not possible to determine in advance how long the auction will last.

19. Further, the Bureaus propose to retain the discretion to exercise any of the following options during Auction 85:

- a) Use a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all construction permits after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid (if permitted), or places any new bids on any construction permit for 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.
- b) Declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the Bureaus invoke this special stopping rule, they will accept bids in the specified final round(s) after which the auction will close.
- c) Keep the auction open even if no bidder places any new bids, applies a waiver, or withdraws any provisionally winning bids (if permitted). In this event, the effect will be the same as if a

²² 47 C.F.R. § 1.2104(e).

²³ Proactive waivers are described in Section V.B.3. "Activity Rule Waivers and Reducing Eligibility," provisionally winning bids are defined in Section V.B.6. "Provisionally Winning Bids," and bid withdrawals are described in Section V.B.7. "Bid Removal and Bid Withdrawal," below.

bidder had applied a waiver. The activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

20. The Bureaus propose to exercise these options only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising these options, the Bureaus are likely to attempt to change the pace of the auction by, for example, changing the number of bidding rounds per day and/or changing minimum acceptable bids. The Bureaus propose to retain the discretion to exercise any of these options with or without prior announcement during the auction. The Bureaus seek comment on these proposals.

4. Information Relating to Auction Delay, Suspension, or Cancellation

21. For Auction 85, the Bureaus propose that, by public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, 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.²⁴ 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. The Bureaus 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. The Bureaus seek comment on this proposal.

B. Auction Procedures

1. Upfront Payments and Bidding Eligibility

22. The Bureaus have delegated authority and discretion to determine an appropriate upfront payment for each construction permit being auctioned.²⁵ As described further below, the upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on construction permits. Upfront payments related to the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction.²⁶ With these considerations in mind, the Bureaus propose the schedule of upfront payments for each construction permit as set forth in Attachment A to this Public Notice. The Bureaus seek comment on this proposal.

23. The Bureaus further propose that the amount of the upfront payment submitted by a bidder will determine the bidder's initial bidding eligibility in bidding units. The Bureaus propose that each construction permit be assigned a specific number of bidding units equal to the upfront payment listed in Attachment A, on a bidding unit per dollar basis. The number of bidding units for a given construction permit is fixed and does not change during the auction as prices change. A bidder's upfront payment is not attributed to specific construction permits. Rather, a bidder may place bids on any of the construction permits it selected on its short-form application (FCC Form 175) 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

²⁴ 47 C.F.R. § 1.2104(i).

²⁵ See *Part 1 Order*, 12 FCC Rcd at 5697-98 ¶ 16. See also *Part 1 Third Report and Order*, 13 FCC Rcd at 425 ¶ 86; Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Second Report and Order*, 9 FCC Rcd 2348, 2378-79 ¶¶ 171-75 (1994) (“*Competitive Bidding Second Report and Order*”).

²⁶ See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2378-79 ¶¶ 171-76.

calculating its upfront payment amount and hence its initial bidding eligibility, an applicant must determine the **maximum** number of bidding units on which it may wish to bid (or hold provisionally winning bids)²⁷ in any single round, and submit an upfront payment amount covering that total number of bidding units.

2. Activity Rule

24. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. A bidder's activity in a round will be the sum of the bidding units associated with any construction permits upon which it places bids during the current round and the bidding units associated with any construction permits for which it holds provisionally winning bids. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.²⁸

25. The Bureaus propose an auction with the following activity requirement: in each round of the auction, a bidder desiring to maintain its eligibility to participate in the auction is required to be active on 100 percent of its bidding eligibility. Failure to maintain the required activity level will result in the use of an activity rule waiver or a reduction in the bidder's bidding eligibility for the next round of bidding. A bidder's reduced eligibility for the next round will be equal to the bidder's activity in the current round.

26. The Bureaus seek comment on this proposal. Commenters that believe that this activity rule should be modified should explain their reasoning and comment on the desirability of an alternative approach. Commenters are advised to support their claims with analyses and suggest alternative activity rules. Commenters may wish to address the alternative of having more than one stage in the auction, with subsequent stages characterized by increasing activity requirements – for example, an 80 percent activity requirement in Stage One and a 95 percent activity requirement in Stage Two.²⁹

3. Activity Rule Waivers and Reducing Eligibility

27. Use of an activity rule waiver preserves the bidder's eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding, not to a particular construction permit. Activity rule waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from bidding in a particular round.

28. The FCC Auction System assumes that a bidder that does not meet the activity requirement would prefer to use 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 in which a bidder's activity level is below the minimum required unless: (1) the bidder has no activity rule waivers remaining; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility,

²⁷ See Section V.B.6. "Provisionally Winning Bids," below.

²⁸ See Section V.B.3. "Activity Rule Waivers and Reducing Eligibility," below.

²⁹ If the Bureaus adopt auction procedures with multiple stages, the Bureaus will change the auction stages by announcement during the auction. In exercising this discretion, the Bureaus will consider a variety of measures of bidder auction activity, including, but not limited to, the auction activity level, the percentage of construction permits (as measured in bidding units) on which there are new bids, the number of new bids, and the increase in revenue.

thereby meeting the activity requirement. If a bidder has no waivers remaining and does not satisfy the required activity level, its eligibility will be permanently reduced, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

29. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding 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 rule as described above. Reducing eligibility is an irreversible action. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility, even if the round has not yet closed.

30. Under the proposed simultaneous stopping rule, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity rule waiver (using the "apply waiver" function in the FCC Auction System) during a bidding round in which no bids are placed or withdrawn (if permitted), the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC Auction System in a round in which there are no new bids, withdrawals (if permitted), or proactive waivers will not keep the auction open. A bidder cannot apply a proactive waiver after bidding in a round, and applying a proactive waiver will preclude a bidder from placing any bids in that round.³⁰ Applying a waiver is irreversible; once a proactive waiver is submitted, that waiver cannot be unsubmitted, even if the round has not yet closed.

31. The Bureaus propose that each bidder in Auction 85 be provided with three activity rule waivers that may be used as set forth above at the bidder's discretion during the course of the auction. The Bureaus seek comment on this proposal.

4. Reserve Price or Minimum Opening Bids

32. Section 309(j) calls upon the Commission to prescribe methods for establishing a reasonable reserve price or a minimum opening bid amount when FCC licenses or construction permits are subject to auction, unless the Commission determines that a reserve price or minimum opening bid amount is not in the public interest.³¹ Consistent with this mandate, the Commission has directed the Bureaus to seek comment on the use of a minimum opening bid amount and/or reserve price prior to the start of each auction.³²

33. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. It is possible for the minimum opening bid and the reserve price to be the same amount.

34. In light of Section 309(j)'s requirements, the Bureaus propose to establish minimum opening bid amounts for Auction 85. The Bureaus believe a minimum opening bid amount, which has been used in other auctions, is an effective bidding tool for accelerating the competitive bidding process.³³

³⁰ In general, once a bidder places a proactive waiver during a round, the FCC Auction System does not allow the bidder to take any other bidding-related action in that round, including placing bids or withdrawing bids (if permitted).

³¹ 47 U.S.C. 309(j)(4)(F). *See also* 47 C.F.R. 1.2104(c) and (d).

³² Broadcast First Report and Order, 13 FCC Rcd at 15971 ¶ 134; *Part I Third Report and Order*, 13 FCC Rcd at 454-55 ¶ 141. *See* 47 C.F.R. § 1.2104(c).

³³ *See, e.g.*, Auction of 800 MHz SMR Upper 10 MHz Band, Minimum Opening Bids or Reserve Prices, *Order*, 12 FCC Rcd 16354 (1997); Auction of the Phase II 220 MHz Service Licenses, Auction Notice and Filing (continued....)

The Bureaus do not propose to establish a separate reserve price for the construction permits to be offered in Auction 85.

35. For Auction 85, the Bureaus propose minimum opening bid amounts 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. This proposed minimum opening bid amount for each construction permit available in Auction 85 is set forth in Attachment A of this Public Notice.³⁴ The Bureaus seek comment on these proposals.

36. If commenters believe that these minimum opening bid amounts will result in unsold construction permits, are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested amounts or formulas for reserve prices or minimum opening bids.

5. Bid Amounts

37. The Bureaus propose 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.³⁵ Under this proposal, the FCC Auction System interface will list the acceptable bid amounts for each construction permit.³⁶

38. 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 construction 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. If, for example, the minimum acceptable bid percentage is 10 percent, the minimum acceptable bid amount will equal (provisionally winning bid amount) * (1.10), rounded.³⁷ If bid withdrawals are permitted in this auction, in the case of a construction permit for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the construction permit.³⁸

39. The eight additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage, which need not be the same as the percentage used to calculate the minimum acceptable bid amount. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded. If, for example, the bid increment percentage is 5 percent, the calculation is (minimum acceptable bid amount) * (1 + 0.05),

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Requirements for 908 Licenses Consisting of Economic Area (EA), Economic Area Grouping (EAG), and Nationwide Licenses, Scheduled for September 15, 1998, Minimum Opening Bids and Other Procedural Issues, *Public Notice*, 13 FCC Rcd 16445 (1998).

³⁴ See note 37 (concerning rounding), below.

³⁵ Bidders must have sufficient eligibility to place a bid on the particular construction permit. See Section V.B.1. “Upfront Payments and Bidding Eligibility,” above.

³⁶ 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.

³⁷ Results are rounded using the Commission's standard rounding procedure for auctions: results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10.

³⁸ See Section V.B.7. “Bid Removal and Bid Withdrawal,” below.

rounded, or (minimum acceptable bid amount) * 1.05, 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) * 1.10, 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) * 1.15, rounded; etc. The Bureaus will round the result using the Commission's standard rounding procedures for auctions.³⁹

40. For Auction 85, the Bureaus propose to use a minimum acceptable bid percentage of 10 percent. This means that the minimum acceptable bid amount for a construction permit will be approximately 10 percent greater than the provisionally winning bid amount for the construction permit. To calculate the additional acceptable bid amounts, the Bureaus propose to use a bid increment percentage of 5 percent.

41. The Bureaus retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the bid increment percentage, and the number of acceptable bid amounts if the Bureaus determine that circumstances so dictate. Further, the Bureaus retain the discretion to do so on a construction permit-by-construction permit basis. The Bureaus also retain the discretion to limit: (a) the amount by which a minimum acceptable bid for a construction permit may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, the Bureaus could set a \$10,000 limit on increases in minimum acceptable bid amounts over provisionally winning bids. Thus, if calculating a minimum acceptable bid using the minimum acceptable bid percentage results in a minimum acceptable bid amount that is \$12,000 higher than the provisionally winning bid on a construction permit, the minimum acceptable bid amount would instead be capped at \$10,000 above the provisionally winning bid. The Bureaus seek comment on the circumstances under which the Bureaus should employ such a limit, factors we should consider when determining the dollar amount of the limit, and the tradeoffs in setting such a limit or changing other parameters, such as changing the minimum acceptable bid percentage, and the bid increment percentage, and the number of acceptable bid amounts. If the Bureaus exercise this discretion, they will alert bidders by announcement in the FCC Auction System during the auction. The Bureaus seek comment on these proposals.

6. Provisionally Winning Bids

42. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round. At the end of a bidding round, a provisionally winning bid for each construction permit will be determined based on the highest bid amount received for the construction permit. In the event of identical high bid amounts being submitted on a construction permit in a given round (*i.e.*, tied bids), the Bureaus will use a random number generator to select a single provisionally winning bid from among the tied bids. (Each bid is assigned a random number, and the tied bid with the highest random number wins the tiebreaker.) The remaining bidders, as well as the provisionally winning bidder, 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. If any bids are received on the construction permit in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the construction permit.

43. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the construction permit at the close of a subsequent round, unless the provisionally winning bid is withdrawn (if permitted). Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.⁴⁰

³⁹ See note 37 (concerning rounding), above.

⁴⁰ See Section V.B.2. "Activity Rule," above.

7. Bid Removal and Bid Withdrawal

44. For Auction 85, the Bureaus propose the following bid removal procedures. Before the close of a bidding round, a bidder has the option of removing any bid placed in that round. By removing selected bids in the FCC Auction System, a bidder may effectively “unsubmit” any bid placed within that round. In contrast to the bid withdrawal provisions described below, a bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid. The Bureaus seek comment on this bid removal proposal.

45. The Bureaus also seek comment on whether bid withdrawals should be permitted in Auction 85. Where permitted in an auction, bid withdrawals provide a bidder with the option of removing bids placed in prior rounds that have become provisionally winning bids. A bidder may withdraw its provisionally winning bids using the “withdraw bids” function in the FCC Auction System. If permitted, a bidder that withdraws its provisionally winning bid(s) is subject to the bid withdrawal payment provisions of the Commission rules.⁴¹

46. In the *Part 1 Third Report and Order*, the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and construction permits and the pursuit of backup strategies as information becomes available during the course of an auction.⁴² The Commission noted, however, that in some instances bidders may seek to withdraw bids for improper reasons. The Bureaus, therefore, have discretion in managing the auction to limit the number of withdrawals to prevent any bidding abuses. The Commission stated that the Bureaus should exercise their discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if the Bureaus find that a bidder is abusing the Commission’s bid withdrawal procedures.⁴³

47. Applying this reasoning, for Auction 85, the Bureaus propose to prohibit bidders from withdrawing any bids after the round in which bids were placed has closed. This proposal is made in recognition that the permits that are the 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. Thus, the Bureaus believe that it is unlikely that bidders will have a need to withdraw bids in this auction. We also remain mindful that bid withdrawals, particularly those made in late stages of this auction, could result in delays in licensing of digital service for these incumbents and attendant delays in the offering of new digital broadcast television service to the public.

C. Post-Auction Payments

1. Interim Withdrawal Payment Percentage

48. If withdrawals are allowed in this auction, the Bureaus seek comment on the appropriate percentage of a withdrawn bid that should be assessed as an interim withdrawal payment, in the event that a final withdrawal payment cannot be determined at the close of the auction. In general, the Commission’s rules provide that a bidder that withdraws a bid during an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or a subsequent auction.⁴⁴ However, if a construction permit for which a bid

⁴¹ 47 C.F.R. §§ 1.2104(g) and 1.2109.

⁴² *Part 1 Third Report and Order*, 13 FCC Rcd at 459-60 ¶ 150.

⁴³ *Id.*

⁴⁴ 47 C.F.R. § 1.2104(g)(1). The withdrawal payment amount is deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission. No withdrawal payment is assessed for a (continued....)

has been withdrawn does not receive a subsequent higher bid or winning bid in the same auction, the final withdrawal payment cannot be calculated until a corresponding construction permit receives a higher bid or winning bid in a subsequent auction. When that final payment cannot yet be calculated, the bidder responsible for the withdrawn bid is assessed an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed.⁴⁵ The Commission recently amended its rules to provide that in advance of the auction, the Commission shall establish a percentage between three percent and twenty percent of the withdrawn bid to be assessed as an interim bid withdrawal payment.⁴⁶

49. The Commission has indicated that the level of the interim withdrawal payment in a particular auction will be based on the nature of the service and the inventory of the construction permits being offered.⁴⁷ The Commission noted that it may impose a higher interim withdrawal payment percentage to deter the anti-competitive use of withdrawals when, for example, bidders likely will not need to aggregate construction permits offered, such as when few construction permits are offered, the construction permits offered are not on adjacent frequencies or in adjacent areas, or there are few synergies to be captured by combining construction permits.⁴⁸

50. Applying the reasoning that a higher interim withdrawal payment percentage is appropriate when aggregation of construction permits is not expected, as with the construction permits subject to competitive bidding in Auction 85, if the Bureaus allow bid withdrawals in this auction, the Bureaus propose the maximum interim withdrawal payment allowed under the current rules. Specifically, the Bureaus propose to establish an interim bid withdrawal payment of twenty percent of the withdrawn bid for this auction. The Bureaus seek comment on this proposal.

2. Additional Default Payment Percentage

51. Any winning bidder that defaults or is disqualified after the close of an auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) is liable for a default payment under 47 C.F.R. § 1.2104(g)(2). This payment consists of 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. At one time this additional payment for non-combinatorial auctions had been set at three percent of the defaulter's bid or of the subsequent winning bid, whichever is less.

52. The *CSEA/Part 1 Report and Order* modified Section 1.2104(g)(2) by increasing the three percent limit on the additional default payment for non-combinatorial auctions to twenty percent.⁴⁹ Under the modified rule, the Commission will, in advance of each non-combinatorial auction, establish an

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withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids equals or exceeds that withdrawn bid. *Id.*

⁴⁵ *Id.*

⁴⁶ See 47 C.F.R. § 1.2104(g)(2), as amended by 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, 903 ¶ 30 (2006) ("*CSEA/Part 1 Report and Order*").

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

additional default payment for that auction of three percent up to a maximum of twenty percent.⁵⁰ As the Commission has indicated, the level of this payment in each case will be based on the nature of the service and the inventory of the construction permits being offered.⁵¹

53. For Auction 85, the Bureaus propose to establish an additional default payment of twenty percent. As noted in the *CSEA/Part I Report and Order*, defaults weaken the integrity of the auction process and may impede the deployment of service to the public, and an additional default payment of more than the previous three percent will be more effective in deterring defaults.⁵² In light of our proposal for the interim bid withdrawal payment amount as discussed above, the Bureaus are concerned that setting an additional default payment of less than the twenty percent maximum amount may encourage post-auction defaults, which further undermine the integrity of the auction process.⁵³ In light of these considerations for Auction 85, the Bureaus propose an additional default payment of twenty percent of the relevant bid. The Bureaus seek comment on this proposal.

VI. DUE DILIGENCE

54. Potential bidders 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.

55. 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.⁵⁴ 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.

56. **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**

⁵⁰ See 47 C.F.R. § 1.2104(g)(2).

⁵¹ See *CSEA/Part I Report and Order*, 21 FCC Rcd at 903 ¶ 30.

⁵² *Id.* at ¶ 29.

⁵³ See BDPCS, Inc., BTA Nos. B008, B036, B055, B089, B110, B133, B149, B261, B298, B331, B347, B358, B391, B395, B407, B413, and B447, Frequency Block C, *Memorandum, Opinion & Order*, 15 FCC Rcd 17,590, 17,580-81 ¶17 (2000) (default payment rule intended to eliminate incentive for defaults in light of greater harms that may result from post-auction withdrawals).

⁵⁴ See e.g., 47 C.F.R. § 73.606.

located in, or near, the service area for which they filed, and also to familiarize themselves with the Commission's environmental assessment obligations.⁵⁵

57. 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.⁵⁶ 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 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. In addition, in November 1999, Congress enacted the Community Broadcasters Protection Act of 1999 (CBPA) which established a new Class A television service.⁵⁷ 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.⁵⁸ 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. 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>.⁵⁹ 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.

58. 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

⁵⁵ Construction permittees must comply with the Commission's rules regarding the National Environmental Policy Act ("NEPA"). 47 C.F.R. Ch. 1, Subpart I.

⁵⁶ See 47 C.F.R. § 73.3572.

⁵⁷ Pub.L.No. 106-113, 113 Stat. Appendix I at 1501A-594 – 598 (1999), codified at 47 U.S.C. § 336(f).

⁵⁸ Establishment of a Class A Television Service, MM Docket No. 00-10, *Report and Order*, 15 FCC Rcd 6355 (2000).

⁵⁹ The Media Bureau's web page which is specific to Class A television stations is available at: <http://www.fcc.gov/mb/video/files/classa.html>.

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.

59. 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.⁶⁰ 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 applications, permits and licenses may have on their ability to operate facilities based on the construction permits offered in this auction.

VII. PROHIBITION OF COLLUSION

60. 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.⁶¹ 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.**⁶² 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.⁶³

61. 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).⁶⁴ Thus, competing applicants must affirmatively avoid all communications with each other that affect or, in their reasonable assessment, have the potential to affect,

⁶⁰ See 47 C.F.R. § 73.622.

⁶¹ 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.

⁶² 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. Cir. 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).

⁶³ 47 C.F.R. § 1.2105(c)(7)(i).

⁶⁴ 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, *Seventh Report and Order*, 16 FCC Rcd 17546 (2001) (“*Part 1 Seventh Report and Order*”); *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, 15297-98 ¶¶ 7-8 (2000) (modified by Erratum, DA 00-2475 (rel. Nov. 3, 2000) (“*Part 1 Fifth Report and Order*”).

bids or bidding strategy, which may include communications regarding the post-auction market structure.⁶⁵

62. Applicants are hereby placed on notice that public disclosure of information relating to bids, bidding strategies, or post auction market structure may violate the anti-collusion rule.⁶⁶ Bidders 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, a qualified bidder'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.⁶⁷ Similarly, a listed applicant's public statement of intent not to participate in Auction 85 bidding, including a request to dismiss an application outside the settlement period, could also violate the rule.

63. The Bureaus also remind applicants with engineering proposals filed in the digital companion channel window that are mutually exclusive that they must not communicate indirectly about bids or bidding strategy.⁶⁸ Accordingly, such 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.⁶⁹ In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.⁷⁰ A violation of the anti-collusion rule could occur in other contexts, such as an individual serving as an officer for two or more applicants.⁷¹ Moreover, the Commission has found a violation of the anti-collusion rule where a bidder 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,"⁷² and has placed auction participants on notice that the use of its bidding system "to disclose

⁶⁵ 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).

⁶⁶ Thus, communication by an applicant to another applicant for one or more of the same licenses of the applicant's license selections on its short-form application, or of the fact that the applicant does or does not hold provisionally winning bids on particular licenses, may well violate the anti-collusion rule.

⁶⁷ 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.").

⁶⁸ *Part I Seventh Report and Order*, 16 FCC Rcd at 17549-50 ¶ 6.

⁶⁹ 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*").

⁷⁰ *Id.*

⁷¹ 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).

⁷² *Mercury PCS II, LLC, Notice of Apparent Liability for Forfeiture*, 12 FCC Rcd 17970, 17976 ¶ 12 (1997).

market information to competitors will not be tolerated and will subject bidders to sanctions.”⁷³ Bidders 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.”⁷⁴

64. By electronically submitting its short-form application, each applicant in Auction 85 certified its compliance with Sections 1.2105(c) and 73.5002. However, the Bureaus caution that the mere filing of 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.⁷⁵ The Commission has stated that it “intend[s] to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring.”⁷⁶ Any applicant found to have violated the anti-collusion rule may be subject to sanctions.⁷⁷

65. Applicants are reminded also 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.⁷⁸ **Compliance with the disclosure requirements of the Commission’s anti-collusion rule will not insulate a party from enforcement of the antitrust laws.**⁷⁹ 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.⁸⁰ 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.⁸¹

⁷³ Mercury PCS II, LLC, *Memorandum Opinion and Order*, 13 FCC Rcd 23755, 23760 ¶ 11 (1998).

⁷⁴ 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).

⁷⁵ *Nevada Wireless Order*, 13 FCC Rcd at 11978 ¶ 13.

⁷⁶ 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).

⁷⁷ 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

⁷⁸ 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*”).

⁷⁹ *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).

⁸⁰ *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226.

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

66. 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.⁸² 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 make such notification to the Commission immediately upon discovery. In addition, Section 1.2105(c)(6) requires that any applicant that makes or receives a communication prohibited by Section 1.2105(c) must report such communication to the Commission in writing immediately, and in no case later than five business days after the communication occurs.⁸³ 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.⁸⁴

67. Any report of a communication pursuant to Sections 1.65 or 1.2105(c)(6) must be submitted by electronic mail to the following address: auction85@fcc.gov. The electronic mail report must include a subject or caption referring to Auction 85 and the name of the applicant. The Bureau request that parties format any attachments to electronic mail as Adobe[®] Acrobat[®] (pdf) or Microsoft[®] Word documents.

68. Parties reporting communications pursuant to Section 1.2105(a)(2) or Section 1.2105(c)(6) must take care to ensure that any such 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.⁸⁵ Such parties are also encouraged to coordinate with the Auctions and Spectrum Access Division staff if they have any questions about the procedures for submitting such reports.⁸⁶

69. A partial listing of documents issued by the Commission and the Bureaus addressing the application of the anti-collusion rule may be found on the Commission's auction anti-collusion web page.⁸⁷

VIII. DEADLINES AND FILING PROCEDURES

70. Comments are due on or before July 31, 2008, and reply comments are due on or before August 7, 2008. All filings related to the auction of LPTV and TV Translator Digital Companion

⁸² 47 C.F.R. § 1.65.

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

⁸⁴ *See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150, Declaratory Ruling on Reporting Requirement under Commission's Part 1 Anti-Collusion Rule, WT Docket No. 07-166, *Second Report and Order*, 22 FCC Rcd 15289, 15403-04 ¶¶ 285-86 (2007).

⁸⁵ *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).

⁸⁶ *See* Section IX. "Contacts," below.

⁸⁷ <http://wireless.fcc.gov/auctions/anticollusion>.

Channel construction permits should refer to AU Docket No. 08-22. Comments may be submitted using the Commission’s Electronic Comment Filing System (“ECFS”) or by filing paper copies.⁸⁸ The Bureaus strongly encourages interested parties to file comments electronically. The Bureaus also request submission of a copy of comments via the Auction 85 e-mail box (auction85@fcc.gov).

71. *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS at <http://www.fcc.gov/cgb/ecfs>. Filers should follow the instructions provided on the website for submitting comments. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number, AU Docket No. 08-22. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, “get form.” A sample form and directions will be sent in response.

72. *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Bureaus continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission’s Secretary Attn: WTB/ASAD, Office of the Secretary, Federal Communications Commission.

- Commission’s contractor will receive hand-delivered or messenger-delivered paper filings for the Commission’s Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. Eastern Time (ET). All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington DC 20554.

73. *Auction 85 E-mail Box:* The Bureaus also request that a copy of all comments and reply comments be submitted electronically to the following address: auction85@fcc.gov.

74. Copies of comments and reply comments will be available for public inspection between 8:00 a.m. and 4:30 p.m. ET Monday through Thursday, or 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, Room CY-A257, 445 12th Street, SW, Washington, DC 20554, and will also be accessible through the search function on the ECFS web page at <http://www.fcc.gov/cgb/ecfs>.

75. This proceeding has been designated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁸⁹ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in Section 1.1206(b) of the Commission’s rules.

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

⁸⁸ See Electronic Filing of Documents in Rulemaking Proceedings, *Report and Order*, 13 FCC Rcd 11322 (1998).

⁸⁹ 47 C.F.R. §§ 1.1200(a), 1.1206.

IX. CONTACTS

77. For further information concerning this proceeding, contact the Wireless Telecommunications Bureau or the Media Bureau, as listed below:

Video Division, Media Bureau

For service rules questions: Shaun Maher at (202) 418-2324 or
Hossein Hashemzadeh at (202) 418-1600

Auctions and Spectrum Access Division, Wireless Telecommunications Bureau

For general auction questions: Debbie Smith or Linda Sanderson at (717) 338-2868
For auctions legal questions: Lynne Milne at (202) 418-0660

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ATTACHMENT A

**AUCTION 85 – LPTV AND TV TRANSLATOR DIGITAL COMPANION CHANNELS
DA 08-460**

This page was intentionally inserted as a placeholder for Attachment A, which is available as a separate file.

ATTACHMENT B

SUBMISSION OF SETTLEMENT AGREEMENTS AND MINOR MODIFICATIONS, INCLUDING AMENDMENTS TO ENGINEERING PROPOSALS

The settlement window is now open for submitting the agreements and affidavits required by Section 73.3525 and/or minor changes including any engineering proposal amendments. Applicants must submit these documents as attachments to their FCC Form 175 applications along with any minor changes, electronically, via the Internet. **Amendments to FCC Form 175 applications must be submitted and confirmed prior to 6:00 PM Eastern Time (ET) on Thursday, July 31.** Late or unconfirmed submissions of electronic data will not be accepted.

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

Applicants are reminded that all information required in connection with applications to participate in spectrum auctions is necessary to determine the applicants' qualifications, and as such will be available for public inspection. Accordingly, applicants should not include any unnecessary sensitive information, such as Taxpayer Identification Numbers or Social Security Numbers, in Forms 175. Applicants may request that information submitted not be made routinely available for public inspection following the procedures set forth in 47 C.F.R. § 0.459. Pursuant to Section 0.459(a), such requests must be included as an attachment to the Form 175 and identify the information to which the request applies. Because the required information bears on applicants' qualifications, confidentiality requests will not be routinely granted.

A. What Information Can Be Modified

While the Settlement period is open, applicants may submit attachments regarding settlement and/or technical modifications, and make minor modifications to their submitted FCC Form 175 application and its associated mutually exclusive engineering proposals.

On the Form 175, applicants may modify only the following fields: Applicant Address, Contact Information (Name, Address, Phone Number, and so on), Responsible Party Address, and Bidding Preference (electronic or telephonic).

In addition, applicants may make minor amendments to engineering proposals in order to resolve mutual exclusivity. However, applicants *may not* modify the following fields: Proposal Description, Service Type, Application Purpose, Facility ID, and Channel. *See* 47 C.F.R. §§ 73.3572(a)(1) and 1.2105(b).

To modify an application and/or its engineering proposal requires first accessing the application electronically via the Internet (see *Accessing Your Application*, below). Modifications to an application are made on the electronic version of it. Modifications made to an engineering proposal also require the applicant to submit a Settlement attachment or Technical Modification attachment describing the modifications.

B. Accessing Your Application

To access your FCC Form 175 application electronically via the Internet, start your web browser and point it to either <http://auctions.fcc.gov/> (primary location) or <http://auctions2.fcc.gov/> (secondary

location). Once on the FCC *Integrated Spectrum Auction System* page, proceed as follows:

1. Log in using the FCC Registration Number (FRN) and Password you used to file the Form 175 application. If you forgot the FRN Password, you can contact the FRN Help Line at (877) 480-3201, option 1 (Mon-Fri 8:00 a.m. – 7:00 p.m. ET).
2. When the *My Auctions* page appears, click the **Enter Auction Application Manager** link in the Pre-Auction area at the top left corner of the page.
3. On the *Auction Application Manager* page, click the link for Auction **85**. This produces the *Summary* page for Auction 85.

From the *Summary* page, you can do three things:

- View or edit your applicant information, by clicking the Applicant Information **View/Edit** button.
- View or edit your engineering proposals, by clicking the Engineering Proposals **View/Edit** button.
- Upload an attachment describing the modifications you made to an engineering proposal, by clicking the **Attachments** icon at the top.

The following sections describe these tasks.

1. Viewing or Editing Applicant Information

Clicking the Applicant Information **View/Edit** button produces the *Detail for Applicant Information* page. As mentioned earlier, you can only change the following fields: Applicant Address, Contact Information (Name, Address, Phone Number, and so on), Responsible Party Address, and Bidding Preference. The system disables all other fields, and displays them as being grayed out. To edit an accessible section of the application, click its associated Edit icon.

When you finish editing or viewing the application, click the **Summary** icon at the top, to return to the *Summary* page or click the **Continue** button at the bottom, to reach the *View/Edit Proposals* page.

2. Viewing or Editing Engineering Proposals

Clicking the Engineering Proposals **View/Edit** button produces the *View/Edit Proposals* page, which lists the engineering proposals you have submitted for this auction. You can view any of the proposals the applicant submitted during the initial filing period, both singletons and mutually-exclusive proposals, but you can only edit proposals determined to be mutually exclusive.

To view or edit a proposal, click its Proposal description link to obtain its *Detail for Engineering Proposal* page. As mentioned earlier, you may only modify mutually exclusive proposals. However, you *may not* modify the following fields: Proposal Description, Service Type, Application Purpose, Facility ID, and Channel. If you modify an engineering proposal, you *must* also submit an attachment describing your modifications, as described in the next section.

When you finish editing or viewing an engineering proposal, click the **Attachments** icon at the top, to upload your attachment; click the **Summary** icon at the top, to return to the *Summary* page; or click the **View/Edit All Proposals** button at the bottom, to return to the *View/Edit Proposals* page.

3. Uploading an Attachment Describing Settlement and Technical Modifications

Clicking the **Attachments** icon at the top of the page produces the *Attachments* page, where you can upload an attachment, created by you and saved on your computer, describing any modification you made to an engineering proposal and/or settlement agreements.

a. Contents of Settlement Agreements

Applicants must ensure that their settlement agreements comply with the provisions of Section 311(c) of the Communications Act of 1934, as amended, and the pertinent requirements of Section 73.3525 of the Commission's Rules, including the reimbursement restrictions. Information about settlement submission requirements is described in Section IV of this Public Notice.

Applicants that request dismissal of their proposal or file an engineering amendment that removes the mutual exclusivity to their proposal without having entered a settlement agreement with another applicant must nevertheless submit an affidavit as to whether or not consideration has been promised to or received by such applicant in connection with their dismissal or engineering amendment. Applicants are not permitted to propose technical changes that would be considered a major change. *See* 47 C.F.R. §§ 1.2105(b) and 73.3572(a)(1).

b. File Formats for Attachments

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

c. Uploading an Attachment

To upload an attachment, do the following:

1. Click **Other** in the Type pull-down menu.
2. In the File field, browse for the location of your attachment.
3. Type an attachment description in the Description field. You *must* include the File Number of the proposal in this field, so the system can associate your attachment to the correct proposal.
4. Click the **Add Attachment** button to perform the upload operation.

If the attachment has been uploaded successfully, the upload date appears at the bottom of the screen. The page does not refresh automatically; therefore you must click the browser's **Refresh** button occasionally.

If you have additional attachments to upload, you can upload it on this page directly. Otherwise, click the **Return to Application** button to return to the *Summary* page.

Note: Attachments should be added prior to submitting your application. If you attempt to add an attachment after you've already submitted your application the system will display a warning message that your changes are not effective until you go back to the *Summary* page and go through the certify and submit process again.

4. Submitting Your Modified Application

To submit your modified application, including any attachments, to the FCC, begin by clicking the **Check Errors** button on the *Summary* page. If the automated check encounters any errors that must be corrected before submitting the application, the errors will be listed in an Error or Warning box at the top of the screen. To correct one of these errors, click its corresponding **EDIT** button. If the application is error-free, start the submittal procedure by clicking **Continue to Certify**.

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

C. Technical Support

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

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