



PUBLIC NOTICE

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AUCTION OF CONSTRUCTION PERMITS FOR LOW POWER TELEVISION AND TV TRANSLATOR STATIONS SCHEDULED FOR SEPTEMBER 10, 2019

COMMENT SOUGHT ON COMPETITIVE BIDDING PROCEDURES FOR AUCTION 104

AU Docket No. 19-61
GN Docket No. 12-268
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ATTACHMENT A: CONSTRUCTION PERMITS IN AUCTION 104

I. INTRODUCTION

1. By this Public Notice, the Incentive Auction Task Force (IATF) and Media Bureau (MB), in conjunction with the Office of Economics and Analytics (OEA),¹ announce an auction of construction permits for low power television (LPTV) stations and TV translator stations (collectively referred to as “LPTV/translator stations”) and seek comment on the procedures to be used for this auction, designated as Auction 104. The permits to be offered in Auction 104 are those that remain mutually exclusive (MX) under previously-announced procedures governing the post-incentive auction displacement of LPTV/translator stations and involve six groups of nineteen stations.

2. Auction 104 will resolve groups of pending MX engineering proposals for up to six LPTV/translator station construction permits. Auction 104 is a “closed” auction; only those individuals or entities listed in Attachment A to this Public Notice are eligible to participate in this auction with respect to the construction permit(s) for which each is listed. The MX groups and engineering proposals listed in Attachment A are those that remain MX as of the release date of this public notice and after the close of the filing window that provided an opportunity to resolve mutual exclusivity through settlement or technical modification of the engineering proposals (the Settlement Window).² We will now proceed to resolve by competitive bidding those MX engineering proposals listed in Attachment A of this Public Notice.

II. BACKGROUND

3. Certain LPTV/translator stations were displaced by the broadcast incentive auction (Auction 1000) which repurposed 84 megahertz of the 600 MHz band spectrum that had been allocated for broadcast television for flexible use and resulted in the channel reassignments of certain full power and Class A television stations.³ As a result of the repurposing of the 600 MHz band and the channel reassignments, a number of secondary LPTV/translator stations were displaced from their pre-auction

¹ See 47 CFR §§ 0.21(n), 0.61, 0.283; see also *id.* § 0.21(m). The Commission established OEA and recently shifted the functions of the Auctions and Spectrum Access Division from the Wireless Telecommunications Bureau (WTB) to the Auctions Division within OEA. OEA works in conjunction with MB with respect to the design, implementation and administration of auctions, helping develop policies, programs, and rules concerning auctions of spectrum for broadcasting. See *id.* § 0.21(m), (o) (OEA’s functions). See also *Establishment of the Office of Economics and Analytics*, Order, 33 FCC Rcd 1539 (2018); see also 83 Fed. Reg. 63073 (Dec. 7, 2018) (effective date of OEA establishment).

² See *Incentive Auction Task Force and Media Bureau Announce Settlement Opportunity for Mutually Exclusive Displacement Applications Filed During the Special Displacement Window; October 30, 2018 to January 10, 2019*, Public Notice, DA 18-1108 (IATF/MB Oct. 30, 2018) (*Settlement Public Notice*).

³ The incentive auction and subsequent transition has been conducted pursuant to the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402 (codified at 47 U.S.C. § 309(j)(8)(G)), 6403 (codified at 47 U.S.C. § 1452), 126 Stat. 156 (2012) (the Spectrum Act).

channels. The Commission adopted procedures for LPTV/translator stations to apply for new channels and took other steps to mitigate the impact of this displacement.⁴

4. On February 9, 2018, IATF and MB announced a special displacement application filing window for licensees and permittees of eligible LPTV/translator stations (Special Displacement Window).⁵ The filing window was open from April 10, 2018, through June 1, 2018.⁶ A displacement applicant was required to file Schedule C (Schedule for a Construction Permit for a LPTV or TV Translator Broadcast Station) of FCC Form 2100 (Application for Media Bureau Video Service Authorization) which permitted staff to determine mutual exclusivities between applicants' engineering proposals. The Commission received over 2,160 applications during the Special Displacement Window.⁷ Upon review of the applications, staff determined that there were 170 MX applications in 71 MX groups. Absent a resolution by applicants of the mutual exclusivity of their applications, MX station proposals are subject to the Commission's competitive bidding rules and procedures.⁸ Accordingly, on October 30, 2018, IATF and MB opened the Settlement Window to afford an opportunity for the 170 applicants with MX applications to resolve such mutual exclusivity by settlement or technical modification of their engineering proposals.⁹ This Settlement Window closed on January 10, 2019.

III. CONSTRUCTION PERMITS IN AUCTION 104

5. Following the completion of processing of submissions made during the Settlement Window, we will now proceed to resolve by competitive bidding the remaining mutually exclusive LPTV/translator station proposals. The MX groups listed in Attachment A are the groups of MX applications that remain after the Settlement Window closed.¹⁰ Attachment A also lists, for each proposal in each MX group, the licensee name, facility identification number, call sign, community of license, and the channel requested in the construction permit application filed in the Special Displacement Window.¹¹

⁴ *Incentive Auction Task Force and Media Bureau Announce Post-Incentive Auction Special Displacement Window April 10, 2018, Through May 15, 2018, and Make Location and Channel Data Available*, Public Notice, 33 FCC Rcd 1234 (IATF/MB 2018) (*Special Displacement Filing Public Notice*); see also, *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567 (2014) (subsequent history omitted); *Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, Public Notice, 32 FCC Rcd 2786 (2017); *The Incentive Auction Task Force and Media Bureau Announce Procedures for Low Power Television, Television Translator and Replacement Translator Stations During the Post-Incentive Auction Transition*, Public Notice, 32 FCC Rcd 3860 (IATF/MB 2017); *Incentive Auction Task Force and Media Bureau Set Forth Tools Available to LPTV/Translator Stations Displaced Prior to the Special Displacement Window*, Public Notice, 32 FCC Rcd 4943 (IATF/MB 2017).

⁵ *Special Displacement Filing Public Notice*, 33 FCC Rcd at 1234.

⁶ *Id.*; *Incentive Auction Task Force and Media Bureau Extend Post-Incentive Auction Special Displacement Window Through June 1, 2018*, Public Notice, 33 FCC Rcd 3794 (IATF/MB 2018).

⁷ *Settlement Public Notice*, DA 18-1108.

⁸ See 47 CFR § 73.5002.

⁹ See *id.*

¹⁰ Please note the engineering proposals grouped under MX7 referenced in the *Settlement Public Notice* will now be referred to as MX008 for auction bidding purposes. This updated construction permit designation is listed in Attachment A to this public notice.

The MX engineering proposals listed in Attachment A are subject to the Commission's competitive bidding rules and procedures.¹²

6. An applicant listed in Attachment A may become qualified to bid only if it complies with the auction filing, qualification, and payment requirements, and otherwise complies with applicable rules, policies, and procedures. Each listed applicant may become a qualified bidder only for those construction permits specified for that applicant in Attachment A to this Public Notice. Each of the engineering proposals within each MX group are directly mutually exclusive with one another; therefore, no more than one construction permit will be awarded for each MX group identified in Attachment A. Under the Commission's established precedent, once mutually exclusive short-form applications are accepted for a construction permit,¹³ and thus mutual exclusivity exists for auction purposes, an applicant cannot obtain a construction permit without placing a bid, even if no other applicant for that particular construction permit becomes qualified to bid or in fact places a bid.¹⁴

IV. PROPOSED BIDDING PROCEDURES

7. Consistent with the provisions of section 309(j)(3)(E)(i) of the Communications Act of 1934, as amended (the Act), 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, OEA in conjunction with MB seeks comment on a variety of auction-specific procedures relating to the structure and conduct of Auction 104.¹⁵

A. Auction Structure

1. Simultaneous Multiple-Round Auction Design

8. We propose to use the Commission's standard simultaneous multiple-round auction format for Auction 104.¹⁶ As described further below, this type of auction offers every construction

(Continued from previous page) _____

¹¹ Attachment A also sets forth a proposed minimum opening bid amount and a proposed upfront payment amount for each construction permit.

¹² See 47 CFR Part 1, Subpart Q; see also 47 CFR §§ 73.5000, 73.5002-73.5003, 73.5005-73.5009. Attachment A of this Public Notice lists the 14 applicants that filed the 19 remaining displacement applications which have been assigned to 6 MX groups. The displacement application of Diya TV, Inc. was assigned to MX008 (former MX group 7) for San Francisco – Santa Cruz, but this displacement application was dismissed on December 28, 2018. A reconsideration petition of this dismissal action remains pending. Accordingly, this displacement application is listed for MX008 (former MX group 7) in Attachment A.

¹³ 47 U.S.C. § 309(j)(1).

¹⁴ See, e.g., *Auction of FM Broadcast Construction Permits Scheduled for July 23, 2015; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 98*, Public Notice, 30 FCC Rcd 3544, 3547, para. 5 (WTB/MB 2015) (*Auction 98 Procedures Public Notice*); *Auction of FM Broadcast Construction Permits Scheduled for July 23, 2015; Comment Sought on Competitive Bidding Procedures for Auction 98*, Public Notice, 30 FCC Rcd 1755, 1756, para. 2 & n.5 (WTB/MB 2015) (*Auction 98 Comment Public Notice*). See also *Request for Refund of Upfront Payment*, Letter Order, 16 FCC Rcd 2181 (WTB 2001); *Vodafone AirTouch Licenses LLC Request for Refund*, Letter Order, 16 FCC Rcd 22358 (WTB 2001); *Closed Broadcast Auction; Notice and Filing Requirements for Auction of AM, FM, TV, LPTV, and FM and TV Translator Construction Permits Scheduled for September 28, 1999; Minimum Opening Bids and Other Procedural Issues*, Public Notice, 14 FCC Rcd 10632, 10646-47 (MMB/WTB 1999).

¹⁵ 47 U.S.C. § 309(j)(3)(E)(i). OEA works in conjunction with MB with respect to the design, implementation and administration of auctions, helping develop policies, programs, and rules concerning auctions of spectrum for broadcasting. See 47 CFR § 0.21(m), (o) (OEA's functions).

¹⁶ See *Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Second Report and Order, 9 FCC Rcd 2348, 2360-75, paras. 68-159 (1994) (*Competitive Bidding Second Report and Order*) for a general discussion of competitive bidding design.

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. We seek comment on this proposal.

2. Bidding Rounds

9. Under this proposal, Auction 104 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 bidding. Details on viewing round results, including the location and format of downloadable round results files, will be included in the same public notice.

10. We 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, we may change 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. We seek comment on this proposal. Commenters on this issue should address the role of the bidding schedule in managing the pace of the auction, specifically discussing the tradeoffs in managing auction pace by bidding schedule changes, by changing the activity requirements or bid amount parameters, or by using other means.

11. We will conduct Auction 104 over the Internet using the FCC auction bidding system. Bidders will also have the option of placing bids by telephone through a dedicated auction bidder line. The toll-free telephone number for the auction bidder line will be provided to qualified bidders prior to the start of bidding in the auction.

3. Stopping Rule

12. We have discretion to establish stopping rules before or during multiple round auctions in order to complete the auction within a reasonable time.¹⁷ For Auction 104, we propose to employ a simultaneous stopping rule approach, which means that all construction permits remain available for bidding until bidding stops on every construction permit. Specifically, bidding would close 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 bid withdrawals are permitted in this auction).¹⁸ Thus, under the proposed simultaneous stopping rule, bidding would remain open on all construction permits until bidding stops on every construction permit. Consequently, under this approach, it is not possible to determine in advance how long the bidding in this auction will last.

13. Further, we propose to retain the discretion to exercise any of the following options during Auction 104:

Option 1. The auction would close for all construction permits after the first round in which no bidder applies a waiver, no bidder withdraws a provisionally winning bid (if withdrawals are permitted in this auction), or no bidder places any new bid on a construction permit for which it is not the provisionally winning bidder. 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 close for all construction permits after the first round in which no bidder applies a waiver, no bidder withdraws a provisionally winning bid (if withdrawals are

¹⁷ 47 CFR § 1.2104(e).

¹⁸ In Section IV.B.7., "Bid Removal and Bid Withdrawal," we seek comment on whether bid withdrawals should be permitted in Auction 104. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round. They are discussed in Section IV.B.6., "Provisionally Winning Bids." Proactive waivers are described in Section IV.B.3., "Activity Rule Waivers and Reducing Eligibility," and bid withdrawals are described in Section IV.B.7., "Bid Removal and Bid Withdrawal," below.

permitted in this auction), or no bidder places any new bid on a construction permit that already has a provisionally winning bid. Absent any other bidding activity, a bidder placing a new bid on an FCC-held construction permit (a construction permit that does not already have a provisionally winning bid) would not keep the auction open under this modified stopping rule.

Option 3. The auction would close using a modified version of the simultaneous stopping rule that combines Option 1 and Option 2 above.

Option 4. The auction would close after a specified number of additional rounds (special stopping rule) to be announced in the FCC auction bidding system. If we invoke this special stopping rule, we will accept bids in the specified final round(s), after which the auction will close.

Option 5. The auction would remain open even if no bidder places any new bid, applies a waiver, or withdraws any provisionally winning bid (if withdrawals are permitted in this auction). In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule will apply as usual, and a bidder with insufficient activity will lose bidding eligibility or use a waiver.

14. We 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, we are likely to attempt to change the pace of the auction. For example, we may adjust the pace of bidding by changing the number of bidding rounds per day and/or the minimum acceptable bids. We propose to retain the discretion to exercise any of these options with or without prior announcement during the auction. We seek comment on these proposals.

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

15. For Auction 104, we propose that we may delay, suspend, or cancel bidding in the auction in the event of a 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.¹⁹ We will notify participants of any such delay, suspension, or cancellation by public notice and/or through the FCC auction bidding system's messages function. If the auction is delayed or suspended, we may in our sole discretion elect to resume the auction starting from the beginning of the current round or from some previous round or cancel the auction in its entirety. Network interruption may cause us to delay or suspend the auction. We emphasize that we will exercise this authority solely at our discretion, and not as a substitute for situations in which bidders may wish to apply their activity rule waivers. We seek comment on this proposal.

B. Auction Procedures

1. Upfront Payments and Bidding Eligibility

16. We seek comment on an appropriate upfront payment for each construction permit being auctioned, taking into account such factors as the efficiency of the auction process and the potential value of similar construction permits.²⁰ As described below, the upfront payment is a refundable deposit made by an applicant to establish eligibility to bid on construction permits. Upfront payments that are related to

¹⁹ 47 CFR § 1.2104(i).

²⁰ See *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, para. 16 (1997) (*Part 1 Order*). See also *Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures*, Third Report and Order and Second Further Notice of Proposed Rule Making, 13 FCC Rcd 374, 425, para. 86 (1997) (*Part 1 Third Report and Order*); *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2377-79, paras. 169-76.

the specific construction permits being auctioned 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 bidding.²¹ With these considerations in mind, we propose the upfront payments set forth in Attachment A to this Public Notice, and seek comment on those proposed upfront payment amounts.

17. We further propose that the amount of the upfront payment submitted by a bidder will determine its initial bidding eligibility in bidding units. We propose to assign each construction permit a specific number of bidding units equal to one bidding unit per dollar of the upfront payment listed in Attachment A. The number of bidding units for a given construction permit is fixed and does not change during the auction as prices change. If an applicant is found to be qualified to bid on more than one permit being offered in Auction 104, such bidder may place bids on multiple construction permits, provided that the total number of bidding units associated with those construction permits does not exceed its current eligibility. A bidder cannot increase its eligibility during the auction; it can only maintain its eligibility or decrease its eligibility. In 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) in any single round and submit an upfront payment amount covering that total number of bidding units. We request comment on these proposals.

Example: Upfront Payments, Bidding Eligibility, and Bidding Flexibility			
Construction Permit	Market Name	Bidding Units	Upfront Payment
MX051	New York, NY	100,000	\$100,000
MX035	Bakersfield, CA	25,000	\$25,000

If a bidder wishes to bid on both construction permits in a round, each construction permit must be designated for that bidder in Attachment A of this Public Notice, and that bidder must have purchased at least 125,000 bidding units (100,000 + 25,000) of bidding eligibility. If it only wishes to bid on one, but not both, purchasing 100,000 bidding units would meet the eligibility requirement for either construction permit. The bidder would be able to bid on either construction permit, but not both at the same time. If the bidder purchased only 25,000 bidding units, the bidder would have enough eligibility to bid for the Bakersfield, California construction permit but not for the New York, New York construction permit.

2. Activity Rule

18. To ensure that the auction closes within a reasonable time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. We propose a single stage auction with the following activity requirement: In each round of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on 100% of its bidding eligibility. 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. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.²² We seek comment on this proposal.

²¹ See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2377-79, paras. 169-76.

²² See Section IV.B.3., "Activity Rule Waivers and Reducing Eligibility," below.

3. Activity Rule Waivers and Reducing Eligibility

19. For our proposed simultaneous multiple round auction format, we propose that when a bidder's eligibility in the current round is below the required minimum level, it may preserve its current level of eligibility through an activity rule waiver, if available. 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. Activity rule waivers are principally a mechanism for a bidder to avoid the loss of bidding eligibility in the event that exigent circumstances prevent it from bidding in a particular round.

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

21. 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 bidding system. In this case, the bidder's eligibility would be permanently reduced to bring it into compliance with the activity rule described above. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder cannot regain its lost bidding eligibility.

22. Under the proposed simultaneous stopping rule, a bidder would be permitted to 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 *proactive waiver* function in the FCC auction bidding system) during a bidding round in which no bids are placed or withdrawn (if bid withdrawals are permitted in this auction), the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC auction bidding system in a round in which there is no new bid, no bid withdrawal (if bid withdrawals are permitted in this auction), and no proactive waiver would not keep the auction open.

23. Consistent with recent FCC spectrum auctions, we propose that each bidder in Auction 104 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. We seek comment on this proposal.

4. Reserve Price or Minimum Opening Bids

24. Consistent with the statutory mandate of section 309(j) of the Act,²³ we seek comment on the use of a minimum opening bid amount and/or reserve price prior to the start of each auction.²⁴

25. Normally, a reserve price is an absolute minimum price below which a construction permit or license will not be sold in a given auction. 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.

26. We propose to establish minimum opening bid amounts for Auction 104. We have found that a minimum opening bid amount, which has been used in other broadcast auctions, is an effective

²³ 47 U.S.C. § 309(j)(4)(F). See also 47 CFR § 1.2104(c), (d).

²⁴ *Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, 13 FCC Rcd 15920, 15971, para. 134 (1998) (*Broadcast Competitive Bidding Order*); *Part 1 Third Report and Order*, 13 FCC Rcd at 454-56, paras. 139-41. See also 47 CFR § 1.2104(c), (d).

bidding tool for accelerating the competitive bidding process.²⁵ We propose not to establish separate reserve prices for the construction permits to be offered in Auction 104.

27. For auctions of broadcast permits, we generally propose minimum opening bid amounts determined by taking into account the type of service and class of facility offered, market size, population covered by the proposed broadcast facility, and recent broadcast transaction data, to the extent such information is available.²⁶ Consideration of such factors for Auction 104 is complicated by a dearth of such transaction data, the fact that a permittee may opt to switch its intended use of such facility from LPTV to translator operation, or vice versa, and the lack of accurate data on the population that would be covered by each proposed facility. Attachment A to this Public Notice lists a proposed minimum opening bid amount for each construction permit available in Auction 104. We seek comment on the minimum opening bid amounts specified in Attachment A.

28. 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 should support their claims with valuation analyses and suggested amounts or formulas for reserve prices or minimum opening bids. In establishing the minimum opening bid amounts, we particularly seek comment on factors that could reasonably have an impact on bidders' valuation of the broadcast spectrum, including the type of service offered, market size, population covered by the proposed broadcast facility, and any other relevant factors.

5. Bid Amounts

29. We propose that, in each round, an eligible bidder will be able to place a bid on a given construction permit in any of up to nine different amounts.²⁷ Under this proposal, the FCC auction bidding system interface will list the acceptable bid amounts for each construction permit.

30. 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. The percentage used for this calculation, the *minimum acceptable bid increment percentage*, is multiplied by the provisionally winning bid amount, and the resulting amount is added to the provisionally winning bid amount. If, for example, the minimum acceptable bid increment percentage is 10%, then the provisionally winning bid amount is multiplied by 10%. The result of that calculation is added to the provisionally winning bid amount, and that sum is rounded using the Commission's standard rounding procedure for auctions.²⁸ If bid withdrawals are permitted in this auction, in the case of a

²⁵ See, e.g., *Auction 98 Procedures Public Notice*, 30 FCC Rcd at 3579, para. 139.

²⁶ See, e.g., *id.* See also *Broadcast Competitive Bidding Order*, 13 FCC Rcd at 15971, para. 134 (“With respect to the methodology to be employed in establishing [minimum opening bid amounts], among the factors the Bureaus may consider are the type of service that will be offered, the amount of spectrum being auctioned, the degree of competition from incumbent providers, the size of the geographic service areas, potential advertising revenue, unalterable limitations due to physical phenomena (e.g., propagation losses), equipment design limitations, issues of interference with other spectrum bands, and other relevant factors that could reasonably have an impact on valuation of the spectrum being auctioned.”)

²⁷ Bidders must have sufficient eligibility to place a bid on the particular construction permit. See Section IV.B.1., “Upfront Payments and Bidding Eligibility,” above.

²⁸ 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.

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.²⁹

31. Under this proposal, the FCC will calculate the eight additional bid amounts using the minimum acceptable bid amount and an additional bid increment percentage. The minimum acceptable bid amount is multiplied by the additional bid increment percentage, and that result (rounded³⁰) is the additional increment amount. The first additional acceptable bid amount equals the minimum acceptable bid amount plus the additional increment amount. The second additional acceptable bid amount equals the minimum acceptable bid amount plus two times the additional increment amount; the third additional acceptable bid amount is the minimum acceptable bid amount plus three times the additional increment amount; etc. If, for example, the additional bid increment percentage is 5%, then the calculation of the additional increment amount is (minimum acceptable bid amount) * (0.05), rounded. The first additional acceptable bid amount equals (minimum acceptable bid amount) + (additional increment amount); the second additional acceptable bid amount equals (minimum acceptable bid amount) + (2*(additional increment amount)); the third additional acceptable bid amount equals (minimum acceptable bid amount) + (3*(additional increment amount)); etc.

32. For Auction 104, we propose to use a minimum acceptable bid increment percentage of 10%. This means that the minimum acceptable bid amount for a construction permit will be approximately 10% greater than the provisionally winning bid amount for the construction permit. To calculate the additional acceptable bid amounts, we propose to use an additional bid increment percentage of 5%. We seek comment on these proposals.

33. We propose to retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid increment percentage, the additional bid increment percentage, and the number of acceptable bid amounts if we determine, consistent with past practice, that circumstances so dictate.³¹ We propose to retain the discretion to do so on a construction permit-by-construction permit basis. We also propose to 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, we could set a \$1,000 limit on increases in minimum acceptable bid amounts over provisionally winning bids. In this example, if calculating a minimum acceptable bid using the minimum acceptable bid increment percentage results in a minimum acceptable bid amount that is \$1,200 higher than the provisionally winning bid on a construction permit, the minimum acceptable bid amount would instead be capped at \$1,000 above the provisionally winning bid. We seek comment on the circumstances under which we 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, the bid increment percentage, or the number of acceptable bid amounts. If we exercise this discretion, we will alert bidders by announcement in the FCC auction bidding system during the auction. We seek comment on these proposals.

6. Provisionally Winning Bids

34. The bidding system will determine provisionally winning bids consistent with practice in past auctions.³² At the end of each bidding round, the bidding system will determine a provisionally

²⁹ See Section IV.B.7., “Bid Removal and Bid Withdrawal,” below.

³⁰ See note 28 (concerning rounding), above.

³¹ See e.g., *Auction 98 Procedures Public Notice*, 30 FCC Rcd at 3581, paras. 147-48; see also 47 CFR § 1.2104(d) (“The Commission may, by announcement before or during an auction, require minimum bid increments in dollar or percentage terms.”).

³² See e.g., *Auction 98 Comment Public Notice*, 30 FCC Rcd at 1764-65, para. 37.

winning bid for each construction permit based on the highest bid amount received for that 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.

35. If identical high bid amounts are submitted on a construction permit in any given round (*i.e.*, tied bids), the FCC auction bidding system will use a random number to select a single provisionally winning bid from among the tied bids. This means that the auction bidding system assigns a random number to each bid when the bid is entered.³³ The tied bid with the highest random number wins the tiebreaker and becomes the provisionally winning bid. The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to close with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid. If the construction permit receives any bids in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the construction permit.

36. A provisionally winning bid will be retained 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 bid withdrawals are permitted in this auction). As a reminder, provisionally winning bids count toward activity for purposes of the activity rule.³⁴

7. Bid Removal and Bid Withdrawal

37. The FCC auction bidding system allows each bidder to remove any of the bids it placed in a round before the close of that round. By removing a bid placed within a round, a bidder effectively “unsubmits” the bid. 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 is no longer permitted to remove a bid.

38. We seek comment on whether bid withdrawals should be permitted in Auction 104. When permitted in an auction, bid withdrawals provide a bidder with the option of withdrawing bids placed in prior rounds that have become provisionally winning bids. A bidder would be able to withdraw its provisionally winning bids using the “withdraw” function in the FCC auction bidding system. A bidder that withdraws its provisionally winning bid(s), if permitted, is subject to the bid withdrawal payment provisions of the Commission’s rules.³⁵

39. The Commission has recognized that bid withdrawals may be a helpful tool for bidders seeking to efficiently aggregate licenses or implement backup strategies in certain auctions.³⁶ The Commission has also acknowledged that allowing bid withdrawals may encourage insincere bidding or increase opportunities for anti-competitive bidding in certain circumstances.³⁷ The stand-alone nature of LPTV/translator stations, however, suggests that bidders will not need to aggregate facilities being offered in the same auction in order to realize full value from those facilities, or to put the spectrum to effective and efficient use.

40. Based on the nature of the permits being offered in this auction and on our experience with past auctions of broadcast construction permits, we propose to prohibit bidders from withdrawing

³³ The number is technically a “pseudo-random” number generated by an algorithm.

³⁴ See Section IV.B.2., “Activity Rule,” above.

³⁵ 47 CFR §§ 1.2104(g), 1.2109.

³⁶ See *Part 1 Third Report and Order*, 13 FCC Rcd at 458-60, paras. 148-50.

³⁷ See *Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Bidding Rules and Procedures*, Report and Order, 21 FCC Rcd 891, 902-03, para. 29, 904 n.57 (2006) (*CSEA/Part 1 Report and Order*).

any bid after the close of the round in which that bid was placed. We make this proposal in light of the site- and applicant-specific nature and wide geographic dispersion of the permits available in this closed auction. Thus, we believe that it is unlikely that bidders will have a need to withdraw bids in this auction. Further, we are mindful that bid withdrawals, particularly if they were made late in this auction, could result in delays in licensing replacement LPTV/translator stations and disruption in providing broadcast service to the public. We seek comment on our proposal to prohibit bid withdrawals in Auction 104.

C. Post-Auction Payments

1. Interim Withdrawal Payment Percentage

41. In the event bid withdrawals are permitted in Auction 104, we propose the interim bid withdrawal payment be 20% of the withdrawn bid. 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.³⁸ However, if a construction permit for which a bid has been withdrawn does not receive a subsequent higher bid or winning bid in the same auction, the FCC cannot calculate the final withdrawal payment until that construction permit receives a higher bid or winning bid in a subsequent auction. In such cases, when that final withdrawal payment cannot yet be calculated, the Commission imposes on the bidder responsible for the withdrawn bid an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed.³⁹

42. The amount of the interim bid withdrawal payment is established in advance of bidding in the auction and may range from 3% to 20% of the withdrawn bid amount.⁴⁰ The Commission has determined that the level of interim withdrawal payment in a particular auction will be based on the nature of the service and the inventory of the licenses being offered.⁴¹ The Commission has noted specifically that a higher interim withdrawal payment percentage is warranted to deter the anti-competitive use of withdrawals when, for example, bidders will not need to aggregate the licenses being offered in the auction or when there are few synergies to be captured by combining licenses. In light of these considerations with respect to the construction permits being offered, we propose to use the maximum interim bid withdrawal payment percentage permitted by section 1.2104(g)(1) in the event bid withdrawals are allowed in this auction. We request comment on using 20% for calculating an interim bid withdrawal payment amount in Auction 104. Commenters advocating the use of bid withdrawals should also address the percentage of the interim bid withdrawal payment.

2. Additional Default Payment Percentage

43. Any winning bidder that defaults or is disqualified after the close of an auction (*i.e.*, fails to remit the required down payment by the specified deadline, fails to make a full and timely final payment, or whose long-form application is not granted for any reason or is otherwise disqualified) is liable for a default payment under section 1.2104(g)(2) of the rules.⁴² This payment consists of a deficiency payment, equal to the difference between the amount of the Auction 104 bidder's winning 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.

³⁸ 47 CFR § 1.2104(g)(1).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ See *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 903-04, paras. 30-31.

⁴² See 47 CFR § 1.2104(g)(2).

44. The Commission's rules provide that, in advance of each auction, it will establish a percentage between 3% and 20% of the applicable winning bid to be assessed as an additional default payment.⁴³ As the Commission has indicated, the level of this additional payment in each auction will be based on the nature of the service and the construction permits being offered.⁴⁴

45. For Auction 104, we propose to establish an additional default payment of 20%. As noted in the *CSEA/Part 1 Report and Order*, defaults weaken the integrity of the auction process and may impede the deployment of service to the public, and an additional 20% default payment will be more effective in deterring defaults than the three percent used in some earlier auctions.⁴⁵ Moreover, a 20% additional default payment amount is consistent with the percentage used in recent auctions of broadcast construction permits.⁴⁶ In light of these considerations, we propose for Auction 104 an additional default payment of 20% of the relevant bid. We seek comment on this proposal.

V. EDUCATIONAL INFORMATION FOR AUCTION 104 APPLICANTS

46. The Commission intends to provide an online tutorial to assist applicants in understanding Auction 104 auction application procedures and the auction bidding system. This tutorial will be made available at the Auction 104 website: www.fcc.gov/auction/104. The Commission intends to provide educational opportunities for applicants to familiarize themselves with Auction 104 bidding procedures at a later date.

VI. PROCEDURAL MATTERS

A. Paperwork Reduction Act

47. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. Therefore, it does not contain any new or modified information burden for small business concerns with fewer than 25 employees pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.⁴⁷

B. Congressional Review Act

48. The Commission will send a copy of this *Auction 104 Comment Public Notice*, including the Supplemental Initial Regulatory Flexibility Analysis, in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act.⁴⁸

C. Supplemental Initial Regulatory Flexibility Analysis

49. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),⁴⁹ the Commission prepared Initial Regulatory Flexibility Analyses (IRFAs) in connection with the *Broadcast Competitive Bidding Notice of Proposed Rulemaking* (NPRM),⁵⁰ and other Commissions NPRMs

⁴³ See *id.*

⁴⁴ See *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 903-04, paras. 30-31.

⁴⁵ *Id.*, 21 FCC Rcd at 902-03, para. 29.

⁴⁶ See, e.g., *Auction 98 Procedures Public Notice*, 30 FCC Rcd at 3584, para. 168 (setting additional default payment for Auction 98 permits at 20% of the applicable bid).

⁴⁷ See 44 U.S.C. § 3506(c)(4).

⁴⁸ See 5 U.S.C. § 801(a)(1)(A).

⁴⁹ 5 U.S.C. § 603. The Regulatory Flexibility Act, see 5 U.S.C. §§ 601-12, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

⁵⁰ *Implementation of Section 309(j) of the Communications Act—Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, Notice of Proposed Rulemaking, 12 FCC Rcd 22363, 22416-22, Appendix B (1997) (*Broadcast Competitive Bidding Notice*).

(collectively, Competitive Bidding NPRMs) pursuant to which Auction 104 will be conducted.⁵¹ Final Regulatory Flexibility Analyses (FRFAs) likewise were prepared in the *Broadcast First Report and Order* and other Commission rulemaking orders (collectively, Competitive Bidding Orders) pursuant to which Auction 104 will be conducted. The Incentive Auction Task Force (IATF), the Media Bureau (MB) and the Office of Economics and Analytics (OEA) have prepared this Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this Public Notice, to supplement the Commission's Initial and Final Regulatory Flexibility Analyses completed in the *Broadcast First Report and Order* and other Commission orders pursuant to which Auction 104 will be conducted.⁵² Written public comments are requested on this Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be filed by the same filing deadlines for comments specified on the first page of this Public Notice. The Commission will send a copy of the Public Notice, including this Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).⁵³ In addition, a summary of the Public Notice and Supplemental IRFA will be published in the *Federal Register*.⁵⁴

1. Need for, and Objectives of, the Public Notice

50. The proposed procedures for the conduct of Auction 104 as described in the *Auction 104 Comment Public Notice* would constitute the more specific implementation of the competitive bidding rules contemplated by Parts 1 and 73 of the Commission's rules, adopted by the Commission in multiple notice-and-comment rulemaking proceedings,⁵⁵ including the Commission's establishing in the underlying rulemaking orders additional procedures to be used on delegated authority. More specifically, the *Auction 104 Comment Public Notice* seeks comment on proposed procedures, terms and conditions governing Auction 104 and the post-auction application and payment processes, as well as seeking comment on the minimum opening bid amount for 6 specified construction permits, and are fully consistent with the underlying rulemaking orders, including the *Broadcast First Report and Order* and other relevant competitive bidding orders.

51. This Public Notice also is intended to provide notice of and adequate time for Auction 104 applicants to comment on proposed auction procedures.⁵⁶ To promote the efficient and fair administration of the competitive bidding process for all Auction 104 participants, including small businesses, we seek comment on the following proposed procedures:

- use of a simultaneous multiple-round auction format, consisting of sequential bidding rounds with a simultaneous stopping rule (with discretion to exercise alternative stopping rules under certain circumstances);

⁵¹ See *Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures*, Declaratory Ruling and Notice of Proposed Rule Making, 20 FCC Rcd 11268, 11301-07, Appendix B (2005) (*CSEA Declaratory Ruling*); *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Notice of Proposed Rule Making, 8 FCC Rcd 7635, 7666, Appendix (1993) (*Competitive Bidding Notice*).

⁵² See *Broadcast Competitive Bidding Order*, 13 FCC Rcd at 16015-27 Appendix B; *Broadcast Competitive Bidding Notice*, 12 FCC Rcd at 22416-22, Appendix B, *CSEA Declaratory Ruling*, 20 FCC Rcd 11268, 11301-07, Appendix B; *Competitive Bidding Notice*, 8 FCC Rcd at 7666, Appendix; *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 927-34, Appendix C; *Part 1 Third Report and Order*, 13 FCC Rcd at 492-503, Appendix B; *Part 1 Order*, 12 FCC Rcd at 5749-53, Appendix C; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2400, para. 299-302.

⁵³ See 5 U.S.C. § 603(a).

⁵⁴ See *id.*

⁵⁵ See note 52 above.

⁵⁶ 47 U.S.C. § 309(j)(3)(E)(i) (requirement to seek comment on auction procedures); see also note 15 above.

- a specific minimum opening bid amount for each construction permit available in Auction 104
- a specific number of bidding units for each construction permit;
- a specific upfront payment amount for each construction permit;
- establishment of a bidder's initial bidding eligibility in bidding units based on that bidder's upfront payment through assignment of a specific number of bidding units for each construction permit;
- use of an activity requirement so that bidders must bid actively during the auction rather than waiting until late in the auction before participating;
- a single stage auction in which a bidder is required to be active on 100% of its bidding eligibility in each round of the auction;
- provision of three activity waivers for each qualified bidder to allow it to preserve eligibility during the course of the auction;
- use of minimum acceptable bid amounts and additional bid increments, along with a proposed methodology for calculating such amounts, while retaining discretion to change their methodology if circumstances dictate;
- a procedure for breaking ties if identical high bid amounts are submitted on a construction permit in a given round;
- bid removal procedures;
- whether to permit bid withdrawals;
- establishment of an interim bid withdrawal percentage of 20% of the withdrawn bid in the event we allow bid withdrawals in Auction 104; and
- establishment of an additional default payment of 20% under section 1.2104(g)(2) in the event that a winning bidder defaults or is disqualified after the auction.

2. Legal Basis

52. The Commission's statutory obligations to small businesses participating in a spectrum auction under the Act are found in sections 309(j)(3)(B) and 309(j)(4)(D). The statutory basis for the Commission's competitive bidding rules is found in various provisions of the Act, including 47 U.S.C. §§ 154(i), 301, 303(e), 303(f), 303(r), 304, 307, and 309(j). The Commission has established a framework of competitive bidding rules pursuant to which it has conducted auctions since the inception of the auction program in 1994 and would conduct Auction 104.⁵⁷ The Commission has directed that we, under

⁵⁷ See generally 47 CFR Part 1, Subpart Q. See also 47 CFR §§ 73.5000, 73.5002-73.5003, 73.5005-73.5009. In promulgating those rules, the Commission conducted numerous Regulatory Flexibility Act analyses to consider the possible impact of those rules on small businesses that might seek to participate in Commission auctions. See, e.g., *Competitive Bidding Notice*, 8 FCC Rcd at 7666, Appendix; *Part 1 Order*, 12 FCC Rcd at 5749-53, Appendix C; *Broadcast Competitive Bidding Notice* 12 FCC Rcd at 22416-22, Appendix B; *CSEA Declaratory Ruling* 20 FCC Rcd at 11301-07, Appendix B. In addition, multiple Final Regulatory Flexibility Analyses (FRFAs) were included in the rulemaking orders which adopted or amended rule provisions relevant to this Public Notice. See *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 927-34, Appendix C; *Broadcast Competitive Bidding Order*, 13 FCC Rcd at 16015-27, Appendix B; *Part 1 Third Report and Order*, 13 FCC Rcd at 492-503, Appendix B; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2400, paras. 299-302.

delegated authority, seek comment on a variety of auction-specific procedures prior to the start of bidding in each auction.⁵⁸

3. Description and Estimate of the Number of Small Entities to Which the Proposed Procedures Will Apply

53. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed procedures, if adopted.⁵⁹ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small government jurisdiction.”⁶⁰ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁶¹ A “small business concern” is one which: (1) is independently owned and operated, (2) is not dominant in its field of operation, and (3) satisfies any additional criteria established by the SBA.⁶²

54. The specific procedures and minimum opening bid amounts on which comment is sought in this Public Notice will directly affect all applicants participating in Auction 104, in which applicant eligibility is closed. Therefore, the specific competitive bidding procedures and minimum opening bid amounts described in the *Auction 104 Comment Public Notice* will affect only the 14 individuals or entities listed in Attachment A to this Public Notice and that are the only parties eligible to complete the remaining steps to become qualified to bid in Auction 104. These specific 14 Auction 104 individuals or entities include firms of all sizes.

55. *Television Broadcasting.* This U.S. Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.”⁶³ These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.⁶⁴ These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having \$38.5 million or less in annual receipts.⁶⁵ The 2012 Economic Census reports that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of \$25 million or less, 25 had annual receipts between \$25 million and \$49,999,999 and 70 had annual receipts of \$50 million or more.⁶⁶

⁵⁸ 47 U.S.C. § 309(j)(3)(E)(i), 309(j)(4)(F); 47 CFR § 1.2104(c), (d), (e), (f), (g); *Part 1 Third Report and Order*, 13 FCC Rcd at 447-49, paras. 123-25; *see Broadcast Competitive Bidding Order*, 13 FCC Rcd at 15967-68, paras. 127-28. *See generally Part 1 Order*, 12 FCC Rcd at 5697-98, para. 16.

⁵⁹ 5 U.S.C. § 603(b)(3).

⁶⁰ 5 U.S.C. § 601(6).

⁶¹ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁶² 15 U.S.C. § 632.

⁶³ U.S. Census Bureau, 2017 NAICS Definitions, “515120 Television Broadcasting,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁶⁴ *Id.*

⁶⁵ 13 C.F.R. § 121.201; 2012 NAICS code 515120.

⁶⁶ U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515120 Television Broadcasting), https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

Based on this data, we estimate that the majority of commercial television broadcast stations are small entities under the applicable size standard.

56. Additionally, the Commission has estimated the number of licensed commercial television stations to be 1,373.⁶⁷ Of this total, 1,270 stations (or about 92.5%) had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) in November of 2018, and therefore these stations qualify as small entities under the SBA definition.

57. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 388.⁶⁸ These stations are non-profit, and therefore considered to be small entities.⁶⁹

58. There are also 2,295 LPTV stations, including Class A stations, and 3,654 TV translators.⁷⁰ Given the nature of these services, we presume that all of these entities qualify as small entities under the SBA small business size standard.

59. We note, however, that the SBA size standard data does not enable us to make a meaningful estimate of the number of small entities that may participate in Auction 104.

60. In assessing whether a business entity qualifies as small under the SBA definition, business control affiliations must be included.⁷¹ We estimate therefore likely overstates the number of small entities that might be affected by its action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. Moreover, the definition of small business also requires that an entity not be dominant in its field of operation and that the entity be independently owned and operated. The estimate of small businesses to which Auction 104 competitive bidding rules may apply does not exclude any radio station from the definition of a small business on these bases and is therefore over-inclusive to that extent. Furthermore, we are unable at this time to define or quantify the criteria that would establish whether a specific LPTV station or TV translator is dominant in its field of operation. In addition, we note that it is difficult to assess these criteria in the context of media entities and therefore estimates of small businesses to which they apply may be over-inclusive to this extent.

61. We also note that we are unable to accurately develop an estimate of how many of these 14 entities in this auction are small businesses based on the number of small entities that applied to participate in prior broadcast auctions, because that information is not collected from applicants for broadcast auctions in which bidding credits are not based on an applicant's size (as is the case in auctions of licenses for wireless services). We conclude, however, that the majority of Auction 104 eligible bidders would likely meet the SBA's definition of a small business concern.

⁶⁷ Broadcast Station Totals as of December 31, 2018, FCC News Release (MB Jan. 2, 2019) (December 31, 2018 Broadcast Station Totals available at www.fcc.gov/document/broadcast-station-totals-december-31-2018.) While the Commission also reports the number of licensed noncommercial educational (NCE) broadcast stations, it does not compile and does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities. Further, the Local Radio Ownership Rule, the Local Television Ownership Rule and the Dual Network Rule apply only to combinations of commercial entities.

⁶⁸ See Broadcast Station Totals as of December 31, 2018, FCC News Release (MB Jan. 2, 2019).

⁶⁹ See generally 5 U.S.C. § 601(4), (6).

⁷⁰ See Broadcast Station Totals as of December 31, 2018, FCC News Release (MB Jan. 2, 2019).

⁷¹ Business concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both. 13 CFR § 121.103(a)(1).

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

62. In this Public Notice, we propose no new reporting, recordkeeping, or other compliance requirements for small entities or other auction applicants. The Commission designed the auction application process itself to minimize reporting and compliance requirements for applicants, including small business applicants. To participate in this auction parties will file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications.⁷² Eligibility to participate in bidding is based on an applicant's short-form application and certifications, as well as its upfront payment. In the second phase of the process, there are additional compliance requirements for winning bidders. Thus, a small business that fails to become a winning bidder does not need to satisfy additional requirements of a winning bidder.

5. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

63. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."⁷³

64. We intend that the proposals of this Public Notice to facilitate participation in Auction 104 will result in both operational and administrative cost savings for small entities and other auction participants. In light of the numerous resources that will be available from the Commission at no cost, the processes and procedures proposed for Auction 104 in this Public Notice should result in minimal economic impact on small entities. For example, prior to the auction, the Commission will hold a mock auction to allow eligible bidders the opportunity to familiarize themselves with both the bidding processes and systems that will be used in Auction 104. During the auction, participants will be able to access and participate in bidding via the Internet using a web-based system, or telephonically, providing two cost-effective methods of participation and avoiding the cost of travel for in-person participation. Further, small entities as well as other auction participants will be able to avail themselves of a telephone hotline for assistance with auction processes and procedures as well as a telephone technical support hotline to assist with issues such as access to or navigation within the electronic FCC Form 175 and use of the FCC's auction system. In addition, all auction participants, including small business entities, will have access to various other sources of information and databases through the Commission that will aid in both their understanding of and participation in the process. These mechanisms are made available to facilitate participation in Auction 104 by all eligible bidders and may result in significant cost savings for small business entities that utilize these mechanisms. These steps, coupled with the advance description of the bidding procedures in Auction 104, should ensure that the auction will be administered efficiently and fairly, thus providing certainty for small entities as well as other auction participants.

6. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

65. None.

⁷² See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2376-77, paras. 163-66.

⁷³ 5 U.S.C. § 603(c)(1)-(4).

D. Deadlines and Filing Procedures

66. Pursuant to sections 1.415 and 1.419 of the Commission's rules,⁷⁴ interested parties may file comments or reply comments on or before the dates indicated on the first page of this document in AU Docket No. 19-61, GN Docket No. 12-268, and MB Docket No. 16-306. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.⁷⁵

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS at www.fcc.gov/ecfs.
- *Paper Filers:* Parties that choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the captions of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

67. Filings in response to this Public Notice may be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW, Room TW-A325, Washington, DC 20554. The filing hours 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 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

68. *Auction 104 Email Box:* IATF, MB and OEA also request that a copy of all comments and reply comments be submitted electronically to the following address: auction104@fcc.gov.

69. *People with Disabilities:* To request materials in accessible formats (braille, large print, electronic files, audio format) for people with disabilities, send an email to fcc504@fcc.gov or call the Consumer and Government Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

70. This proceeding has been designated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁷⁶ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to the Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b). In proceedings governed by section 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations,

⁷⁴ 47 CFR §§ 1.415, 1.419.

⁷⁵ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

⁷⁶ 47 CFR §§ 1.1200(a), 1.1206.

and all attachments thereto, must be filed through the Electronic Comment Filing System available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

E. Contact Information

71. For further information concerning this proceeding, contact the offices listed below:

Video Division, Media Bureau

LTPV/translator station service questions: Shaun Maher (legal) at (202) 418-2324, or Hossein Hashemzadeh (technical) at (202) 418-1658.

Auctions Division, Office of Economics and Analytics

Auction legal questions: Lynne Milne at (202) 418-0660
General auction questions: Auctions Hotline at (717) 338-2868

Office of Communications Business Opportunities

For questions concerning small business inquiries: (202) 418-0990

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**ATTACHMENT A:
CONSTRUCTION PERMITS IN AUCTION 104**

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