



# PUBLIC NOTICE

**Federal Communications Commission**  
**445 12<sup>th</sup> Street, S.W.**  
**Washington, DC 20554**

**News Media Information: 202-418-0500**  
**Internet: [www.fcc.gov](http://www.fcc.gov)**  
**TTY: 888-835-5322**

**DA 18-260**  
**March 23, 2018**

## **AUCTION OF CROSS-SERVICE FM TRANSLATOR CONSTRUCTION PERMITS SCHEDULED FOR MAY 15, 2018**

### **NOTICE AND FILING REQUIREMENTS, MINIMUM OPENING BIDS, UPFRONT PAYMENTS, AND OTHER PROCEDURES FOR AUCTION 99**

AU Docket No. 17-143

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ATTACHMENT A: Auction 99 – Construction Permits to be Auctioned

ATTACHMENT B: Auction-Specific Instructions for FCC Remittance Advice (FCC Form 159-February 2003 Edition)

## I. GENERAL INFORMATION

### A. Introduction

1. By this Public Notice, the Wireless Telecommunications Bureau (WTB) and the Media Bureau (MB) (collectively, the Bureaus) establish the procedures, terms and conditions, together with the minimum opening bid amounts, for the upcoming auction of certain cross-service FM translator construction permits. This Public Notice also provides an overview of the post-auction application and payment processes governing Auction 99. Bidding in this auction is scheduled to start on May 15, 2018. Auction 99 is a closed auction; only those individuals or entities listed in Attachment A to this Public Notice are eligible to complete the remaining steps to become qualified to bid in this auction.

2. This Public Notice provides instructions for each Auction 99 applicant to maintain the accuracy of their previously filed short-form applications electronically using the FCC auction application system. An applicant whose application is found to contain deficiencies will be provided with a limited opportunity to bring its application into compliance with the Commission's competitive bidding rules during a resubmission window, the dates for which will be announced in a future public notice. An Auction 99 applicant will be qualified to bid in the auction only if: (1) it has submitted a short-form application that is timely and is found to be substantially complete, and (2) timely submits a sufficient upfront payment for at least one of the permits for which it is designated as an applicant on Attachment A to this Public Notice.

## 1. Background

3. On June 1, 2017, the Bureaus announced an auction filing window for AM broadcasters seeking new cross-service FM translator station construction permits.<sup>1</sup> Each applicant was required to file one FCC Form 175, Application to Participate in an FCC Auction, and certain sections of FCC Form 349, Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station, which permitted staff to determine mutual exclusivities between applicant engineering proposals. By Public Notice released September 28, 2017, the Bureaus provided a list of all applications received during the filing window with engineering proposals that were mutually exclusive (MX) with engineering proposals in other applications submitted in the filing window. In the *Auction 99 Settlement Public Notices*, applicants in listed groups of mutually exclusive engineering proposals (MX groups) were given the opportunity to eliminate their mutual exclusivity with other applicants' engineering proposals by settlement or technical modification to their proposals.<sup>2</sup> The Bureaus will now proceed to auction with the remaining 12 MX groups identified in Attachment A.

4. Auction 99 will proceed pursuant to the procedures described in this Public Notice, which have been adopted in accordance with section 309(j)(3) of the Communications Act of 1934, as amended (the Act).<sup>3</sup> On January 31, 2018, the Bureaus released a public notice seeking comment on competitive bidding procedures to be used in Auction 99.<sup>4</sup>

## 2. Construction Permits and Entities Eligible to Participate in Auction 99

5. Auction 99 will resolve MX engineering proposals for construction permits for up to 12 new cross-service FM translator stations. A list of the locations and channels of these proposed stations is included as Attachment A. Attachment A also sets forth the names of applicants in each MX group, along with a minimum opening bid and an upfront payment amount for each construction permit in this auction.

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<sup>1</sup> See *Filing Instructions for Cross-Service FM Translator Auction Filing Window for AM Broadcasters to be Open July 26-August 2, 2017; Freeze on FM Translator and Low-Power FM Station Minor Change Applications and FM Booster Applications July 19-August 2, 2017*, Public Notice, 32 FCC Rcd 4663(MB/WTB 2017) (*Auction 99 Filing Instructions Public Notice*). See also *Online Tutorial Available to Assist AM Broadcasters in Filing Auction 99 Applications for New Cross-Service FM Translators; AM Station Licensees or Proposed AM Station Assignees May Seek FM Translators in This Filing Window*, Public Notice, 32 FCC Rcd 5567 (MB/WTB 2017).

<sup>2</sup> See *Auction 99 Settlement Period Announced for Cross-Service FM Translator Mutually Exclusive Applications for Auction 99*, Public Notice, 32 FCC Rcd 9716 (MB/WTB 2017) (*Auction 99 Settlement Public Notice*). See also 47 CFR § 73.5002(d).

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

<sup>4</sup> *Auction of Cross-Service FM Translator Construction Permits Scheduled for May 15, 2018; Comment Sought on Competitive Bidding Procedures for Auction 99*, AU Docket No. 17-143, Public Notice, DA 18-91 (WTB/MB 2018) (*Auction 99 Comment Public Notice*). A summary of this public notice was published at 83 Fed. Reg. 6141 (Feb. 13, 2018). On January 11, 2018, the Media Bureau dismissed a petition for reconsideration filed in this docket by Edward A. Schober, PE, along with various engineering and licensing entities that he owns or with which he is affiliated, seeking limited reconsideration of the eligibility criteria to participate in Auction 99. *Edward A. Schober, PE*, Letter Decision, 33 FCC Rcd 145 (MB 2018) (dismissing petition as a late-filed request for reconsideration of the eligibility criteria established in the *AM Revitalization* rulemaking proceeding, and setting forth waiver criteria for such cross-service translator applicants). Additionally, on June 20 and 21, 2017, two unidentified commenters filed express comments in this docket, generally proposing various forms of relief for minority, women, and disabled broadcasters. These comments are beyond the scope of this docket and will not be considered here. The commenters may re-submit their comments as *ex parte* filings in the *Revitalization of the AM Radio Service* docket, MB Docket No. 13-249. Additionally, Ken Burger submitted on November 14, 2017, a copy of his FCC Form 319 Application for a Low-Power FM Broadcast Station License, File No. BLL-20171113ABQ, which had also been filed in the Media Bureau's Consolidated Database System (CDBS). That application, for a license for station WQJZ-LP, Murfreesboro, Tennessee, was granted on November 22, 2017.

6. An applicant listed in Attachment A may become qualified to bid only if it complies with the additional filing, qualification, payment, and other applicable rules, policies, and procedures.<sup>5</sup> Each qualified bidder may become eligible only for those construction permits specified for that qualified bidder 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. As noted in the *Auction 99 Comment Public Notice*, the Commission's established precedent provides that, once mutually exclusive applications are accepted and thus are mutual exclusive for auction purposes,<sup>6</sup> 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.<sup>7</sup> We will follow this approach for Auction 99.

## **B. Rules and Disclaimers**

### **1. Relevant Authority**

7. Auction 99 applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules,<sup>8</sup> including Commission decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees.<sup>9</sup> Broadcasters should also familiarize themselves with the Commission's cross-service FM translator broadcast service and competitive bidding requirements contained in Parts 73 and 74 of the Commission's rules,<sup>10</sup> as well as Commission orders concerning competitive bidding for broadcast construction permits.<sup>11</sup> Applicants

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<sup>5</sup> All applicants listed in Attachment A previously filed short-form applications (FCC Form 175) in the filing window announced in the *Auction 99 Filing Instructions Public Notice*, 32 FCC Rcd at 4666-67, para. 13.

<sup>6</sup> See *Auction 99 Comment Public Notice*, DA 18-91, para. 4, citing 47 U.S.C. § 309(j)(1).

<sup>7</sup> 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 Letter to J. Dominic Monahan, Esq., counsel to Rob Allen Hauser, from Margaret Wiener, Chief, Auctions and Industry Analysis Div., Wireless Telecommunications Bur., re: Request for Refund of Upfront Payment for MX Group FM 130 in Closed Broadcast Auction No. 25, 16 FCC Rcd 2181 (WTB 2001); Letter to Carl Northrop, counsel to Vodafone Airtouch Licenses, LLC, from Margaret Wiener, Chief, Auctions and Industry Analysis Div., Wireless Telecommunications Bur., re: Request for Refund for Licenses Purchased in Auction 26, 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, 10647 (WTB/MMB 1999).

<sup>8</sup> 47 CFR Part 1, Subpart Q.

<sup>9</sup> See, e.g., *Updating Part 1 Competitive Bidding Rules*, Report and Order, Order on Reconsideration of the First Report and Order, Third Order on Reconsideration of the Second Report and Order, Third Report and Order, 30 FCC Rcd 7493 (2015) (*Updating Part 1 Report & Order*) (modified by Erratum, 30 FCC Rcd 8518 (2015)); *Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures*, Order, Memorandum Opinion and Order and Notice of Proposed Rule Making, 12 FCC Rcd 5686 (1997) (*Auction Procedures Consolidation 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 (2000) (*Part 1 Fifth Report and Order*) (modified by Erratum, 15 FCC Rcd 21520 (2000)); Seventh Report and Order, 16 FCC Rcd 17546 (2001) (*Part 1 Seventh Report and Order*); Eighth Report and Order, 17 FCC Rcd 2962 (2002); Second Order on Reconsideration of the Third Report and Order and Order on Reconsideration of the Fifth Report and Order, 18 FCC Rcd 10180 (2003); Second Order on Reconsideration of the Fifth Report and Order, 20 FCC Rcd 1942 (2005).

<sup>10</sup> 47 CFR §§ 73.1001 – 73.5009, 74.1201 – 74.1290.

<sup>11</sup> See, e.g., *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 (continued....)

must also be thoroughly familiar with the procedures, terms and conditions contained in this Public Notice and any future public notices that may be released in this proceeding.

8. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of each applicant to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most auctions-related Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at <http://wireless.fcc.gov/auctions>.<sup>12</sup>

## 2. Prohibited Communications and Compliance with Antitrust Laws

9. The rules prohibiting certain communications set forth in sections 1.2105(c) and 73.5002(d) and (e) of the rules apply to each applicant that filed a short-form application (FCC Form 175) in Auction 99.<sup>13</sup> Section 1.2105(c)(1) of the Commission's rules provides that, subject to specified exceptions, after the deadline for filing a short-form application, "all applicants are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other . . . in any manner the substance of their own, or each other's, or any other applicants' bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after the down payment deadline[.]"<sup>14</sup>

### a. Entities Subject to Section 1.2105

10. An "applicant" for purposes of this rule includes the officers and directors of the applicant, all "controlling interests" in the entity submitting the FCC Form 175 auction application, as well as all holders of interests amounting to 10 percent or more of the entity, and all officers and directors of that entity.<sup>15</sup> A party that submits an application becomes an "applicant" under the rule at the application deadline and that status does not change based on subsequent developments.<sup>16</sup>

(Continued from previous page) \_\_\_\_\_

FCC Rcd 15920 (1998) (*Broadcast First Report and Order*), *on recon.*, Memorandum Opinion and Order, 14 FCC Rcd 8724, *on further recon.*, Memorandum Opinion and Order, 14 FCC Rcd 12541 (1999); *Reexamination of the Comparative Standard for Noncommercial Educational Applicants*, MM Docket No. 95-31, Second Report and Order, 18 FCC Rcd 6691 (2003) (*Noncommercial Educational Second Report and Order*); Memorandum Opinion and Third Order on Reconsideration, 23 FCC Rcd 17423 (2008) (*Noncommercial Educational Third Reconsideration Order*).

<sup>12</sup> Additionally, documents are available at the Commission's headquarters, located at 445 12th Street, SW, Washington, DC 20554, between 8:00 a.m. and 4:30 p.m. Eastern Time (ET) Monday through Thursday or 8:00 a.m. to 11:30 a.m. ET Fridays.

<sup>13</sup> 47 CFR §§ 1.2105(c), 73.5002(d), (e).

<sup>14</sup> 47 CFR § 1.2105(c)(1). Specifically, this prohibition became effective for Auction 99 at the initial short-form application filing deadline on August 2, 2017.

<sup>15</sup> 47 CFR § 1.2105(c)(5)(i).

<sup>16</sup> See *Star Wireless, LLC v. FCC*, 522 F.3d 469 (D.C. Cir. 2008). Thus, an auction applicant that does not correct deficiencies in its application, fails to submit a timely and sufficient upfront payment, or does not otherwise become qualified, remains an "applicant" for purposes of the rule and remains subject to the prohibition on certain communications until the applicable down payment deadline.

**b. Scope of Prohibition on Communications; Prohibition on Joint Bidding Agreements**

11. The Commission updated and revised section 1.2105(c)'s prohibition on communications by auction applicants in recent years.<sup>17</sup> Significantly, the Commission in 2015 amended section 1.2105(c) to extend the prohibition on communications to cover all applicants for an auction regardless of whether the applicants seek permits or licenses in the same geographic area, or market.<sup>18</sup> In connection with those 2015 amendments to the competitive bidding rules, the Commission now prohibits a "joint bidding arrangement," including arrangements relating to the permits or licenses being auctioned that address or communicate, directly or indirectly, bidding at the auction, bidding strategies, including arrangements regarding price or the specific permits or licenses on which to bid, and any such arrangements relating to the post-auction market structure.<sup>19</sup> The revised rule provides limited exceptions for a communication within the scope of any arrangement consistent with the exclusion from our rule prohibiting joint bidding, provided such arrangement is disclosed on the applicant's auction application.<sup>20</sup> An applicant may continue to communicate pursuant to any pre-existing agreements, arrangements, or understandings that are solely operational or that provide for transfer or assignment of license, provided that such agreements, arrangements or understandings do not involve the communication or coordination of bids (including amounts), bidding strategies, or the particular permits or licenses on which to bid and provided that such agreements, arrangements or understandings are disclosed on its application.<sup>21</sup>

12. The Bureaus sought comment in the *Auction 99 Comment Public Notice* on whether it would be appropriate to waive or modify the application of section 1.2105 provisions discussed above so that Auction 99 applicants relying on the waiver of section 1.2105(a)(3) will not thereby violate such other provisions.<sup>22</sup> We received no comment on this issue. Accordingly, no commenter has suggested that there is a need for a waiver to accommodate any commonly-controlled Auction 99 applicants that filed separate short-form applications pursuant to the Bureaus' previously-granted waiver of section 1.2105(a)(3).<sup>23</sup> Therefore, we have no basis for further waiving or modifying the application of section 1.2105 provisions discussed above for Auction 99.

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<sup>17</sup> See, e.g., *Procedural Amendments to Commission Part 1 Competitive Bidding Rules*, Order, 25 FCC Rcd 521 (2010)(*Part 1 Procedural Amendments Order*); *Updating Part 1 Report and Order*, 30 FCC Rcd 7493.

<sup>18</sup> See *Updating Part 1 Report and Order*, 30 FCC Rcd at 7577, para. 199; see also 47 CFR § 1.2105(a)(2)(ix), (c)(1).

<sup>19</sup> 47 CFR § 1.2105(a)(2)(ix). Joint bidding arrangements include arrangements relating to the licenses being auctioned that address or communicate, directly or indirectly, bids or bidding strategies, including arrangements regarding price or the specific construction permits or licenses on which to bid, as well as any such arrangements relating to the post-auction market structure. *Updating Part 1 Report and Order*, 30 FCC Rcd at 7575-76, para. 195.

<sup>20</sup> *Updating Part 1 Report and Order*, 30 FCC Rcd at 7576-7, para. 197-99.

<sup>21</sup> *Id.* See also *Guidance Regarding the Prohibition of Certain Communications During the Incentive Auction, Auction 1000*, Public Notice, 30 FCC Rcd 10794 (WTB 2015)(*Prohibited Communications Public Notice*).

<sup>22</sup> See *Auction 99 Comment Public Notice*, DA 18-91, para. 11.

<sup>23</sup> The Bureaus extended a waiver of section 1.2105(c) to Auction 99 applicants under common control in light of the unique circumstances of the Auction 99 filing window, including the specific eligibility requirements adopted by the Commission. See *Auction 99 Filing Instructions Public Notice*, 32 FCC Rcd at 4667-8, para. 13; see also *Auction 99 Comment Public Notice*, DA 18-91, para. 10, citing 47 CFR § 1.2105(a)(3); *Auction 99 Filing Instructions Public Notice*, 32 FCC Rcd at 4666-67, para. 17.

**c. Section 1.2105(c) Certification**

13. By electronically submitting its FCC Form 175 auction application, each applicant in Auction 99 certified its compliance with sections 1.2105(c) and 73.5002(d) of the rules.<sup>24</sup> However, the mere filing of a certifying statement as part of an application will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted.<sup>25</sup> Any applicant found to have violated these communication prohibitions may be subject to sanctions.<sup>26</sup>

**d. Reporting Requirements**

14. Section 1.2105(c)(4) requires that any applicant that makes or receives a communication that appears to violate section 1.2105(c) must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs.<sup>27</sup> Each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.<sup>28</sup>

**e. Procedures for Reporting Prohibited Communications**

15. Section 1.2105(c) requires parties to file only a single report concerning a prohibited communication and to file that report with Commission personnel expressly charged with administering the Commission's auctions.<sup>29</sup> This rule is designed to minimize the risk of inadvertent dissemination of information in such reports. Any reports required by section 1.2105(c) must be filed consistent with the instructions set forth in this Public Notice.<sup>30</sup> For Auction 99, such reports must be filed with the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available. Any such report should be submitted by e-mail to Margaret W. Wiener at the following e-mail address: [auction99@fcc.gov](mailto:auction99@fcc.gov). If you choose instead to submit a report in hard copy, any such report must be delivered only to: Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Room 6C217, Washington, DC 20554.

16. A party reporting any communication pursuant to sections 1.65, 1.2105(a)(2), or 1.2105(c)(4) must take care to ensure that any report of a prohibited communication does not itself give

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<sup>24</sup> 47 CFR § 1.2105(a)(2)(ix). The Bureau suspended for Auction 99 application of the section 1.2105(c) and 73.5002(d) prohibitions during a specified period for the limited purpose of allowing settlement discussions. *See, e.g., Auction 99 Settlement Public Notice*, 32 FCC Rcd at 9716. Discussion of information covered by the rules outside of the window would violate the rules.

<sup>25</sup> *See Application of Nevada Wireless*, Memorandum Opinion and Order, 13 FCC Rcd 11973, 11978 para. 13 (WTB 1998). *See also Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Memorandum Opinion and Order, 9 FCC Rcd 7684, 7689 para. 12 (1994) (*Competitive Bidding Memorandum Opinion and Order*).

<sup>26</sup> *See* 47 CFR §§ 1.2105(c), 1.2107(d), 1.2109(d).

<sup>27</sup> 47 CFR § 1.2105(c)(4); *see also Part 1 Seventh Report and Order*, 16 FCC Rcd at 17553-55 paras. 13-17.

<sup>28</sup> *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, Second Report and Order, 22 FCC Rcd 15289, 15395 paras. 285-86 (2007); *see Part 1 Procedural Amendments Order*, 25 FCC Rcd at 523, para. 8; *see also* 47 CFR § 1.65; *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17550-51 para. 9.

<sup>29</sup> *Part 1 Procedural Amendments Order*, 25 FCC Rcd at 522 para. 4. This process differs from filing procedures used in connection with other Commission rules and processes which may call for submission of filings to the Commission's Office of the Secretary or ECFS. Filing through the Office of Secretary or ECFS could allow the report to become publicly available and might result in the communication of prohibited information to other auction applicants.

<sup>30</sup> *Id.*

rise to a violation of section 1.2105(c). 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 a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by following the procedures specified in section 0.459 of the Commission's rules.<sup>31</sup> Such parties also are encouraged to coordinate with the Auctions and Spectrum Access Division staff about the procedures for submitting such reports.<sup>32</sup> This Public Notice provides additional guidance on procedures for submitting application-related information below.<sup>33</sup>

**f. Winning Bidders Must Disclose Terms of Agreements**

17. Each applicant that is a winning bidder will be required to disclose in its long-form application the specific terms, conditions, and parties involved in any agreement it has entered into.<sup>34</sup> This applies to any bidding consortia, joint venture, partnership, or agreement, understanding, or other arrangement entered into relating to the competitive bidding process, including any agreement relating to the post-auction market structure.<sup>35</sup> Failure to comply with the Commission's rules can result in enforcement action.

**g. Additional Information Concerning Rule Prohibiting Certain Communications**

18. A summary listing of documents issued by the Commission and the Bureaus addressing the application of section 1.2105(c) is available on the Commission's auction web page at <https://www.fcc.gov/summary-listing-documents-addressing-application-rule-prohibiting-certain-communications>.

**h. Antitrust Laws**

19. Regardless of compliance with the Commission's rules, applicants remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace.<sup>36</sup> Compliance with the disclosure requirements of section 1.2105(c) will not insulate a party from enforcement of the antitrust laws.<sup>37</sup> For instance, a violation of the antitrust laws could arise out of actions taking place well

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<sup>31</sup> See 47 CFR § 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 CFR § 0.459(a).

<sup>32</sup> See Section VII "Contact Information," below.

<sup>33</sup> See Section II. A "Maintaining Current Information in Short-Form Applications," below.

<sup>34</sup> See *Prohibited Communications Public Notice*, 30 FCC Rcd at 10794.

<sup>35</sup> 47 CFR § 1.2107(d).

<sup>36</sup> See *Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures*, WT Docket No. 97-82, Third Further Notice of Proposed Rulemaking, 14 FCC Rcd 21558, 21560-61 para. 4 & n.17 (1999) quoting *Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689 para. 12 ("[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*, Fourth Memorandum Opinion and Order, 9 FCC Rcd 6858, 6869 n.134 (1994) (*Fourth Memorandum Opinion and Order*) ("[A]pplicants will also be subject to existing antitrust laws.").

<sup>37</sup> See *Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689 para. 12. See also "Justice Department Sues Three Firms Over FCC Auction Practices," *Press Release* 98-536 (DOJ Nov. 10, 1998).

before any party submitted a short-form application.<sup>38</sup> Similarly, the Wireless Telecommunications Bureau previously reminded potential applicants and others that “[e]ven where the applicant discloses parties with whom it has reached an agreement on the short-form application, thereby permitting discussions with those parties, the applicant is nevertheless subject to existing antitrust laws.”<sup>39</sup>

20. To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation.<sup>40</sup> If an applicant is found to have violated the antitrust laws or the Commission’s rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.<sup>41</sup>

### 3. Due Diligence

21. We remind each potential bidder that it is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the construction permits for cross-service FM translators that it is seeking in this auction. **The FCC makes no representations or warranties about the use of this spectrum or these construction permits for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC permittee in a 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.**

22. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. In particular, the Bureaus strongly encourage each potential bidder to perform technical analyses and/or refresh its previous analyses to assure itself that, should it become a winning bidder for any Auction 99 construction permit, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements. We strongly encourage each applicant to inspect any prospective transmitter sites located in, or near, the service area for which it plans to bid, confirm the availability of such sites, and to familiarize itself with the Commission’s rules regarding the National Environmental Policy Act.<sup>42</sup>

23. The Bureaus strongly encourage each applicant to continue to conduct its own research throughout Auction 99 in order to determine the existence of pending or future administrative or judicial proceedings that might affect its decision on continued participation in the auction. Each Auction 99 applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on construction permits available in this auction. The due diligence considerations mentioned in this Public Notice do not comprise an exhaustive list of steps that should be undertaken prior to participating in this auction. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon specific facts and circumstances related to its interests.

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<sup>38</sup> See, e.g., *Fourth Memorandum Opinion and Order*, 9 FCC Rcd at 6869 n.134. The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws. For example, actual or potential competitors may not agree to divide territories in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another market for the other. *Id.*

<sup>39</sup> *Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules*, Public Notice, 11 FCC Rcd 9645, 9646 (WTB 1995)(*Anti-Collusion Public Notice*).

<sup>40</sup> See *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Second Report and Order, 9 FCC Rcd 2348, 2388 para. 226 (1994) (*Competitive Bidding Second Report and Order*).

<sup>41</sup> See 47 CFR § 1.2109(d); see also *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 para. 226.

<sup>42</sup> 47 CFR Part 1, Subpart I.

24. **Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the construction permits available in Auction 99.** Each potential bidder is responsible for undertaking research to ensure that any permits won in this auction will be suitable for its business plans and needs. Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

25. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, it must 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 its databases.

#### **4. Use of Auction Systems**

26. Qualified bidders will be able to place bids in Auction 99 over the Internet using the FCC auction application system and the auction bidding system. The Commission makes no warranty whatsoever with respect to the FCC auction systems. In no event shall the Commission, or any of its officers, employees, or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning, or use of the FCC auction systems that are accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming, or other advice or service provided in connection with the FCC auction systems.

### **C. Auction Specifics**

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

27. Bidding in Auction 99 will begin on Tuesday, May 15, 2018. Pre-auction dates and deadlines are listed below.

28. The initial schedule for bidding rounds will be announced by public notice at least one week before bidding in the auction starts. Moreover, unless otherwise announced, bidding on all construction permits will be conducted on each business day until bidding has stopped on all construction permits.

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

29. Auction 99 – AM Revitalization / FM Translator

#### **3. Bidding Methodology and Options**

30. As discussed in more detail below, the bidding methodology for Auction 99 will be a simultaneous multiple round format.<sup>43</sup> The Commission will conduct this auction over the Internet using the FCC auction bidding system. Qualified bidders are permitted to bid electronically via the Internet or by telephone using the telephonic bidding option. All telephone calls are recorded.

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<sup>43</sup> See Section IV.A.1 "Simultaneous Multiple Round Auction," below.

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

31. The following dates and deadlines apply:

|  |   |
|--|---|
| Upfront Payments (via wire transfer).....      | April 19, 2018; 6:00 p.m. Eastern Time (ET) |
| Auction Tutorial Available (via Internet)..... | May 4, 2018                                 |
| Mock Auction.....                              | May 11, 2018                                |
| Auction Begins.....                            | May 15, 2018                                |

#### 5. Requirements for Participation

32. A party whose application is listed on Attachment A of this Public Notice may participate in the bidding in Auction 99 only if the applicant;

- Has submitted a short-form application (FCC Form 175) that is found to comply with the Commission's competitive bidding rules and the procedures and deadlines set forth in this Public Notice;
- *Deficiencies in Auction Applications:* After Commission staff reviews all FCC Form 175 auction applications, each application will be designated as either Complete, Incomplete, or Rejected.<sup>44</sup> An applicant whose application contains deficiencies and has been designated as incomplete will have a limited opportunity to bring its application into compliance with the Commission's competitive bidding rules during a resubmission window, the dates for which will be announced in a future public notice;
- Submits a sufficient upfront payment and a complete and accurate FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET on April 19, 2018, following the procedures and instructions set forth in Attachment B to this Public Notice; and
- Complies with all provisions outlined in this Public Notice and applicable Commission rules.

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

### A. Maintaining Current Information in Short-Form Applications

33. Sections 1.65 and 1.2105(b) of the Commission's rules require an applicant to maintain the accuracy and completeness of all information furnished in its pending application and in competitive bidding proceedings to furnish additional or corrected information to the Commission within five days of a significant occurrence,<sup>45</sup> or to amend a short form application no more than five days after the applicant becomes aware of the need for the amendment.<sup>46</sup> Changes that cause a loss of or reduction in the

<sup>44</sup> If an application is designated as rejected, that applicant will have no further opportunity to update its application and the applicant is disqualified from further participation in Auction 99. The Commission concluded in the *Noncommercial Educational Second Report and Order* that any application for a noncommercial educational (NCE) station that is mutually exclusive with any application for a commercial broadcast station will be returned as unacceptable for filing. *Noncommercial Educational Second Report and Order*, 18 FCC Rcd at 6699-6700 paras. 21-22; *Noncommercial Educational Third Reconsideration Order*, 23 FCC Rcd at 17423. This procedure has been codified at 47 CFR § 73.5002(b). The rejected applicant will retain its status as an applicant in Auction 99. As with any other applicant that may be found not qualified to bid, this applicant will remain subject to the Commission's rules prohibiting certain communications, 47 CFR §§ 1.2105(c) and 73.5002(d).

<sup>45</sup> We remind each applicant of its duty to continuously maintain the accuracy of information submitted in its auction application. *See, e.g., Vermont Telephone Co.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 14130 (EB 2011).

<sup>46</sup> 47 CFR §§ 1.65, 1.2105(b). *See also Part 1 Procedural Amendments Order*, 25 FCC Rcd at 523 para. 8.

percentage of bidding credit specified in the application must be reported immediately, and no later than five business days after the change occurs.<sup>47</sup>

### **B. Submission of Updates to Short-Form Applications**

34. Updates to short-form applications should be made electronically using the FCC auction application system whenever possible. For the change to be submitted and considered by the Commission, be sure to click on the SUBMIT button.<sup>48</sup>

35. An applicant should not use the auction application system outside of the initial and resubmission filing windows to make changes to its short-form application for other than administrative changes (e.g., changing contact information or the name of an authorized bidder). After the filing window has closed, the system will not permit applicants to modify information in most of the application's data fields.

36. If changes need to be made outside of these initial and resubmission filing windows for other than the minor administrative changes as described, the applicant must submit a letter briefly summarizing the changes and subsequently update its short-form application in the auction application system once it is available. Any letter describing changes to an applicant's short-form application must be addressed to Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, and submitted by e-mail to [auction99@fcc.gov](mailto:auction99@fcc.gov). The e-mail summarizing the changes must include a subject or caption referring to Auction 99 and the name of the applicant, for example, "Re: Changes to Auction 99 Short-Form Application of ABC Corp." The Bureaus request that parties format any attachments to e-mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Questions about short-form application amendments should be directed to the Auctions and Spectrum Access Division at (202) 418-0660.

37. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System, which was used for submitting comments regarding procedures for conducting Auction 99.

38. Applicants should note that submission of a short-form application (and any amendments thereto) constitutes a representation by the person certifying the application that he or she is an authorized representative of the applicant with authority to bind the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

### **C. Electronic Review of Short-Form Applications**

39. Applicants will be able to view other applicants' FCC Forms 175 after the Commission has issued a public notice announcing the status of the submitted Auction 99 applications. Instructions

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<sup>47</sup> See 47 CFR § 73.5007(a). See also *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, First Report and Order and Further Notice of Proposed Rule Making, 25 FCC Rcd 1583, 1611-14 paras. 57-63 (2010). For example, if ownership changes result in the attribution of new interest holders that affect the applicant's qualifications for a new entrant bidding credit, such information must be clearly stated in the bidder's amendment. See *Liberty Productions*, Memorandum Opinion and Order, 16 FCC Rcd 12061, 12077-78 paras. 34-37 (2001). Events occurring after the initial application filing deadline, such as the acquisition of attributable interests in media of mass communications, may also cause diminishment or loss of the bidding credit, and must be reported immediately, and no later than five business days after the change occurs.

<sup>48</sup> After the revised application has been submitted, a confirmation page will be displayed stating the submission time, submission date, and a unique file number. The Bureaus advise applicants to print and retain a copy of this confirmation page.

for electronic review of FCC Forms 175 will be discussed in the public notice concerning the status of the applications.

#### D. Provisions Regarding Former and Current Defaulters

40. Current defaulters or delinquents are not eligible to participate in Auction 99, but former defaulters or delinquents can participate so long as they are otherwise qualified and, as discussed below, make upfront payments that are fifty percent more than would otherwise be necessary.<sup>49</sup> An applicant is considered a “current defaulter” or a “current delinquent” when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, is in default on any payment for any Commission construction permit or license (including a down payment) or is delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for FCC Forms 175 in that auction.<sup>50</sup>

41. On the short-form application, an applicant must certify under penalty of perjury that it, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by section 1.2110 of the Commission’s rules,<sup>51</sup> are not in default on any payment for a Commission construction permit or license (including down payments) and that it is not delinquent on any non-tax debt owed to any Federal agency.<sup>52</sup> **Accordingly, if an applicant has an outstanding non-tax debt to the Commission or any other Federal agency, including any debt that results in a listing of the applicant on the Commission’s Red Light Display System, as of the closing deadline of the initial filing window,<sup>53</sup> the applicant will be unable to make the required certification that it is not currently in default; if so, such applicant will not be eligible to participate in the bidding for Auction 99.**

42. An applicant is considered a “former defaulter” or a “former delinquent” when the applicant or any of its controlling interests has defaulted on any Commission construction permit or license or has been delinquent on any non-tax debt owed to any Federal agency, but has since remedied all such defaults and cured all of the outstanding non-tax delinquencies prior to the FCC Form 175 filing deadline in this auction. Each applicant must also certify under penalty of perjury whether it, along with any of its controlling interests, has ever been in default on any payment for a Commission construction permit or license (including a down payment) or has ever been delinquent on any non-tax debt owed to any Federal agency, subject to the exclusions described below.<sup>54</sup> If an applicant or any controlling interest is a “former defaulter” or “former delinquent” the applicant may participate further in Auction 99

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<sup>49</sup> 47 CFR §§ 1.2105(a)(2)(xi), (xii), 1.2105(b)(1), and 1.2106(a); *see Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317 para. 42 & n.142 (“If any one of an applicant’s controlling interests or their affiliates...is in default on any Commission licenses or is delinquent on any non-tax debt owed to any Federal agency at the time the applicant files it[s] FCC Form 175, the applicant will not be able to make the certification required by [the rules]...and will not be eligible to participate in Commission auctions.”)

<sup>50</sup> *See Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317 para. 42 & n.142; *Wireless Telecommunications Bureau Reminds Prospective Broadband PCS Spectrum Auction Applicants of Default and Delinquency Disclosure Requirements*, Public Notice 19 FCC Rcd 21920 (WTB 2004) (*Auction Default Disclosure Public Notice*). For purposes of making this certification, the term “controlling interest” is defined in 47 CFR § 1.2105(a)(4)(i).

<sup>51</sup> 47 CFR § 1.2110.

<sup>52</sup> 47 CFR § 1.2105(a)(2)(x); *see also Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317 para. 42 & n.142. Auction 99 applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

<sup>53</sup> For Auction 99, this deadline was 6:00 p.m. ET on August 2, 2017.

<sup>54</sup> 47 CFR § 1.2105(a)(2)(xii). For purposes of making this certification, the term “controlling interest” is defined in 47 CFR § 1.2105(a)(4)(i).

so long as it is otherwise qualified, and that applicant makes an upfront payment that is fifty percent more than would otherwise be required.<sup>55</sup>

43. In 2015, the Commission narrowed the scope of the individuals and entities to be considered a former defaulter or a former delinquent.<sup>56</sup> For purposes of the certification under section 1.2105(a)(2)(xii), the applicant may exclude from consideration any cured default on a Commission construction permit or license or cured delinquency on a non-tax debt owed to a Federal agency for which any of the following criteria are met: (1) the notice of the final payment deadline or delinquency was received more than seven years before the FCC Form 175 filing deadline; (2) the default or delinquency amounted to less than \$100,000; (3) the default or delinquency was paid within six months after receiving the notice of the final payment deadline or delinquency; or (4) the default or delinquency was the subject of a legal or arbitration proceeding and was cured upon resolution of the proceeding.<sup>57</sup>

44. Applicants are encouraged to review previous guidance provided by the Wireless Telecommunications Bureau on default and delinquency disclosure requirements in the context of the auction short-form application process.<sup>58</sup> For example, it has been determined that, to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for purposes of sections 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline.<sup>59</sup> Therefore, with respect to regulatory or application fees, the provisions of sections 1.2105(a) and 1.2106(a) regarding default and delinquency in connection with competitive bidding are limited to circumstances in which the relevant party has not complied with a final payment deadline.<sup>60</sup> Parties are also encouraged to consult with the Wireless Telecommunications Bureau's Auctions and Spectrum Access Division staff if they have any questions about default and delinquency disclosure requirements.

45. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the "red light rule," that implement its obligations under the Debt Collection Improvement Act of 1996, which governs the collection of debts owed to the United States.<sup>61</sup> Under the red light rule, applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission will not be processed. In the same rulemaking order, the Commission explicitly declared, however, that its

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<sup>55</sup> 47 CFR §§ 1.2105(a)(2)(xii), 1.2105(b)(1), 1.2106(a).

<sup>56</sup> See *Updating Part 1 Report and Order*, 30 FCC Rcd at 7568, para. 175; see also 47 CFR § 1.2105(a)(2)(xii), (c)(1).

<sup>57</sup> See 47 CFR § 1.2105(a)(2)(xii), (a)(4); see also *Updating Part 1 Report & Order*, 30 FCC Rcd at 7566-68 paras. 173-75.

<sup>58</sup> *Auction Default Disclosure Public Notice*, 19 FCC Rcd at 21920.

<sup>59</sup> Letter to Cheryl A. Tritt, Esq., from Margaret Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, 19 FCC Rcd 22907 (WTB 2004) (clarifying the term "debt" or "non-tax debt" as referenced in 47 CFR §§ 1.2105(a) and 1.2106(a)).

<sup>60</sup> Even where Commission rules expressly permit late payment, subject to payment of an additional late fee, and do not impose a final payment deadline, the Commission may in some cases issue a demand for payment by a date certain. See 47 CFR § 1.1164(a). Failure to comply with the terms of a demand letter in the time period specified may render the subject debt delinquent, notwithstanding rules generally permitting late payment.

<sup>61</sup> *Amendment of Parts 0 and 1 of the Commission's Rules; Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors*, Report and Order, 19 FCC Rcd 6540 (2004) (implementing Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996)) (*Debt Collection Report and Order*).

competitive bidding rules “are not affected” by the red light rule.<sup>62</sup> As a consequence, the Commission’s adoption of the red light rule does not alter the applicability of any of its competitive bidding rules, including the provisions and certifications of sections 1.2105 and 1.2106, with regard to current and former defaults or delinquencies.

46. The Bureaus remind each applicant, however, that the Commission’s Red Light Display System, which provides information regarding debts currently owed to the Commission, may not be determinative of an auction applicant’s ability to comply with the default and delinquency disclosure requirements of section 1.2105.<sup>63</sup> Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant’s lack of current “red light” status is not necessarily determinative of its eligibility to participate in an auction (or whether it will have an increased upfront payment obligation).<sup>64</sup>

47. Moreover, applicants in Auction 99 should note that any long-form applications filed after the close of bidding will be reviewed for compliance with the Commission’s red light rule,<sup>65</sup> and such review may result in the dismissal of a winning bidder’s long-form application.<sup>66</sup> The Bureaus strongly encourage each applicant to carefully review all records and other available federal agency databases and information sources to determine whether the applicant, or any of its affiliates, or any of its controlling interests, or any of the affiliates of its controlling interests, owes or was ever delinquent in the payment of non-tax debt owed to any federal agency.

### III. PRE-AUCTION PROCEDURES

#### A. Online Tutorial on Bidding Process – Available May 4, 2018

48. An educational auction tutorial will be available on the Auction 99 web page by Friday, May 4, 2018. Auction 99 will be the first auction to use the FCC’s new auction bidding system, an extensive redesign of the previous auction bidding system. The redesign includes enhancements to the auction bidding system, such as easier navigation, customizable results, and improved functionality. This online tutorial will provide information about auction conduct, the FCC auction bidding system, and auction rules. The tutorial will also provide an avenue to ask FCC staff questions about the auction, auction procedures, filing requirements, and other matters related to this auction.

49. The tutorial will allow viewers to navigate the presentation outline, review written notes, listen to audio recordings of the notes, and search for topics using a text search function. Additional features of this web-based tool include links to auction-specific Commission releases, e-mail links for contacting Commission licensing and auctions staff, a timeline with deadlines for auction preparation, and screen shots of the FCC auction bidding system. The tutorial will be accessible through a web browser with Adobe Flash Player.<sup>67</sup>

50. The auction tutorial will be accessible from the FCC’s Auction 99 web page at

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<sup>62</sup> *Id.*, 19 FCC Rcd at 6541 n.11 (specifically noting the current defaulter and former defaulter certifications of 47 CFR §§ 1.2105(a)(2)(x) and (xi) and stating that “[t]hese rules are not affected by the red light rule.”).

<sup>63</sup> *Auction Default Disclosure Public Notice*, 19 FCC Rcd at 21920 (addressing relationship between Commission’s Red Light Display System and short-form application default and delinquency disclosure requirements for auction applicants).

<sup>64</sup> *Id.*, 19 FCC Rcd at 21921-22.

<sup>65</sup> *Debt Collection Report and Order*, 19 FCC Rcd at 6540 para. 1, 6541-42 paras. 3-5. See 47 CFR § 1.1114.

<sup>66</sup> Applicants that have their long-form applications dismissed will be deemed to have defaulted and will be subject to default payments under 47 CFR §§ 1.2104(g) and 1.2109(c).

<sup>67</sup> Most users will already have the Flash Player browser plug-in, which can be downloaded from <http://get.adobe.com/flashplayer/>.

[www.fcc.gov/auction/99](http://www.fcc.gov/auction/99) through an “Auction Tutorial” link. Once posted, this tutorial will remain available and accessible anytime for reference in connection with the procedures outlined in this Public Notice.

51. On July 13, 2017, the Bureaus released an online tutorial to assist applicants in understanding the application filing requirements for applicants seeking a new cross-service FM translator. The Auction Application Filing Tutorial is available at the Auction 99 website: [www.fcc.gov/auction/99](http://www.fcc.gov/auction/99).

### **B. Application Processing and Corrections of Deficiencies**

52. The Commission will process all applications for permits listed in Attachment A to determine which are complete, and subsequently will issue a public notice identifying (1) those that are complete; (2) those that are rejected; and (3) those that are incomplete or deficient because of minor defects that may be corrected. An applicant whose application is incomplete will have a limited opportunity to address deficiencies during a resubmission window, the dates for which will be announced in a future public notice.

53. Commission staff will communicate only with an applicant’s contact person or certifying official, as designated on the short-form application, unless the applicant’s certifying official or contact person notifies the Commission in writing that applicant’s counsel or other representative is authorized to speak on its behalf.<sup>68</sup> Authorizations may be sent by e-mail to [auction99@fcc.gov](mailto:auction99@fcc.gov).

### **C. Upfront Payments – Due April 19, 2018**

54. In order to be eligible to bid in this auction, a sufficient upfront payment and a complete and accurate FCC Remittance Advice Form (FCC Form 159) must be submitted before 6:00 p.m. ET on April 19, 2018, following the procedures outlined below and the instructions in Attachment B to this Public Notice. After completing its short-form application, an applicant will have access to an electronic version of the FCC Form 159. This Form 159 can be printed and the completed form must be sent by fax to FCC at (202) 418-2843.

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

55. Wire transfer payments must be received before 6:00 p.m. ET on April 19, 2018.<sup>69</sup> No other payment method is acceptable.<sup>70</sup> To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their bankers several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. The following information will be needed:

ABA Routing Number: 081000210  
Receiving Bank: U.S. Bank  
1005 Convention Plaza  
St. Louis, MO 63101

BENEFICIARY: FCC/Account # 152321044637  
Originating Bank Information (OBI Field): (Skip one space between each information item)  
“AUCTIONPAY”

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<sup>68</sup> In no event, however, will the FCC send auction registration materials to anyone other than the contact person listed on the applicant’s FCC Form 175 or respond to a request for replacement registration materials from anyone other than the authorized bidder, contact person, or certifying official listed on the applicant’s FCC Form 175. See Section III.D “Auction Registration,” below.

<sup>69</sup> An applicant must initiate the wire transfer through its bank, authorizing the bank to wire funds from the applicant’s account to the Commission’s auction payment lockbox bank.

<sup>70</sup> The Commission will not accept checks, credit cards, or automated clearing house (ACH) payments.

APPLICANT FCC REGISTRATION NUMBER (FRN): (same as FCC Form 159, block 21)  
PAYMENT TYPE CODE: (same as FCC Form 159, block 24A: "U099")  
FCC CODE 1: (same as FCC Form 159, block 28A: "99")  
PAYER NAME: (same as FCC Form 159, block 2)  
PAYER FCC REGISTRATION NUMBER (FRN): (If different from applicant FRN)

NOTE: The BNF Account Number is specific to the upfront payments for this auction. Do not use a BNF Account Number from a previous auction.

56. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must fax a completed FCC Form 159 (Revised 2/03) to the FCC (202) 418-2843. On the fax cover sheet, write "Wire Transfer – Auction Payment for Auction 99." In order to meet the upfront payment deadline, an applicant's payment must be credited to the Commission's account for Auction 99 before the deadline.<sup>71</sup>

57. Each applicant is responsible for ensuring timely submission of its upfront payment and for timely filing of an accurate and complete FCC Remittance Advice Form (FCC Form 159). An applicant should coordinate with its financial institution well ahead of the due date regarding its wire transfer and allow sufficient time for the transfer to be initiated and completed prior to the deadline. The Commission repeatedly has cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer.<sup>72</sup> **Each applicant also is responsible for obtaining confirmation from its financial institution that its wire transfer to U.S. Bank was successful and from Commission staff that its upfront payment was timely received and that it was deposited into the proper account.** To receive confirmation from Commission staff, contact Gail Glasser of the Office of Managing Director's Revenue & Receivables Operations Group/Auctions at (202) 418-0578, or alternatively, Theresa Meeks at (202) 418-2945.

58. Please note the following information regarding upfront payments:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction 99 go to an Account Number different from the Accounts used in previous FCC auctions.

59. Failure to deliver a sufficient upfront payment as instructed herein by the April 19, 2018, deadline will result in dismissal of the short-form application and disqualification from participation in the auction.

## 2. FCC Form 159

60. An accurate and complete FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be faxed to the FCC at (202) 418-2843 to accompany each upfront payment. Proper completion of this form is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment B. An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payers using the pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate.

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<sup>71</sup> Letter to Lee G. Petro, from Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, 25 FCC Rcd 9046 (Auc. Div. 2010).

<sup>72</sup> See, e.g., Letter to David G. O'Neil, Esq. from Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, 23 FCC Rcd 4765 (Auc. Div. 2008); Letter to Patrick Shannon, Esq., Counsel for Lynch 3G Communications Corp., from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 18 FCC Rcd 11552 (WTB 2003).

### 3. Upfront Payments and Bidding Eligibility

61. The Bureaus have delegated authority and discretion to determine appropriate upfront payments 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.<sup>73</sup> Upfront payments that are related to 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.<sup>74</sup>

62. Applicants that are former defaulters, as described above, must pay upfront payments 50 percent greater than non-former defaulters.<sup>75</sup> For purposes of this classification as a former defaulter or a former delinquent, defaults and delinquencies of the applicant itself and its controlling interests are included.<sup>76</sup>

63. Applicants must make upfront payments sufficient to obtain bidding eligibility on the construction permits on which they will bid. The Bureaus proposed, in the *Auction 99 Comment Public Notice*, that the amount of the upfront payment would determine a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids in any single round.<sup>77</sup> Under the Bureaus' proposal, in order to bid on a particular construction permit, otherwise qualified bidders that are designated in Attachment A of this Public Notice for that construction permit must have a current eligibility level that meets or exceeds the number of bidding units assigned to that construction permit. **At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits designated for that applicant in Attachment A of this Public Notice, or else the applicant will not be eligible to participate in the auction.** An applicant does not have to make an upfront payment to cover all construction permits designated for that applicant in Attachment A of this Public Notice, but only enough to cover the maximum number of bidding units that are associated with construction permits on which they wish to place bids and hold provisionally winning bids in any given round.<sup>78</sup> The total upfront payment does not affect the total dollar amount the bidder may bid on any given construction permit.

64. In the *Auction 99 Comment Public Notice*, the Bureaus proposed an upfront payment for each construction permit, taking into account various factors related to the efficiency of the auction process and the potential value of similar spectrum, and sought comment on this proposal. The Bureaus received no comments on the proposal that the upfront payment amount would determine a bidder's initial bidding eligibility, and this proposal is adopted. The specific upfront payment amounts and bidding units for each construction permit are set forth in Attachment A of this Public Notice.

65. In calculating its upfront payment amount, an applicant should determine the **maximum** number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on)

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<sup>73</sup> See *Auction Procedures Consolidation Order*, 12 FCC Rcd at 5697-98, para 16. See also *Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures*, WT Docket No. 97-82, Third Report and Order and Second Further Notice of Proposed Rule Making, 13 FCC Rcd 374, 425 para. 86 (1997) (*Part 1 Third Report and Order*); *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2377-79, paras. 169-75.

<sup>74</sup> See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2377-79, paras. 169-76.

<sup>75</sup> *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15316-18 paras. 40-43; see also 47 CFR § 1.2106(a); Section II.D "Provisions Regarding Former and Current Defaulters," above.

<sup>76</sup> For this purpose, the term "controlling interest" is defined in 47 CFR § 1.2105(a)(4)(i).

<sup>77</sup> *Auction 99 Comment Public Notice*, DA 18-91, at 9-10 paras. 24-25.

<sup>78</sup> Provisionally winning bids are bids that would become final winning bids if the auction were to close after the given round. See Section IV.B.4 "Provisionally Winning Bids," below.

in any single round, and submit an upfront payment amount covering that number of bidding units.<sup>79</sup> In order to make this calculation, an applicant should add together the bidding units for all construction permits on which it seeks to be active in any given round. **Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline.**

66. If an applicant is a former defaulter, it must calculate its upfront payment for all of its identified construction permits by multiplying the number of bidding units on which it wishes to be active by 1.5.<sup>80</sup> In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.<sup>81</sup>

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

67. At least one week before the beginning of bidding in the auction, the Bureaus will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants with submitted FCC Form 175 applications that are deemed timely filed, accurate, and substantially complete, provided that such applicants have timely submitted an upfront payment that is sufficient to qualify them to bid.

68. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID® tokens that will be required to place bids, the web address and instructions for accessing and logging in to the auction bidding system, an FCC assigned username (User ID) for each authorized bidder, and the Auction Bidder Line phone number.

69. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, if this mailing is not received by noon on Wednesday, May 9, 2018, call the Auctions Hotline at (717) 338-2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

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

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

71. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Only qualified bidders are permitted to bid. Each applicant should indicate its bidding preference — electronic or telephonic — on its FCC Form 175. In either case, each authorized

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<sup>79</sup> A qualified bidder's maximum eligibility will not exceed the sum of the bidding units associated with the total number of construction permits identified for that applicant in Attachment A of this Public Notice. In some cases, a qualified bidder's maximum eligibility may be less than the amount of its upfront payment because the qualified bidder has either previously been in default on a Commission construction permit or license or delinquent on non-tax debt owed to a Federal agency (*see* 47 CFR § 1.2106(a)), or has submitted an upfront payment that exceeds the total amount of bidding units associated with the construction permits designated for that bidder.

<sup>80</sup> 47 CFR § 1.2106(a).

<sup>81</sup> If a former defaulter fails to submit a sufficient upfront payment to establish eligibility to bid on at least one of the construction permits designated for that applicant in Attachment A of this Public Notice, the applicant will not be eligible to participate in the auction. *Broadcast First Report and Order*, 13 FCC Rcd at 15979-80 para. 153. This applicant will retain its status as an applicant in Auction 99 and will remain subject to 47 CFR §§ 1.2105(c) and 73.5002(d). *See Star Wireless, LLC*, Forfeiture Order, 19 FCC Rcd 18626, 18628 para. 4 & n.19 (EB 2004), *order granted in part sub nom, Star Wireless, LLC and Northeast Communications of Wisconsin, Inc.*, Order on Review, 22 FCC Rcd 8943 (2007), *petition for review denied, Star Wireless, LLC v. FCC*, 522 F.3d 469 (D.C. Cir. 2008).

bidder must have its own SecurID® token, which the Commission will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. **For security purposes, the SecurID® tokens, bidding system web address, FCC assigned username, and the telephonic bidding telephone number are only mailed to the contact person at the contact address listed on the FCC Form 175.** Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 99.

72. Please note that the SecurID® tokens can be recycled, and the Bureaus encourage bidders to return the tokens to the FCC. Pre-addressed envelopes will be provided to return the tokens once bidding has closed.

**F. Mock Auction – May 11, 2018**

73. All qualified bidders will be eligible to participate in a mock auction on Friday, May 11, 2018. The mock auction will enable bidders to become familiar with the FCC auction bidding system prior to the auction. The Bureaus strongly recommend that all bidders participate in the mock auction. Details will be announced by public notice.

**IV. AUCTION**

74. The first round of bidding for Auction 99 will begin on Tuesday, May 15, 2018. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released at least one week before the start of the auction.

**A. Auction Structure**

**1. Simultaneous Multiple Round Auction**

75. In the *Auction 99 Comment Public Notice*, the Bureaus proposed to auction all construction permits listed in Attachment A of this Public Notice in a single auction using the Commission's standard simultaneous multiple-round auction format.<sup>82</sup> This type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which qualified bidders may place bids on individual construction permits. The Bureaus received no comment on this proposal, and this proposal is adopted. Unless otherwise announced, bids will be accepted on all construction permits in each round of the auction until bidding stops on every construction permit.

**2. Eligibility and Activity Rules**

76. As discussed above, the Bureaus will use upfront payments to determine initial (maximum) bidding eligibility (as measured in bidding units) for Auction 99.<sup>83</sup> The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. As noted earlier, each construction permit is assigned a specific number of bidding units as listed in Attachment A. Bidding units assigned to each construction permit do not change as prices rise during the auction. Upfront payments are not attributed to specific construction permits. Rather, a bidder may place bids on any of the construction permits for which it is designated an applicant in Attachment A of this Public Notice as long as the total number of bidding units associated with those construction permits does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount and therefore 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. At a minimum, an applicant's upfront payment must cover the bidding units for at least one of the construction

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<sup>82</sup> *Auction 99 Comment Public Notice*, DA 18-91, at 7-8 para. 16.

<sup>83</sup> See Section III.C.3 "Upfront Payments and Bidding Eligibility," above.

permits for which it is designated an applicant in Attachment A of this Public Notice. The total upfront payment does not affect the total dollar amount a bidder may bid on any given construction permit. The Bureaus received no comments on the bidding eligibility proposals, and these proposals are adopted.

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

78. A bidder's activity level in a round is the sum of the bidding units associated with construction permits covered by the bidder's new bids in the current round and provisionally winning bids from the previous round.<sup>84</sup>

79. The Bureaus received no comments on the eligibility and activity rules proposal. Therefore, in order to ensure that the auction closes within a reasonable period of time, the Bureaus adopt the proposal with the following activity requirement: a bidder is required to be active on 100 percent of its current eligibility during each round of the auction. That is, a bidder must either place a bid or be a provisionally winning bidder during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.<sup>85</sup>

### 3. Activity Rule Waivers

80. In the *Auction 99 Comment Public Notice*, the Bureaus proposed that each bidder in the auction be provided with three activity rule waivers.<sup>86</sup> The Bureaus received no comments on this issue.

81. Therefore, the Bureaus adopt this proposal to provide bidders with three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's eligibility despite its activity in the current round being below the required minimum activity 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. 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.

82. 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.

83. 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.

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<sup>84</sup> Provisionally winning bids are bids that would become final winning bids if the auction were to close after the given round. See Section IV.B.4 "Provisionally Winning Bids," below.

<sup>85</sup> See Section IV.A.3 "Activity Rule Waivers," below.

<sup>86</sup> *Auction 99 Comment Public Notice*, DA 18-91, at 11 paras. 27-31.

84. Finally, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively were to apply 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, 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 are no new bids or a proactive waiver will not keep the auction open.

#### 4. Auction Stopping Rule

85. For Auction 99, the Bureaus proposed to employ a simultaneous stopping rule approach, which means all construction permits remain available for bidding until bidding stops on every construction permit.<sup>87</sup> Specifically, bidding will close on all construction permits after the first round in which no bidder submits any new bid or applies a proactive waiver.<sup>88</sup>

86. We also sought comment on alternative versions of the simultaneous stopping rule for Auction 99:

Option 1. The auction would close for all construction permits after the first round in which no bidder applies a waiver or places any new bid on a 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.

Option 2. The auction would close for all construction permits after the first round in which no bidder applies a proactive waiver or places any new bid on a construction permit that already has a provisionally winning bid. Thus, absent any other bidding activity, a bidder placing a new bid on an FCC-held construction permit (a construction permit that does not 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 by the Bureaus. If the Bureaus invoke this special stopping rule, they 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 bids or applies a waiver. 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 either lose bidding eligibility or use a waiver.

87. The Bureaus proposed 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.<sup>89</sup> Before exercising these options, the Bureaus are likely to attempt to change the pace of the auction. For example, the Bureaus may adjust the pace of bidding by changing the number of bidding rounds per day and/or the minimum acceptable bids.<sup>90</sup> The Bureaus proposed to retain the discretion to

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<sup>87</sup> *Auction 99 Comment Public Notice*, DA 18-91, at 8-9 paras. 20-22.

<sup>88</sup> Provisionally winning bids are bids that would become final winning bids if the auction were to close after the given round. See Section IV.B.4 "Provisionally Winning Bids," below. Proactive waivers are described in Section IV.A.3 "Activity Rule Waivers," above.

<sup>89</sup> *Auction 99 Comment Public Notice*, DA 18-91, at 9 para. 22.

<sup>90</sup> *Id.*

exercise any of these options with or without prior announcement during the auction.<sup>91</sup> The Bureaus received no comment on these proposals and adopt them for Auction 99.

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

88. In the *Auction 99 Comment Public Notice*, the Bureaus proposed that, by public notice and/or by announcement through the FCC auction bidding system, they may delay, suspend, or cancel bidding in the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding.<sup>92</sup> We received no comment on this issue.

89. Because this approach has proven effective in resolving exigent circumstances in previous auctions, the Bureaus adopt these proposals regarding auction delay, suspension, or cancellation. By public notice and/or by announcement through the FCC auction bidding system, we may delay, suspend, or cancel bidding in 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. In such cases, the Bureaus, in their sole discretion, may 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 the Bureaus to delay or suspend the auction. The Bureaus 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.

### **B. Bidding Procedures**

#### **1. Round Structure**

90. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released at least one week before the start of bidding in the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted each day.

91. In the *Auction 99 Comment Public Notice*, the Bureaus proposed 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. The Bureaus received no comment on these proposals, and adopt them for Auction 99. The Bureaus 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.

#### **2. Reserve Price and Minimum Opening Bids**

92. Section 309(j) of the Act calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when applications for FCC licenses or construction permits are subject to auction (i.e., because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest.<sup>93</sup> Consistent with this mandate, the Commission directed the Bureaus to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.<sup>94</sup> Among other factors, we must consider the amount of spectrum being auctioned, levels of incumbency, the availability

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<sup>91</sup> *Id.*

<sup>92</sup> See *Auction Procedures Consolidation Order*, 12 FCC Rcd at 5697-98, para. 16. See also *Part 1 Third Report and Order*, 13 FCC Rcd at 425 para. 86; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2377-79, paras. 169-76.

<sup>93</sup> 47 U.S.C. § 309(j)(4)(F).

<sup>94</sup> *Part 1 Third Report and Order*, 13 FCC Rcd at 455-56 para 141.

of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on the spectrum being auctioned.<sup>95</sup> The Commission concluded that the Bureaus should have the discretion to employ either or both of these mechanisms for future auctions.<sup>96</sup>

93. In the *Auction 99 Comment Public Notice*, the Bureaus did not propose to establish reserve prices for the construction permits listed in Attachment A.<sup>97</sup> This is consistent with policy applied in earlier broadcast spectrum auctions. The Bureaus did not receive comment on this proposal, and adopt it.

94. Consistent with a statutory mandate and Commission delegation of authority,<sup>98</sup> the Bureaus in the *Auction 99 Comment Public Notice*, however, sought comment on specifically proposed minimum opening amounts for each construction permit listed in Attachment A to this Public Notice, reasoning that a minimum opening bid, which has been used in other auctions, is an effective tool for accelerating the competitive bidding process.<sup>99</sup> Specifically, a minimum opening bid was proposed for each construction permit by taking into account various factors relating to the efficiency of the auction and the potential value of the spectrum, including the type of service and class of facility offered, market size, population covered by the proposed broadcast facility, industry cash flow data, and recent broadcast transactions.

95. The Bureaus received no comments on the proposed minimum opening bids, and therefore the Bureaus adopt the minimum opening bid amounts proposed in the *Auction 99 Comment Public Notice*. The specific minimum opening bid amounts for each of the construction permits are again specified in Attachment A to this Public Notice.

### 3. Bid Amounts

96. In the *Auction 99 Comment Public Notice*, the Bureaus proposed 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.<sup>100</sup> Under the proposal, the FCC auction bidding system interface will list the nine acceptable bid amounts for each construction permit. The Bureaus received no comments on this proposal; therefore, it is adopted.

97. In the *Auction 99 Comment Public Notice*, in calculating the first of the acceptable bid amounts, the Bureaus proposed to use a *minimum acceptable bid increment 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 eight additional acceptable bid amounts, the Bureaus proposed in the *Auction 99 Comment Public Notice*, to use an *additional bid increment percentage* of 5 percent. We did not receive any comments on these proposals to use 10 and 5 percent respectively in our calculation of nine acceptable bid amounts for each construction permit. Our experience in previous broadcast auctions assures us that a minimum acceptable

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

<sup>96</sup> *Id.*

<sup>97</sup> *Auction 99 Comment Public Notice*, DA 18-91, at 11-12 paras. 32-36. Normally, a reserve price is an absolute minimum price below which a construction permit or license will not be sold in a specific auction. A minimum opening bid, in contrast, is the minimum bid price set at the beginning of the auction below which no bids are accepted.

<sup>98</sup> 47 U.S.C. § 309(j)(4)(F); see *Part 1 Third Report and Order*, 13 FCC Rcd at 455-56 para. 141.

<sup>99</sup> *Auction 99 Comment Public Notice*, DA 18-91, at 11-12, paras. 32-36.

<sup>100</sup> See 47 U.S.C. § 309(j)(4)(F); 47 CFR § 1.2104(d) (minimum bid increments, minimum opening bids and maximum bid increments). A bidder must have sufficient eligibility to place a bid on the particular construction permit. See Section III.C.3 “Upfront Payments and Bidding Eligibility,” above.

bid increment percentage of 10 percent and an additional bid increment percentage of 5 percent are sufficient to ensure active bidding. Therefore, we will begin the auction with a minimum acceptable bid increment percentage of 10 percent and an additional bid increment percentage of 5 percent.

98. In Auction 99, 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 calculated by multiplying the provisionally winning bid amount by one plus the minimum acceptable bid percentage—i.e., provisionally winning bid amount \* 1.10, rounded.<sup>101</sup>

99. In Auction 99, the FCC auction bidding system will calculate the eight additional bid amounts by multiplying the minimum acceptable bid amount by the additional bid increment percentage of 5 percent, and that result (rounded<sup>102</sup>) 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. Because the additional bid increment percentage is 5 percent, 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.

100. The Bureaus proposed to retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the additional bid increment percentage, and the number of acceptable bid amounts if the Bureaus determine that circumstances so dictate, consistent with past practice.<sup>103</sup> Further, the Bureaus proposed to retain the discretion to do so on a construction permit-by-construction permit basis. The Bureaus also proposed 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, the Bureaus could set a \$1,000 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 \$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.

101. The Bureaus did not receive any comments on their proposals to retain the discretion to change bid amounts as described above if they determine that circumstances so dictate. The Bureaus adopt these proposals. If we exercise this discretion, we will alert bidders by announcement in the FCC auction bidding system during the auction.

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<sup>101</sup> Under 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 \$1000 are rounded to the nearest \$10.

<sup>102</sup> See note 101 (concerning rounding), above.

<sup>103</sup> See, e.g., *Auction 98 Procedures Public Notice*, 30 FCC Rcd at 3588 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.").

#### 4. Provisionally Winning Bids

102. Consistent with practice in past auctions,<sup>104</sup> the FCC auction bidding system at the end of each bidding round will determine a *provisionally 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.

103. In the *Auction 99 Comment Public Notice*, the Bureaus proposed to use a pseudo-random number generator to select a single provisionally winning bid in the event of identical high bid amounts being submitted on a construction permit in a given round (i.e., tied bids).<sup>105</sup> No comments were received on this proposal. Hence, the Bureaus adopt this tied bids proposal.

104. Accordingly, the FCC auction bidding system will assign a pseudo-random number to each bid upon submission. 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.

105. A provisionally winning bid will be retained until there is a higher bid on the construction permit at the close of a subsequent round. As a reminder, provisionally winning bids count toward activity for purposes of the activity rule.<sup>106</sup>

#### 5. Bidding

106. All bidding will take place remotely either through the FCC auction bidding system or by telephonic bidding. There will be no on-site bidding during Auction 99. Please note that telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of ten minutes.

107. An Auction 99 bidder's ability to bid on specific construction permits is determined by two factors: (1) the construction permits designated for that applicant in Attachment A of this Public Notice and (2) the bidder's eligibility. The bid submission screens will allow bidders to submit bids on only those construction permits designated for that applicant in Attachment A of this Public Notice.

108. In order to access the bidding function of the FCC auction bidding system, bidders must be logged in during the bidding round using the passcode generated by the SecurID<sup>®</sup> token and a personal identification number ("PIN") created by the bidder. Bidders are strongly encouraged to print a *round summary* for each round after they have completed all of their activity for that round.

109. In each round, eligible bidders will be able to place bids on a given construction permit in any of up to nine pre-defined bid amounts.<sup>107</sup> For each construction permit, the FCC auction bidding system will list the acceptable bid amounts in a drop-down box.<sup>108</sup> Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC auction bidding system also includes an *upload* function that allows text files containing bid information to be uploaded.

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<sup>104</sup> See, e.g., *Auction 98 Comment Public Notice*, 30 FCC Rcd at 1764-65 para. 37.

<sup>105</sup> *Auction 99 Comment Public Notice*, DA 18-91, 13-14, para. 43.

<sup>106</sup> See Section IV.A.2 "Eligibility and Activity Rules," above.

<sup>107</sup> A bidder must have sufficient eligibility to place a bid on the particular construction permit. See Section III.C.3 "Upfront Payments and Bidding Eligibility," above.

<sup>108</sup> See Section IV.B.3 "Bid Amounts," above.

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

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

## **6. Bid Removal and Bid Withdrawal**

112. In the *Auction 99 Comment Public Notice*, the Bureaus explained bid removal procedures in the FCC auction bidding system.<sup>109</sup> Each qualified bidder has the option of removing any bids placed in a round provided that such bids are removed before the close of that bidding round. By removing a bid within a round, a bidder effectively “unsubmits” the bid. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity because a removed bid no longer counts toward bidding activity for the round. Once a round closes, a bidder may no longer remove a bid.

113. In the *Auction 99 Comment Public Notice*, the Bureaus proposed to prohibit bidders from withdrawing any bid after close of the round in which that bid was placed.<sup>110</sup> This proposal was made in recognition of the site-specific nature and wide geographic dispersion of the permits available in this auction, as well as the experience of the Bureaus with past auctions of broadcast construction permits. The Bureaus received no comments on this issue of bid withdrawal. Accordingly, the Bureaus will prohibit bid withdrawals in Auction 99. Bidders are cautioned to select bid amounts carefully because no bid withdrawals will be allowed, even if a bid was mistakenly or erroneously made.

## **7. Round Results**

114. Reports reflecting bidders' identities for Auction 99 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

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

## **8. Auction Announcements**

116. The Commission will use auction announcements to report necessary information such as schedule changes. All auction announcements will be available by clicking a link in the FCC auction bidding system.

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<sup>109</sup> *Auction 99 Comment Public Notice*, DA 18-91, at 14-15 para. 45-48.

<sup>110</sup> *Id.*

## V. POST-AUCTION PROCEDURES

117. Shortly after bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, final payments, and the long-form applications (FCC Forms 349).

### A. Down Payments

118. Within ten business days after release of the auction closing public notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 99 to twenty percent of the net amount of its winning bids (gross bids less any applicable new entrant bidding credits).<sup>111</sup>

### B. Final Payments

119. Each winning bidder will be required to submit the balance of the net amount for each of its winning bids within ten business days after the applicable deadline for submitting down payments.<sup>112</sup>

### C. Long-Form Application (FCC Form 349)

120. The Commission's rules currently provide that within thirty days following the close of bidding and notification to the winning bidders, unless a longer period is specified by public notice,<sup>113</sup> winning bidders must electronically submit a properly completed long-form application (FCC Form 349, Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station) and required exhibits for each construction permit won through Auction 99.<sup>114</sup> Winning bidders claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit.<sup>115</sup> Further instructions on these and other filing requirements will be provided to winning bidders in the auction closing public notice.

### D. Default and Disqualification

121. Any winning bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment by the specified deadline, fails to submit a timely long-form application, fails to make a full and timely final payment, or is otherwise disqualified) is liable for default payments as described in section 1.2104(g)(2).<sup>116</sup> This payment consists of a deficiency payment, equal to the difference between the amount of the Auction 99 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.

122. The percentage of the applicable bid to be assessed as an additional payment for defaults in a particular auction is established in advance of the auction. Accordingly, in the *Auction 99 Comment Public Notice*, the Bureaus proposed to set the additional default payment for this auction at 20 percent of the applicable bid. We received no comments on this proposal, and it is therefore adopted.

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<sup>111</sup> 47 CFR § 1.2107(b).

<sup>112</sup> 47 CFR § 1.2109(a); 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, 907-09 paras. 43-46 (2006).

<sup>113</sup> 47 CFR § 73.5005(a).

<sup>114</sup> The Commission's rules also provide that a winning bidder in a commercial broadcast spectrum auction is required to submit an application filing fee with its post-auction long-form application. See 47 CFR § 1.2107(c).

<sup>115</sup> 47 CFR §§ 1.2110(j) and 73.5005; see also 47 CFR § 1.2112(b)(2).

<sup>116</sup> 47 CFR § 1.2104(g)(2).

123. Finally, in the event of a default, the Commission has the discretion to re-auction the construction permit or offer it to the next highest bidder (in descending order) at its final bid amount.<sup>117</sup> In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing authorizations held by the applicant.<sup>118</sup>

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

124. All refunds of upfront payment balances will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. Bidders are encouraged to use the **Refund Information** icon found on the *Auction Application Manager* page or the **Refund Form** link available on the *Auction Application Submit Confirmation* page in the FCC auction application system to access the form. After the required information is completed on the blank form, the form should be printed, signed, and submitted to the Commission by mail or fax as instructed below.

125. If you have elected not to access the Refund Form through the Auction Application Manager page, the Commission is requesting that all information listed below be supplied in writing.

Name, address, contact and phone number of Bank  
ABA Number  
Account Number to Credit  
Name of Account Holder  
FCC Registration Number (FRN)

The refund request must be submitted by fax to the Revenue & Receivables Operations Group/Auctions at (202) 418-2843 or by mail to:

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

NOTE: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Gail Glasser at (202) 418-0578 or Theresa Meeks at (202) 418-2945.

## VI. SUPPLEMENTAL FINAL REGULATORY FLEXIBILITY ANALYSIS

126. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>119</sup> the Commission prepared Initial Regulatory Flexibility Analyses (IRFAs) in connection with *Implementation of Section 309(j) of the Communications Act—Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, Notice of Proposed Rulemaking* and other Commission orders (collectively, “*Broadcast Competitive Bidding NPRMs*”) pursuant to which Auction 99 will be conducted.<sup>120</sup> Final Regulatory Flexibility Analyses (FRFAs) were likewise prepared in the *Broadcast*

<sup>117</sup> 47 CFR §§ 1.2109(b) and (c).

<sup>118</sup> 47 CFR § 1.2109(d).

<sup>119</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>120</sup> See *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*); *Implementation of the Commercial* (continued....)

*First Report and Order* and other Commission orders (collectively, “*Broadcast Competitive Bidding Orders*”) pursuant to which Auction 99 will be conducted.<sup>121</sup> In this proceeding, a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) was incorporated in the *Auction 99 Comment Public Notice*.<sup>122</sup> The Commission sought written public comment on the proposals in *Auction 99 Comment Public Notice*, including comments on the Supplemental IRFA. This Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) supplements the FRFAs in the *Broadcast Competitive Bidding Orders* to reflect the actions taken in this Public Notice and conforms to the RFA.

127. *Need for, and Objectives of, the Public Notice.* The *Auction 99 Procedures Public Notice* implements competitive bidding rules adopted by the Commission in multiple notice-and-comment rulemaking proceedings,<sup>123</sup> as well as establishes additional procedures to be used by the Bureaus, on delegated authority, for competitive bidding in AM Revitalization / FM Translator Auction 99 for up to 12 specified cross-service FM translator construction permits. More specifically, the *Auction 99 Procedures Public Notice* provides an overview of the procedures, terms and conditions governing Auction 99 and the post-auction application and payment processes, as well as setting the minimum opening bid amount for each of the Auction 99 construction permits.

128. To promote the efficient and fair administration of the competitive bidding process for all Auction 99 participants, the Bureaus in the *Auction 99 Procedures Public Notice* announced the following policies: (1) Application of the current rules prohibiting certain communications between auction applicants and the related prohibition on joint bidding arrangements to implement the Bureaus’ prior decision to allow eligible AM licensees having any of the same controlling interests in common to file separate Forms 175, rather than restricting those licensees to a single Form 175; (2) Use of a simultaneous multiple-round auction format, consisting of sequential bidding rounds with a simultaneous stopping

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*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*); and *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*).

<sup>121</sup> See *Broadcast First Report and Order*, 13 FCC Rcd at 16015-27 Appendix B; *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.

<sup>122</sup> *Auction of Cross-Service FM Translator Construction Permits Scheduled for May 15, 2018; Comment Sought on Competitive Bidding Procedures for Auction 99*, AU Docket No. 17-143, Public Notice, DA 18-91 (WTB/MB 2018) (*Auction 99 Comment Public Notice*). A summary of this public notice was published at 83 Fed. Reg. 6141 (Feb. 13, 2018).

<sup>123</sup> See, e.g., *Updating Part 1 Competitive Bidding Rules*, Report and Order, Order on Reconsideration of the First Report and Order, Third Order on Reconsideration of the Second Report and Order, Third Report and Order, 30 FCC Rcd 7493 (2015) (modified by Erratum, DA 15-959 (rel. Aug. 25, 2015)); *Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures*, WT Docket No. 97-82, Order, Memorandum Opinion and Order and Notice of Proposed Rule Making, 12 FCC Rcd 5686 (1997); Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making, 15 FCC Rcd 15293 (2000) (modified by Erratum, DA 00-2475 (rel. Nov. 3, 2000)); Seventh Report and Order, 16 FCC Rcd 17546 (2001); Eighth Report and Order, 17 FCC Rcd 2962 (2002); Second Order on Reconsideration of the Third Report and Order and Order on Reconsideration of the Fifth Report and Order, 18 FCC Rcd 10180 (2003); Second Order on Reconsideration of the Fifth Report and Order, 20 FCC Rcd 1942 (2005); 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 (1998), *on recon.*, Memorandum Opinion and Order, 14 FCC Rcd 8724, *on further recon.*, Memorandum Opinion and Order, 14 FCC Rcd 12541 (1999); *Reexamination of the Comparative Standard for Noncommercial Educational Applicants*, Second Report and Order, 18 FCC Rcd 6691 (2003); Memorandum Opinion and Third Order on Reconsideration, 23 FCC Rcd 17423 (2008).

procedure (with discretion by the Bureaus to exercise alternative stopping rules under certain circumstances); (3) A specific minimum opening bid amount for each construction permit available in Auction 99; (4) A specific upfront payment amount for each construction permit; (5) Use 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; (6) Use of an activity requirement so that bidders must bid actively during the auction rather than waiting until late in the auction before participating; (7) A single stage auction in which a bidder is required to be active on 100 percent of its bidding eligibility in each round of the auction; (8) Provision of three activity waivers for each qualified bidder to allow it to preserve bidding eligibility during the course of the auction; (9) Use of minimum acceptable bid amounts and additional acceptable increments, along with a proposed methodology for calculating such amounts, with the Bureaus retaining discretion to change their methodology if circumstances dictate; (10) A procedure for breaking ties if identical high bid amounts are submitted on one permit in a given round; (11) Bid removal procedures; (12) A prohibition on bid withdrawals in Auction 99; and (13) Establishment of an additional default payment of 20 percent under 47 CFR 1.2104(g)(2) in the event that a winning bidder defaults or is disqualified after the auction.

129. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* There were no comments filed that addressed the procedures and policies proposed in the Supplemental IFRA.

130. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.* Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comment filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed procedures as a result of those comments.<sup>124</sup> The Chief Counsel did not file any comments in response to the proposed procedures in the *Auction 99 Comment Public Notice*.

131. *Description and Estimate of the Number of Small Entities to Which the Proposed Procedures Will Apply.* 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 rules adopted herein.<sup>125</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>126</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>127</sup> 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.<sup>128</sup>

132. Auction 99 is a "closed" auction; therefore the specific competitive bidding procedures and minimum opening bid amounts described in the *Auction 99 Procedures Public Notice* will affect only the 26 individuals or entities listed in Attachment A to this Public Notice who are the only parties eligible to complete the remaining steps to become qualified to bid in this auction.<sup>129</sup> The 26 eligible individuals or entities for Auction 99 include firms of all sizes.

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<sup>124</sup> 5 U.S.C. § 604(a)(3).

<sup>125</sup> 5 U.S.C. § 604(a)(3).

<sup>126</sup> 5 U.S.C. § 601(6).

<sup>127</sup> 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."

<sup>128</sup> 15 U.S.C. § 632.

<sup>129</sup> *Auction 99 Comment Public Notice*, DA 18-91 (WTB/MB Jan. 31, 2018).

133. *Radio Stations.* This Economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.”<sup>130</sup> The SBA has established a small business size standard for this category as firms having \$38.5 million or less in annual receipts.<sup>131</sup> Economic Census data for 2012 shows that 2,849 radio station firms operated during that year.<sup>132</sup> Of that number, 2,806 firms operated with annual receipts of less than \$25 million per year, 17 with annual receipts between \$25 million and \$49,999,999 and 26 with annual receipts of \$50 million or more.<sup>133</sup> Therefore, based on the SBA’s size standard the majority of such entities are small entities.

134. According to Commission staff review of the BIA/Kelsey, LLC’s Media Access Pro Radio Database as of January 30, 2018, about 11,261 (or about 99.92 percent) of 11,270 commercial radio stations had revenues of \$38.5 million or less and thus qualify as small entities under the SBA definition.<sup>134</sup> We note however, that the SBA size standard data does not enable the Bureaus to make a meaningful estimate of the number of small entities who may participate in Auction 99. There are a maximum of 26 entities that may become qualified bidders in Auction 99, in which applicant eligibility is closed. The specific procedures and minimum opening bid amounts announced in the *Auction 99 Procedures Public Notice* will affect directly all applicants participating in Auction 99.

135. We also note that we are unable to accurately develop an estimate of how many of these 26 entities 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). Potential eligible bidders in Auction 99 may include existing holders of broadcast station construction permits or licenses. In 2013, the Commission estimated that 97 percent of radio broadcasters met the SBA’s prior definition of small business concern, based on annual revenues of \$7 million.<sup>135</sup> The SBA has since increased that revenue threshold to \$38.5 million, which suggests that an even greater percentage of radio broadcasters would fall within the SBA’s definition.<sup>136</sup> Based on Commission staff review of the BIA/Kelsey, LLC’s Media Access Pro Radio Database, 4,635 (99.94%) of 4,638 AM radio stations have revenue of \$38.5 million or less.<sup>137</sup> Accordingly, based on this data, the Bureaus conclude that the majority of Auction 99 eligible bidders will likely meet the SBA’s definition of a small business concern.<sup>138</sup>

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<sup>130</sup>U.S. Census Bureau, 2017 NAICS Definitions, “515112 Radio Stations,” <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=515112&search=2017+NAICS+Search&search=2017>.

<sup>131</sup> 13 CFR § 121.201; NAICS code 515112.

<sup>132</sup> U.S. Census Bureau, Table No. EC0751SSSZ4, *Information: Subject Series – Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* NAICS Code 515112, [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ4//naics~515112](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4//naics~515112).

<sup>133</sup> *Id.*

<sup>134</sup> BIA/Kelsey, MEDIA Access Pro Database (viewed Jan. 26, 2018).

<sup>135</sup> *Revitalization of the AM Service*, Notice of Proposed Rule Making, 28 FCC Rcd 15221, 15247 para. 6 (2013).

<sup>136</sup> 13 CFR § 121.201; NAICS code 515112.

<sup>137</sup> BIA/Kelsey, MEDIA Access Pro Database (viewed Jan. 26, 2018).

<sup>138</sup> In assessing whether a business entity qualifies as “small” under the above definition, business control affiliations must be included. The Bureaus’ 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 that the entity be independently owned and operated. The estimate of small businesses to which 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 (continued....)

136. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* In the *Auction 99 Procedures Public Notice*, the Bureaus adopted no new reporting, recordkeeping or other compliance requirements for small entities or other auction applicants. The Commission has designed the auction application process itself to minimize reporting and compliance requirements for applicants, including small business applicants. In the first part of the Commission's two-phased auction application process, parties desiring to participate in an auction file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on an applicant's short-form application and certifications, as well as its upfront payment. The Public Notice provides instructions for each Auction 99 applicant to maintain the accuracy of their previously filed short-form applications electronically using the FCC auction application system and/or by direct communication with the Auctions and Spectrum Access Division. More specifically as mentioned above, small entities and other Auction 99 applicants will be qualified to bid in the auction only if they comply with the following: (1) submission of a short-form application that is timely and is found to be substantially complete, and (2) timely submission of a sufficient upfront payment for at least one of the permits for which it is designated as an applicant on Attachment A to this Public Notice. The timely submitted payment must be accompanied by a complete and accurate FCC Remittance Advice Form (FCC Form 159), and made by 6:00 p.m. ET on April 19, 2018, following the procedures and instructions set forth in Attachment B to this Public Notice. An applicant whose application is found to contain deficiencies will have a limited opportunity to bring their application into compliance with the Commission's competitive bidding rules during a resubmission window.<sup>139</sup> All qualified bidders will automatically be registered for the auction and mailed the necessary registration materials.

137. In the second phase of the process, there are additional compliance requirements for winning bidders. As with other winning bidders, any small entity that is a winning bidder will be required to comply with the following: (1) within 10 business days of release of the auction closing public notice submit as a down payment sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 99 to twenty percent of the net amount of its winning bids; (2) within 10 business days after the down payment deadline submit the balance of the net amount for each of its winning bids; and (3) within thirty days following the close of bidding and notification to the winning bidders, unless a longer period is specified by public notice, electronically submit a properly completed long-form application (FCC Form 349, Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station) and required exhibits for each construction permit won through Auction 99. Winning bidders claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit.

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that would establish whether a specific radio station is dominant in its field of operation. In addition, the Bureaus note that it is difficult at times to assess these criteria in the context of media entities and therefore our estimates of small businesses to which they apply may be over-inclusive to this extent.

<sup>139</sup> The resubmission window dates will be announced in a future public notice.

138. *Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* 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.<sup>140</sup>

139. The Bureaus believe that the steps described below to facilitate participation in Auction 99 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 adopted for Auction 99 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 processes and systems that will be utilized in Auction 99. During the auction, participants will be able to access and participate in the auction via the Internet using a web-based system, or telephonically, providing two cost effective methods of participation 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 hotlines for assistance with auction processes and procedures as well as technical support hotlines 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 will have access to various other sources of information and databases through the Commission that will aid in both their understanding and participation in the process. These steps coupled with the advanced communication of the bidding procedures "rules of the road" in Auction 99 should ensure that the auction will be administered efficiently and fairly, with certainty for small entities as well as other auction participants.

140. *Report to Congress.* The Commission will send a copy of the *Auctions 99 Procedures Public Notice*, including this Supplemental FRFA, in a report to Congress pursuant to the Congressional Review Act.<sup>141</sup> In addition, the Commission will send a copy of the *Auctions 99 Procedures Public Notice*, including and this Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Auctions 99 Procedures Public Notice* (or summaries thereof) will also be published in the Federal Register.<sup>142</sup>

## VII. CONTACT INFORMATION

141. Contact Information Table:

### General Auction 99 Information

General Auction Questions  
Auction Process and Procedures

### FCC Auctions Hotline

(888) 225-5322, option two; or  
(717) 338-2868  
Hours of service: 8:00 a.m. – 5:30 p.m. ET,  
Monday through Friday

### Auction 99 Legal Information

Auction Rules, Policies, Regulations, including  
Reports of Section 1.2105(c) Violations and  
Application Major Modifications

### Auctions and Spectrum Access Division

**(202) 418-0660**  
Lynne Milne (Attorney)

<sup>140</sup> 5 U.S.C. § 603(c)(1)-(4).

<sup>141</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>142</sup> 5 U.S.C. § 604(b).

**Licensing Information**

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

**Technical Support**

Electronic Filing  
FCC Auction System (Hardware/Software Issues)

**Payment Information**

Wire Transfers  
Refunds

**Auction Bidder Line****Press Information****FCC Forms****Accessible Formats**

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

**Small Businesses**

Additional information for small and disadvantaged  
businesses

**FCC Internet Sites****Audio Division (202) 418-2700**

Lisa Scanlan (Attorney)  
Tom Nessinger (Attorney)  
James Bradshaw (Engineer)

**FCC Auctions Technical Support Hotline**

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

**FCC Revenue & Receivables Operations  
Group/Auctions**

Gail Glasser at (202) 418-0578, or alternatively,  
Theresa Meeks at (202) 418-2945, or  
(202) 418-2843 (fax)

Will be furnished only to qualified bidders

Cecilia Sulhoff (202) 418-0587

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

**Consumer and Governmental Affairs Bureau**

(202) 418-0530 or (202) 418-0432 (TTY)  
[fcc504@fcc.gov](mailto:fcc504@fcc.gov)

**Office of Communications Business**

**Opportunities**  
(202) 418-0990  
[www.fcc.gov/ocbo](http://www.fcc.gov/ocbo)

[www.fcc.gov](http://www.fcc.gov)  
[www.fcc.gov/auction/99](http://www.fcc.gov/auction/99)  
[www.fcc.gov/mb](http://www.fcc.gov/mb)

**ATTACHMENT A**

**Auction 99 – Construction Permits To Be Auctioned**

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

## ATTACHMENT B

**Auction-Specific Instructions for  
FCC Remittance Advice (FCC Form 159-February 2003 Edition)**

**Upfront Payments**

The following information supplements the standard instructions for FCC Form 159 (Revised 2/03), and is provided to help ensure correct completion of FCC Form 159 for upfront payments for Auction 99. Applicants need to complete FCC Form 159 carefully, because:

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

Therefore, appropriate cross-references between the FCC Form 159 Remittance Advice and the short-form application (FCC Form 175) are described below:

| <b>Block<br/>Number</b> | <b>Required Information</b>   |
|-------------------------|---|
| 1                       | LOCKBOX # - Enter "Leave Blank"   |
| 2                       | Payer Name - Enter the name of the person or company making the payment. If the applicant itself is the payer, this entry would be the same as FCC Form 175.  |
| 3                       | Total Amount Paid - Enter the amount of the upfront payment associated with the FCC Form 159 (Revised 2/03).  |
| 4-8                     | Street Address, City, State, ZIP Code - Enter the street mailing address ( <b>not Post Office box number</b> ) where mail should be sent to the payer. If the applicant is the payer, these entries would be the same as FCC Form 175 from the Applicant Information section. |
| 9                       | Daytime Telephone Number - Enter the telephone number of a person knowledgeable about this upfront payment.   |
| 10                      | Country Code - For addresses outside the United States, enter the appropriate postal country code (available from the Mailing Requirements Department of the U.S. Postal Service).  |
| 11                      | Payer FRN - Enter the payer's ten-digit FCC Registration Number ("FRN") registered in the Commission Registration System ("CORES").   |
| 21                      | Applicant FRN (Complete only if applicant is different than payer.) – Enter the applicant's ten-digit FRN registered in CORES.  |
| 24A                     | Payment Type Code - Enter "U099"  |
| 25A                     | Quantity - Enter the number "1"   |
| 26A                     | Fee Due - Amount of Upfront Payment   |
| 27A                     | Total Fee - Will be the same amount as 26A.   |
| 28A                     | FCC Code 1 - Enter the number "99" (indicating Auction 99).   |

## NOTES:

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

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

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