

Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418-1359 or via the Internet at [pl Laurenz@fcc.gov](mailto:pl Laurenz@fcc.gov).

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060-0810.

*OMB Approval Date:* 05/23/2003.

*Expiration Date:* 05/31/2006.

*Title:* Procedures for Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended.

*Form No.:* N/A.

*Estimated Annual Burden:* 100 responses; 6,200 total annual hours; 62 hours per respondent.

*Needs and Uses:* 47 U.S.C. 214(e)(6) states that a telecommunications carrier that is not subject to the jurisdiction of a state may request that the Commission determine whether it is eligible. The Commission must evaluate whether such telecommunications carriers meet the eligibility criteria set forth in the Act. In this Order, the Commission concludes that petitions for designation filed under section 214(e)(6) relating to "near reservation" areas will not be considered as petitions relating to tribal lands and as a result, petitioners seeking ETC designation in such areas must follow the procedures out-lined in the Twelfth Report and Order for non-tribal lands prior to submitting a request for designation to this Commission under section 214(e)(6).

*OMB Control No.:* 3060-0514.

*OMB Approval Date:* 05/20/2003.

*Expiration Date:* 05/31/2006.

*Title:* Section 43.21 (b)—Holding Company Annual Report.

*Form No.:* N/A.

*Estimated Annual Burden:* 20 responses; 20 total annual hours; 1 hour per respondent.

*Needs and Uses:* The SEC 10K form is needed from holding companies of communications common carriers to provide the Commission with the data required to fulfill its regulatory responsibilities and by the public in analyzing the industry. Selected information is compiled and published in the Commission's annual common carrier statistical publication.

*OMB Control No.:* 3060-0400.

*OMB Approval Date:* 05/20/2003.

*Expiration Date:* 05/31/2006.

*Title:* Tariff Review Plan.

*Form No.:* N/A.

*Estimated Annual Burden:* 41 responses; 2,501 total annual hours; 61 hours per respondent.

*Needs and Uses:* Certain local exchange carriers are required annually to submit Tariff Review Plan in partial fulfillment of cost support material required by 47 CFR part 61. The

information used by FCC and the public to determine the justness and reasonableness of rates, terms and conditions in tariffs as required by the Communications Act of 1934, as amended.

*OMB Control No.:* 3060-0894.

*OMB Approval date:* 05/09/2003.

*Expiration Date:* 05/31/2006.

*Title:* Certification Letter Accounting for Receipt of Federal Support—CC Docket Nos. 96-45 and 96-262.

*Form No.:* N/A.

*Estimated Annual Burden:* 51 responses; 153 total annual hours; 3 hours per respondent.

*Needs and Uses:* The Commission requires states to certify that carriers within the state had accounted for its receipt of federal support in its rates or otherwise used the support pursuant with Section 254 (e).

*OMB Control No.:* 3060-0755.

*OMB Approval Date:* 05/09/2003.

*Expiration Date:* 05/31/2006.

*Title:* 47 CFR Sections 59.1-59.4—Infrastructure Sharing.

*Form No.:* N/A.

*Estimated Annual Burden:* 1,425 responses; 2,325 total annual hours; 1-2 hours per respondent.

*Needs and Uses:* In CC Docket No. 96-237, the Commission implemented the infrastructure sharing provisions of the Communications Act of 1934, as added by the Telecommunications Act of 1996. Section 259 requires incumbent LECs to file any arrangements showing the conditions under which they share infrastructure per section 259. Section 259 also requires incumbent LECs to provide information on deployments of new services and equipment to qualifying carriers. The Commission also requires incumbent LECs to provide 60 day notices prior to terminating section 259 agreements.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

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**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC-03-54-B (Auction No. 54); DA 03-1547]

### Closed Broadcast Auction No. 54 Construction Permits for New Broadcast Stations Scheduled for July 23, 2003; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the procedures, minimum opening bids, and revised inventory for the upcoming auction of construction permits for new full power television (TV), low power television (LPTV), and FM broadcast stations ("Auction No. 54") scheduled for July 23, 2003. This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for this auction.

**DATES:** Auction No. 54 is scheduled to begin on July 23, 2003.

**FOR FURTHER INFORMATION CONTACT:**

Auctions and Industry Analysis Division: Kenneth Burnley, Legal Branch at (202) 418-0660; Lyle Ishida, Operations Branch at (202) 418-0660 or Linda Sanderson, Operations Branch at (717) 338-2888. Audio Division: Lisa Scanlan at (202) 418-2700. Video Division: Shaun Maher at (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction No. 54 Procedures Public Notice* released on May 12, 2003. The complete text of the *Auction No. 54 Procedures Public Notice*, including attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC, 20554. The *Auction No. 54 Procedures Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com). This document is also available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/54/>.

## I. General Information

### A. Introduction

1. The *Auction No. 54 Procedures Public Notice* announces the procedures and minimum opening bids for the upcoming auction of construction permits for new full power television (TV), low power television (LPTV), and FM broadcast stations ("Auction No. 54"), scheduled for July 23, 2003. On April 11, 2003, in accordance with the Balanced Budget Act of 1997, the Media Bureau ("MB") and the Wireless Telecommunications Bureau ("WTB") (collectively, the "Bureaus") released the *Auction No. 54 Comment Public Notice*, 68 FR 19816 (April 22, 2003), seeking comment on the establishment of reserve prices and/or minimum opening bids and other procedures for

Auction No. 54. The Bureaus received no comments in response to the *Auction No. 54 Comment Public Notice*.

i. Construction Permits To Be Auctioned

2. Auction No. 54 will include construction permits for one TV, two LPTV, and four FM broadcast stations. These broadcast stations are the subject of pending, mutually exclusive FCC Form 301 or Form 346 applications for construction permits for the referenced broadcast services, for which the Commission has not approved a settlement agreement that obviates the need for an auction. Pursuant to the *Broadcast First Report and Order*, 63 FR 48615 (September 11, 1998), participation in this auction is limited to the applicants identified in Attachment A of the *Auction No. 54 Procedures Public Notice*. All applications within a mutually exclusive applicant group ("MX Group") are directly mutually exclusive with one another, and therefore a single construction permit will be auctioned for each MX Group identified in Attachment A of the *Auction No. 54 Procedures Public Notice*. Applicants will be eligible to bid on only those construction permits selected on their previously filed FCC Form 301 or Form 346. The minimum opening bids and upfront payments for these broadcast construction permits are also included in Attachment A of the *Auction No. 54 Procedures Public Notice*.

3. As stated in the *Broadcast First Report and Order*, all pending mutually exclusive applications for broadcast services must be resolved through a system of competitive bidding. When two or more short-form applications (FCC Form 175) are accepted for filing within an MX Group, mutual exclusivity exists for auction purposes. Once mutual exclusivity exists for auction purposes, even if only one applicant within an MX Group submits an upfront payment, that applicant is required to submit a bid in order to obtain the construction permit.

B. Rules and Disclaimers

i. Relevant Authority

4. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to broadcast auctions, contained in title 47, part 73 of the Code of Federal Regulations. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, "terms") contained in the *Auction No. 54 Procedures Public Notice*; the *Auction No. 54 Comment Public Notice*, the *Broadcast First*

*Report and Order*, the *Broadcast Reconsideration Order*, 64 FR 24523 (May 7, 1999), and the *New Entrant Bidding Credit Reconsideration Order*, 64 FR 44856 (August 18, 1999). Potential bidders must also familiarize themselves with part 1, subpart Q of the Commission's rules concerning competitive bidding proceedings. In particular, broadcasters should also familiarize themselves with the Commission's recent amendments and clarifications to its general competitive bidding rules.

5. 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 bidders. It is the responsibility of all prospective bidders to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at <http://wireless.fcc.gov/auctions>. Additionally, documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC, 20554, or may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com). When ordering documents from Qualex, please provide the appropriate FCC document number (for example, FCC 98-194 for the *Broadcast First Report and Order* and FCC 99-74 for the *Broadcast Reconsideration Order*).

ii. Prohibition of Collusion

6. To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for the same market from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. Bidders competing for construction permits in the same market are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of

bids or bidding strategies between the bidders he or she is authorized to represent in the auction. A violation could similarly occur if the authorized bidders are different individuals employed by the same organization (e.g., law firm or consulting firm). In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.

7. However, the Bureaus caution that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted. The Commission's anti-collusion rules allow applicants to form certain agreements during the auction, provided the applicants have not applied for construction permits in the same market. In Auction No. 54, for example, the rule would apply to any applicants bidding for the same market (i.e., Victor, ID, MX Groups FM2 and FM3). Therefore, applicants that apply to bid for any construction permit in the same market would be precluded from communicating after filing the FCC Form 175 application with any other applicant for a construction permit in that same market. However, all applicants may enter into bidding agreements *before* filing their FCC Form 175, as long as they disclose the existence of the agreement(s) in their FCC Form 175. If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application pursuant to § 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other applicants for the same market. By signing their FCC Form 175 applications, applicants are certifying their compliance with §§ 1.2105(c) and 73.5002.

8. In addition, § 1.65 of the Commission's rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, § 1.65 and 1.2105 require an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of

such violation. Bidders therefore are required to make such notification to the Commission immediately upon discovery.

9. A summary listing of documents from the Commission and the Bureaus addressing the application of the anti-collusion rules may be found in Attachment F of the *Auction No. 54 Procedures Public Notice*.

### iii. Due Diligence

10. Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and market place factors that may have a bearing on the value of the broadcast facilities in this auction. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC permittee in the broadcast service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

11. Potential bidders are strongly encouraged to conduct their own research prior to Auction No. 54 in order to determine the existence of pending proceedings that might affect their decisions regarding participation in the auction. Participants in Auction No. 54 are strongly encouraged to continue such research during the auction.

12. Bidders are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may effect their ability to bid on, otherwise acquire, or make use of the construction permits available in Auction No. 54.

13. Potential bidders for the new full power television facility should note that, in November 1999, Congress enacted the Community Broadcasters Protection Act of 1999 (CBPA) which established a new Class A television service. In response to the enactment of the CBPA, the Commission adopted rules to establish the new Class A television service. In the *Class A Report and Order*, 65 FR 29985 (May 10, 2000), the Commission adopted rules to provide interference protection for eligible Class A television stations from new full power television stations. Given the Commission's ruling in the Class A Report and Order, the winning

bidder in Auction No. 54, upon submission of its long-form application (FCC Form 301), will have to provide interference protection to qualified Class A television stations. Therefore, potential bidders are encouraged to perform engineering studies to determine the existence of Class A television stations and their effect on the ability to operate the full power television station proposed in this auction. Information about the identity and location of Class A television stations is available from the Media Bureau's Consolidated Database System (CDBS) (public access available at: <http://www.fcc.gov/mb>) and on the Media Bureau's Class A television web page: <http://www.fcc.gov/mb/video/files/classa.html>

14. Potential bidders for the new full power television facility are also reminded that full service television stations are in the process of converting from analog to digital operation and that stations may have pending applications to construct and operate digital television facilities, construction permits and/or licenses for such digital facilities. Bidders should investigate the impact such applications, permits and licenses may have on their ability to operate the facilities proposed in this auction.

15. Potential bidders should direct questions regarding the search capabilities of CDBS to the Media Bureau help line at (202) 418-2662, or via e-mail at [mbinfo@fcc.gov](mailto:mbinfo@fcc.gov).

### iv. Bidder Alerts

16. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a construction permit, and not in default on any payment for Commission construction permits or licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, construction permit or license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

17. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 54 to deceive and defraud unsuspecting investors. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326-2222 and from the SEC at (202) 942-7040. Complaints about specific

deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876-7060. Consumers who have concerns about specific proposals regarding Auction No. 54 may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225-5322).

### v. National Environmental Policy Act (NEPA) Requirements

18. Permittees must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a broadcast facility is a federal action and the permittee must comply with the Commission's NEPA rules for each such facility.

### C. Auction Specifics

#### i. Auction Date

19. Auction No. 54 will begin on Wednesday, July 23, 2003. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all construction permits will be conducted on each business day until bidding has stopped on all construction permits.

#### ii. Auction Title

20. Auction No. 54—Closed Broadcast.

#### iii. Bidding Methodology

21. The bidding methodology for Auction No. 54 will be simultaneous, multiple round bidding.

The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well.

As a contingency plan, bidders may also dial in to the FCC Wide Area Network. Qualified bidders are permitted to bid telephonically or electronically.

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

22. The following is a list of important dates related to Auction No. 54:

Auction Seminar—June 12, 2003

Short-Form (FCC Form 175) Filing

Window Opens—June 12, 2003; 12 p.m. ET

Short-Form (FCC Form 175) Application

Deadline—June 20, 2003; 6 p.m. ET

Upfront Payments (via wire transfer)—July 3, 2003; 6 p.m. ET

Mock Auction—July 18, 2003

Auction Begins—July 23, 2003

#### i. Requirements for Participation

23. Those wishing to participate in the auction must:

- Submit a short form application (FCC Form 175) electronically by 6 p.m. ET, June 20, 2003. No other application may be substituted for the FCC Form 175.

- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. ET, July 3, 2003.

- Comply with all provisions outlined in this public notice and applicable Commission rules.

#### i. General Contact Information

24. The following is a list of general contact information related to Auction No. 54:

#### GENERAL AUCTION INFORMATION

General Auction Questions, Seminar Registration—FCC Auctions Hotline (888) 225-5322, Press Option #2, or direct (717) 338-2888, Hours of service: 8 a.m.–5:30 p.m. ET

#### AUCTION LEGAL INFORMATION

Auction Rules, Policies, Regulations—Auctions and Industry Analysis Division, Legal Branch (202) 418-0660

#### LICENSING INFORMATION

Rules, Policies, Regulations; Licensing Issues; Due Diligence Incumbency Issues—Audio Division (202) 418-2700; Video Division (202) 418-2700

#### TECHNICAL SUPPORT

Electronic Filing, Automated Auction System—FCC Auctions Technical Support Hotline, (202) 414-1250 (Voice), (202) 414-1255 (TTY); Hours of service: Monday through Friday 8 a.m. to 6 p.m. ET

#### PAYMENT INFORMATION

Wire Transfers, Refunds—FCC Auctions Accounting Branch; (202) 418-1995, (202) 418-2843 (Fax)

#### TELEPHONIC BIDDING

Will be furnished only to qualified bidders

#### FCC COPY CONTRACTOR

Qualex International

Additional Copies of Commission documents—Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, (202) 863-2893, (202) 863-2898, (Fax), [qualexint@aol.com](mailto:qualexint@aol.com) (E-mail)

#### PRESS INFORMATION

Meribeth McCarrick (202) 418-0654

#### FCC FORMS

(800) 418-3676 (outside Washington, DC), (202) 418-3676 (in the

Washington Area), <http://www.fcc.gov/formpage.html>

#### FCC INTERNET SITES

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

#### II. Short-Form Application (FCC Form 175) Requirements

25. Guidelines for completion of the short-form application (FCC Form 175) are set forth in Attachment D of the Auction No. 54 Procedures Public Notice.

##### A. License Selection

26. The Bureaus notes that as part of the FCC Form 175 filing process, applicants must identify which construction permits they may bid on as part of the auction. While the electronic FCC Form 175 will allow for the selection of all construction permits, applicants should only select from among those construction permits that they selected on their previously filed FCC Form 301 or Form 346. Applicants that select construction permits on their FCC Form 175 that were not selected on the FCC Form 301 or Form 346 will not be permitted to bid on those construction permits during the auction.

##### B. Ownership Disclosure Requirements (FCC Form 175 Exhibit A)

27. The Commission indicated in the *Broadcast First Report and Order* that, for purposes of determining eligibility to participate in a broadcast auction, the uniform part 1 ownership disclosure standards would apply. Specifically, in completing FCC Form 175, all applicants will be required to provide information required by §§ 1.2105 and 1.2112 of the Commission's rules.

##### C. Consortia and Joint Bidding Arrangements (FCC Form 175 Exhibit B)

28. Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the construction permits being auctioned, including any agreements relating to post-auction market structure. Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular construction permits on which they will or will not bid.

29. While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, bidders are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies. Such subject areas include, but are not limited to, issues such as management, sales, local marketing agreements, rebroadcast agreements, and other transactional agreements.

##### D. New Entrant Bidding Credit (Form 175 Exhibit C)

30. To fulfill its obligations under section 309(j) and further its long-standing commitment to the diversification of broadcast facility ownership, the Commission adopted a tiered New Entrant Bidding Credit for broadcast auction applicants with no, or very few, other media interests.

##### i. Eligibility

31. The interests of the bidder, and of any individuals or entities with an attributable interest in the bidder, in other media of mass communications shall be considered when determining a bidder's eligibility for the New Entrant Bidding Credit. The bidder's attributable interests shall be determined as of the short-form application (FCC Form 175) filing dead—June 20, 2003. Bidders intending to divest a media interest or make any other ownership changes, such as resignation of positional interests, in order to avoid attribution for purposes of qualifying for the New Entrant Bidding Credit must have consummated such divestment transactions or have completed such ownership changes by no later than the short-form application filing deadline—June 20, 2003.

32. Generally, media interests will be attributable for purposes of the New Entrant Bidding Credit to the same extent that such other media interests are considered attributable for purposes of the broadcast multiple ownership rules. However, attributable interests held by a winning bidder in existing low power television, television translator or FM translator facilities will not be counted among the bidders' other mass media interests in determining its eligibility for a New Entrant Bidding Credit. Full service noncommercial educational stations, on both reserved and non-reserved channels, are included among "media of mass communications" as defined in § 73.5008(b). A medium of mass communications is defined in 47 CFR 73.5008 (b) and includes non-commercial broadcast stations. For more

information, *see* section II.C. of the Auction No. 54 Procedures Public Notice.

## ii. Application Requirements

33. In addition to the ownership information required on Exhibit A, applicants are required to file supporting documentation on Exhibit C to their FCC Form 175 applications to establish that they satisfy the eligibility requirements to qualify for a New Entrant Bidding Credit. In those cases where a New Entrant Bidding Credit is being sought, a certification under penalty of perjury must be set forth in Exhibit C.

## iii. Bidding Credits

34. Applicants that qualify for the New Entrant Bidding Credit, as set forth in 47 CFR 73.5007, are eligible for a bidding credit that represents the amount by which a bidder's winning bid is discounted. The size of a New Entrant Bidding Credit depends on the number of ownership interests in other media of mass communications that are attributable to the bidder-entity and its attributable interest-holders:

- A 35 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has no attributable interest in any other media of mass communications, as defined in 47 CFR 73.5008;
- A 25 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has an attributable interest in no more than three mass media facilities, as defined in 47 CFR 73.5008;
- No bidding credit will be given if any of the commonly owned mass media facilities serve the same area as the proposed broadcast station, as defined in 47 CFR 73.5007, or if the winning bidder, and/or any individual or entity with an attributable interest in the winning bidder, has attributable interests in more than three mass media facilities.

35. Bidding credits are not cumulative; qualifying applicants receive either the 25 percent or the 35 percent bidding credit, but not both. Attributable interests are defined in 47 CFR 73.3555 and note 2 of that section. Bidders should note that unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license or construction permit to an entity not qualifying for the same level of bidding credit.

## D. Provisions Regarding Defaulters and Former Defaulters (Form 175 Exhibit D)

36. Each applicant must provide a certification on its FCC Form 175 application, made under penalty of perjury, that it is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must provide a certification on its FCC Form 175 application, made under penalty of perjury, indicating whether or not the applicant, its affiliates, its controlling interests, or the affiliates of its controlling interest, have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any federal agency. The applicant must provide such information for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by § 1.2110 of the Commission's rules (as amended in the *Part 1 Fifth Report and Order*). Applicants must include this statement as Exhibit D of the FCC Form 175.

37. "Former defaulters"—*i.e.*, applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—are eligible to bid in Auction No. 54, provided that they are otherwise qualified. However, as discussed *infra* in section III.D.iii, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

## E. Installment Payments

38. Installment payment plans will not be available in Auction No. 54.

## F. Other Information (FCC Form 175 Exhibits E and F)

39. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(b)(2), may attach an exhibit (Exhibit E) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of "designated entities" in its auctions. Applicants must specify the file number of the pending FCC Form 301 or Form 346 on Exhibit F (Miscellaneous Information). Applicants wishing to submit additional information may do so on Exhibit F.

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

40. After the short-form application filing deadline (June 20, 2003),

applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their construction permit selections, change the certifying official, changes in ownership of the applicant that would constitute a change of control of the applicant, or changes affecting eligibility for the new entrant bidding credit). Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants should make these modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division, at the following address: [auction54@fcc.gov](mailto:auction54@fcc.gov). The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 54. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

41. A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338-2850.

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

42. Applicants have an obligation under 47 CFR 1.65, to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

## III. Pre-Auction Procedures

### A. Auction Seminar

43. On June 12, 2003 the FCC will sponsor a free seminar for Auction No. 54 at the Federal Communications Commission, located at 445 12th Street, SW., Washington, DC. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, the FCC Automated Auction System, and the broadcast service and auction rules.

### B. Short-Form Application (FCC Form 175)—Due June 20, 2003

44. In order to be eligible to bid in this auction, applicants must first submit an

FCC Form 175 application. This application must be submitted electronically and received at the Commission no later than 6 p.m. ET on June 20, 2003. Late applications will not be accepted.

45. There is no application fee required when filing an FCC Form 175.

i. Electronic Filing

46. Applicants must file their FCC Form 175 applications electronically. Applications may generally be filed at any time beginning at 12 noon ET on June 12, 2003, until 6 p.m. ET on June 20, 2003. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on June 20, 2003.

47. Applicants must press the "SUBMIT Application" button on the "Submission" page of the electronic form to successfully submit their FCC Form 175s. Any form that is not submitted will not be reviewed by the FCC. Information about accessing the FCC Form 175 is included in Attachment C of the *Auction No. 54 Procedures Public Notice*. Technical support is available at (202) 414-1250 (voice) or (202) 414-1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8 a.m. to 6 p.m. ET. In order to provide better service to the public, *all calls to the hotline are recorded*.

ii. Completion of the FCC Form 175

48. Applicants should carefully review 47 CFR 1.2105 and 73.5002, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment D of the *Auction No. 54 Procedures Public Notice*.

iii. Electronic Review of FCC Form 175

49. The FCC Form 175 electronic review system may be used to locate and print applicants' FCC Form 175 information. There is no fee for accessing this system. See Attachment C of the *Auction No. 54 Procedures Public Notice* for details on accessing the review system.

50. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed, and the FCC has issued a public notice explaining the status of the applications.

**Note:** Applicants should not include sensitive information (*i.e.*, Taxpayer Identification Number or Employer Identification Number) on any exhibits to their FCC Form 175 applications.

C. Application Processing and Minor Corrections

51. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (i) Those applications accepted for filing (including FCC account numbers and the construction permits for which they applied); (ii) those applications rejected; and (iii) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

D. Upfront Payments—Due July 3, 2003

52. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6 p.m. ET on July 3, 2003. For specific instructions regarding upfront payments, see section III.D. of the *Auction No. 54 Procedures Public Notice*.

i. Making Auction Payments by Wire Transfer

53. Wire transfer payments must be received by 6 p.m. ET on July 3, 2003. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline.

54. Applicants must fax a completed FCC Form 159 (Revised 2/00) to Mellon Bank at (412) 209-6045 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer—Auction Payment for Auction Event No. 54." Bidders should confirm the receipt of their upfront payment at Mellon Bank by contacting their sending financial institution. Detailed instructions for completion of FCC Form 159 are included in Attachment E of the *Auction No. 54 Procedures Public Notice*.

ii. Amount of Upfront Payment

55. The Commission delegated to the Bureaus the authority and discretion to determine appropriate upfront payment(s) for each auction. In addition, in the *Part 1 Fifth Report and*

*Order*, the Commission ordered that "former defaulters," *i.e.*, applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, be required to pay upfront payments fifty percent greater than non-"former defaulters." In the *Auction No. 54 Comment Public Notice*, the Bureaus proposed that the amount of the upfront payment would determine the number of bidding units on which a bidder may place bids. In order to bid on a construction permit, otherwise qualified bidders that applied for that construction permit on FCC Form 175 must have an eligibility level that meets the number of bidding units assigned to that construction permit. (While the electronic FCC Form 175 allows for the selection of all construction permits, applicants should only select from among those construction permits that they selected on their previously filed FCC Form 301 or Form 346). At a minimum, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one construction permit applied for on FCC Form 175, or else the applicant will not be eligible to participate in the auction. No comments were received; therefore, the Bureaus adopt its proposal. The specific upfront payments and bidding units for each construction permit are set forth in Attachment A of the *Auction No. 54 Procedures Public Notice*.

56. In calculating its upfront payment amount, an applicant should determine the *maximum* number of bidding units on which it may wish to be active (bidding units associated with construction permits on which the bidder has the standing high bid from the previous round and construction permits on which the bidder places a bid in the current round) in any single round, and submit an upfront payment covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all construction permits on which it seeks to bid in any given round. Bidders should check their calculations carefully, as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

57. Former defaulters should calculate their upfront payment for all construction permits by multiplying the number of bidding units they wish to purchase by 1.5. 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.

**Note:** An applicant's actual bidding in any round will be limited by the bidding units reflected in its upfront payment, in conjunction with the selections made on the FCC Form 175.

### iii. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

58. The Commission will use wire transfers for all Auction No. 54 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed be supplied to the FCC. Applicants can provide the information electronically during the initial short-form filing window after the form has been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Gail Glasser or Tim Dates, at (202) 418-2843 by July 3, 2003. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call Gail Glasser at 202-418-0578 or Tim Dates at (202) 418-0496.

Name of Bank  
ABA Number  
Contact and Phone Number  
Account Number to Credit  
Name of Account Holder  
FCC Registration Number (FRN)  
Taxpayer Identification Number  
Correspondent Bank (if applicable)  
ABA Number  
Account Number

### E. Auction Registration

59. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and that have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the construction permits for which they applied.

60. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, each containing the confidential bidder identification number (BIN) and the other containing the SecurID cards, both of which are required to place bids. These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.

61. Applicants that do not receive both registration mailings will not be

able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Wednesday, July 16, 2003, should contact the Auctions Hotline at (717) 338-2888. Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

62. Qualified bidders should note that lost bidder identification numbers or SecurID cards can be replaced only by appearing *in person* at the FCC Headquarters located at 445 12th Street, SW., Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear *in person* with two forms of identification (one of which must be a photo identification) in order to receive replacements. Qualified bidders requiring replacements must call technical support prior to arriving at the FCC.

### F. Remote Electronic Bidding

63. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. As a contingency plan, bidders may also dial in to the FCC Wide Area Network. Qualified bidders are permitted to bid telephonically or electronically. In either case, each authorized bidder must have its own SecurID card, which the FCC will provide at no charge. For security purposes, the SecurID cards and the FCC Automated Auction System user manual are only mailed to the contact person at the contact address listed on the FCC Form 175. Each SecurID card is tailored to a specific auction; therefore, SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 54. The telephonic bidding phone number will be supplied in the first overnight mailing, which also includes the confidential bidder identification number. Each applicant should indicate its bidding preference—electronic or telephonic—on the FCC Form 175.

64. SecurID cards can be recycled, and the Bureaus encourages bidders to return the cards to the FCC. The Bureaus will provide pre-addressed envelopes that bidders may use to return the cards once the auction is over.

### G. Mock Auction

65. All qualified bidders will be eligible to participate in a mock auction on Friday, July 18, 2003. The mock auction will enable applicants to become familiar with the FCC Automated Auction System prior to the

auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

### IV. Auction Event

66. The first round of bidding for Auction No. 54 will begin on Wednesday, July 23, 2003. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

#### A. Auction Structure

##### i. Simultaneous Multiple Round Auction

67. In the *Auction No. 54 Comment Public Notice*, the Bureaus proposed to award all the construction permits in Auction No. 54 in a simultaneous multiple round auction. The Bureaus received no comments on this issue. The Bureaus therefore concludes that it is operationally feasible and appropriate to auction the construction permits through a simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all construction permits in successive rounds of bidding.

##### ii. Maximum Eligibility and Activity Rules

68. In the *Auction No. 54 Comment Public Notice*, the Bureaus proposed that the amount of the upfront payment submitted by a bidder would determine the maximum initial eligibility (as measured in bidding units) for each bidder. No comments were received concerning the eligibility rule.

69. For Auction No. 54, the Bureaus will adopt its proposal. The amount of the upfront payment submitted by a bidder determines the maximum initial eligibility (in bidding units) for each bidder. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid and hold high bids in a round. As there is no provision for increasing a bidder's eligibility after the upfront payment deadline, prospective bidders are cautioned to calculate their upfront payments carefully. The total upfront payment does not affect the total dollar amount a bidder may bid on any given construction permit.

70. In addition, the Bureaus received no comments on its proposal for a single stage auction. Therefore, in order to ensure that the auction closes within a reasonable period of time, the Bureaus adopts its proposal with the following activity requirement: a bidder is required to be active on 100 percent of its current eligibility during each round



of the auction. That is a bidder must either place a bid and/or be the standing high bidder during each round of the auction.

71. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a permanent reduction in the bidder's bidding eligibility, possibly eliminating them from the auction.

### iii. Activity Rule Waivers and Reducing Eligibility

72. Each bidder will be provided three activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit.

73. The FCC Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any round where a bidder's activity level is below the minimum required unless: (i) There are no activity rule waivers remaining; or (ii) bidders eligible to bid on more than one construction permit override the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements. If a bidder that is eligible to bid on only one construction permit has no activity rule waivers available, the bidder's eligibility will be reduced, eliminating it from the auction. If a bidder that is eligible to bid on more than one construction permit has no waivers remaining and does not satisfy the required activity level, its current eligibility will be permanently reduced, possibly eliminating the bidder from the auction.

74. A bidder that is eligible to bid on more than one construction permit and has 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 period by using the "reduce eligibility" function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

75. Finally, a bidder may proactively use an activity rule waiver as a means

to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding system) during a bidding period in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new bids will not keep the auction open. **Note:** Once a proactive waiver is submitted during a round, that waiver cannot be unsubmitted.

### iv. Auction Stopping Rules

76. For Auction No. 54, the Bureaus proposed to employ a simultaneous stopping rule. Under this rule, bidding will remain open on all construction permits until bidding stops on every construction permit. The auction will close for all construction permits when one round passes during which no bidder submits a new acceptable bid on any construction permit or applies a proactive waiver.

77. The Bureaus also sought comment on a modified version of the stopping rule. The modified version of the stopping rule would close the auction for all construction permits after the first round in which no bidder submits a proactive waiver or a new bid on any construction permit on which it is not the standing high bidder.

78. The Bureaus further proposed retaining the discretion to keep an auction open even if no new bids or proactive waivers are submitted. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either use an activity rule waiver (if it has any left) or lose bidding eligibility.

79. In addition, the Bureaus proposed that it reserve the right to declare that the auction will end after a designated number of additional rounds ("special stopping rule"). If the Bureaus invoke this special stopping rule, it will accept bids in the final round(s) only for construction permits on which the high bid increased in at least one of the preceding specified number of rounds. The Bureaus proposed to exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity, or where it appears likely that the auction will not close within a reasonable period of time.

80. The Bureaus adopt all of the proposals concerning the auction stopping rules. Auction No. 54 will begin under the simultaneous stopping rule, and the Bureaus will retain the

discretion to invoke the other versions of the stopping rule.

### v. Auction Delay, Suspension, or Cancellation

81. By public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety.

### B. Bidding Procedures

#### i. Round Structure

82. The initial bidding schedule will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of the round results. Multiple bidding rounds may be conducted in a given day. Details regarding round result formats and locations will also be included in the qualified bidders public notice.

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

#### ii. Reserve Price or Minimum Opening Bid

84. For Auction No. 54, the Bureaus proposed establishing minimum opening bids based on the potential value of the spectrum, including the type of service, proposed population coverage, market size, industry cash flow data and recent broadcast transactions. The Bureaus received no comments on this issue therefore, it adopts its proposal. The specific minimum opening bids for each construction permit are set forth in Attachment A of the *Auction No. 54 Procedures Public Notice*.

85. The minimum opening bids the Bureaus adopts for Auction No. 54 are reducible at its discretion. The Bureaus emphasizes, however, that such



discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureaus will not entertain any requests to reduce the minimum opening bid on specific construction permits.

### iii. Minimum Acceptable Bids and Bid Increments

86. In the *Auction No. 54 Comment Public Notice*, the Bureaus proposed to use a fixed percentage to calculate minimum acceptable bids. The Bureaus further proposed to retain the discretion to change the minimum acceptable bids and bid increments if circumstances so dictate.

87. The Bureaus adopts the proposal contained in the *Auction No. 54 Comment Public Notice*. Once there is a standing high bid on a construction permit, the FCC Automated Auction System will calculate a minimum acceptable bid for that construction permit for the following round. The difference between the minimum acceptable bid and the standing high bid for each construction permit will define the bid increment—*i.e.*, bid increment = (minimum acceptable bid) – (standing high bid). The nine acceptable bid amounts for each construction permit consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

88. For Auction No. 54, the Bureaus will use a 10 percent bid increment. This means that the minimum acceptable bid for a construction permit will be approximately 10 percent greater than the previous standing high bid received on the construction permit. The minimum acceptable bid amount will be calculated by multiplying the standing high bid times one plus the increment percentage—*i.e.*, (standing high bid) \* (1.10).

89. Until a bid has been placed on a construction permit, the minimum acceptable bid for that construction permit will be equal to its minimum opening bid. The additional bid amounts are calculated using the difference between the minimum opening bid times one plus the percentage increment, rounded as described, and the minimum opening bid. That is, the increment used to calculate additional bid amounts = (minimum opening bid)(1 + percentage increment){rounded} – (minimum

opening bid). Therefore, when the percentage increment equals 0.1 (*i.e.*, 10%), the first additional bid amount will be approximately ten percent higher than the minimum opening bid; the second, twenty percent higher; the third, thirty percent higher; etc.

90. The Bureaus retain the discretion to compute the minimum acceptable bids through other methodologies if they determine circumstances so dictate. Advanced notice of the Bureaus' decision to do so will be announced via the FCC Automated Auction System.

### iv. High Bids

91. At the end of a bidding round, the FCC Automated Auction System determines the high bid for each construction permit based on the highest gross bid amount received for each construction permit. A high bid from a previous round is sometimes referred to as a "standing high bid." A "standing high bid" will remain the high bid until there is a higher bid on the same construction permit at the close of a subsequent round. Bidders are reminded that standing high bids confer bidding activity.

92. A Sybase® SQL pseudo-random number generator based on the Lecuyer algorithm will be used to select a high bid in the event of identical high bids on a construction permit in a given round (*i.e.*, tied bids). The tied bid having the highest random number will become the standing high bid. The remaining bidders, as well as the high bidder, will be able to submit a higher bid in a subsequent round. If no bidder submits a higher bid in a subsequent round, the high bid from the previous round will win the construction permit. If any bids are received on the construction permit in a subsequent round, the high bid will once again be determined on the highest gross bid amount received for the construction permit.

### v. Bidding

93. During a bidding round, a bidder may submit bids for any or all construction permits selected on its FCC Form 175 (subject to its eligibility based on previously filed FCC Forms 301 or Form 346), remove bids placed in the same bidding round, or if eligible to bid on more than one construction permit, permanently reduce eligibility. Bidders also have the option of making multiple submissions in each round. If a bidder submits multiple bids for a single construction permit in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with construction permits for

which the bidder has removed its bid do not count towards the bidder's activity at the close of the round.

94. Please note that all bidding will take place remotely either through the FCC Automated Auction System or by telephonic bidding. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, four to five minutes are necessary to complete a bid submission.

95. A bidder's ability to bid on specific construction permits in the first round of the auction is determined by two factors: (i) The construction permits applied for on FCC Form 175 (applicants are eligible to bid on only those construction permits selected on their previously filed FCC Form 301 or Form 346); and (ii) the upfront payment amount deposited. The bid submission screens will allow bidders to submit bids on only those construction permits for which the bidder applied on its FCC Form 175.

96. In order to access the bidding functions of the FCC Automated Auction System, bidders must be logged in during the bidding round using the bidder identification number provided in the registration materials, and the tokencode generated by the SecurID card. Bidders are strongly encouraged to print bid confirmations for each round *after* they have completed all of their activity for that round.

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

98. Until a bid has been placed on a construction permit, the minimum acceptable bid for that construction permit will be equal to its minimum opening bid. Once there is a standing high bid on a construction permit, the FCC Automated Auction System will calculate a minimum acceptable bid for that construction permit for the following round, as described in section IV.B.iii.

### vi. Bid Removal and Bid Withdrawal

99. In the *Auction No. 54 Comment Public Notice*, the Bureaus proposed that bidders not be permitted to withdraw bids in any round. The

Bureaus received no comments on this issue. Therefore, the Bureaus adopt their proposal and will not permit bidders to withdraw bids in any round during the auction.

100. Procedures. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bid" function in the bidding system, a bidder may effectively "unsubmit" any bid placed within that round. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is subsequently removed does not count toward the bidder's activity requirement. Once a round closes, a bidder may no longer remove a bid. No comments were received on this issue, therefore, the Bureaus adopts these procedures for Auction No. 54.

vii. Round Results

101. Bids placed during a round will not be made public until the conclusion of that bidding period. After a round closes, the Bureaus will compile reports of all bids placed, current high bids, new minimum acceptable bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities for Auction No. 54 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.

viii. Auction Announcements

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

ix. Maintaining the Accuracy of FCC Form 175 Information

103. After the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. Applicants must make these modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division at the following address: [auction54@fcc.gov](mailto:auction54@fcc.gov). The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 54. The Bureaus requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

104. A separate copy of the letter should be faxed to the attention of

Kathryn Garland at (717) 338-2850. Questions about other changes should be directed to Kenneth Burnley of the Auctions and Industry Analysis Division at (202) 418-0660.

**V. Post-Auction Procedures**

*A. Down Payments*

105. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders and down payments due.

106. 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 No. 54 to 20 percent of its net winning bid (actual bids less any applicable bidding credit).

*B. Long-Form Application*

107. The auction closing public notice will specify procedures for submitting any necessary minor amendments to the winning bidder's previously filed long form application. In accordance with Commission rules, the winning bidder may not submit amendments that constitute a major change from either the technical or legal proposal specified in the previously filed long form application. Given the length of time that the long form applications have been pending, the winning bidder should take into account any relevant rule changes in amending their long form applications on file.

*C. Default and Disqualification*

108. Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission will offer the construction permit to the next highest bidder (in descending order) at their final bid. 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 licenses or construction permits held by the applicant.

*D. Refund of Remaining Upfront Payment Balance*

109. All applicants that submitted upfront payments but were not winning bidders for a construction permit in Auction No. 54 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

110. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions, Taxpayer Identification Number ("TIN") and FCC Registration Number (FRN). Send refund request to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Gail Glasser or Tim Dates, 445 12th Street, SW., Room 1-C863, Washington, DC 20554.

111. Bidders are encouraged to file their refund information electronically using the refund information portion of the FCC Form 175, but bidders can also fax their information to the Auctions Accounting Group at (202) 418-2843. Once the information has been approved, a refund will be sent to the party identified in the refund information.

**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 Tim Dates at (202) 418-0496.

Federal Communications Commission.

**Margaret Wiener,**

*Chief, Auctions and Industry Analysis Division.*

[FR Doc. 03-14813 Filed 6-11-03; 8:45 am]

BILLING CODE 6712-01-P

**FEDERAL ELECTION COMMISSION**

**Sunshine Act Notices**

**AGENCY:** Federal Election Commission.

**PREVIOUSLY ANNOUNCED DATE AND TIME:** Thursday, June 12, 2003, meeting open to the public:

The following item was withdrawn from the agenda: Draft Advisory Opinion 2103-05: National Association of Home Builders of the United States (NAHB) by counsel, E. Mark Braden and William H. Schweitzer.