



PUBLIC NOTICE

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AUCTION OF CONSTRUCTION PERMITS FOR LOW POWER TELEVISION AND TV TRANSLATOR STATIONS

COMMENT SOUGHT ON COMPETITIVE BIDDING PROCEDURES FOR AUCTION 111

AU Docket No. 21-284

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ATTACHMENT A: CONSTRUCTION PERMITS IN AUCTION 111

I. INTRODUCTION

1. By this Public Notice, the Office of Economics and Analytics (OEA) and the Media Bureau (MB), announce a “closed” auction of construction permits for new or modified low power television (LPTV) stations and TV translator stations (collectively referred to as “LPTV/translator stations”) and seek comment on the procedures to be used for this auction. We expect the bidding for the auction, which is designated as Auction 111, to commence in February 2022.

II. CONSTRUCTION PERMITS OFFERED AND APPLICATION PROCESSING

A. Construction Permits to be Offered in Auction 111

2. Auction 111 will resolve groups of pending mutually exclusive (MX) engineering proposals for up to 17 new or modified LPTV/translator station construction permits. Auction 111 is a “closed” auction; only those individuals or entities listed in Attachment A to this Public Notice are eligible to participate in this auction with respect to the construction permit(s) for which each is listed.¹

3. The MX groups and engineering proposals listed in Attachment A consist of applications for new LPTV/translator stations, or major changes to existing stations, that were accepted on a first-come, first-served basis (i.e., rolling one-day windows), pursuant to section 74.787(a)(3) of the Commission’s rules² and displacement relief applications filed pursuant to a special filing window for eligible LPTV/translator stations displaced by the broadcast television spectrum incentive auction (Auction 1000).³ Any LPTV/translator station applications for new facilities, major changes to existing facilities, or displacement relief that are mutually exclusive with one another must be resolved via the Commission’s part 1 and part 73 competitive bidding rules.⁴ In 2009, MB began accepting applications for new rural digital LPTV/translator stations on a limited basis and then later froze those filings.⁵ All but

¹ A copy of this Public Notice will be sent by email and overnight delivery to the contact address listed on each LPTV/translator station application listed in Attachment A. Future public notices in this proceeding may be provided directly to each applicant listed in Attachment A at this contact address as well. Each applicant is reminded that pursuant to section 1.65 of the Commission’s rules, it is obligated to maintain the accuracy of this information. 47 CFR § 1.65. We ask each party that is eligible to file a short-form application in Auction 111 to make sure that the contact address provided in its LPTV/translator station application is accurate and is a location capable of accepting packages. After the deadline for filing short-form applications (FCC Form 175) to participate in Auction 111, Auction 111-related materials will be sent to auction applicants at the contact addresses in their short-form applications.

² 47 CFR § 74.787(a)(3); *see Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, MB Docket No. 03-185, Report and Order, 19 FCC Rcd 19331, 19383, para. 155 (2004) (*Digital LPTV Order*). LPTV/translator station licensing and operation is governed by part 74, subpart G of the Commission’s rules. 47 CFR §§ 74.701-799. In addition, many part 73 broadcast regulations are applicable to LPTV/translator stations, including sections 73.3522 (*Amendment of Applications*), 73.3525 (*Agreements for Removing Application Conflicts*), and 73.3568 (*Dismissal of Applications*). *Id.* § 74.789.

³ *Incentive Auction Task Force and Media Bureau Announce Post-Incentive Auction Special Displacement Window April 10, 2018, Through May 15, 2018, and Make Location and Channel Data Available*, MB Docket No. 16-306, Public Notice, 33 FCC Rcd 1234 (IATF/MB 2018) (*Special Displacement Filing Public Notice*); *see* 47 CFR § 73.3700(g); *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567, 6835-37, paras. 659-61 (2014) (*Broadcast Incentive Auction Report and Order*).

⁴ 47 CFR § 74.787(a)(3)-(4); *see id.* §73.3700(g) (indicating that LPTV/translator displacement relief applications filed pursuant to the post-incentive auction licensing rules are generally subject to 74.787(a)(4)); *see also Digital LPTV Order*, 19 FCC Rcd at 19384-87, paras. 160-67; *Broadcast Incentive Auction Report and Order*, 29 FCC Rcd at 6837, para. 661.

⁵ *See Commencement of Rural, First-Come, First-Served Digital Licensing*, Public Notice, 24 FCC Rcd 8911 (MB 2009) (*Rural Filing Public Notice*); *Freeze on the Filing of Applications for New Digital Low Power Television and* (continued....)

one of the MX groups listed in Attachment A consist of applications for new or modified rural digital LPTV/translator stations that were submitted on the first day that MB began accepting such applications. With regard to the remaining MX group, Auction 1000, which repurposed 84 megahertz of the 600 MHz band spectrum, resulted in the channel reassignments of certain full power and Class A television stations, and in turn displaced certain LPTV/translator stations.⁶ In 2018, the Incentive Auction Task Force and MB opened a special displacement application filing window for eligible licensees and permittees of LPTV/translator stations displaced by Auction 1000 to apply for new channels.⁷ The remaining MX group listed in Attachment A consists of two displacement relief applications filed pursuant to this special displacement application filing window.⁸

4. In order to facilitate resolution of pending mutually exclusive LPTV/translator station applications before initiating competitive bidding procedures, and given the passage of time since the applications were filed, MB announced that it would withhold action on certain MX applications for new or modified LPTV/translator stations, including each application listed in Attachment A, from June 1, 2020 to July 31, 2020, in order to provide applicants with an opportunity to resolve mutual exclusivity through settlement or technical modification of their engineering proposals.⁹ MB advised each applicant that, absent resolution of its mutual exclusivity, its application would be subject to the Commission's competitive bidding procedures.¹⁰

5. The MX groups listed in Attachment A are the groups of MX applications that remain after the filing window closed, and we will now proceed to resolve these mutually exclusive LPTV/translator station proposals by competitive bidding in Auction 111.¹¹ Attachment A also lists, for each proposal in each MX group, the applicant name, FCC Registration Number (FRN), file number, facility identification number, community of license, and the channel requested in the relevant construction permit application.¹²

(Continued from previous page) _____
TV Translator Stations, Public Notice, 25 FCC Rcd 15120 (MB 2010); *Initiation of Nationwide First-Come, First-Served Digital Licensing for Low Power Television and TV Translators Postponed Until Further Notice*, Public Notice, 25 FCC Rcd 8179 (MB 2010) (*Rural Filing Freeze Public Notice*). Applications were first accepted for "rural areas" defined as specifying transmitting antenna site coordinates (geographic latitude and longitude) located more than 121 kilometers (75 miles) from the reference coordinates of the cities listed in Appendix A of the Public Notice. See *Rural Filing Public Notice*, 24 FCC Rcd at 8912, 8915-8917.

⁶ *The Incentive Auction Task Force and Media Bureau Announce Procedures for Low Power Television, Television Translator and Replacement Translator Stations During the Post-Incentive Auction Transition*, MB Docket No. 16-306, Public Notice, 32 FCC Rcd 3860 (IATF/MB 2017).

⁷ *Special Displacement Filing Public Notice*, 33 FCC Rcd 1234.

⁸ Displacement for LPTV Station Application of Ventana Television, Inc., LMS File No. 0000048498 (filed Mar. 12, 2018), Displacement for LPTV Station Application of Venture Technologies Group, LLC, LMS File No. 0000054805 (filed June 1, 2018).

⁹ *Media Bureau Announces Settlement Opportunity for Mutually Exclusive Low Power Television and TV Translator Applications; June 1, 2020-July 31, 2020*, Public Notice, 35 FCC Rcd 5506 (MB 2020).

¹⁰ *Id.* at 5506. With regard to MX Group 21, this filing window fulfilled the settlement opportunity provided for mutually exclusive post-incentive auction displacement relief applications by section 74.3700(g)(3) of the Commission's rules. 47 CFR § 74.3700(g)(3); see *Broadcast Incentive Auction Report and Order*, 29 FCC Rcd at 6837, para. 661.

¹¹ See 47 CFR § 74.787(a)(3)-(4); 74.3700(g)(1), (3); see also *id.* pt. 1, subpart Q; *id.* §§ 73.5000, 73.5002-73.5003, 73.5005-73.5009. Attachment A of this Public Notice lists the 24 applicants that filed the 40 applications which have been assigned to 17 MX groups.

¹² Attachment A also sets forth a proposed minimum opening bid amount and a proposed upfront payment amount for each construction permit.

B. Application Processing and Limited Auction Settlement Period

6. Attachment A lists the pending LPTV/translator station applications that will be resolved through Auction 111 unless the applicants resolve their mutual exclusivity by entering into settlement agreements or making minor amendments to their pending applications before the deadline for filing short-form applications (FCC Form 175) to participate in Auction 111, which will be announced in a future public notice.¹³ Specifically, if a member of an MX group withdraws its application on its own initiative or files a unilateral engineering amendment, or if members of the MX group enter into and submit a settlement agreement and supporting documentation that the Commission staff determines to be fully in accordance with the Communications Act of 1934, as amended (Act) and the Commission's rules,¹⁴ and such actions completely resolve the mutual exclusivity prior to the short-form application deadline, that MX group will be removed from Auction 111 and the remaining engineering proposal(s) will be processed under standard licensing procedures.

7. Conversely, if an MX group listed in Attachment A remains mutually exclusive as of the short-form application filing deadline, each applicant in that MX group must timely file a short-form application in order to avoid dismissal of its pending LPTV/translator station application. Specifically, if any member of an MX group that remains mutually exclusive as of the short-form application filing deadline fails to submit a timely short-form application, that party will have its pending application for a new or modified LPTV/translator station dismissed for failure to prosecute.¹⁵ Likewise, if only one member of an MX group that remains mutually exclusive as of the short-form application filing deadline submits a short-form application, the MX group will be removed from the auction and the engineering proposal of the party that submitted a short-form application will be treated as a "singleton" and processed under standard licensing procedures.¹⁶ We note that, if an applicant forgoes filing a short-form application pursuant to an agreement with mutually exclusive applicants, such settlement agreement must be submitted to MB for approval in accordance with section 73.3525 of the Commission's rules.¹⁷

8. After the short-form application filing deadline, we will release a public notice identifying the mutually exclusive applications for Auction 111. As provided in section 73.5002(d) of the Commission's rules, these mutually exclusive applicants will then be given a limited opportunity to resolve mutual exclusivity by the filing of technical amendments, dismissal requests, and requests for approval of universal settlements.¹⁸ The specific dates of the settlement period will be announced in the public notice identifying the MX applications, but will only last, at most, two weeks. Due to the prohibited communications rule, applicants in Auction 111 will not be able to communicate after the

¹³ See *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, 10675 (MMB/WTB 1999) (*Auction 25 Procedures Public Notice*); see also, *Auction of Construction Permits for Low Power Television and TV Translator Stations Scheduled for September 10, 2019; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 104*, AU Docket No. 19-61, Public Notice, 34 FCC Rcd 4216, 4220, para. 6 (IATF/MB/OEA 2019) (*Auction 104 Procedures Public Notice*).

¹⁴ See 47 U.S.C. § 311(c); 47 CFR §§ 73.3525, 73.3522.

¹⁵ 47 CFR § 74.3568(a); see *Auction 25 Procedures Public Notice*, 14 FCC Rcd at 10635 (explaining that pending, mutually exclusive long-form applications would be dismissed if applicants failed to file a short-form application in a closed broadcast auction).

¹⁶ See *Auction 25 Procedures Public Notice*, 14 FCC Rcd at 10634, 10637.

¹⁷ 47 CFR § 73.3525.

¹⁸ 47 CFR §§ 73.5002(d) (noting that certain applicants will be permitted to resolve mutual exclusivities "by means of engineering solutions or settlements during a limited period after the filing of short-form applications"), 74.787(a)(3)-(4) (applying 47 CFR § 73.5002(d) to certain mutually exclusive applications for LPTV/translator stations).

short-form application deadline with each other for the purpose of resolving conflicts outside of this limited settlement period.¹⁹

9. An applicant listed in Attachment A may become qualified to bid in Auction 111 only if it complies with the auction filing, qualification, and payment requirements, and otherwise complies with applicable rules, policies, and procedures. Each listed applicant may become a qualified bidder only for those construction permits specified for that applicant in Attachment A to this Public Notice. Each of the engineering proposals within each MX group are directly mutually exclusive with one another; therefore, no more than one construction permit will be awarded through Auction 111 for each MX group identified in Attachment A. Under the Commission's established precedent, once two or more short-form applications are accepted for an MX group, mutual exclusivity exists for the relevant construction permit for auction purposes.²⁰ Unless the mutual exclusivity is resolved during the limited settlement opportunity mentioned above, an applicant in Auction 111 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.²¹

III. IMPLEMENTATION OF PART 1 AND PART 73 COMPETITIVE BIDDING RULES AND REQUIREMENTS

10. Consistent with the provisions of section 309(j)(3)(E)(i) of the Act, and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, we seek comment on a variety of auction-specific procedures relating to the conduct of Auction 111.²²

11. The Commission's part 1 and part 73 competitive bidding rules require each applicant seeking to bid to acquire a construction permit in a broadcast auction to provide certain information in a short-form application (FCC Form 175), including ownership details and numerous certifications.²³ The competitive bidding rules in part 1, subpart Q, and part 73 also contain a framework for the implementation of a competitive bidding design, application and certification procedures, reporting requirements, and the prohibition of certain communications.²⁴

¹⁹ Section 1.2105(c)(1) of the Commission's rules provides that, subject to specified exceptions, "[a]fter the short-form application filing deadline, 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[.]" 47 CFR § 1.2105(c)(1). Sections 74.787(a)(3)(4) and 73.5002(d) of the Commission's rules provide a limited exception to the prohibited communications rule to allow certain mutually exclusive LPTV/translator station applicants to resolve their mutual exclusivity by means of engineering solutions or settlements during a limited period after the filing of short-form applications. 47 CFR §§ 73.5002(d), 74.787(a)(3), (4).

²⁰ 47 U.S.C. § 309(j)(1); *see e.g. Auction 104 Procedures Public Notice*, 34 FCC Rcd at 4220, para. 6.

²¹ *See, e.g., Auction of FM Broadcast Construction Permits Scheduled for July 23, 2015; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 98*, Public Notice, 30 FCC Rcd 3544, 3547, para. 5 (WTB/MB 2015) (*Auction 98 Procedures Public Notice*); *Auction of FM Broadcast Construction Permits Scheduled for July 23, 2015; Comment Sought on Competitive Bidding Procedures for Auction 98*, Public Notice, 30 FCC Rcd 1755, 1756, para. 2 & n.5 (WTB/MB 2015) (*Auction 98 Comment Public Notice*). *See also Request for Refund of Upfront Payment*, Letter Order, 16 FCC Rcd 2181 (WTB 2001); *Vodafone AirTouch Licenses LLC Request for Refund*, Letter Order, 16 FCC Rcd 22358 (WTB 2001); *Auction 25 Procedures Public Notice*, 14 FCC Rcd at 10646-47.

²² 47 U.S.C. § 309(j)(3)(E)(i). OEA works in conjunction with MB with respect to the design, implementation and administration of auctions, as well as helping develop policies, programs, and rules concerning auctions of broadcast permits. *See* 47 CFR § 0.21(m).

²³ *See generally* 47 CFR §§ 1.2105, 73.5002.

²⁴ *See generally id.* §§ 1.2101-1.2114, 73.5000-73.5009.

A. Upfront Payments and Bidding Eligibility

12. In keeping with the usual practice in spectrum auctions, we propose that applicants be required to submit upfront payments as a prerequisite to becoming qualified to bid.²⁵ An upfront payment is a refundable deposit made by an applicant to establish its eligibility to bid on construction permits. 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 the bidding.²⁶

13. We seek comment on an appropriate upfront payment for each construction permit being auctioned, taking into account such factors as the efficiency of the auction process and the potential value of similar construction permits. With these considerations in mind, we propose the upfront payments set forth in Attachment A to this Public Notice and seek comment on those proposed upfront payment amounts.

14. We further propose that the amount of the upfront payment submitted by an applicant will determine its initial bidding eligibility in bidding units, which are a measure of bidder eligibility and bidding activity. We propose to assign each construction permit a specific number of bidding units, equal to one bidding unit per dollar of the upfront payment listed in Attachment A. The number of bidding units for a given construction permit is fixed and does not change during the auction as prices change. If an applicant is found to be qualified to bid on more than one permit being offered in Auction 111, such bidder may place bids on multiple construction permits, provided that the total number of bidding units associated with those construction permits does not exceed that bidder's current eligibility. A bidder cannot increase its eligibility during the auction; it can only maintain its eligibility or decrease its eligibility. In calculating its upfront payment amount and hence its initial bidding eligibility, an applicant must determine the maximum number of bidding units on which it may wish to bid (or hold provisionally winning bids) in any single round and submit an upfront payment amount covering that total number of bidding units. We request comment on these proposals.

Example: Upfront Payments, Bidding Eligibility, and Bidding Flexibility			
Construction Permit	Market Name	Bidding Units	Upfront Payment
MX019	Tallahassee, FL	100,000	\$100,000
MX020	Beaumont, TX	50,000	\$50,000

If a bidder wishes to bid on both construction permits in a round, it must have selected both on its FCC Form 175 and purchased at least 150,000 bidding units (100,000 + 50,000) of bidding eligibility. If it only wishes to bid on one, but not both, purchasing 100,000 bidding units would meet the eligibility requirement for either construction permit. The bidder would be able to bid on either construction permit, but not both at the same time. If the bidder purchased only 50,000 bidding units, the bidder would have enough eligibility for the Beaumont, TX construction permit but not for the Tallahassee, FL construction permit.

²⁵ *Id.* § 1.2106.

²⁶ See *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Second Report and Order, 9 FCC Rcd 2348, 2377-79, paras. 169-76 (1994) (*Competitive Bidding Second Report and Order*). We note that “[a]ny auction applicant that, pursuant to § 1.2105(a)(2)(xii), certifies that it is a former defaulter must submit an upfront payment equal to 50% more than the amount that would otherwise be required.” 47 CFR § 1.2106(a).

B. Reserve Price or Minimum Opening Bids

15. As part of the pre-bidding process for each auction, we seek comment on the use of a minimum opening bid amount and/or reserve price, as mandated by section 309(j) of the Act. We propose to establish minimum opening bid amounts for Auction 111. Based on our experience in past broadcast auctions, we have found that setting a minimum opening bid amount judiciously is an effective bidding tool for accelerating the competitive bidding process.²⁷ In the last auction of LPTV construction permits (Auction 104), we similarly proposed establishing minimum opening bids and not reserve prices; no comments opposed that proposal, and it was adopted.²⁸ Based on all of these facts, we propose establishing minimum opening bids for Auction 111. We do not propose to establish separate reserve prices for any of the construction permits to be offered in Auction 111 nor do we see any reason to propose an aggregate reserve price for the auction.

16. For auctions of broadcast permits, we generally propose minimum opening bid amounts determined by taking into account the type of service and class of facility offered, market size, population covered by the proposed broadcast facility, and recent broadcast transaction data, to the extent such information is available.²⁹ Consideration of such factors for Auction 111 is complicated by a dearth of such transaction data, the fact that a permittee may opt to switch its intended use of such facility from LPTV to translator operation, or vice versa, and the lack of accurate data on the population that would be covered by each proposed facility. In Auction 104, the last auction of LPTV construction permits, we proposed minimum opening bid amounts based on the limited information available, and received no comments suggesting changes to the minimum opening bid amounts.³⁰ We followed a similar methodology used in Auction 104 to set the minimum opening bid amounts proposed in Attachment A to this Public Notice for each construction permit available in Auction 111. We seek comment on the minimum opening bid amounts specified in Attachment A.

17. If commenters believe that these minimum opening bid amounts will result in unsold construction permits or are not reasonable amounts at which to start bidding, they should explain why this is so and comment on the desirability of an alternative approach. Commenters should support their claims with valuation analyses and suggested amounts or formulas. In establishing the minimum opening bid amounts, we particularly seek comment on factors that could reasonably have an impact on bidders' valuation of the broadcast spectrum, including the type of service and class of facility offered, market size, population covered by the proposed broadcast facility and any other relevant factors. Commenters also may wish to address the general role of minimum opening bids in managing the pace of the auction. For example, commenters could compare using minimum opening bids—e.g., by setting higher minimum opening bids to reduce the number of rounds it takes for construction permits to reach their final prices—to other means of controlling auction pace, such as changes to bidding schedules, percentage increments, or activity requirements.

C. Auction Delay, Suspension, or Cancellation

18. For Auction 111, we propose that at any time before or during the bidding process we may delay, suspend, or cancel bidding in the auction in the event of a natural disaster, technical obstacle,

²⁷ See, e.g., *Auction 98 Procedures Public Notice*, 30 FCC Rcd at 3579, para. 139.

²⁸ *Auction 104 Procedures Public Notice*, 34 FCC Rcd at 4248, paras. 119-20.

²⁹ See, e.g., *id.*; see also *Broadcast Competitive Bidding Order*, 13 FCC Rcd at 15971, para. 134 (“With respect to the methodology to be employed in establishing [minimum opening bid amounts], among the factors the Bureau may consider are the type of service that will be offered, the amount of spectrum being auctioned, the degree of competition from incumbent providers, the size of the geographic service areas, potential advertising revenue, unalterable limitations due to physical phenomena (e.g., propagation losses), equipment design limitations, issues of interference with other spectrum bands, and other relevant factors that could reasonably have an impact on valuation of the spectrum being auctioned.”)

³⁰ *Auction 104 Procedures Public Notice*, 34 FCC Rcd at 4248, paras. 119-20.

network interruption, 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.³¹ We will notify participants of any such delay, suspension, or cancellation by public notice or through the FCC auction bidding system's messages function. If bidding is delayed or suspended, we may, in our sole discretion, elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. We emphasize that we will exercise this authority solely at our discretion, and not as a substitute for situations in which bidders may wish to apply activity rule waivers. We seek comment on this proposal.

D. Interim Withdrawal Payment Percentage

19. As discussed below, we propose not to allow bid withdrawals in Auction 111.³² In the event bid withdrawals are permitted in Auction 111, however, we propose the interim bid withdrawal payment be 20% of the withdrawn bid.³³ A bidder that withdraws a provisionally winning bid during an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or a subsequent auction.³⁴ However, if a construction permit for which a bid has been withdrawn does not receive a subsequent higher bid or winning bid in the same auction, the Commission cannot calculate the final withdrawal payment until that construction permit receives a higher bid or winning bid in a subsequent auction. In such cases, when that final withdrawal payment cannot yet be calculated, the Commission imposes on the bidder responsible for the withdrawn bid an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed.³⁵

20. The percentage amount of the interim bid withdrawal payment is established in advance of bidding in each auction and may range from 3% to 20% of the withdrawn bid amount.³⁶ The Commission has determined that the level of interim withdrawal payment in a particular auction will be based on the nature of the service and the inventory of the licenses being offered.³⁷ The Commission noted specifically that a higher interim withdrawal payment percentage is warranted to deter the anti-competitive use of withdrawals when, for example, bidders will not need to aggregate the licenses being offered in the auction or when there are few synergies to be captured by combining licenses.³⁸ In light of these considerations with respect to the construction permits being offered in this auction, we propose to use the maximum interim bid withdrawal payment percentage permitted by section 1.2104(g)(1) in the event bid withdrawals are allowed in this auction. We request comment on using 20% for calculating an interim bid withdrawal payment amount in Auction 111 in the event that bidders would be permitted to withdraw bids. Commenters advocating the use of bid withdrawals should also address the percentage of the interim bid withdrawal payment.

E. Deficiency Payments and Additional Default Payment Percentage

21. Any winning bidder that defaults or is disqualified after the close of an auction (i.e., fails to remit the required down payment by the specified deadline, fails to make full and timely final payment, fails to submit a timely long-form application, or whose long-form application is not granted for any

³¹ 47 CFR § 1.2104(i).

³² See Section IV.H., "Bid Removal and Bid Withdrawal," below.

³³ See generally *Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures*, WT Docket No. 05-211, Report and Order, 21 FCC Rcd 891, 903-04, paras. 30-31 (2006) (*CSEA/Part 1 Report and Order*).

³⁴ 47 CFR § 1.2104(g)(1).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 903-04, para. 31.

³⁸ *Id.* at 903-04, para. 31 & n.57.

reason, or is otherwise disqualified) is liable for a default payment under section 1.2104(g)(2) of the rules.³⁹ This payment consists of a deficiency payment, equal to the difference between the amount of the Auction 111 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.⁴⁰

22. The Commission's rules provide that, in advance of each auction, it will establish a percentage between 3% and 20% of the applicable winning bid to be assessed as an additional default payment.⁴¹ As the Commission has indicated, the level of this additional payment in each auction will be based on the nature of the service and the construction permits being offered.⁴²

23. For Auction 111, we propose to establish an additional default payment of 20%, which is consistent with the percentage in prior auctions of broadcast construction permits.⁴³ As the Commission has noted, defaults weaken the integrity of the auction process and may impede the deployment of service to the public, and an additional 20% default payment will be more effective in deterring defaults than the 3% used in some earlier auctions.⁴⁴ In light of these considerations, we propose for Auction 111 an additional default payment of 20% of the relevant bid. We seek comment on this proposal.

IV. PROPOSED BIDDING PROCEDURES

A. Simultaneous Multiple-Round Auction Design

24. We propose to use the Commission's simultaneous multiple-round auction format for Auction 111.⁴⁵ As described further below, this type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which qualified bidders may place bids on individual construction permits. Typically, bidding remains open on all construction permits until bidding stops on every construction permit. We seek comment on this proposal.

B. Bidding Rounds

25. The Commission will conduct Auction 111 over the Internet using the FCC auction bidding system. A bidder will also have the option of placing bids by telephone through a dedicated auction bidder line.⁴⁶

26. Under this proposal, Auction 111 will consist of sequential bidding rounds, each followed by the release of round results. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of bidding. Details on viewing round results, including the location and format of downloadable round results files, will be included in the same public notice.

27. We propose that the initial bidding schedule may be adjusted in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. Under this proposal, such changes may include 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

³⁹ 47 CFR § 1.2104(g)(2); *see also id.* § 1.2109.

⁴⁰ 47 CFR § 1.2104(g)(2).

⁴¹ *Id.* § 1.2104(g)(2)(ii).

⁴² *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 903-04, para. 31.

⁴³ *See, e.g., Auction 104 Procedures Public Notice*, 34 FCC Rcd at 4252, para. 139 (setting additional default payment for Auction 104 permits at 20% of the applicable bid).

⁴⁴ *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 902-03, para. 29.

⁴⁵ For a general discussion of competitive bidding design see *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2360-75, paras. 68-159.

⁴⁶ The toll-free telephone number for the auction bidder line will be provided to qualified bidders prior to the start of bidding in the auction.

other factors. We seek comment on this proposal. Commenters on this issue should address the role of the bidding schedule in managing the pace of the auction, specifically discussing the tradeoffs in managing auction pace by bidding schedule changes, by changing the activity requirement(s) or bid amount parameters, or by using other means.

C. Stopping Rule

28. We have discretion to establish stopping rules before or during multiple round auctions in order to complete the auction within a reasonable time.⁴⁷ For Auction 111, we propose to employ a simultaneous stopping rule approach, which means all construction permits remain available for bidding until bidding stops on every construction permit. Specifically, bidding will close on all construction permits after the first round in which no bidder submits any new bid, applies a proactive activity rule waiver, or withdraws any provisionally winning bid (if bid withdrawals are permitted in this auction).⁴⁸ Thus, under the proposed simultaneous stopping rule, bidding would remain open on all construction permits until bidding stops on every construction permit. Consequently, under this approach, it is not possible to determine in advance how long the bidding in this auction will last.

29. Further, we propose to retain the discretion to exercise any of the following stopping options during Auction 111:

Option 1. The auction would close for all construction permits after the first round in which no bidder applies a waiver, no bidder withdraws a provisionally winning bid (if withdrawals are permitted in this auction), or no bidder places any new bid on a construction permit for which it is not the provisionally winning bidder. Absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule.

Option 2. The auction would close for all construction permits after the first round in which no bidder applies a waiver, no bidder withdraws a provisionally winning bid (if withdrawals are permitted in this auction), or no bidder places any new bid on a construction permit that already has a provisionally winning bid. Absent any other bidding activity, a bidder placing a new bid on an FCC-held construction permit (a construction permit that does not already have a provisionally winning bid) would not keep the auction open under this modified stopping rule.

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

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

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

⁴⁷ 47 CFR § 1.2104(e).

⁴⁸ In Section III.H., “Bid Removal and Bid Withdrawal,” we seek comment on whether bid withdrawals should be permitted in Auction 111. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round. They are discussed in Section III.G., “Provisionally Winning Bids.” Proactive waivers are described in Section III.E., “Activity Rule Waivers and Reducing Eligibility,” and bid withdrawals are described in Section III.H., “Bid Removal and Bid Withdrawal,” below.

30. We propose to exercise these options only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising these options, we are likely to attempt to change the pace of the auction. For example, we may adjust the pace of bidding by changing the number of bidding rounds per day or the minimum acceptable bids. We propose to retain the discretion to exercise any of these options with or without prior announcement during the auction. We seek comment on these proposals. Commenters should provide specific reasons for supporting or objecting to these proposals.

D. Activity Rule

31. To ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. For purposes of the activity rule, the FCC auction bidding system calculates a bidder's activity in a round as the sum of the bidding units associated with any construction permits upon which it places bids during the current round and the bidding units associated with any construction permits for which it holds provisionally winning bids.⁴⁹ Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. We propose a single-stage auction with a 100% activity requirement. That is, in each bidding round, a bidder desiring to maintain its current bidding eligibility will be required to be active on 100% of its bidding eligibility. Thus, the activity requirement would be satisfied when a bidder has bidding activity on construction permits with bidding units that total 100% of its current eligibility in the round. If the activity rule is met, then the bidder's eligibility does not change in the next round. 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 for the next round of bidding, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.⁵⁰ We seek comment on these activity requirements. We encourage commenters that oppose a 100% activity requirement to explain their reasons with specificity.

E. Activity Rule Waivers and Reducing Eligibility

32. For our proposed simultaneous multiple-round auction format, we propose that when a bidder's activity in the current round is below the required minimum level, it may preserve its current level of eligibility through an activity rule waiver, if the bidder has any available. Consistent with prior Commission auctions of broadcast construction permits, we propose that each bidder in Auction 111 be provided with three activity rule waivers that may be used as set forth below at the bidder's discretion during the course of the auction.

33. 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 primarily 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.

34. 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 waiver 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.

35. 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

⁴⁹ See 47 CFR § 1.2104(f) (providing for the establishment of activity rules).

⁵⁰ See Section III.E., "Activity Rule Waivers and Reducing Eligibility," below.

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.

36. Under the proposed simultaneous stopping rule, a bidder would be permitted to apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity rule waiver (using the *proactive waiver* function in the FCC auction bidding system) during a bidding round in which no bid is placed or withdrawn (if bid withdrawals are permitted in this auction), the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC auction bidding system in a round in which there is no new bid, no bid withdrawal (if bid withdrawals are permitted in this auction), or no proactive waiver would not keep the auction open. We seek comment on these proposals.

F. Bid Amounts

37. We propose that, in each round, a qualified bidder will be able to place a bid on a given construction permit in any of up to nine different amounts: the minimum acceptable bid amount or one of the additional bid amounts.⁵¹

38. *Minimum Acceptable Bid Amounts.* The first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid for the construction permit. Once there is a provisionally winning bid for a construction permit, the minimum acceptable bid amount for that construction permit will be equal to the amount of the provisionally winning bid plus a specified percentage of that bid amount. The percentage used for this calculation, the *minimum acceptable bid increment percentage*, is multiplied by the provisionally winning bid amount, and the resulting amount is added to the provisionally winning bid amount. If, for example, the minimum acceptable bid increment percentage is 10%, then the provisionally winning bid amount is multiplied by 10%. The result of that calculation is added to the provisionally winning bid amount, and that sum is rounded using the Commission's standard rounding procedure for auctions.⁵² If bid withdrawals are permitted in this auction, in the case of a construction permit for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the construction permit.⁵³

39. *Additional Bid Amounts.* Under this proposal, the Commission will calculate the eight additional bid amounts using the minimum acceptable bid amount and an additional bid increment percentage. The minimum acceptable bid amount is multiplied by the additional bid increment percentage, and that result (rounded)⁵⁴ is the additional increment amount. The first additional acceptable bid amount equals the minimum acceptable bid amount plus the additional increment amount. The second additional acceptable bid amount equals the minimum acceptable bid amount plus two times the additional increment amount; the third additional acceptable bid amount is the minimum acceptable bid amount plus three times the additional increment amount; etc. If, for example, the additional bid increment percentage is 5%, then the calculation of the additional increment amount would be (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

⁵¹ Bidders must have sufficient eligibility to place a bid on the particular construction permit. See Section III.A., "Upfront Payments and Bidding Eligibility," above.

⁵² The result of that calculation is subject to a minimum of \$100, and results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10.

⁵³ See Section III.H., "Bid Removal and Bid Withdrawal," below.

⁵⁴ For a discussion concerning rounding see note 52 above.

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.

40. For Auction 111, we propose to use a minimum acceptable bid increment percentage of 10%. This means that the minimum acceptable bid amount for a construction permit will be approximately 10% greater than the provisionally winning bid amount for the construction permit. To calculate the additional acceptable bid amounts, we propose to use a bid increment percentage of 5%. We seek comment on these proposals.

41. *Bid Amount Changes.* We propose 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 we determine, consistent with past practice, that circumstances so dictate.⁵⁵ We propose to retain the discretion to do so on a construction permit-by-construction permit basis. We also propose to retain the discretion to limit (a) the amount by which a minimum acceptable bid for a construction permit may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, we could set a \$1,000 limit on increases in minimum acceptable bid amounts over provisionally winning bids. In this example, if calculating a minimum acceptable bid using the minimum acceptable bid increment percentage results in a minimum acceptable bid amount that is \$1,200 higher than the provisionally winning bid on a construction permit, the minimum acceptable bid amount would instead be capped at \$1,000 above the provisionally winning bid. We seek comment on the circumstances under which we should employ such a limit, factors we should consider when determining the dollar amount of the limit, and the tradeoffs in setting such a limit or changing other parameters, such as changing the minimum acceptable bid percentage, the bid increment percentage, or the number of acceptable bid amounts. If we exercise this discretion, we will alert bidders by announcement in the FCC auction bidding system during the auction.

42. We seek comment on these proposals. If commenters disagree with the proposal to begin the auction with nine acceptable bid amounts per construction permit, they should suggest an alternative number of acceptable bid amounts to use. Commenters may wish to address the role of the minimum acceptable bids and the number of acceptable bid amounts in managing the pace of the auction and the tradeoffs in managing auction pace by changing the bidding schedule, activity requirement, bid amounts, or by using other means.

G. Provisionally Winning Bids

43. The FCC auction bidding system will determine provisionally winning bids consistent with practice in past auctions.⁵⁶ At the end of a bidding round, the bidding system will determine a provisionally winning bid for each construction permit based on the highest bid amount received for that permit. The FCC auction bidding system will advise bidders of the status of their bids when round results are released. 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, unless the provisionally winning bid is withdrawn (if bid withdrawals are permitted in this auction). Provisionally winning bids at the end of the auction become the winning bids. As a reminder, provisionally winning bids count toward activity for purposes of the activity rule.⁵⁷

44. The FCC auction bidding system assigns a pseudo-random number generated by an algorithm to each bid when the bid is entered. If identical high bid amounts are submitted on a

⁵⁵ See, e.g., *Auction 98 Procedures Public Notice*, 30 FCC Rcd at 3581, paras. 147-48; see also 47 CFR § 1.2104(d) (“The Commission may, by announcement before or during an auction, require minimum bid increments in dollar or percentage terms.”).

⁵⁶ See, e.g., *Auction 104 Procedures Public Notice*, 34 FCC Rcd at 4250, para. 126.

⁵⁷ See Section III.D., “Activity Rule,” above.

construction permit in any given round (i.e., tied bids), the FCC auction bidding system will use a pseudo-random number generator to select a single provisionally winning bid from among the tied bids. The tied bid with the highest pseudo-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 end 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.

H. Bid Removal and Bid Withdrawal

45. *Bid Removal.* The FCC auction bidding system allows each bidder to remove any of the bids it placed in a round before the close of that round. By removing a bid placed within a round, a bidder effectively “unsubmits” the bid. In contrast to the bid withdrawal provisions described below, a bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid. Consistent with the design of the bidding system, bidders in Auction 111 would be permitted to remove bids placed in a round before the close of that round.

46. *Bid Withdrawal.* We propose not to permit bidders in Auction 111 to withdraw bids. When permitted in an auction, bid withdrawals provide a bidder with the option of withdrawing bids placed in prior rounds that have become provisionally winning bids. A bidder would be able to withdraw its provisionally winning bids using the *withdraw* function in the FCC auction bidding system. A bidder that withdraws its provisionally winning bid(s), if permitted, is subject to the bid withdrawal payment provisions of the Commission’s rules.⁵⁸

47. The Commission has recognized that bid withdrawals may be a helpful tool in certain circumstances for bidders seeking to efficiently aggregate licenses or implement backup strategies.⁵⁹ The Commission has also acknowledged that allowing bid withdrawals may encourage insincere bidding or increased opportunities for undesirable strategic bidding in certain circumstances.⁶⁰ The Commission stated that we should exercise discretion assertively, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if we find a bidder is abusing the Commission’s bid withdrawal procedures.⁶¹ In managing the auction, therefore, we have discretion to limit the number of withdrawals to prevent bidding abuses.

48. Based on this guidance and on our experience with past auctions of broadcast construction permits, we propose to prohibit bidders from withdrawing any bid after the close of the round in which that bid was placed. We make this proposal in light of the site-specific nature and wide geographic dispersion of the permits available in this auction, which suggests that potential applicants for this auction may have fewer incentives to aggregate permits through the auction process (as compared with bidders in many auctions of wireless licenses). Thus, we believe that it is unlikely that bidders will have a need to withdraw bids in this auction. Further, we are mindful that bid withdrawals, particularly if they were made late in this auction, could result in delays in licensing new broadcast stations and attendant delays in the offering of new broadcast service to the public. We seek comment on our proposal to prohibit bid withdrawals in Auction 111. Commenters advocating alternative approaches should support their arguments by taking into account the construction permits offered, the impact of auction dynamics and the pricing mechanism, and the effects on the bidding strategies of other bidders.

⁵⁸ 47 CFR §§ 1.2104(g)(1).

⁵⁹ See *Part 1 Third Report and Order*, 13 FCC Rcd at 460, para. 150.

⁶⁰ *Id.* at 458-60, paras. 148-50. See *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 902-04, para. 29 & n.57.

⁶¹ *Part 1 Third Report and Order*, 13 FCC Rcd at 460, para. 150.

V. TUTORIAL AND ADDITIONAL INFORMATION FOR APPLICANTS

49. The Commission intends to provide additional information on the bidding system and to offer demonstrations and other educational opportunities for applicants in Auction 111 to familiarize themselves with the FCC auction application system and the auction bidding system. For example, we intend to release an online tutorial that will help applicants understand the procedures to be followed in the filing of their auction short-form applications (FCC Form 175) and on the bidding procedures for Auction 111.

VI. PROCEDURAL MATTERS

A. Paperwork Reduction Act

50. The Office of Management and Budget (OMB) has approved the information collections in the Application to Participate in an FCC Auction, FCC Form 175.⁶² This Public Notice does not propose new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. Therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.⁶³

B. Supplemental Initial Regulatory Flexibility Analysis

51. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),⁶⁴ the Commission prepared Initial Regulatory Flexibility Analyses (IRFAs) in connection with the *Broadcast Competitive Bidding Notice of Proposed Rulemaking* (NPRM),⁶⁵ and other Commission NPRMs (collectively, Competitive Bidding NPRMs) pursuant to which Auction 111 will be conducted.⁶⁶ Final Regulatory Flexibility Analyses (FRFAs) likewise were prepared in the *Broadcast Competitive Bidding Order*⁶⁷ and other Commission rulemaking orders (collectively, Competitive Bidding Orders) pursuant to which Auction 111 will be conducted.⁶⁸ The Office of Economics and Analytics (OEA), in conjunction with the Media Bureau (MB), has prepared this Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this Public Notice, to supplement the Commission's Initial and Final Regulatory Flexibility Analyses completed in the *Competitive Bidding NPRMs* and the *Competitive Bidding Orders* pursuant to which Auction 111 will be conducted.⁶⁹ Written public comments are requested on this Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be

⁶² OMB Control No. 3060-0600.

⁶³ See 44 U.S.C. § 3506(c)(4).

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

⁶⁵ *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, Notice of Proposed Rulemaking, 12 FCC Rcd 22363, 22416-22, Appendix B (1997) (*Broadcast Competitive Bidding NPRM*).

⁶⁶ See *Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures*, Declaratory Ruling and Notice of Proposed Rule Making, 20 FCC Rcd 11268, 11301-07, Appendix B (2005) (*CSEA Declaratory Ruling/NPRM*); *Amendment of Part 1 of the Commission's Rules – Competitive Bidding Proceeding*, Order, WT Docket No. 97-82, Memorandum Opinion and Order and Notice of Proposed Rule Making, 12 FCC Rcd 5686, 5749-53, Appendix C (1997) (*Part 1 Order/NPRM*); *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Notice of Proposed Rule Making, 8 FCC Rcd 7635, 7666, Appendix (1993) (*Competitive Bidding NPRM*).

⁶⁷ *Broadcast Competitive Bidding Order*, 13 FCC Rcd at 16015-27, Appendix B.

⁶⁸ See *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; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2400, paras. 299-302.

⁶⁹ See decisions cited in notes 65-68 above.

filed by the same filing deadlines for comments specified on the first page of this Public Notice. The Commission will send a copy of the Public Notice, including this Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).⁷⁰ In addition, a summary of the Public Notice, including this Supplemental IRFA, will be published in the *Federal Register*.⁷¹

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

52. The proposed procedures for the conduct of Auction 111 as described in this Public Notice would constitute the more specific implementation of the competitive bidding rules contemplated by parts 1 and 73 of the Commission's rules, adopted by the Commission in multiple notice-and-comment rulemaking proceedings,⁷² including the Commission's establishing in the underlying rulemaking orders additional procedures to be used on delegated authority. More specifically, this Public Notice seeks comment on proposed procedures, terms and conditions governing Auction 111, and the post-auction application and payment processes, as well as seeking comment on the minimum opening bid amounts for the specified construction permits, and is fully consistent with the underlying rulemaking orders, including the *Broadcast Competitive Bidding Order* and other relevant competitive bidding orders.

53. This Public Notice provides notice of proposed auction procedures and adequate time for Auction 111 applicants to comment on those proposed procedures.⁷³ To promote the efficient and fair administration of the competitive bidding process for all Auction 111 participants, including small businesses, this Public Notice seeks comment on the following proposed procedures:

- establishment of an interim bid withdrawal percentage of 20% of the withdrawn bid in the event we allow bid withdrawals in Auction 111;
- establishment of an additional default payment of 20% under section 1.2104(g)(2) in the event that a winning bidder defaults or is disqualified after the auction;
- use of a simultaneous multiple-round auction format, consisting of sequential bidding rounds with a simultaneous stopping rule (with discretion to exercise alternative stopping rules under certain circumstances);
- retention by OEA, in conjunction with MB, to exercise its discretion to delay, suspend, or cancel bidding in Auction 111 for any reason that affects the ability of the competitive bidding process to be conducted fairly and efficiently;
- retention by OEA of discretion to adjust the bidding schedule in order to manage the pace of Auction 111;
- a specific minimum opening bid amount for each construction permit available in Auction 111;
- a specific number of bidding units for each construction permit;
- a specific upfront payment amount for each construction permit;
- establishment of a bidder's initial bidding eligibility in bidding units based on that bidder's upfront payment through assignment of a specific number of bidding units for each construction permit;
- use of an activity requirement so that bidders must bid actively during the auction rather than waiting until late in the auction before participating;

⁷⁰ See 5 U.S.C. § 603(a).

⁷¹ See *id.*

⁷² See notes 65-68 above.

⁷³ 47 U.S.C. § 309(j)(3)(E)(i) (requirement to seek comment on auction procedures).

- a single stage auction in which a bidder is required to be active on 100% of its bidding eligibility in each round of the auction;
- provision of three activity waivers for each qualified bidder to allow it to preserve eligibility during the course of the auction;
- use of minimum acceptable bid amounts and additional bid increments, along with a proposed methodology for calculating such amounts, while retaining discretion to change their methodology if circumstances dictate;
- bid removal procedures; and
- proposal to allow for bid removals (before the close of a bidding round) but not allow bid withdrawals (after the close of a bidding round).

2. Legal Basis

54. The Commission's statutory obligations to small businesses participating in a spectrum auction under the Act are found in sections 309(j)(3)(B) and 309(j)(4)(D). The statutory basis for the Commission's competitive bidding rules is found in various provisions of the Act, including 47 U.S.C. §§ 154(i), 301, 303(e), 303(f), 303(r), 304, 307, and 309(j). The Commission has established a framework of competitive bidding rules pursuant to which it has conducted auctions since the inception of the auction program in 1994 and would conduct Auction 111.⁷⁴ The Commission has directed that we, under delegated authority, seek comment on a variety of auction-specific procedures prior to the start of bidding in each auction.⁷⁵

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

55. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed procedures, if adopted.⁷⁶ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small government jurisdiction."⁷⁷ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁷⁸ A "small

⁷⁴ See generally 47 CFR pt. 1, subpart Q; see also 47 CFR §§ 73.5000, 73.5002-73.5003, 73.5005-73.5009. In promulgating those rules, the Commission conducted numerous Initial Regulatory Flexibility Act analyses to consider the possible impact of those rules on small businesses that might seek to participate in Commission auctions. See, e.g., *CSEA Declaratory Ruling/NPRM*, 20 FCC Rcd at 11301-07, Appendix B; *Broadcast Competitive Bidding NPRM* 12 FCC Rcd at 22416-22, Appendix B; *Part 1 Order Notice*, 12 FCC Rcd at 5749-53, Appendix C; *Competitive Bidding NPRM*, 8 FCC Rcd at 7666, Appendix. In addition, multiple Final Regulatory Flexibility Analyses (FRFAs) were included in the rulemaking orders which adopted or amended rule provisions relevant to this Public Notice. See *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 927-34, Appendix C; *Broadcast Competitive Bidding Order*, 13 FCC Rcd at 16015-27, Appendix B; *Part 1 Third Report and Order*, 13 FCC Rcd at 492-503, Appendix B; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2400, paras. 299-302.

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

⁷⁶ 5 U.S.C. § 603(b)(3).

⁷⁷ 5 U.S.C. § 601(6).

⁷⁸ 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."

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.⁷⁹

56. The specific procedures and minimum opening bid amounts on which comment is sought in this Public Notice will directly affect all applicants participating in Auction 111, in which applicant eligibility is closed. Therefore, the specific competitive bidding procedures and minimum opening bid amounts described in the *Auction 111 Comment Public Notice* will affect only the 24 individuals and entities listed in Attachment A to this Public Notice and that are the only parties eligible to complete the remaining steps to become qualified to bid in Auction 111. These specific 24 Auction 111 individuals and entities include firms of all sizes.

57. *Television Broadcasting.* This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.”⁸⁰ These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.⁸¹ These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having \$41.5 million or less in annual receipts.⁸² The 2012 Economic Census reports that 751 firms in this category operated that entire year.⁸³ Of that number, 656 had annual receipts of \$25,000,000 or less, and 25 had annual receipts between \$25,000,000 and \$49,999,999.⁸⁴ Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

58. Additionally, the Commission has estimated the number of licensed commercial television stations to be 1,374.⁸⁵ Of this total, 1,269 stations (or about 92.5%) had revenues of \$41.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) in April 20, 2021 and therefore these stations qualify as small entities under the SBA definition.

59. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 384.⁸⁶ These stations are non-profit, and therefore considered to be small entities.⁸⁷

⁷⁹ 15 U.S.C. § 632.

⁸⁰ See U.S. Census Bureau, *2017 NAICS Definition*, “515120 Television Broadcasting”, <https://www.census.gov/naics/?input=515120&year=2017&details=515120>.

⁸¹ *Id.*

⁸² See 13 CFR § 121.201, NAICS Code 515120.

⁸³ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series – Estab. and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 515120, <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=515120&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false>.

⁸⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁸⁵ Broadcast Station Totals as of March 31, 2021, News Release (MB Apr. 5, 2021) (March 31, 2021 Broadcast Station Totals), available at www.fcc.gov/document/broadcast-station-totals-march-31-2021 (*April 2021 Station Totals News Release*). While the Commission also reports the number of licensed noncommercial educational (NCE) broadcast stations, it does not compile and does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities. Further, the Local Radio Ownership Rule, the Local Television Ownership Rule and the Dual Network Rule apply only to combinations of commercial entities.

⁸⁶ *Id.*

60. There are also 2,371 LPTV stations, including Class A stations, and 3,306 TV translators.⁸⁸ Given the nature of these services, we presume that all of these entities qualify as small entities under the SBA small business size standard.

61. We note, however, that the SBA size standard data does not enable us to make a meaningful estimate of the number of small entities that may participate in Auction 111.

62. In assessing whether a business entity qualifies as small under the SBA definition, business control affiliations must be included.⁸⁹ Our estimate therefore likely overstates the number of small entities that might be affected by this auction because the revenue figures on which this estimate is based does not include or aggregate revenues from affiliated companies. Moreover, the definition of small business also requires that an entity not be dominant in its field of operation and that the entity be independently owned and operated. The estimate of small businesses to which Auction 111 competitive bidding rules may apply does not exclude any television station from the definition of a small business on these bases and is therefore over-inclusive to that extent. Furthermore, we are unable at this time to define or quantify the criteria that would establish whether a specific LPTV station or TV translator is dominant in its field of operation.

63. We also note that we are unable to accurately develop an estimate of how many of the 24 entities in this auction are small businesses based on the number of small entities that applied to participate in prior broadcast auctions, because that information is not collected from applicants for broadcast auctions in which bidding credits are not based on an applicant's size (as is the case in auctions of licenses for wireless services). We conclude, however, that the majority of Auction 111 eligible bidders would likely meet the SBA's definition of a small business concern.

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

64. The Commission designed the auction application process itself to minimize reporting and compliance requirements for applicants, including small business applicants. To participate in this auction parties will file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications.⁹⁰ Eligibility to participate in bidding is based on an applicant's short-form application and certifications, as well as its upfront payment. In the second phase of the process, there are additional compliance requirements for winning bidders. Thus, a small business that fails to become a winning bidder does not need to satisfy additional requirements of a winning bidder.

65. We do not expect the processes and procedures proposed in this Public Notice will require small entities to hire attorneys, engineers, consultants, or other professionals to participate in Auction 111 and comply with the procedures we ultimately adopt because of the information, resources, and guidance we make available to potential and actual participants. For example, we intend to release an online tutorial that will help applicants understand the procedures for filing the auction short-form application (FCC Form 175). We also intend to make information on the bidding system available and to offer demonstrations and other educational opportunities for applicants in Auction 111 to familiarize themselves with the FCC auction application system and the auction bidding system. By providing these resources as well as the resources discussed below, we expect small business entities who use the available resources to experience lower participation and compliance costs. Nevertheless, while we cannot quantify the cost of compliance with the proposed procedures, we do not believe that the costs of compliance will unduly burden small entities that choose to participate in the auction because the

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⁸⁷ See generally 5 U.S.C. § 601(4), (6).

⁸⁸ See April 2021 Station Totals News Release.

⁸⁹ Business concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both. 13 CFR § 121.103(a)(1).

⁹⁰ See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2376-77, paras. 163-66.

proposals for Auction 111 are similar in many respects to the procedures in recent auctions conducted by the Commission.⁹¹

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

66. 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.”⁹²

67. We have taken steps to minimize any economic impact of our auction procedures on small businesses through, among other things, the many resources we provide potential auction participants. Small entities and other auction participants may seek clarification of or guidance on complying with competitive bidding rules and procedures, reporting requirements, and the FCC’s auction bidding system. An FCC Auctions Hotline provides access to Commission staff for information about the auction process and procedures. The FCC Auctions Technical Support Hotline is another resource which provides technical assistance to applicants, including small entities, on issues such as access to or navigation within the electronic FCC Form 175 and use of the FCC’s auction bidding system. Small entities may also use the web-based, interactive online tutorial produced by Commission staff to familiarize themselves with auction procedures, filing requirements, bidding procedures, and other matters related to an auction.

68. We also make various databases and other sources of information, including the Auctions program websites and copies of Commission decisions, available to the public without charge, providing a low-cost mechanism for small entities to conduct research prior to and throughout the auction. Prior to and at the close of Auction 111, we will post public notices on the Auctions website, which articulate the procedures and deadlines for the auction. We make this information easily accessible and without charge to benefit all Auction 111 applicants, including small entities, thereby lowering their administrative costs to comply with the Commission’s competitive bidding rules.

69. Prior to the start of bidding, eligible bidders will be given an opportunity to become familiar with auction procedures and the bidding system by participating in a mock auction. Further, we intend to conduct Auction 111 electronically over the Internet using its web-based auction system that eliminates the need for bidders to be physically present in a specific location. Qualified bidders also have the option to place bids by telephone. These mechanisms are made available to facilitate participation in Auction 111 by all eligible bidders and may result in significant cost savings for small business entities that use these alternatives. Moreover, the adoption of bidding procedures in advance of the auction, consistent with statutory directive, is designed to ensure that the auction will be administered predictably and fairly for all participants, including small entities.

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

70. None.

⁹¹ See generally, e.g., *Auction of AM and FM Broadcast Construction Permits Scheduled for July 27, 2021; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 109*, AU Docket No. 21-39, Public Notice, DA 21-361 (OEA/MB Apr. 1, 2021).

⁹² 5 U.S.C. § 603(c)(1)-(4).

C. Deadlines and Filing Procedures

71. Interested parties may file comments or reply comments on or before the dates indicated on the first page of this document in AU Docket No. 21-284. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).⁹³

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS at www.fcc.gov/ecfs.
- *Paper Filers:* Parties that choose to file by paper must file an original and one copy of each filing.

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

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
- Until further notice, the Commission no longer accepts any hand delivered or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.⁹⁴

73. *Email.* We also request that a copy of all comments and reply comments be submitted electronically to the following address: auction111@fcc.gov.

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

75. *Ex Parte Requirements.* This proceeding has been designated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁹⁵ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to the Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b). In proceedings governed by section 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the Electronic Comment Filing System available for that proceeding, and must be filed in their native

⁹³ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (May 1, 1998).

⁹⁴ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OMD 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

⁹⁵ 47 CFR §§ 1.1200(a), 1.1206.

format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

D. Contact Information

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

Video Division, Media Bureau

LTPV/translator station service questions: Shaun Maher (legal) at (202) 418-2324, or
Mark Colombo (technical questions) at (202) 418-7611

Auctions Division, Office of Economics and Analytics

Auction legal questions: Lyndsey Grunewald or Scott Mackoul at (202) 418-0660
General auction questions: Auctions Hotline at (717) 338-2868

Office of Communications Business Opportunities

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

Consumer and Governmental Affairs Bureau

To request materials in accessible formats: (202) 418-0530 or (202) 418-0432 (TTY)
fcc504@fcc.gov

Press Information: Janice Wise (202) 418-8165

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**ATTACHMENT A:
CONSTRUCTION PERMITS IN AUCTION 111**

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