



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Fax-On-Demand 202 / 418-2830
TTY 202 / 418-2555
Internet: <http://www.fcc.gov>
<ftp.fcc.gov>

DA 02-2623
October 15, 2002

AUCTION NO. 32 CONSTRUCTION PERMITS FOR NEW AM BROADCAST STATIONS SCHEDULED FOR DECEMBER 10, 2002

Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedural Issues

Report No. AUC-01-32-H (Auction No. 32)

I.	General Information.....	3
A.	Introduction.....	3
1.	Construction Permits to Be Auctioned	3
B.	Rules and Disclaimers.....	5
1.	Relevant Authority.....	5
2.	Prohibition of Collusion	5
3.	Due Diligence	7
4.	Bidder Alerts.....	7
5.	National Environmental Policy Act (NEPA) Requirements.....	8
C.	Auction Specifics	8
1.	Auction Date.....	8
2.	Auction Title.....	9
3.	Bidding Methodology.....	9
4.	Pre-Auction Dates and Deadlines	9
5.	Requirements for Participation	9
6.	General Contact Information	10
II.	SHORT-FORM (FCC FORM 175) APPLICATION REQUIREMENTS	11
A.	Maintaining the Accuracy of FCC Form 175 Information	11
B.	Requirements for Logging on to the FCC Auction 175 Application & Search System.....	11
C.	Electronic Review of Short –Form Applications (FCC Form 175).....	12
D.	Installment Payments	12
III.	PRE-AUCTION PROCEDURES	12

A.	Application Processing and Minor Corrections	12
B.	Auction Seminar	12
C.	Upfront Payments -- Due November 15, 2002	13
1.	Making Auction Payments by Wire Transfer	13
2.	FCC Form 159	14
3.	Amount of Upfront Payment	14
4.	Applicant's Wire Transfer Information for Purposes of Refunds	15
D.	Auction Registration	15
E.	Electronic Bidding	16
F.	Mock Auction	16
IV.	AUCTION EVENT	16
A.	Auction Structure	16
1.	Simultaneous Multiple Round Auction	16
2.	Maximum Eligibility and Activity Rules.....	17
3.	Activity Rule Waivers and Reducing Eligibility	17
4.	Auction Stopping Rules	18
5.	Auction Delay, Suspension, or Cancellation	19
B.	Bidding Procedures.....	19
1.	Round Structure	19
2.	Reserve Price or Minimum Opening Bid.....	19
3.	Minimum Accepted Bids and Bid Increments	20
4.	High Bids	21
5.	Bidding	22
6.	Bid Removal and Bid Withdrawal	22
7.	Round Results	23
8.	Auction Announcements.....	23
V.	POST-AUCTION PROCEDURES.....	23
A.	Down Payments	23
B.	Long-Form Application	23
C.	Default and Disqualification	23
D.	Refund of Remaining Upfront Payment Balance	24
VI.	Attachment A: Construction Permits to be Auctioned.....	A1
VII.	Attachment B: FCC Auction Seminar Registration Form	B1
VIII.	Attachment C: Auction-Specific Instructions for FCC Remittance Advice (FCC Form 159 - February 2000 Edition).....	C1
IX.	Attachment D: Summary Listing of Documents from the Commission and the Wireless Telecommunications Bureau Addressing Applications of the Anti-Collusion Rules.....	D1

I. GENERAL INFORMATION

A. Introduction

This public notice announces the procedures and minimum opening bids for the upcoming auction of construction permits for new AM broadcast stations (“Auction No. 32”). On September 16, 2002, in accordance with the Balanced Budget Act of 1997,¹ the Media Bureau (“MB”) and the Wireless Telecommunications Bureau (“WTB”) (collectively, the “Bureaus”) released the *Auction No. 32 Comment Public Notice*,² seeking comment on the establishment of reserve prices and/or minimum opening bids for Auction No. 32. In addition, the Bureaus sought comment on a number of procedures to be used in Auction No. 32. The Bureaus received two comments and one reply comment in response to the *Auction No. 32 Comment Public Notice*.³

1. Construction Permits to Be Auctioned

Auction No. 32 will include construction permits for three new AM broadcast stations. These construction permits are the subject of pending, mutually exclusive short-form applications (FCC Form 175) filed on or before February 1, 2000, and participation in this auction is limited to the applicants identified in Attachment A.⁴ All applications within a mutually exclusive applicant group (“MX Group”) are directly mutually exclusive with one another, and therefore a single AM construction permit will be auctioned for each MX Group identified in Attachment A. The minimum opening bids and upfront payments for these construction permits are also included in Attachment A.

MX Group AM 38: Applicants ALM and Michael filed comments in response to the *Auction No. 32 Comment Public Notice*. Both request that the auction be held in abeyance pending resolution of their respective Applications for Review, in which ALM and Michael challenge the Media Bureau’s finding

¹ Section 3002(a), Balanced Budget Act of 1997, Pub. L. 105-33, 111 Stat. 251 (1997) (“Balanced Budget Act”); 47 U.S.C. §309(j)(4)(F). The Commission’s authority to establish a reserve price or minimum opening bid is set forth in 47 C.F.R. § 1.2104 (c) and (d).

² Auction of Construction Permits For New AM Broadcast Stations Scheduled for December 10, 2002; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedural Issues, *Public Notice*, DA 02-2216 (rel. September 16, 2002) (“*Auction No. 32 Comment Public Notice*”).

³ Comments were filed by Alvin Lou Media, Inc. (“ALM”) and Victor A. Michael (“Michael”). A reply comment was filed by Alvin Lou Media, Inc. (“ALM”).

⁴ On November 19, 1999, the Bureaus announced a five-day period, from January 24, 2000 to January 28, 2000, for the filing of applications for new AM stations and major modifications to authorized AM stations. *AM Auction Filing Window and Application Freeze; Notice and Filing Requirements Regarding January 24-28, 2000 Window for Certain AM Construction Permits; Notice Regarding Freeze on the Acceptance of AM Minor Change Construction Permits from December 24, 1999 to January 21, 2000, Public Notice*, 14 FCC Rcd 19490 (1999) (“*Auction No. 32 Filing Window Public Notice*”). The filing window was subsequently extended to February 1, 2000. *AM Auction Filing Window and Application Freeze Extended to February 1, 2000, Public Notice*, 15 FCC Rcd 1910 (2000). Applicants were required to file an FCC Form 175 and certain sections of FCC Form 301, Application for Construction Permit, which permitted the staff to determine mutual exclusivities between applicants.

that ALM and Powell Meredith Communications Company (“PMCC”) should proceed to auction.⁵ ALM and Michael both argue that PMCC’s technical proposal is unacceptable, and thus PMCC should not be allowed to proceed to auction.

We will not delay the auction for MX Group AM 38 as requested by the commenters. The Commission has directed us to defer technical review until the post-auction submission of long-form applications by the winning bidders.⁶ This is consistent with Congress and the Commission’s overall objective of minimizing delay in the award of construction permits, and promoting deployment of new broadcasting service to the public as expeditiously as possible.⁷ Further, to the extent ALM and Michael rely on pending challenges to the determination that ALM and PMCC should proceed to auction, they have not shown irreparable harm or that the public interest would be served by delaying the auction schedule. Any grant of a construction permit won in competitive bidding remains subject to Commission or judicial review and the ultimate disposition of issues presented on appeal.⁸

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.⁹ When two or more short-form applications are accepted for filing within an MX Group, mutual exclusivity exits for auction purposes.¹⁰ 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.¹¹

⁵ See *Letter to Mr. Dave Garey, Lee J. Peltzman, Esq., and A. Wray Fitch III, Esq. from Peter H. Doyle, Chief, Audio Division, Office of Broadcast License Policy, Media Bureau*, Ref. No. 1800B3-TSN (August 15, 2002). ALM filed an Application for Review on September 16, 2002, and Michael filed an Application for Review on September 19, 2002.

⁶ 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, GC Docket No. 92-52 and GEN Docket No. 90-264, *First Report and Order*, 13 FCC Rcd 15920, 15979 (1998) (“*Broadcast First Report and Order*”).

⁷ *Id.* See also 47 U.S.C. § 309(j)(3)(A).

⁸ See, e.g., *Committee to Save WEAM v. F.C.C.*, 808 F.2d 113, 119 (D.C. Cir. 1986) (parties to assignment of license consummated transaction knowing that Commission could reverse Bureau’s approval of assignment on review; “effective but not final” procedure did not deprive appellant of opportunity to challenge assignment before Commission and court, but merely prevented appellant from insisting on maintenance of the status quo pending review); “Auction of C, D, E, and F Block Broadband PCS Licenses,” *Public Notice*, 14 FCC Rcd 5467, 5470-71 (1999) (auction would continue notwithstanding that several licenses to be auctioned were the subject of pending proceedings by parties claiming continuing interests in the licenses; winning bidders would receive refunds of any payments if forced to surrender licenses won at auction).

⁹ *Broadcast First Report and Order*, 13 FCC Rcd at 15923-25, ¶¶ 7-12.

¹⁰ *Broadcast First Report and Order*, 13 FCC Rcd at 15978-80, ¶¶ 149-154. See also Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-252, *Second Report and Order*, 9 FCC Rcd 2348, 2376, ¶ 165 (1994).

¹¹ Any applicant that submits a short-form application that is accepted for filing but fails to timely submit an upfront payment will retain its place in the MX Group but, having purchased no bidding eligibility, will not be eligible to bid.

B. Rules and Disclaimers

1. Relevant Authority

Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to the AM broadcast service contained in Title 47, Part 73 of the Code of Federal Regulations. Prospective bidders must also be familiar with the rules relating to broadcast auctions and competitive bidding proceedings in Title 47, Part 1, Subpart Q and Part 73, Subpart I of the Commission's rules. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions contained in this Public Notice, the *Auction No. 32 Comment Public Notice*, the *Broadcast First Report and Order*,¹² the *Broadcast Reconsideration Order*,¹³ and the *New Entrant Bidding Credit Reconsideration Order*.¹⁴

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. When ordering documents from Qualex, please provide the appropriate FCC number (for example, FCC 98-194 for the *Broadcast First Report and Order* and FCC 99-74 for the *Broadcast Reconsideration Order*).

2. Prohibition of Collusion

Bidders are reminded that Section 1.2105(c) of the Commission's rules prohibits competing applicants from communicating with each other during the auction about bids, bidding strategies, or settlements unless they have identified each other as parties with whom they have entered into agreements under Section 1.2105(a)(2)(viii).¹⁵ For further details regarding the anti-collusion rule, refer to the *AM Auction Filing Window and Application Freeze Public Notice*, released November 19, 1999.¹⁶ For Auction No. 32, this prohibition became effective at the short-form application deadline (February 1, 2000) and will

¹² *Broadcast First Report and Order*, 13 FCC Rcd 15920.

¹³ Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, *Memorandum Opinion and Order*, 14 FCC Rcd 8724 (1999) (“*Broadcast Reconsideration Order*”).

¹⁴ Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, *Memorandum Opinion and Order*, 14 FCC Rcd 12541 (1999) (“*New Entrant Bidding Credit Reconsideration Order*”).

¹⁵ 47 C.F.R. § 1.2105(c).

¹⁶ AM Auction Filing Window and Application Freeze, *Public Notice*, 14 FCC Rcd 19490 (1999) (“*Auction Filing Window Public Notice*”).

end on the down payment due date after the auction (to be announced in a future public notice).¹⁷ Applicants certified compliance with Section 1.2105(c) when they signed their short-form applications. 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.¹⁸

Bidders in Auction No. 32 are encouraged not to use the same individual acting as an authorized bidder for any other applicant. 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/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 addition, Section 1.65 of the Commission's rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application.¹⁹ Thus, Section 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules immediately upon learning of such violation. Bidders therefore are required to make such notification to the Commission immediately upon discovery.²⁰

A summary listing of documents from the Commission and the Bureaus addressing the application of the anti-collusion rules may be found in Attachment D.

¹⁷ See 47 C.F.R. § 73.5002(d). In certain circumstances in Auction No. 32, however, the Commission allowed limited opportunities to settle or otherwise resolve mutual exclusivities by means of engineering solutions following the filing of FCC Form 175 applications. See *AM Auction No. 32 Mutually Exclusive Applicants Subject to Auction, Public Notice*, 15 FCC Rcd 20449 (2000). The three MX Groups listed in Attachment A to this Public Notice were ineligible for settlement. Further, the staff performed Section 307(b) analyses in MX Groups 20 and 38, finding that the proposals for, respectively, Sunrise Manor and Spring Valley, Nevada, were effectively Las Vegas proposals, and not entitled to first local service preferences as requested by the applicants. The staff then determined that Las Vegas was entitled to a dispositive Section 307(b) preference over the other competing communities and, therefore, that the mutually exclusive applications for the Las Vegas area in both groups must proceed to auction. See *Broadcast First Report and Order*, 13 FCC Rcd at 15965.

¹⁸ See *In re Application of Nevada Wireless for a License to Provide 800 MHz Specialized Mobile Radio Service in the Farmington, NM-CO Economic Area (EA-155) Frequency Band A, Memorandum Opinion and Order*, 13 FCC Rcd 11973, 11978 (1998) (“*Nevada Wireless*”).

¹⁹ 47 C.F.R. § 1.65.

²⁰ The Commission recently amended Section 1.2105 to require auction applicants to report prohibited communications in writing to the Commission immediately, but in no case later than five business days after the communication occurs. In the Matter of Amendment of Part 1 of the Commission’s Rules--Competitive Bidding Procedures, WT Docket No. 97-82, *Seventh Report and Order*, 16 FCC Rcd 17546, 17555 (2001) (“*Part 1 Seventh Report and Order*”).

3. Due Diligence

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 AM 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.

Potential bidders are strongly encouraged to conduct their own research prior to Auction No. 32 in order to determine the existence of pending proceedings that might affect their decisions regarding participation in the auction. Participants in Auction No. 32 are strongly encouraged to continue to conduct due diligence examinations regarding pending proceedings and other legal developments with respect to the construction permits for which they may bid during the course of the auction. Bidders should be aware that certain applications (including those for modification), petitions for rulemaking, requests for special temporary authority (“STA”), waiver requests, petition to deny, petitions for reconsideration, and applications for review may be pending before the Commission and relate to particular applicants or the construction permits available in Auction No. 32.²¹ In addition, certain judicial proceedings that may relate to particular applicants or the construction permits available in Auction No. 32 may be commenced or may be pending or subject to further review. We note that resolution of these matters could have an impact on the availability of spectrum in Auction No. 32. Some of these matters (whether before the Commission or the courts) may not be resolved at the time of the auction. In the event that a final determination reached in a pending proceeding requires a winning bidder to surrender a construction permit(s) won in Auction No. 32, the Commission will return payments relating to such construction permit(s) to the payor of record. The Commission, however, will not pay interest on the returned payment(s) as it lacks the legal authority to do so.

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. 32.

4. Bidder Alerts

By submitting an FCC Form 175 application, applicants have certified under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses or construction permits (including down payments) or delinquent on any non-tax debt owed to any Federal agency.²² 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, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

²¹ See, e.g., Applications for Review pertaining to MX Group AM 38 filed by Alvin Lou Media, Inc. on September 16, 2002, and Victor A. Michael on September 19, 2002; Application for Review pertaining to MX Group AM 20 filed by Robert E. Combs on October 7, 2002.

²² 47 C.F.R. § 1.2105.

As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 32 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a “cold call” from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of the minimum investment is less than \$25,000.
- The sales representative makes verbal representations that: (a) the Internal Revenue Service (“IRS”), Federal Trade Commission (“FTC”), Securities and Exchange Commission (“SEC”), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

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 may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225-5322).

5. National Environmental Policy Act (NEPA) Requirements

Permittees must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA).²³ The construction of a broadcast antenna facility is a federal action and the permittee must comply with the Commission's NEPA rules for each such facility.²⁴ The Commission's NEPA rules require, among other things, that the permittee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corp of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The permittee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The permittee must also prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

1. Auction Date

Auction No. 32 will begin on Tuesday, December 10, 2002. The initial schedule for bidding will be

²³ See Part 1, Subpart I of Title 47 of the Code of Federal Regulations.

²⁴ 47 C.F.R. §§1.1305-1.1319.

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.

2. Auction Title

Auction No. 32 — New AM Broadcast Stations

3. Bidding Methodology

The bidding methodology for Auction No. 32 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network will be available as well. Qualified bidders are permitted to bid telephonically or electronically.

4. Pre-Auction Dates and Deadlines

Auction Seminar	November 6, 2002
Upfront Payments (via wire transfer)	November 15, 2002; 6:00 p.m. ET
Mock Auction	December 5, 2002
Auction Begins	December 10, 2002

5. Requirements for Participation

Those wishing to participate in the auction must:

- Be listed on Attachment A of this public notice.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, November 15, 2002.
- Comply with all provisions outlined in this public notice and applicable Commission rules.

6. General Contact Information

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

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
6:00 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

Additional Copies of
Commission Documents

Qualex International
Portals II, 445 12th Street, SW, Room CY-B402
Washington, DC 20554
(202) 863-2893
(202) 863-2898 (Fax)
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>

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

A. Maintaining the Accuracy of FCC Form 175 Information

As noted in the *Auction No. 32 Comment Public Notice*,²⁵ and under 47 C.F.R. §1.65, applicants have an obligation 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 short-form applications, as defined by 47 C.F.R. § 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the short-form application. Applicants should report these modifications to their FCC Form 175 by electronic mail and submit a letter, briefly summarizing the changes, to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division, at the following address: auCTION32@fcc.gov. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 32. The Bureaus request that parties format any attachments to electronic mail as Adobe[®] Acrobat[®] (pdf) or Microsoft[®] Word documents.

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.

In addition, applicants should make these changes to their FCC Form 175 applications on-line after release of the public notice explaining the status of the applications.

B. Requirements for Logging on to the FCC Auction 175 Application & Search System

Although applicants submitted their original FCC Form 175 applications by using a Taxpayer Identification Number (TIN), any review of and updates to these applications will require the use of an FCC Registration Number (FRN). On August 24, 2001, the FCC adopted a rule requiring all persons and entities doing business with the FCC to acquire a unique identifying number called the FRN and to provide it with all applications or feeable filings as well as other transactions involving payment of money.²⁶ This requirement became effective on December 3, 2001. **Use of an FRN is mandatory for all filers logging on to the FCC Auctions 175 Application & Search system.**

To obtain an FRN, an applicant must register their TIN using the CORES. To access CORES, point web browser to the FCC Auctions page at <http://wireless.fcc.gov/auctions/> and click the CORES link under Related Sites. Next, follow the directions provided to register and receive your FRN. Applicants need to be sure to retain this number and password and keep such information strictly confidential.

A filing window for review and resubmission of FCC Form 175 applications will open after the future release of a public notice announcing the status of applications. This public notice announcing the status of applications will contain additional information for reviewing and accessing applications.

VERY IMPORTANT: Before logging on to the FCC Form 175 Applications & Search system, all applicants must send their FRN to the FCC Operations Group. To do this, include entity name,

²⁵ *Auction No. 32 Comment Public Notice* at 8.

²⁶ Adoption of a Mandatory FCC Registration Number, MD Docket No. 00-205, *Report and Order*, 16 FCC Red 16138 (2001).

TIN, and FRN in an e-mail to auction32@fcc.gov or fax to Kathryn Garland at (717) 338-2850. This information must be received by 5:00 p.m. ET, Friday, October 25, 2002.

For further information, contact: FCC Technical Support at (202) 414-1250. Hours of service: Monday through Friday 8 a.m. to 6:00 p.m. ET.

C. Electronic Review of Short –Form Applications (FCC Form 175)

As noted in the *Auction Filing Window Public Notice*,²⁷ applicants may review their own and other applicants' completed FCC Form 175s after the FCC has issued a public notice concerning the status of the applications. The FCC Form 175 electronic review system will be available at that time, and may be used to locate and print applicants' FCC Form 175 information. Applicants will also be able to view other applicants' completed FCC Form 175 applications. There is no fee for accessing this system. Instructions for electronic review of FCC Form 175 applications will be discussed in the public notice concerning the status of the applications.

D. Installment Payments

Installment payment plans will not be available in Auction No. 32.

III. PRE-AUCTION PROCEDURES

A. Application Processing and Minor Corrections

The FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (1) those applications accepted for filing; (2) those applications rejected; and (3) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

As described more fully in the Commission's rules, after the short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and certain revision of exhibits. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their construction permit selections, change the engineering information submitted with the FCC Form 175, 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).²⁸

B. Auction Seminar

On November 6, 2002, the FCC will sponsor a free seminar for Auction No. 32 at the Federal Communications Commission, located at 445 12th Street, S.W. (Room 4-B516), Washington, D.C. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC Automated Auction System, and the broadcast service and auction rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

²⁷ *Auction Filing Window Public Notice* at Attachment A.

²⁸ 47 C.F.R. §§ 1.2105(b)(2), 73.5007, 73.5008. *See also Broadcast First Report and Order*, 13 FCC Rcd at 15976-77.

To register, complete the registration form included as Attachment B of this public notice and submit it by Monday, November 4, 2002. Registrations are accepted on a first-come, first-served basis.

C. Upfront Payments -- Due November 15, 2002

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 the FCC Form 175 becomes available electronically, 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 6:00 p.m. ET on November 15, 2002.

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 32 go to a lockbox number different from the ones used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the November 15, 2002 deadline will result in dismissal of the application and disqualification from participation in the auction.

1. Making Auction Payments by Wire Transfer

Wire transfer payments must be received by 6:00 p.m. ET on November 15, 2002. 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. Applicants will need the following information:

ABA Routing Number: 043000261
Receiving Bank: Mellon Pittsburgh
BENEFICIARY(BNF): FCC/Account # 910-1203
OBI Field: (Skip one space between each information item)
"AUCTIONPAY"
FCC REGISTRATION NUMBER (FRN): (same as FCC Form 159, block 11 and/or 21)
PAYMENT TYPE CODE (same as FCC Form 159, block 24A: A32U)
FCC CODE 1 (same as FCC Form 159, block 28A: "32")
PAYER NAME (same as FCC Form 159, block 2)
LOCKBOX NO. # 358425

NOTE: The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

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. 32." **Bidders**

should confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

2. FCC Form 159

A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/00) must be faxed to Mellon Bank in order to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/00) is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment C to this public notice. An electronic version of the FCC Form 159 will be accessible after the FCC Form 175 becomes available electronically. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

3. Amount of Upfront Payment

The Commission delegated to the Bureaus the authority and discretion to determine appropriate upfront payment(s) for each auction.²⁹ 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 licenses 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.”³⁰

In the *Auction No. 32 Comment Public Notice*, we proposed translating bidders’ upfront payments to bidding units to define a bidder’s maximum initial eligibility.³¹ In order to bid on a construction permit, otherwise qualified bidders who applied for that construction permit on Form 175 must have an eligibility level that meets the number of bidding units assigned to that construction permit. An applicant’s total upfront payment must be enough to establish eligibility to bid on the construction permit applied for on Form 175, or else the applicant will not be eligible to participate in the auction. No comments were received; therefore, we adopt our proposal. The specific upfront payments and bidding units for each construction permit are set forth in Attachment A of this Public Notice.

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.

²⁹ Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Proceeding, WT Docket No. 97-82, *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, 12 FCC Rcd 5686, 5697-5698, ¶ 16 (1997). See also *Broadcast First Report and Order*, 13 FCC Rcd at 15967-68, ¶ 127-128.

³⁰ In the Matter of Amendment of Part 1 of the Commission’s Rules--Competitive Bidding Procedures, WT Docket No. 97-82, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd at 15316-17, ¶¶ 40-42 (2000) (“*Part 1 Fifth Report and Order*”); 47 C.F.R. § 1.2106(a); see also 47 C.F.R. §§1.2105(a)(2)(xi).

³¹ *Auction No. 32 Comment Public Notice* at 2-3.

4. Applicant's Wire Transfer Information for Purposes of Refunds

The Commission will use wire transfers for all Auction No. 32 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed below be supplied to the FCC. Applicants can provide the information electronically after the FCC Form 175 becomes available for review. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Tim Dates or Gail Glasser, at (202) 418-2843 by November 15, 2002. 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 (202) 418-1995.

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

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in Section V.D., below.

D. Auction Registration

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 have timely submitted upfront payments sufficient to make them eligible to bid on the construction permit for which they applied.

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

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 Tuesday, December 3, 2002, 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.

Qualified bidders should note that lost bidder identification numbers or SecurID cards can be replaced only by appearing in person at the FCC Auction Headquarters located at 445 12th Street, S.W., Washington, D.C. 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.

E. Electronic Bidding

The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network will be available as well. The telephone number through which the backup FCC Wide Area Network may be accessed will be announced in a later public notice. Qualified bidders are permitted to bid telephonically or electronically, *i.e.*, over the Internet or the FCC's Wide Area Network. In either case, **each authorized bidder** must have its own Remote Security Access SecurID card, which the FCC will provide at no charge. Each applicant with less than three authorized bidders will be issued two SecurID cards, while applicants with three authorized bidders will be issued three cards. 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. Please note that 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. 32. The telephonic bidding phone number will be supplied in the first overnight mailing of the confidential bidder identification number. Each applicant's bidding preference has been defaulted to electronic. Applicants should modify this preference during the FCC Form 175 resubmit window if they intend to bid telephonically.

Please note that the SecurID cards can be recycled, and we encourage bidders to return the cards to the FCC. We will provide pre-addressed envelopes that bidders may use to return the cards once the auction is over.

F. Mock Auction

All qualified bidders will be eligible to participate in a mock auction on Thursday, December 5, 2002. 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

The first round of bidding for Auction No. 32 will begin on Tuesday, December 10, 2002. 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.

A. Auction Structure

1. Simultaneous Multiple Round Auction

In the *Auction No. 32 Comment Public Notice*, we proposed to award all construction permits in a simultaneous multiple round auction.³² We received no comments on this issue. We therefore conclude that it is operationally feasible and appropriate to auction the new AM broadcast station construction permits through a simultaneous multiple round auction. Unless otherwise announced, bids will be accepted from eligible bidders on all construction permits in each round of the auction.

³² *Auction No. 32 Comment Public Notice* at 2.

2. Maximum Eligibility and Activity Rules

In the *Auction No. 32 Comment Public Notice*, we 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.³³ We received no comments on this issue.

For Auction No. 32, we adopt our proposal. The amount of the upfront payment submitted by a bidder determines the maximum initial eligibility (in bidding units) for each bidder. Note again that each construction permit is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A on a bidding unit per dollar basis. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid and hold high bids. As there is no provision for increasing a bidder's maximum eligibility during the course of an auction, prospective bidders are cautioned to calculate their upfront payments carefully. **The total upfront payment does not affect the total dollars a bidder may bid on any given construction permit.**

In addition, we received no comments on our proposal for a single stage auction. Therefore, in order to ensure that the auction closes within a reasonable period of time, we adopt our proposal with the following activity requirements: a bidder must either place a valid bid and/or be the standing high bidder during each round of the auction rather than wait until the end before participating. A bidder is required to be active on 100 percent of their bidding eligibility. 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 bidding eligibility, thus eliminating them from the auction.

3. Activity Rule Waivers and Reducing Eligibility

In the *Auction No. 32 Comment Public Notice*, we proposed that each bidder in the auction would be provided three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction.³⁴ We received no comments on this issue.

Based upon our experience in previous auctions, **we adopt our proposal that each bidder 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 minimum level. An activity rule waiver applies to an entire round of bidding. We are satisfied that our practice of providing three waivers over the course of the auction provides a sufficient number of waivers and flexibility to the bidders, while safeguarding the integrity of the auction.

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 bidding period where a bidder's activity level is below the minimum required. If a bidder has no waivers remaining and does not satisfy the required activity level, the bidder's eligibility will be permanently reduced, eliminating them from the auction.

³³ *Id.* at 3.

³⁴ *Id.*

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 valid bids will not keep the auction open. **Note: Once a proactive waiver is placed during a round, that waiver cannot be unsubmitted.**

4. Auction Stopping Rules

For Auction No. 32, the Bureaus proposed to employ a simultaneous stopping rule.³⁵ 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. After the first such round, bidding closes simultaneously on all construction permits.

The Bureaus also proposed retaining discretion to implement a modified version of the simultaneous stopping rule. The modified version will 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. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the standing high bidder will not keep the auction open under this modified stopping rule.

The Bureaus further proposed retaining the discretion to keep the auction open even if no new acceptable bids or proactive waivers are submitted in a round. 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 lose bidding eligibility or use an activity rule waiver (if any remain).

In addition, we proposed that the Bureaus 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. We 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.³⁶ Before exercising this option, the Bureaus are likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or adjusting the amount of the minimum bid increments for the construction permits.

We received no comments on these issues, therefore, we adopt all of the above proposals concerning the auction stopping rules. Auction No. 32 will begin under the simultaneous stopping rule, and the Bureaus will retain the discretion to invoke the other versions of the stopping rule. We believe that these stopping rules are most appropriate for Auction No. 32, because our experience in prior auctions demonstrates that the auction stopping rules balance the interests of administrative efficiency and maximum bidder participation.

³⁵ *Auction No. 32 Comment Public Notice* at 6-7.

³⁶ *Id.* at 7.

5. Auction Delay, Suspension, or Cancellation

In the *Auction No. 32 Comment Public Notice*, we proposed that, by public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair conduct of competitive bidding.³⁷

Because this approach has proven effective in resolving exigent circumstances in previous auctions, we adopt our proposed auction cancellation rules. 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. Network interruption may cause the Bureaus to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureaus, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

1. Round Structure

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. The round structure for each bidding round contains a single bidding round 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 referenced above.

The Bureaus have the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureaus 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.

2. Reserve Price or Minimum Opening Bid

Background. The Balanced Budget Act calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses or construction permits are subject to auction (*i.e.*, because mutually exclusive applications have been accepted), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest.³⁸ Consistent with this mandate, the Commission directed the Bureaus to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.³⁹ Among other

³⁷ *Id.* at 4.

³⁸ Balanced Budget Act, *see* note 2, *supra*.

³⁹ Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd at 141, 455-456 (1998) ("*Part 1 Third Report and Order*").

factors, the Bureaus must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on valuation of the spectrum being auctioned.⁴⁰ The Commission concluded that the Bureaus should have the discretion to employ either or both of these mechanisms for future auctions.⁴¹

In the *Auction No. 32 Comment Public Notice*, the Bureaus proposed to establish minimum opening bids for Auction No. 32 and to retain discretion to lower the minimum opening bids.⁴² Specifically, for Auction No. 32, the Bureaus proposed calculating the minimum opening bid based on the potential value of the spectrum, including the type of service, market size, industry cash flow data and recent broadcast transactions. We received no comments on this issue, therefore, we adopt our proposal. The specific minimum opening bids for each construction permit are set forth in Attachment A of this public notice.

3. Minimum Accepted Bids and Bid Increments

In the *Auction No. 32 Comment Public Notice*, we proposed to use a fixed percentage to calculate minimum acceptable bids.⁴³ We further proposed to retain the discretion to change the minimum acceptable bids and bid increments if circumstances so dictate.⁴⁴ We received no comment on this issue.

In each round, each eligible bidder will be able to place a bid on the particular construction permit for which it applied in any of nine different amounts.⁴⁵ The Auctions Bidding System interface will list the nine acceptable bid amounts for each construction permit.

For Auction No. 32, we proposed to use a fixed 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 fixed percentage — *i.e.*, minimum acceptable bid amount = (standing high bid) * (1.10){rounded}. We will round the result using our standard rounding procedure for minimum acceptable bid calculations: 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.

At the start of the auction and 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. Corresponding additional bid amounts will be calculated using bid increments defined as the difference between the

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Auction No. 32 Comment Public Notice* at 4-5.

⁴³ *Id.* at 5.

⁴⁴ *Id.* at 6.

⁴⁵ Bidders must have sufficient eligibility to place a bid on the particular construction permit. *See* Section III.C.3 “Amount of Upfront Payment,” *supra*.

minimum opening bid times one plus the percentage increment, rounded as described above, and the minimum opening bid — *i.e.*, bid increment = (minimum opening bid)(1 + percentage increment){rounded} - (minimum opening bid). At the start of the auction and until a bid has been placed on a construction permit, the nine acceptable bid amounts for each construction permit consist of the minimum opening bid and additional amounts are calculated using multiple bid increments (*i.e.*, the second bid amount equals the minimum opening bid plus the bid increment, the third bid amount equals the minimum opening bid plus two times the bid increment, etc.).

Example bid amount calculation for construction permits at the start of the auction and without standing high bids:

- 1st bid amount = minimum opening bid
- 2nd bid amount = minimum opening bid + (bid increment)
- 3rd bid amount = minimum opening bid + 2(bid increment)
- ...
- 9th bid amount = minimum opening bid + 8(bid increment)

Once there is a standing high bid on the construction permit, the Auctions Bidding System will calculate a minimum acceptable bid for that construction permit for the following round, as described below. 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.).

Example bid amount calculation for construction permits with standing high bids:

- 1st bid amount = standing high bid + bid increment
- 2nd bid amount = standing high bid +2(bid increment)
- 3rd bid amount = standing high bid +3(bid increment)
- ...
- 9th bid amount = standing high bid +9(bid increment)

The Bureaus retain the discretion to change the minimum acceptable bids and bid increments and the methodology for determining the minimum acceptable bids and bid increments if they determine circumstances so dictate. The Bureaus will do so by announcement in the FCC Automated Auction System. The Bureaus may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant.

4. High Bids

At the end of each round, the FCC Automated Auction System determines the standing high bid for each construction permit based on the gross dollar amounts of the bids received for each construction permit.

In the case of tied high bids, a random number generator will be used to determine the standing high bid. A random number will be assigned to each bid. The tie bid having the highest random number will become the standing high bid.

5. Bidding

During a bidding round, a bidder may submit a bid, subject to its eligibility, as well as remove a bid placed in the same bidding round. Bidders also have the option of making multiple submissions in each bidding round. If a bidder submits multiple bids for a 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 the construction permit for which the bidder has removed its bid do not count towards the bidder's activity at the close of the round.

Please note that all bidding will take place remotely either through the FCC Automated Auction System or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 32.

A bidder's ability to bid on a specific construction permit in the first round of the auction is determined by two factors: (1) the construction permit applied for on FCC Form 175 and (2) the upfront payment amount deposited. The bid submission screens will allow bidders to submit bids on only the construction permit for which the bidder applied on its FCC Form 175.

The FCC Automated Auction System requires each bidder to be logged in during the bidding round using the bidder identification number provided in the registration materials, and the generated SecurID code. Bidders are strongly encouraged to print bid confirmations after they submit their bids.

In each round, eligible bidders will be able to place bids on a given construction permit in any of nine different amounts.⁴⁶ 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 acceptable bid amounts. The FCC Automated Auction System also includes an import function that allows bidders to upload text files containing their bid information.

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.3.

6. Bid Removal and Bid Withdrawal

In the *Auction No. 32 Comment Public Notice*, we proposed bid removal and bid withdrawal procedures.⁴⁷ With respect to bid withdrawals, we proposed that bidders not be permitted to withdraw bids in any round. We received no comments on this issue. Therefore, the Bureaus adopt their proposal and will not permit bidders to withdrawal bids in any round during the auction.

Bid Removal 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

⁴⁶ Bidders must have sufficient eligibility to place a bid on the particular construction permit. *See* Section III.C.3 "Amount of Upfront Payment," *supra*.

⁴⁷ *Auction No. 32 Comment Public Notice* at 6.

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, we adopt these procedures for Auction No. 32.

7. Round Results

Bids placed during a round will not be published until the conclusion of that bidding period. After a round closes, the Bureaus will compile reports of all bids placed, current high bid, new minimum accepted bid, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 32 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.

8. Auction Announcements

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.

V. POST-AUCTION PROCEDURES

A. Down Payments

After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders and winning bids for each construction permit, and any down payments due.

Within ten business days after release of the auction closing 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 Government to 20 percent of its net winning bids (actual bids less any applicable bidding credit).⁴⁸

B. Long-Form Application

Within thirty days after release of the auction closing public notice, winning bidders must electronically submit a properly completed long-form application and required exhibits for the construction permit won through Auction No. 32.⁴⁹ Winning bidders that are claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit.⁵⁰ Further filing instructions will be provided to the auction winners at the close of the auction.

C. Default and Disqualification

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

⁴⁸ 47 C.F.R. §§ 1.2107(b), 73.5003.

⁴⁹ 47 C.F.R. § 73.5005.

⁵⁰ 47 C.F.R. §§ 1.2112(b), 73.5005, 73.5007.

application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 C.F.R. § 1.2104(g)(2). In such event the Commission may re-auction the construction permit or offer it to the next highest bidder (in descending order) at their final bid.⁵¹ 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.⁵²

D. Refund of Remaining Upfront Payment Balance

All applicants that submitted upfront payments but were not winning bidders for a construction permit in Auction No. 32 will be entitled to a refund of their 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.

Qualified bidders that have exhausted all of their activity rule waivers and 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

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.

Media Contact: Meribeth McCarrick at (202) 418-0654.

Auctions and Industry Analysis Division: Kenneth Burnley, Legal Branch, at (202) 418-0660; Linda Sanderson, or Roy Knowles, Auctions Operations Branch at (717) 338-2888.

Audio Division: Lisa Scanlan or Edward DeLaHunt at (202) 418-2700.

- FCC -

⁵¹ 47 C.F.R. § 1.2109(b) and (c).

⁵² 47 C.F.R. § 1.2109(d).

VI. ATTACHMENT A

AM Construction Permits

MX Group	Location	Frequency (kHz)	Bidding Units	Upfront Payment	Minimum Opening Bid	Applicants
AM20	Las Vegas, NV	1100	50,000	\$50,000	\$50,000	Kemp Communications, Inc.
AM20	Las Vegas, NV	1100	50,000	\$50,000	\$50,000	Lotus Broadcasting Corp.
AM20	Sunrise Manor, NV	1100	50,000	\$50,000	\$50,000	Palmetto Radio Group, Inc.
AM30	Taos, NM	1340	2,500	\$2,500	\$2,500	Alpine Broadcasting Limited Partnership
AM30	Taos, NM	1340	2,500	\$2,500	\$2,500	Richard L. Garcia and Darren Cardova
AM38	Spring Valley, NV	1590	50,000	\$50,000	\$50,000	Alvin Lou Media, Inc.
AM38	Las Vegas, NV	1590	50,000	\$50,000	\$50,000	Powell Meredith Communications Company

VII. ATTACHMENT B

FCC AUCTION SEMINAR REGISTRATION FORM

Auction No. 32

The FCC will sponsor a one-day seminar for Auction No. 32 applicants. The seminar is free of charge and will provide information about pre-auction procedures, service and auction rules, conduct of the auction, and the FCC Automated Auction System.

Representatives from each company may attend on a reservation basis, first-come first-served until room capacity is filled. The seminar will be held:

Wednesday, November 6, 2002
Federal Communications Commission
445 12th Street S.W. (Room 4-B516)
Washington, DC 20554
Registration 9:30 a.m. - 10:00 a.m.
Seminar 10:00 a.m. – 2 p.m.

If hotel accommodations are needed
Please contact 1-888-225-5322 (option #2) for a list of hotels in the area

To register, complete the form below and
return by mail or fax to be received no later than

Monday, November 4, 2002, to:

FCC Auction 32
Auctions Operations Branch
1270 Fairfield Road
Gettysburg, PA 17325-7245

FAX: 717-338-2850
Phone: 717-338-2888

I/We will attend the Auction No. 32 Seminar, scheduled for **Wednesday, November 6, 2002.**

Name of attendee: _____

Name of attendee: _____

Company name: _____

Phone: _____

Fax: _____

VIII. ATTACHMENT C

AUCTION-SPECIFIC INSTRUCTIONS FOR FCC REMITTANCE ADVICE (FCC FORM 159-February 2000 edition)

A. Upfront Payments

The following information supplements the standard instructions for FCC Form 159 (Revised 2/00), and is provided to help ensure correct completion of FCC Form 159 for upfront payments for Auction No. 32. Applicants need to complete FCC Form 159 carefully, since:

- **Mistakes may affect their bidding eligibility; and**
- **Lack of consistency between information set forth in FCC Form 159 (Revised 2/00), FCC Form 175, long-form application, and correspondence about an application may cause processing delays.**

Therefore appropriate cross-references between the FCC Form 159 Remittance Advice and the FCC Form 175 Short Form Application are described below:

Block Number	Required Information
1	LOCKBOX # - Enter "358425"
2	Payer Name - Enter the name of the person or company making the payment. If the applicant itself is the payer, this entry would be the same as FCC Form 175.
3	Total Amount Paid - Enter the amount of the upfront payment associated with the FCC Form 159 (Revised 2/00).
4-8	Street Address, City, State, ZIP Code - Enter the street mailing address (not Post Office box number) where mail should be sent to the payer. If the applicant is the payer, these entries would be the same as FCC Form 175 from the Applicant Information section.
9	Daytime Telephone Number - Enter the telephone number of a person knowledgeable about this upfront payment.
10	Country Code - For addresses outside the United States, enter the appropriate postal country code (available from the Mailing Requirements Department of the U.S. Postal Service).
11	Payer FRN – Enter the payer’s ten-digit FCC Registration Number (FRN) registered in the Commission Registration System (CORES).
12	Payer TIN – Enter the payer’s nine-digit Taxpayer Identification Number (TIN).
24A	Payment Type Code - Enter "A32U"

- 25A Quantity - Enter the number "1"
- 26A Fee Due - Amount of Upfront Payment
- 27A Total Fee - Will be the same amount as 26A.
- 28A FCC Code 1 - Enter the number "32" (indicating Auction No. 32).

NOTES:

- Do not use Remittance Advice (Continuation Sheet), FCC Form 159-C, for upfront payments.
- If applicant is different from the payer, complete blocks 13 through 22 for the applicant, using the same information shown on FCC Form 175. Otherwise leave them blank.
- Since credit card payments will not be accepted for this auction, leave Section E blank.

B. Winning Bidder Requirements, Down Payments and Final Payments

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

IX. ATTACHMENT D

SUMMARY LISTING OF DOCUMENTS FROM THE COMMISSION AND THE WIRELESS TELECOMMUNICATIONS BUREAU ADDRESSING APPLICATION OF THE ANTI-COLLUSION RULES

A. Commission Decisions:

Second Report and Order in PP Docket No. 93-253, FCC 94-61, 9 FCC Rcd. 2348, 2386-2388 (1994), paragraphs 221-226.

Fifth Report and Order in PP Docket No. 93-253, FCC 94-178, 9 FCC Rcd. 5532, 5570-5571 (1994), paragraphs 91-92.

Fourth Memorandum Opinion and Order in PP Docket No. 93-253, FCC 94-264, 9 FCC Rcd. 6858, 6866-6869 (1994), paragraphs 47-60.

Second Memorandum Opinion and Order in PP Docket No. 93-253, FCC 94-215, 9 FCC Rcd. 7245, 7253-7255 (1994), paragraphs 48-55.

Memorandum Opinion and Order in PP Docket No. 93-253, FCC 94-295, 9 FCC Rcd. 7684, 7687-7689 (1994), paragraphs 8-12.

In re Commercial Realty St. Pete, *Notice of Apparent Liability for Forfeiture*, 10 FCC Rcd. 4277 (1995),
In re Commercial Realty St. Pete, *Memorandum Opinion and Order*, 11 FCC Rcd. 15,374 (1996).

In re Applications of Mercury PCS II, LLC, *Notice of Apparent Liability for Forfeiture*, 12 FCC Rcd. 17,970 (1997) (petition for partial reconsideration pending).

Amendment of Part 1 of the Commission's rules -- Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz, WT Docket No. 97-82, ET Docket No. 94-32, FCC 97-413, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd. 374, 463-469 (1997), paragraphs 155-166.

In re Application of US West Communications, Inc., *Notice of Apparent Liability for Forfeiture*, 13 FCC Rcd 8286 (1998); In the Matter of Notice of Apparent Liability for Forfeiture of US West Communications, Inc., *Order*, FCC 99-90 (May 7, 1999).

In re Application of Western PCS BTA I Corporation, *Notice of Apparent Liability for Forfeiture*, FCC 98-42 (March 16, 1998); In the Matter of Notice of Apparent Liability for Forfeiture of Western PCS BTA I Corporation, *Memorandum Opinion and Order*, 14 FCC Rcd 21571, 21577-78, ¶ 20 (rel. Dec. 13, 1999).

In the Matter of Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures, *Seventh Report and Order*, 16 FCC Rcd 17546 (2001).

B. Wireless Telecommunications Bureau Decisions:

Amendment of Parts 21 and 74 of the Commission's rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, *Order*, 11 FCC Rcd. 9655 (Wireless Tel. Bur. 1995).

In re Applications of GWI PCS, Inc. For Authority to Construct and Operate Broadband PCS Systems Operating on Frequency Block C, *Memorandum Opinion and Order*, 12 FCC Rcd. 6441 (Wireless Tel. Bur. 1997).

In re Applications of Mercury PCS II, LLC, For Facilities in the Broadband Personal Communications Services in the D, E, and F Blocks, *Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd. 18,093 (Wireless Tel. Bur. 1997).

In the Matter of Applications of High Plains Wireless, L.P., For Authority to Construct and Operate Broadband PCS Systems on Frequency Blocks D, E, and F, *Memorandum Opinion and Order*, 12 FCC Rcd. 19,627 (Wireless Tel. Bur. 1997).

In the Matter of Applications of Mercury PCS II, LLC, For Authority to Construct and Operate Broadband PCS Systems on Frequency Blocks D, E, and F, *Memorandum Opinion and Order*, 13 FCC Rcd. 5756 (Wireless Tel. Bur. 1997).

1. Public Notices:

Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, 11 FCC Rcd. 9645 (1995).

FCC Staff Clarifies Application of Anti-Collusion Rule to Broadband PCS 'C' Block Reauction, *Public Notice*, 11 FCC Rcd. 7031 (1996).

Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E and F Block Bidders, *Public Notice*, 11 FCC Rcd. 10,134 (1996).

Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction, *Public Notice*, DA 98-37 (rel. January 9, 1998).

2. Letters from the Office of General Counsel and the Wireless Telecommunications Bureau:

Letter to Gary M. Epstein and James H. Barker from William E. Kennard, General Counsel, Federal Communications Commission (released October 25, 1994).

Letter to Alan F. Ciamporcero from William E Kennard, General Counsel, Federal Communications Commission (released October 25, 1996).

Letter to R. Michael Senkowski from Rosalind K. Allen, Acting Chief, Commercial Radio Division, Wireless Telecommunications Bureau (released December 1, 1994).

Letter to Leonard J. Kennedy from Rosalind K. Allen, Acting Chief, Commercial Radio Division, Wireless Telecommunications Bureau (released December 14, 1994).

Letter to Jonathan D. Blake and Robert J. Rini from Kathleen O'Brien Ham, Chief, Auctions Division, Wireless Telecommunications Bureau, DA 95-2404 (released November 28, 1995).

Letter to Mark Grady from Kathleen O'Brien Ham, Chief, Auctions Division, Wireless Telecommunications Bureau, 11 FCC Rcd. 10,895 (1996).

Letter to David L. Nace from Kathleen O'Brien Ham, Chief, Auctions Division, Wireless Telecommunications Bureau, 11 FCC Rcd. 11,363 (1996).

Letter to Elliott J. Greenwald from Christopher J. Wright, General Counsel, Federal Communications Commission (released April 6, 1998).

Letter to Robert Pettit, Wiley, Rein & Fielding from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, DA 00-2905 (released December 26, 2000).

3. Civil Actions Initiated by U.S. Department of Justice:

U.S. v. Omnipoint Corp., Proposed Final Judgements and Competitive Impact Statements, Department of Justice, 63 FR 65,228 (November 25, 1998).

“Justice Department Sues Three Firms Over FCC Auction Practices,” *Press Release, U.S. Department of Justice* (November 10, 1998).

Complaint, *U.S. v. Omnipoint Corp.*, No. 1:98CV02750 (D.D.C. November 10, 1998).

Complaint, *U.S. v. Mercury PCS II, L.L.C.*, No. 1:98CV02751 (D.D.C. November 10, 1998).

Complaint, *U.S. v. 21st Century Bidding Corp.*, No. 1:98CV02752 (D.D.C. November 10, 1998).

How to Obtain Copies of the Anti-Collusion Decisions:

Many of the documents listed in this attachment can be retrieved from the following Commission web site: <http://wireless.fcc.gov/auctions/anticollusion>.

The documents may be located by using our search engine (select the link “search”). Documents retrieved from the web site are available in various formats including Word, WordPerfect, Acrobat Reader, Excel, and ASCII Text. To review a document in its entirety, including footnotes, it is necessary to access the document in WordPerfect, MS Word, or Acrobat Reader.

Additionally, all of the documents can be ordered in hard copy for a fee from the Commission’s contractor, Qualex International at (202) 863-2893.