

*Number of Respondents:* 17.

*Estimated Time Per Response:* 1 hour.

*Frequency of Response:* Annual reporting requirement.

*Total Annual Burden:* 17 hours.

*Annual Cost Burden:* N/A.

*Privacy Act Impact Assessment:* N/A.

*Needs and Uses:* This collection will be submitted as an extension (after this 60 day comment period) to OMB in order to obtain the full three year clearance.

The filing of SEC Form 10-K is required by section 1.785 and 43.21(b) of the Commission's rules and authorized by section 219 of the Communications Act of 1934, as amended. Each company, not itself a communications common carrier, that directly or indirectly controls any communications common carrier having annual revenues equal to or above the indexed revenue threshold, as defined in section 32.9000, shall file annually with the Commission, not later than the date prescribed by Security and Exchange Commission (SEC), for its purposes, two complete copies of any SEC Form 10-K annual report (or any superseding form) filed with that Commission.

The information filed pursuant to section 43.21(b) is used by staff members to regulate and monitor the telephone industry and by the public to analyze the industry. Selected information is compiled and published in the Commission's annual common carrier statistical publication.

*OMB Control No.:* 3060-0755.

*Title:* Sections 59.1 through 59.4, Infrastructure Sharing.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for profit.

*Number of Respondents:* 75.

*Estimated Time Per Response:* 2-24 hours.

*Frequency of Response:* On occasion reporting requirement and third party disclosure requirement.

*Total Annual Burden:* 2,325 hours.

*Annual Cost Burden:* N/A.

*Privacy Act Impact Assessment:* N/A.

*Needs and Uses:* This collection will be submitted as an extension (after this 60 day comment period) to OMB in order to obtain the full three year clearance.

Section 259 requires incumbent local exchange carriers (LECs) to file any arrangements showing the conditions under which they share infrastructure. Section 259 also requires incumbent LECs to provide information on deployments of new services and

equipment to qualifying carriers. Finally, the Commission requires incumbent LECs to provide 60 day notice prior to terminating section 259 agreements.

The Commission uses the information in the following ways: (1) The information collected under the requirement that LECs file any tariffs, contracts or other arrangements for infrastructure sharing will be made available for public inspection; (2) the information collected under the requirement that incumbent LECs provide timely information on planned deployments of new services and equipment will be provided to third parties (qualifying carriers); and (3) the information collected under the requirement that providing incumbent LECs furnish 60 days notice prior to termination of a section 259 sharing agreement will be provided to third parties, i.e., qualifying carriers, to protect customers from sudden changes in service.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E5-7873 Filed 12-27-05; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. AUC-05-64-B (Auction No. 64); DA 05-2987]**

### **Auction of Full Power Television Construction Permits Scheduled for March 15, 2006, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 64**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the procedures and minimum opening bids for the upcoming auction of eleven full power television station construction permits. This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for Auction No. 64.

**DATES:** Auction No. 64 short-form applications are due before 6 p.m. Eastern Time (ET) on January 20, 2006. Upfront payments are due before 6 p.m. ET on February 17, 2006. Competitive bidding is scheduled to begin on March 15, 2006.

**FOR FURTHER INFORMATION CONTACT:** Auction and Spectrum Access Division, Wireless Telecommunications Bureau: *for legal questions:* Lynne Milne at (202)

418-0660; *for general auction questions:* Debbie Smith or Lisa Stover at (717) 338-2888. Video Division, Media Bureau: *for service rule questions:* Shaun Maher at (202) 418-2324 or Shaleim Henry at (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction No. 64 Procedures Public Notice* released on November 23, 2005. The complete text of the *Auction No. 64 Procedures Public Notice*, including attachments and related Commission documents, is available for public inspection and copying from 8 a.m. to 4:30 p.m. Monday through Thursday or from 8 a.m. to 11:30 p.m. on Friday at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The *Auction No. 64 Procedures Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. ("BCPI"), Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone 202-488-5300, facsimile 202-488-5563, or Web site: <http://www.BCPIWEB.com>. When ordering documents from BCPI, please provide the appropriate FCC document number (for example, DA 05-2987 for the Auction No. 64 Procedures Public Notice). The *Auction No. 64 Procedures Public Notice* and related documents are available also on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/64/>.

## **I. General Information**

### *A. Introduction*

1. The Media Bureau (MB) and the Wireless Telecommunications Bureau (WTB) (collectively the *Bureaus*) announce the procedures and minimum opening bid amounts for the auction of 11 full power television station construction permits in Auction No. 64, scheduled to begin on March 15, 2006. On September 23, 2005, in accordance with 47 U.S.C. 309(j)(4), the Bureaus released a public notice seeking comment on reserve prices or minimum opening bid amounts and the procedures to be used in Auction No. 64. The Bureaus received comments from one commenter in response to the *Auction No. 64 Comment Public Notice*, 70 FR 58700 (October 7, 2005).

#### *i. Background*

2. The Commission's competitive bidding rules will be used to select among mutually exclusive applications for these construction permits in Auction No. 64. When two or more short-form applications are accepted for filing for the same construction permit

in Auction No. 64, mutual exclusivity exists for auction purposes. Once mutual exclusivity exists for auction purposes, even if only one applicant for a particular construction permit submits an upfront payment, that applicant is required to submit a bid in order to obtain the construction permit. Any applicant that submits a short-form application that is accepted for filing but fails to timely submit an upfront payment will retain its status as an applicant in Auction No. 64 and will remain subject to the Commission's anti-collusion rules, but, having purchased no bidding eligibility, will not be eligible to bid.

#### ii. Television Station Construction Permits To Be Auctioned

3. Auction No. 64 will offer 11 construction permits for full power television stations. Ten of these construction permits are *open* to any interested party. The locations and channels of the ten *open* construction permits are designated as: Greeley, Colorado (DTV 45), Pueblo, Colorado (NTSC 48), Apalachicola, Florida (DTV 3), Derby, Kansas (DTV 46), Topeka, Kansas (NTSC 22+), Duluth, Minnesota (NTSC 27), Osage Beach, Missouri (NTSC 49+), Bend, Oregon (NTSC 51), Victoria, Texas (NTSC 31), and Medical Lake, Washington (DTV 51). The remaining permit, with a location and channel designated as Jackson, Mississippi (NTSC 51), is *closed*, and only the five listed parties that previously filed long-form applications may participate in the bidding for this permit, provided such parties submit an acceptable short-form application pursuant to the Commission's rules and procedures described in the *Auction No. 64 Procedures Public Notice*.

4. A complete list of construction permits available in Auction No. 64 is included in Attachment A of the *Auction No. 64 Procedures Public Notice*. Interested parties should note that some of the stations listed in Attachment A of the *Auction No. 64 Procedures Public Notice* are single channel, digital-only television stations and are indicated as DTV. These stations must be operated in digital television mode. Those stations indicated as NTSC are single-channel stations that must be operated as either NTSC analog stations or, if they meet the Commission's interference requirements, may be operated as digital only television stations.

5. To be eligible to participate in competitive bidding for any of the construction permits identified in Attachment A of the *Auction No. 64 Procedures Public Notice*, each

interested party, including those individuals or entities with a pending long-form application listed in Attachment A of the *Auction No. 64 Procedures Public Notice*, must submit before the deadline of January 20, 2006, a complete and correct short-form application and otherwise comply with the deadlines and requirements outlined in the *Auction No. 64 Procedures Public Notice*. The Media Bureau will dismiss the pending long-form application (FCC Form 301) listed in Attachment A of the *Auction No. 64 Procedures Public Notice* of any applicant which fails to file a short-form application (FCC Form 175) to participate in Auction No. 64 before the deadline specified in the *Auction No. 64 Procedures Public Notice* or which fails to submit a sufficient upfront payment before the deadline specified in the same public notice.

#### a. Open Construction Permits

6. Pursuant to the policies established in the *Broadcast Competitive Bidding First Report and Order*, 63 FR 48615 (September 11, 1998), any interested party may apply for any of the ten *open* construction permits listed in Attachment A of the *Auction No. 64 Procedures Public Notice*. Long-form applications were filed previously for some of these *open* television station construction permits. The pending applications for these open construction permits also are listed in Attachment A of the *Auction No. 64 Procedures Public Notice*.

7. Any party filing for an open construction permit with a pending long-form application should understand that it is likely that its application will be mutually exclusive with the previously-filed application. Even if there is no pending long-form application for an open construction permit listed in Attachment A of the *Auction No. 64 Procedures Public Notice*, short-form applications specifying the same open construction permit will be considered mutually exclusive.

8. In response to the *Auction No. 64 Comment Public Notice*, one individual filed comments requesting that the construction permit for the new television station on Channel 31 at Victoria, Texas be removed from the auction and that there be no opportunity to file a competing application against his pending application for station TV-NTS009-31. The commenter expressed concern that the Commission will be allowing other parties to file competing applications for a full power television station that may cause interference to his licensed Class A low power

television (LPTV) station KVHM-LP, on Channel 31 at Victoria, Texas. The commenter maintained that only his application for Victoria can be granted because the issue of interference to his Class A LPTV station can only be resolved with his consent. The commenter requests that his application for Channel 31 at Victoria be withdrawn from the auction and granted outside of the auction process.

9. The commenter essentially requests that the staff review the technical qualifications of all proposals for the new Victoria television station prior to auction. In the *Broadcast Competitive Bidding First Report and Order*, the Commission rejected such a pre-auction review of technical proposals to minimize the potential for delay and promote the deployment of new broadcasting service to the public. The Bureaus will not, therefore, consider whether other proposals for a new Victoria television station would be technically qualified prior to the auction.

10. Moreover, the Bureaus declined to remove the Victoria construction permit from this auction based on speculation that a long-form application filed by a winning bidder may fail to protect from harmful interference the Class A low power television station (KVHM-LP) licensed to the commenter. After the close of competitive bidding, the winning bidder for the Victoria construction permit for TV-NTS009-31, if any, will be required to submit a long-form application and demonstrate *inter alia* compliance with all of the technical rules concerning operation of a full-power television station. As part of its long-form application review, the staff will determine whether the winning bidder's proposed facility would cause harmful interference to all relevant stations, including the commenter's Class A LPTV station. For this reason, the Bureaus declined to remove from Auction No. 64 the construction permit for station TV-NTS009-31 at Victoria, Texas. However, the Bureaus take this opportunity to remind potential bidders to undertake appropriate due diligence, including engineering studies, site inspections, and other research, prior to participating in this auction to ensure that their desired facility may be implemented.

#### b. Closed Construction Permit

11. Participation in competitive bidding for the TV-NTS011-51 construction permit will be limited to those applicants identified for the closed construction permit in Attachment A of the *Auction No. 64 Procedures Public Notice*, provided

such parties submit an acceptable short-form application pursuant to the Commission's rules and procedures described in the *Auction No. 64 Procedures Public Notice*.

12. In the *Auction No. 64 Comment Public Notice*, the Bureaus required each of the nine specified auction applicants for this closed construction permit to submit its FCC registration number (FRN) before 5 p.m. Eastern Time (ET) on November 16, 2005. Four out of the nine specified applicants failed to submit the required FRN. Accordingly, on November 23, 2005, the Video Division of the Media Bureau dismissed four long-form applications for a construction permit for station TV-NTS011-51, on NTSC channel 51, at Jackson, Mississippi. A separate public notice announcing that action was released December 1, 2005 (Broadcast Actions, *Public Notice*, Report No. 46122 (Media Bur. Dec. 1, 2005)).

#### B. Rules and Disclaimers

##### i. Relevant Authority

13. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules, including recent amendments and clarifications. Broadcasters also should familiarize themselves with the Commission's rules relating to the television broadcast service contained in 47 CFR 73.601-73.699 and 73.1001-73.4280. Prospective applicants also must be familiar with the rules relating to competitive bidding proceedings contained in 47 CFR 1.2001-1.2112 and broadcast auctions contained in 47 CFR 73.5000-73.5009. Prospective applicants also must be thoroughly familiar with the procedures, terms and conditions (collectively, terms) contained in the *Auction No. 64 Procedures Public Notice*, the *Auction No. 64 Comment Public Notice*, the *Broadcast Competitive Bidding First Report and Order*, the *Broadcast Competitive Bidding First Reconsideration Order*, 64 FR 24523 (May 7, 1999), the *New Entrant Bidding Credit Reconsideration Order*, 64 FR 44856 (August 18, 1999), and the *Noncommercial Educational Second Report and Order*, 68 FR 26220 (May 15, 2003).

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 applicants. It is the responsibility of

each applicant to remain current with all Commission rules and with all public notices pertaining to this auction.

##### ii. Prohibition of Collusion

15. The Commission's Part 1 rules prohibit applicants competing for construction permits in the same geographic license area from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications as parties with whom they have entered into agreements under 47 CFR 1.2105(a)(2)(viii). Thus, applicants competing for construction permits in the same geographic license area must affirmatively avoid all communications with each other that affect or, in their reasonable assessment have the potential to affect, bids or bidding strategy. In some instances, this prohibition extends to communications regarding the post-auction market structure. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction, which will be announced in a future public notice. This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.

16. In Auction No. 64, the rule would apply to applicants bidding for any of the same construction permits. Therefore, two applicants that apply to bid for any one common television station construction permit would be precluded from engaging in prohibited communications during the period from the short-form application deadline until the down payment deadline following the close of the auction. In addition, even if auction applicants select to bid on their short-form applications for only one common television station construction permit, they may not discuss with each other their bids or bidding strategies relating to any television station construction permit for which either applicant selected to bid on the applicant's short-form application.

17. For purposes of this prohibition, 47 CFR 1.2105(c)(7)(i) defines applicant as including all officers and directors of the entity submitting a short-form application to participate in the auction, as well as all controlling interests of that entity, all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application.

18. Applicants competing for construction permits for any of the same

television stations must not communicate indirectly about bids or bidding strategy. Accordingly, such applicants are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the applicants that the authorized bidder is authorized to represent in the auction. Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or engineering firm or consulting firm), a violation similarly could occur. In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule. Similarly, the Bureaus noted that a violation of the anti-collusion rule could occur in other contexts, such as, an individual serving as an officer for two or more competing applicants.

19. The Commission's anti-collusion rules allow applicants to form certain agreements during the auction, provided the applicants have not applied for any of the same construction permits. However, applicants may enter into bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form application. If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application under 47 CFR 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations, discussions or communications with other applicants for construction permits for the same designated market. Applicants that are winning bidders will be required pursuant to 47 CFR 1.2107(d) to disclose in their long-form applications the specific terms, conditions, and parties involved in all bidding consortia, joint ventures, partnerships, and other arrangements entered into relating to the competitive bidding process.

20. By electronically submitting its short-form application, each applicant certifies its compliance with 47 CFR 1.2105(c) and 73.5002. 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.

21. In addition, 47 CFR 1.65 requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, 47 CFR 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Applicants are therefore required by 47 CFR 1.65 to make such notification to the Commission immediately upon discovery. In addition, 47 CFR 1.2105(c)(6) requires that any applicant that makes or receives a communication prohibited by 47 CFR 1.2105(c) must report such communication to the Commission in writing immediately, and in no case later than five business days after the communication occurs.

22. Any applicant found to have violated the anti-collusion rule may be subject to sanctions. Applicants are reminded that they are subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. Compliance with the disclosure requirements of the Commission's anti-collusion rule will not necessarily insulate a party from enforcement of the antitrust laws. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions.

23. A summary listing of documents issued by the Commission and the Bureaus addressing the application of the anti-collusion rule may be found in Attachment F of the *Auction No. 64 Procedures Public Notice* and these documents are available on the Commission's auction anti-collusion Web page.

### iii. Due Diligence

24. Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and market place factors that may have a bearing on the value of the broadcast facilities in this auction. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to

become an FCC construction 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.

25. Potential bidders are strongly encouraged to conduct their own research prior to the beginning of bidding in Auction No. 64 in order to determine the existence of any pending administrative or judicial proceedings that might affect their decision regarding participation in bidding in the auction. Participants in Auction No. 64 are strongly encouraged to continue such research throughout the auction. In addition, potential bidders should perform technical analyses sufficient to assure themselves that, should they prevail in competitive bidding for a specific construction permit, they will be able to build and operate facilities that will comply fully with the Commission's technical and legal requirements.

26. Potential bidders should also be aware that certain pending and future applications (including those for modification), petitions for rulemaking, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal oppositions, and applications for review before the Commission may relate to particular applicants or incumbent construction permittees or incumbent licensees or the construction permits available in Auction No. 64. In addition, pending and future judicial proceedings may relate to particular applicants, incumbent construction permittees, or incumbent licensees, or the construction permits available in Auction No. 64. Prospective bidders are responsible for assessing the likelihood of the various possible outcomes, and considering their potential impact on construction permits available in this auction.

27. In particular, potential bidders are strongly encouraged to review all underlying Commission orders, such as the specific report and order amending the television and digital television Tables of Allotments and allotting the analog or digital television channel(s) on which they plan to bid. Bidders are also responsible for reviewing all pending rulemaking petitions and open proceedings that might affect the construction permit(s) on which they plan to bid.

28. Prospective bidders should perform due diligence to identify and consider all proceedings that may affect the construction permits being auctioned. The Bureaus note that resolution of such matters could have an impact on the availability of spectrum for construction permits included in Auction No. 64. In addition, although the Commission may continue to act on various pending applications, informal objections, petitions, and other requests for Commission relief, some of these matters may not be resolved by the time of the beginning of bidding in this auction.

29. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the construction permits available in Auction No. 64. Potential applicants are strongly encouraged to physically inspect any sites located in, or near, the service area for which they plan to bid, and also to familiarize themselves with the environmental assessment obligations as described in 47 CFR 1.1305—1.1319.

30. Potential bidders for any new television facility in Auction No. 64 should note that full service television stations are in the process of converting from analog to digital operation and that stations may have pending applications to construct and operate digital television facilities, construction permits and/or licenses for such digital facilities. Bidders should investigate the impact such applications, permits and licenses may have on their ability to operate the facilities proposed in this auction.

31. In response to the enactment of the Community Broadcasters Protection Act of 1999, in the *Class A Report and Order*, 65 FR 29985 (May 10, 2000), the Commission adopted rules to establish a new Class A television service, including rules to provide interference protection for eligible Class A television stations from new full power television stations. As required by the rulemaking order, a winning bidder in Auction No. 64, upon submission of its long-form application, will have to provide interference protection to qualified Class A television stations. Therefore, potential bidders are encouraged to perform engineering studies to determine the existence of Class A television stations and their effect on the ability to operate any full power television station proposed in this auction.

32. Potential bidders may research the Media Bureau's Consolidated Data Base System (CDBS) on the Internet in order

to determine which channels are licensed already to incumbent licensees or previously authorized to construction permittees, including information about the identity and location of Class A television stations. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases. To the extent the Commission's databases may not include all information deemed necessary or desirable by a bidder, bidders may obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the database.

#### iv. Bidder Alerts

33. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 64 to deceive and defraud unsuspecting investors. Information about deceptive telemarketing investment schemes is available from the Federal Trade Commission (FTC) at (202) 326-2222 and from the Securities and Exchange Commission (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.

#### v. National Environmental Policy Act Requirements

34. Construction permittees or licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act (NEPA). The construction of a broadcast facility is a Federal action and the construction permittee must comply with the Commission's NEPA rules for each such facility. The Commission's NEPA rules require, among other things, that the construction permittee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the U.S. Army Corps of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The construction permittee must prepare environmental assessments for broadcast 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 construction permittee also must prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

#### C. Auction Specifics

##### i. Auction Date

35. Bidding in this auction will begin on Wednesday, March 15, 2006. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all construction permits will be conducted on each business day until bidding has stopped on all construction permits.

##### ii. Auction Title

36. Auction No. 64—Full Power Television.

##### iii. Bidding Methodology

37. The bidding methodology for Auction No. 64 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet using the FCC's Integrated Spectrum Auction system (ISAS or FCC Auction System), and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically via the Internet or by telephone.

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

Auction Seminar—January 11, 2006  
 FCC Form 175 Filing Window Opens—  
 January 11, 2006; 12 p.m. ET  
 FCC Form 175 Filing Window  
 Deadline—January 20, 2006; 6 p.m.  
 ET  
 Upfront Payments (via wire transfer)—  
 February 17, 2006; 6 p.m. ET  
 Mock Auction—March 13, 2006  
 Auction Begins—March 15, 2006

##### v. Requirements for Participation

38. Those wishing to participate in the auction must submit a short-form application (FCC Form 175) electronically prior to 6 p.m. ET, January 20, 2006, following the electronic filing procedures set forth in Attachment C of the *Auction No. 64 Procedures Public Notice*; submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) before 6:00 p.m. ET, February 17, 2006; and comply with all provisions outlined in this public notice and applicable Commission rules.

#### vi. General Contact Information

##### GENERAL AUCTION INFORMATION

General Auction Questions  
 Seminar Registration  
 FCC Auctions Hotline, (888) 225-  
 5322, option two; or (717) 338-2888  
 Hours of service: 8 a.m.—5:30 p.m. ET,  
 Monday through Friday

##### AUCTION LEGAL INFORMATION

Auction Rules, Policies, Regulations  
 Auctions and Spectrum Access  
 Division  
 (202) 418-0660

##### LICENSING INFORMATION

Rules, Policies, Regulations  
 Licensing Issues, Engineering Issues,  
 Due Diligence, Incumbency Issues  
 Video Division  
 (202) 418-1600

##### TECHNICAL SUPPORT

Electronic Filing  
 FCC Auction System  
 FCC Auctions Technical Support  
 Hotline  
 (877) 480-3201, option nine; or (202)  
 414-1250, (202) 414-1255 (TTY)  
 Hours of service: 8 a.m.—6 p.m. ET,  
 Monday through Friday

##### PAYMENT INFORMATION

Wire Transfers  
 Refunds  
 FCC Auctions Accounting Branch  
 (202) 418-0578, (202) 418-2843 (Fax)

##### AUCTION BIDDER LINE

Will be furnished only to qualified  
 bidders

##### FCC COPY CONTRACTOR

Additional Copies of  
 Commission Documents  
 Best Copy and Printing, Inc  
 445 12th Street, SW., Room CY-B402,  
 Washington, DC 20554, (800) 378-  
 3160, <http://www.bcpweb.com>

##### PRESS INFORMATION

Chelsea Fallon (202) 418-7991

##### FCC FORMS

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

##### ACCESSIBLE FORMATS

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

Consumer and Governmental Affairs  
 Bureau

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

##### FCC INTERNET SITES

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

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

39. Entities seeking construction permits available in Auction No. 64

must file electronically via the FCC Auction System an application to participate in an FCC auction, referred to as a short-form application or FCC Form 175, before 6 p.m. ET on January 20, 2006, following the procedures prescribed in Attachment C to the *Auction No. 64 Procedures Public Notice*. For Auction No. 64, if an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 will be used in determining whether the applicant is eligible for the claimed bidding credit. Applicants bear full responsibility for submission of accurate, complete and timely short-form applications. All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license. Applicants should read carefully the instructions provided in Attachment C of the *Auction No. 64 Procedures Public Notice* and should consult the Commission's rules to ensure that, in addition to the materials described below, all the information that is required under the Commission's rules is included with their short-form applications.

40. An entity may not submit more than one short-form application in a single auction. In the event that a party submits multiple short-form applications, such additional applications will be dismissed.

41. Applicants also should note that submission of a short-form application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

#### A. New Entrant Bidding Credit

42. The Commission adopted a tiered New Entrant Bidding Credit for broadcast auction applicants with no, or very few, other media interests. The determination of an auction applicant's eligibility for the New Entrant Bidding Credit considers the interests of the applicant, and of any individuals or entities with an attributable interest in the applicant, in other media of mass communications. The applicant's attributable interests shall be determined as of the short-form application filing deadline, January 20, 2006. Thus, the applicant's maximum

new entrant bidding credit eligibility will be determined as of the short-form application filing deadline. Any applicant intending to divest a media interest or make any other ownership changes, such as resignation of positional interests, in order to avoid attribution for purposes of qualifying for the New Entrant Bidding Credit must have consummated such divestment transactions or have completed such ownership changes by no later than the short-form filing deadline, January 20, 2006. An applicant cannot qualify for a bidding credit, nor upgrade a previously claimed bidding credit, based upon ownership or positional changes occurring after the short-form application filing deadline. Prospective applicants are reminded, moreover, that events occurring after the short-form filing deadline, such as the acquisition of attributable interests in media of mass communications, may cause diminishment or loss of the bidding credit, and must be reported immediately.

43. Under traditional broadcast attribution rules, those entities or individuals with an attributable interest in an applicant include, all officers and directors of a corporate applicant; any owner of 5 percent or more of the voting stock of a corporate applicant; all partners and limited partners of a partnership bidder, unless the limited partners are sufficiently insulated; and all members of a limited liability company, unless sufficiently insulated.

44. In cases where an applicant's spouse or close family member holds other media interests, such interests are not automatically attributable to the applicant. The Commission decides attribution issues in this context based on certain factors traditionally considered relevant. Applicants should note that the mass media attribution rules were revised in 1999.

45. Applicants also are reminded that, by the *New Entrant Bidding Credit Reconsideration Order*, the Commission further refined the eligibility standards for the New Entrant Bidding Credit, judging it appropriate to attribute the media interests held by very substantial investors in, or creditors of, an applicant claiming new entrant status. Specifically, the attributable mass media interests held by an individual or entity with an equity and/or debt interest in an applicant shall be attributed to that auction applicant for purposes of determining its eligibility for the New Entrant Bidding Credit, if the equity and debt interests, in the aggregate, exceed 33 percent of the total asset value of the applicant, even if such an interest is non-voting.

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

#### B. Application Requirements

47. In addition to the ownership information required pursuant to 47 CFR 1.2105 and 1.2112, applicants are required to establish on their short-form applications that they satisfy the eligibility requirements to qualify for a New Entrant Bidding Credit. In those cases where a New Entrant Bidding Credit is being sought, a certification under penalty of perjury must be provided in completing the applicant's short-form application. An applicant claiming that it qualifies for a 35 percent new entrant bidding credit must certify that neither it nor any of its attributable interest holders have any attributable interests in any other media of mass communications. An applicant claiming that it qualifies for a 25 percent new entrant bidding credit must certify that neither it nor any of its attributable interest holders have any attributable interests in more than three media of mass communications, and must identify and describe such media of mass communications.

##### i. Bidding Credits

48. Applicants that qualify for the New Entrant Bidding Credit, as specified in the applicable rule, are eligible for a bidding credit that represents the amount by which a bidder's winning bid is discounted. The size of a New Entrant Bidding Credit depends on the number of ownership interests in other media of mass communications that are attributable to the bidder-entity and its attributable interest-holders. A 35 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has no attributable interest in any other media of mass communications, as defined in 47 CFR

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

49. Bidding credits are not cumulative; qualifying applicants receive either the 25 percent or the 35 percent bidding credit, but not both. Attributable interests are defined in 47 CFR 73.3555 and Note 2 of that section.

#### ii. Unjust Enrichment

50. Applicants should note that unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license or construction permit to an entity not qualifying for the same level of bidding credit.

#### C. Permit Selection

51. There is no opportunity to change construction permit selection after the short-form filing deadline. It is critically important that each applicant confirms its construction permit selection because the FCC Auction System will not accept bids on construction permits that an applicant has not selected on its short-form application. In addition, prospective applicants should note that participation in competitive bidding for a construction permit for station TV-NTS011-51 (closed permit) will be limited to those applicants identified under the closed construction permit in Attachment A of the *Auction No. 64 Procedures Public Notice*, provided such parties submit an acceptable short-form application pursuant to the Commission's rules and procedures described in the *Auction No. 64 Procedures Public Notice*.

#### D. Consortia and Joint Bidding Arrangements

52. Applicants will be required to indicate on their applications whether they have entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular construction permits on which they will or will not bid. Applicants also will be

required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings that relate in any way to the construction permits being auctioned, including any agreements relating to post-auction market structure. If an applicant has had discussions, but has not reached a joint bidding agreement by the short-form application filing deadline, it would not include the names of parties to the discussions on its applications and may not continue such discussions with applicants for the same construction permit after the deadline.

53. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for construction permits in the same market provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies. Such subject areas include, but are not limited to, issues such as management, sales, local marketing agreements, rebroadcast agreements, and other transactional agreements.

#### E. Ownership Disclosure Requirements

54. The Commission specified in the *Broadcast Competitive Bidding First Report and Order* that, for purposes of determining eligibility to participate in a broadcast auction, the uniform Part 1 ownership disclosure standards would apply. Therefore, all applicants must comply with the uniform Part 1 ownership disclosure standards and provide information required by 47 CFR 1.2105 and 1.2112. Specifically, in completing the short-form application, applicants will be required to fully disclose information on the real party or parties-in-interest and ownership structure of the bidding entity. The ownership disclosure standards for the short-form application are prescribed in

47 CFR 1.2105 and 1.2112. Each applicant is responsible for information submitted in its short-form application being complete and accurate.

55. To simplify filling out its short-form application, an applicant's most current ownership information on file with the Commission in an electronic format compatible with the short-form application, such as information submitted in an on-line FCC Form 602 in connection with wireless services or in a short-form application filed for a previous auction, will be entered automatically into the applicant's short-form application for Auction No. 64. An applicant should review carefully any information automatically entered to confirm that it is complete and accurate as of the deadline for filing the short-form application. Applicants can update any information that needs to be changed directly in the short-form application.

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

56. Each applicant in Auction No. 64 must state under penalty of perjury on its short-form application whether or not the applicant, its affiliates, its controlling interests, or any affiliate of its controlling interests, have ever been in default on any Commission construction permit or license or have ever been delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must certify under penalty of perjury on its short-form application that the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as of the filing deadline for applications to participate in a specific auction, are not in default on any payment for a Commission construction permit or license (including a down payment) and that they are not delinquent on any non-tax debt owed to any Federal agency. Affiliates and controlling interests are defined in 47 CFR 1.2110. Prospective applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

57. Former defaulters—*i.e.*, applicants, including any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, that in the past have defaulted on any Commission construction permit or license or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their

outstanding non-tax delinquencies—are eligible to bid in Auction No. 64, provided that they are otherwise qualified. However, former defaulters are required pursuant to 47 CFR 1.2106(a) to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

58. In contrast, an applicant is not eligible to participate in competitive bidding in Auction No. 64 if the applicant, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, is in default on any payment for any Commission construction permit or license (including a down payment) or is delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for applications to participate in this auction.

59. Applicants are encouraged to review the Wireless Telecommunications Bureau's previous guidance on default and delinquency disclosure requirements in the context of the auction short-form application process. For example, it has been determined that to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for purposes of 47 CFR 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline. Therefore, with respect to regulatory or application fees, the sanctions 47 CFR 1.2105(a) and 1.2106(a) impose with respect to competitive bidding are limited to circumstances in which the relevant party has not complied with a final Commission payment deadline.

60. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the red light rule, that implement the Commission's obligations under the Debt Collection Improvement Act of 1996, which governs the collection of claims owed to the United States. Under the red light rule, the Commission will not process applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission. In the same rulemaking order, the Commission explicitly declared, however, that the Commission's competitive bidding rules are not affected by the red light rule. As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of the Commission's competitive bidding rules, including the provisions and certifications of 47 CFR 1.2105 and

1.2106, with regard to current and former defaults or delinquencies. Applicants are reminded, however, that the Commission's Red Light Display System, which provides information regarding debts owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of 47 CFR 1.2105. Thus, while the red light rule may ultimately prevent the processing of long-form applications by auction winners, an auction applicant's red light status is not necessarily determinative of its eligibility to participate in this auction or to its upfront payment obligation.

61. Prospective applicants in Auction No. 64 should note that any long-form applications filed after the close of competitive bidding will be reviewed for compliance with the Commission's red light rule, and such review may result in the dismissal of a winning bidder's long-form application.

#### *G. Other Information*

62. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(c)(2), may identify themselves in filling out their short-form applications regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of designated entities in its auctions.

#### *H. Minor Modifications to Short-Form Applications (FCC Forms 175)*

63. Following the deadline for filing short-form applications on January 20, 2006, applicants in Auction No. 64 are permitted to make only minor changes to their applications. As explained in 47 CFR 1.2105, applicants are not permitted to make major modifications to their applications (e.g., change their construction permit selections, change control of the applicant, increase a previously claimed bidding credit, or change their self-identification as a noncommercial educational entity). Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons.

64. Any application amendment and related statements of fact must be certified by: (1) The applicant, if the applicant is an individual, (2) one of the partners if the applicant is a partnership, (3) by an officer, director, or duly authorized employee, if the applicant is a corporation, (4) by a member who is an officer, if the

applicant is an unincorporated association, (5) by the trustee if the applicant is an amateur radio service club, or (6) a duly elected or appointed official who is authorized to do so under the laws of the applicable jurisdiction, if the applicant is a governmental entity.

65. An applicant must make permissible minor changes to its short-form application, as defined by 47 CFR 1.2105(b), on-line. Applicants must click on the SUBMIT button in the FCC Auction System for the changes to be submitted and considered by the Commission. After the revised application has been submitted, a confirmation page will be displayed that states the submission time and date, along with a unique file number.

66. In addition, applicants must submit a letter, briefly summarizing the changes by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: [auction64@fcc.gov](mailto:auction64@fcc.gov). The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 64 and the name of the applicant.

#### *I. Maintaining the Accuracy of Short-Form Application Information*

67. Each applicant must maintain the accuracy and completeness of information furnished in its pending application and notify the Commission within 30 days of any substantial change that may be of decisional significance to that application as specified in 47 CFR 1.65. Changes that cause a loss of or reduction in eligibility for a new entrant bidding credit must be reported immediately. For example, if ownership changes result in the attribution of new interest holders that affect the applicant's qualifications for a new entrant bidding credit, such information must be clearly stated in the applicant's notification. If an amendment reporting substantial changes is a major amendment as defined by 47 CFR 1.2105, the major amendment will not be accepted and may result in the dismissal of the short-form application.

68. Applicants must report 47 CFR 1.65 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 Spectrum Access Division, at the following address: [auction64@fcc.gov](mailto:auction64@fcc.gov). The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 64 and the name of the applicant.



### III. Pre-Auction Procedures

#### A. Auction Seminar—January 11, 2006

69. On Wednesday, January 11, 2006, the FCC will sponsor a seminar for parties interested in participating in Auction No. 64 at the Federal Communications Commission headquarters, located at 445 12th Street, SW., Washington, DC. The seminar will provide attendees with information about pre-auction procedures, completing the FCC Form 175, auction conduct, the FCC Auction System, auction rules, and the full power television broadcast service rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

70. To register, complete the registration form, Attachment B of the *Auction No. 64 Procedures Public Notice*, and submit it by Monday, January 9, 2006. Registrations are accepted on a first-come, first-served basis. The seminar is free of charge.

71. For individuals who are unable to attend, an Audio/Video of this seminar will be available via Webcast from the FCC's Auction 64 Web page at <http://wireless.fcc.gov/auctions/64/>. Select the Auction Seminar link.

#### B. Short-Form Application (FCC Form 175)—Due Before 6 p.m. ET on January 20, 2006

72. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application electronically via the FCC Auction System. This application must be submitted electronically and received at the Commission prior to 6 p.m. ET on January 20, 2006. Late applications will not be accepted. There is no application fee required when filing FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment.

73. Applications generally may be filed at any time beginning at noon ET on January 11, 2006, until 6 p.m. ET on January 20, 2006. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on January 20, 2006.

74. Applicants must always click on the SUBMIT button on the Certify and Submit screen of the electronic form to successfully submit their FCC Forms 175 or modifications. Any form that is not submitted will not be reviewed by the FCC. Information about accessing, completing, and viewing the FCC Form 175 is included in Attachment C of the

#### Auction No. 64 Procedures Public Notice.

#### C. Application Processing and Minor Corrections

75. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (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 resubmitting such corrected applications.

76. Non-mutually exclusive applications will be listed in a subsequent public notice to be released by the Bureaus. Such applications will not proceed to auction, but will proceed in accordance with instructions set forth in the subsequent public notice. All mutually exclusive applications will be considered under the relevant procedures for conflict resolution. Mutually exclusive commercial applications will proceed to auction. However, any applications for non-commercial educational full power television stations on non-reserved spectrum that are mutually exclusive with any applications specifying commercial facilities will be returned as unacceptable for filing pursuant to 47 CFR 73.5002(b).

77. As described more fully in the Commission's rules, after the short-form filing deadline on January 20, 2006, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (e.g., change their construction permit selections, change control of the applicant, increase a previously claimed bidding credit, or change their self-identification as non-commercial educational (NCE)).

#### D. Upfront Payments—Due February 17, 2006

78. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and sent by facsimile to Mellon Bank in Pittsburgh, PA. All upfront payments must be received in the proper account at Mellon Bank before 6 p.m. ET on February 17, 2006.

#### i. Making Auction Payments by Wire Transfer

79. Wire transfer payments must be received before 6 p.m. ET on February 17, 2006. 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. The specific information needed to make the required wire transfer payment is provided in the *Auction No. 64 Procedures Public Notice*.

80. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must send by facsimile a completed FCC Form 159 (Revised 2/03) to Mellon Bank at (412) 209-6045. On the cover sheet of the facsimile, write "Wire Transfer—Auction Payment for Auction No. 64." In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account before the deadline. Applicants are responsible for obtaining confirmation from their financial institution that Mellon Bank has timely received their upfront payment and deposited it in the proper account.

81. All payments must be made in U.S. dollars and by wire transfer. Upfront payments for Auction No. 64 go to a lockbox number different from the lockboxes 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 specified deadline on February 17, 2006, will result in dismissal of the application and disqualification from participation in the auction.

#### ii. FCC Form 159

82. A completed FCC Remittance Advice Form (FCC Form 159) must be sent by facsimile to Mellon Bank to accompany each upfront payment. Proper completion of the FCC Form 159 is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment D of the *Auction No. 64 Procedures Public Notice*. An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payors using a pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed

electronically, but must be filed with Mellon Bank via facsimile.

iii. Amount of Upfront Payment

83. In the *Auction No. 64 Comment Public Notice*, the Bureaus proposed that the amount of the upfront payment would determine a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids. In order to bid on a construction permit, an otherwise qualified bidder that applied for that construction permit on its FCC Form 175, must have a current eligibility level that meets or exceeds the number of bidding units assigned to that construction permit. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits selected on its FCC Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all construction permits for which the applicant has applied on FCC Form 175, but rather to cover the number of bidding units that are associated with construction permits on which the bidder wishes to place bids and hold provisionally winning bids at any given time. (Provisionally winning bids are bids that would become winning bids if the auction were to close after the given round.)

84. In the *Auction No. 64 Comment Public Notice*, the Bureaus proposed upfront payments for each construction permit. The specific upfront payment and bidding units for each construction permit are specified in Attachment A of the *Auction No. 64 Procedures Public Notice*.

85. In calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to be active (bid or hold provisionally winning bids) in any single round, and submit an upfront payment amount covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all construction permits on which it seeks to be active in any given round. Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline. Information about an upfront payment calculation, including an example, is provided in the *Auction No. 64 Procedures Public Notice*.

86. In the *Fifth Report and Order*, 65 FR 52323 (August 29, 2000), the Commission specified that an applicant be required to make upfront payments

50 percent greater than the amount set for each construction permit or license if the applicant ever has been in default on any Commission construction permit or license or ever has been delinquent on any non-tax debt owed to any Federal agency. For purposes of this calculation, the applicant includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by 47 CFR 1.2110.

87. Pursuant to 47 CFR 1.2106(a), former defaulters should calculate their upfront payment for all construction permits by multiplying the number of bidding units on which they wish to be active 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. If a former defaulter fails to submit a sufficient upfront payment to establish eligibility to bid on at least one of the construction permits for which the applicant has applied on its FCC Form 175, the applicant will not be eligible to participate in the auction.

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

88. The Commission will use wire transfers for all Auction No. 64 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information specified in the *Auction No. 64 Procedures Public Notice* be supplied to the FCC. Applicants can provide the information electronically during the initial short-form filing window after the form has been submitted. Wire Transfer Instructions also can be manually sent by facsimile to the FCC, Financial Operations Center, Auctions Accounting Group, Attention: Gail Glasser, at (202) 418-2843. All refunds will be returned to the payor of record as identified on the FCC Form 159, unless the payor submits written authorization instructing otherwise. Applicants should 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.

E. Auction Registration

89. 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 at least one of the construction permits for which they applied.

90. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID cards that will be required to place bids, the Integrated Spectrum Auction System (ISAS) Bidder's Guide, and the Auction Bidder Line phone number.

91. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder that has not received this mailing by noon on Thursday, March 9, 2006, should call (717) 338-2888. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

92. In the event that SecurID cards are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacement registration material.

F. Remote Electronic Bidding

93. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically and telephonically. Each applicant should indicate its bidding preference—electronic or telephonic—on the FCC Form 175. In either case, each authorized bidder must have its own SecurID card, which the FCC will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID cards, while applicants with two or three authorized bidders will be issued three cards. For security purposes, the SecurID cards, the telephonic bidding phone number, and the Integrated Spectrum Auction System (ISAS) Bidder's Guide 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. 64.

G. Mock Auction—March 13, 2006

94. All qualified bidders will be eligible to participate in a mock auction on Monday, March 13, 2006. The mock

auction will enable applicants to become familiar with the FCC Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

#### IV. Auction Event

95. The first round of bidding for Auction No. 64 will begin on Wednesday, March 15, 2006. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

##### A. Auction Structure

###### i. Simultaneous Multiple Round Auction

96. Auction No. 64 will be conducted using a simultaneous multiple round auction. Unless otherwise announced, bids will be accepted from eligible qualified bidders on all construction permits in each round of the auction.

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

97. The amount of the upfront payment submitted by a bidder determines a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. Each construction permit is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 64 Procedures Public Notice* on a bidding unit per dollar basis. Bidding units for a given construction permit do not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific construction permits. Rather, a bidder may place bids on any combination of construction permits selected on its FCC Form 175 as long as the total number of bidding units associated with those construction permits does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, 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. The total upfront payment does not affect the total dollar amount a bidder may bid for any given construction permit.

98. In order 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. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction.

99. A bidder's activity level in a round is the sum of the bidding units associated with construction permits on which the bidder is active. In Auction No. 64, a bidder will be considered active on a construction permit in the current round if it is either the provisionally winning bidder at the end of the previous bidding round, or if it submits a bid in the current round. The minimum required activity is expressed as a percentage of the bidder's current eligibility, and increases by stage as the auction progresses.

###### iii. Auction Stages

100. Auction No. 64 will be conducted in two stages and employ an activity rule.

*Stage One:* During the first stage of the auction, a bidder desiring to maintain its current bidding eligibility will be required to be active on construction permits representing at least 75 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding unless an activity rule waiver is used. During Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by four-thirds (4/3).

*Stage Two:* During the second stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding unless an activity rule waiver is used. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by twenty-nineteenths (20/19).

101. The Bureaus, however, reserve the discretion to further alter the activity percentages before and/or during the auction.

###### iv. Stage Transitions

102. The auction will start in Stage One and will generally advance to Stage Two when, in each of three consecutive rounds of bidding, the provisionally

winning bids have been placed on 20 percent or less of the construction permits being auctioned (as measured in bidding units). In addition, the Bureaus will retain the discretion to regulate the pace of the auction by announcement.

###### v. Activity Rule Waivers and Reducing Eligibility

103. Bidders may use an activity rule waiver in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum activity level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit. Activity rule waivers can be either applied proactively by the bidder (known as a proactive waiver) or applied automatically by the FCC Auction System (known as an automatic waiver) and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

104. The FCC Auction System assumes that bidders with insufficient activity would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any round where a bidder's activity level is below the minimum required unless: (1) There are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements. If a bidder has no waivers remaining and does not satisfy the required activity level, the eligibility will be permanently reduced, possibly curtailing the bidder's ability to bid on some construction permit(s) or eliminating the bidder from further bidding in the auction.

105. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

106. Finally, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity waiver (using the

apply waiver function in the FCC Auction System) during a bidding round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver applied by the FCC Auction System in a round in which there are no new bids will not keep the auction open.

**Note:** Applying a waiver is irreversible; once a proactive waiver is submitted that waiver cannot be unsubmitted, even if the round has not yet closed.

#### vi. Auction Stopping Rules

107. Auction No. 64 will begin under the simultaneous stopping rule approach, and the Bureaus will retain the discretion to invoke the other versions of the stopping rule. Under a modified version of the simultaneous stopping rule the auction for all construction permits would close after the first round in which no bidder applies a waiver or submits any new bids on any construction permit on which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule.

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

109. In addition, the Bureaus reserve the right to declare that the auction will end after a specified number of additional rounds (special stopping rule). If the Bureaus invoke this special stopping rule, bids will be accepted in the specified final round(s) and the auction will close.

110. The Bureaus propose to exercise these options only in certain 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. Before exercising these options, 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 increasing the amount of the minimum bid increments for the limited number of construction permits where there is still a high level of bidding activity.

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

111. 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. The Bureaus 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

##### i. Round Structure

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

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

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

114. The specific minimum opening bid amounts for each construction permit available in Auction No. 64 are specified in Attachment A of the *Auction No. 64 Procedures Public Notice*. The minimum opening bid amounts adopted for Auction No. 64 are reducible at the discretion of the Bureaus. The Bureaus emphasize, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial

eligibility. During the course of the auction, the Bureaus will not entertain requests to reduce the minimum opening bid amount on specific construction permits.

##### iii. Bid Amounts

115. In each round, each eligible bidder will be able to place a bid on a particular construction permit for which it applied in any of nine different amounts. The FCC Auction System will list the nine bid amounts for each construction permit. The nine bid amounts for each construction permit consist of the minimum acceptable bid amount calculated using a smoothing formula and additional amounts calculated using a bid increment percentage.

##### a. Minimum Acceptable Bid Amounts

116. After 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 an additional amount calculated using a smoothing formula. The smoothing formula calculates minimum acceptable bid amounts by first calculating a percentage increment. The percentage increment for each construction permit is a function of bidding activity on that construction permit in prior rounds; therefore, a construction permit that has received many bids will have a higher percentage increment than a construction permit that has received few bids. This allows the minimum acceptable bid amounts to be tailored to the activity on a construction permit, decreasing the number of rounds it takes for construction permits receiving many bids to reach their final prices. Smoothing formula equations and examples are shown in Attachment E of the *Auction No. 64 Procedures Public Notice*.

117. The calculation of the percentage increment used to determine the minimum acceptable bid amounts for each construction permit for the next round is made at the end of each round. The computation is based on an activity index, which is a weighted average of the number of bids in that round and the activity index from the prior round (except for round 1 when the activity index from the prior round is set at 0). The current activity index is equal to a weighting factor times the number of bidders that submit bids on the construction permit in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The activity index is then used to calculate a percentage

increment by multiplying a minimum percentage increment by one plus the activity index with that result being subject to a maximum percentage increment. The weighting factor initially will be set at 0.5, the minimum percentage increment at 0.1 (10%), and the maximum percentage increment at 0.2 (20%). Hence, at these initial settings, the percentage increment will fluctuate between 10% and 20% depending upon the number of bids for the construction permit. The Bureaus will round the result using our standard rounding procedures.

118. The minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid for the construction permit. After there is a provisionally winning bid for a construction permit, the minimum acceptable bid amount for that construction permit will be equal to the amount of the provisionally winning bid plus an additional amount. Using the smoothing formula, the FCC Auction System will calculate a percentage increment at the end of each round to determine the minimum acceptable bid amount for each construction permit for the next round.

#### b. Additional Bid Amounts

119. The acceptable bid amounts in addition to the minimum acceptable bid amount for each construction permit are calculated using a bid increment percentage. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded—*e.g.*, if the increment percentage is 10 percent, the calculation is (minimum acceptable bid amount) \* (1 + 0.10), rounded, or (minimum acceptable bid amount) \* 1.10, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) \* 1.20, rounded; the third additional acceptable bid amount equals the minimum acceptable bid amount times one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) \* 1.30, rounded; etc. The Bureaus will begin the auction with a bid increment percentage of 10 percent.

120. The Bureaus retain the discretion to change the minimum acceptable bid amounts, the smoothing formula parameters, and the bid increment percentage if they determine that circumstances so dictate. The Bureaus will do so by announcement in the FCC Auction System. The Bureaus also may

use their discretion to change the minimum acceptable bid amounts, the smoothing formula parameters, and the bid increment percentage without prior notice if circumstances warrant.

#### iv. Provisionally Winning Bids

121. At the end of each bidding round, a provisionally winning bid will be determined based on the highest bid amount received for each construction permit. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.

122. A pseudo-random number generator based on the L'Ecuyer algorithms will be used to assign a random number to each bid and to break tied bids. The tied bid having the highest random number will become the provisionally winning bid. Eligible bidders, including the provisionally winning bidder, will be able to submit a higher bid in a subsequent round. In Auction No. 64, if no bidder submits a higher bid in subsequent rounds, the provisionally winning bid from the previous round will win the construction permit. If any bids are received on the construction permit in a subsequent round, the provisionally winning bid will once again be determined based on the highest bid amount received for the construction permit.

#### v. Bidding

123. During a round in Auction No. 64, a bidder may submit bids for as many construction permits as it wishes (subject to its eligibility), remove bids placed in the current bidding round, or permanently reduce eligibility. In Auction No. 64, bidders also have the option of submitting and removing multiple bids during a round. If a bidder submits multiple bids for a single construction permit in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidders in Auction No. 64 should note that the bidding units associated with construction permits for which the bidder has removed its bid do not count towards the bidder's current activity.

124. All bidding will take place remotely either through the FCC Auction System or by telephonic bidding. There will be no on-site bidding during Auction No. 64. Please note that telephonic bid assistants are required to use a script when entering

bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, five to ten minutes are necessary to complete a telephonic bid submission.

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

126. In order to access the bidding function of the FCC Auction System, bidders must be logged in during the bidding round using the passcode generated by the SecurID card and a personal identification number (PIN) created by the bidder. Bidders are strongly encouraged to print a round summary for each round after they have completed all of their activity for that round.

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

128. Until a bid has been placed on a construction permit, the minimum acceptable bid amount for that construction permit will be equal to its minimum opening bid amount. Once there is a provisionally winning bid on a construction permit, the FCC Auction System will calculate a minimum acceptable bid amount for that construction permit for the following round.

#### vi. Bid Removal

129. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the remove bids function in the FCC Auction System, a bidder may effectively unsubmit any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. After a round closes, a bidder may no longer remove a bid. Removing a bid will affect a bidder's activity for the round in

which it is removed, *i.e.*, a bid that is removed does not count toward bidding activity.

#### vii. Bid Withdrawal

130. For Auction No. 64, bidders will not be permitted to withdraw any bid after the close of the round in which the bid was submitted.

### V. Post-Auction Procedures

#### A. Down Payments

131. After bidding has ended, the Commission will issue a public notice declaring the auction closed and identifying winning bidders, down payments, and final 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 Commission for Auction No. 64 to 20 percent of the net amount of its winning bids (gross bids less any applicable new entrant bidding credits).

#### B. Final Payments

132. Absent a change to the existing payment rules applicable to broadcast permits won at auction, if a winning bidder's long-form application is uncontested, after the termination of the pleading cycle for petitions to deny, the Commission will issue a public notice announcing that it is prepared to grant the winning bidder's long-form application. If a petition to deny is filed within the pleading cycle for petitions to deny, and if the petition to deny is dismissed or denied, the Commission will issue a public notice announcing that it is prepared to grant the winning bidder's long-form application promptly after the Media Bureau disposes of any such petition to deny and is otherwise satisfied that the applicant is qualified to hold the specified construction permit. Within ten (10) business days after the date of the release of the public notice announcing that the Commission is prepared to grant a winning bidder's long-form application, each winning bidder will be required to submit the balance of the net amount of its winning bids (gross bids less any applicable new entrant bidding credits). Broadcast construction permits will be granted only after the full and timely payment of winning bids and any applicable late fees, in accordance with 47 CFR 1.2109(a).

#### C. Long-Form Applications

133. Within thirty days after the release of the auction closing notice, winning bidders must submit electronically a properly completed long-form application (FCC Form 301),

and required exhibits, for each construction permit won through Auction No. 64. A winning bidder claiming new entrant status must include an exhibit demonstrating its eligibility for the bidding credit. Further filing instructions will be provided to auction winners at the close of the auction.

#### D. Default and Disqualification

134. 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 timely a long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event, the Commission may re-auction the construction permit or offer it to the next highest bidder (in descending order) at its final bid amount. 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.

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

135. All applicants that submit upfront payments but are not winning bidders for a construction permit in Auction No. 64 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. In Auction No. 64, no refund will be made unless there are excess funds on deposit from the applicant. All refunds will be returned to the payor of record, as identified on the FCC Form 159, unless the payor submits written authorization instructing otherwise.

136. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers and have no remaining bidding eligibility must submit a written refund request. If the applicant has completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request also must include wire transfer instructions, Taxpayer Identification Number (TIN) and FCC Registration Number (FRN). Send refund requests to: Federal Communications Commission,

Financial Operations Center, Auctions Accounting Group, Gail Glasser, 445 12th Street, SW., Room 1-C864, Washington, DC 20554.

Federal Communications Commission.

**William Huber,**

*Associate Chief, Auctions and Spectrum Access Division, WTB.*

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## FEDERAL HOUSING FINANCE BOARD

[No. 2005-N-09]

### Notice of Annual Adjustment of the Cap on Average Total Assets That Defines Community Financial Institutions, the Limits on Annual Compensation for Federal Home Loan Bank Directors, and the Maximum Dollar Limits on Certain Allocations by a Federal Home Loan Bank of Its Annual Required Affordable Housing Program Contributions

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Notice.

**SUMMARY:** Based on the annual percentage increase in the Consumer Price Index for all urban consumers (CPI-U), as published by the Department of Labor (DOL), the Federal Housing Finance Board (Finance Board) has adjusted the cap on average total assets that defines a "Community Financial Institution", the limits on annual compensation for Federal Home Loan Bank (Bank) directors, and the maximum dollar limits on certain allocations by a Bank of its annual required Affordable Housing Program (AHP) contributions. These changes will become effective on January 1, 2006.

**FOR FURTHER INFORMATION CONTACT:** Scott L. Smith, Associate Director, Research, Office of Supervision, by telephone at 202-408-2991, by electronic mail at [smiths@fhfb.gov](mailto:smiths@fhfb.gov), or by regular mail at the Federal Housing Finance Board, 1625 Eye Street NW., Washington DC 20006.

#### SUPPLEMENTARY INFORMATION:

##### A. Statutory and Regulatory Background

Section 2(13) of the Federal Home Loan Bank Act (Bank Act) and § 925.1 of the Finance Board regulations define a member that is a "Community Financial Institution" (CFI) by the member's total asset size. See 12 U.S.C. 1422(13)(A) and 12 CFR 925.1. The Bank Act requires the Finance Board annually to adjust the CFI asset cap to reflect any percentage increase in the