

factors (e.g., geographical areas and professional affiliations).

Dated: April 22, 2010.

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*Director, EPA Science Advisory Board Staff Office.*

[FR Doc. 2010-10135 Filed 4-29-10; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 10-31; DA 10-524]

### Closed Auction of Broadcast Construction Permits Scheduled for July 20, 2010; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 88

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the procedures and minimum opening bids for the upcoming auction of identified Broadcast construction permits (Auction 88). This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for the auction.

**DATES:** Applications to participate in Auction 88 must be filed prior to 6 p.m. Eastern Time (ET) on May 13, 2010. Bidding for construction permits in Auction 88 is scheduled to begin on July 20, 2010.

**FOR FURTHER INFORMATION CONTACT:**

*Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* For legal questions: Lynne Milne or Howard Davenport at (202) 418-0660. For general auction questions: Jeff Crooks at (202) 418-0660 or Linda Sanderson at (717) 338-2868. *Media Bureau, Audio Division:* For licensing information and service rule questions: Lisa Scanlan or Tom Nessinger at (202) 418-2700. To request materials in accessible formats (Braille, large print, electronic files or audio format) for people with disabilities, send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction 88 Procedures Public Notice*, which was released on March 31, 2010. The complete text of the *Auction 88 Procedures Public Notice*, including attachments, as well as related Commission documents, are available for public inspection and copying from 8 a.m. to 4:30 p.m. ET

Monday through Thursday and from 8 a.m. to 11:30 a.m. ET on Friday in the FCC Reference Information Center, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The *Auction 88 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>, using document number DA 10-524 for the *Auction 88 Procedures Public Notice*. The *Auction 88 Procedures Public Notice* and related documents are also available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/88/>.

### I. General Information

#### A. Introduction

1. The Wireless Telecommunications Bureau and the Media Bureau (collectively, the Bureaus) announce the procedures and minimum opening bid amounts for the upcoming closed auction of certain broadcast AM, FM, and FM Translator construction permits. This auction, which is designated as Auction 88, is scheduled to commence on July 20, 2010. Auction 88 is a closed auction; only those entities listed in Attachment A of the *Auction 88 Procedures Public Notice* will be eligible to participate in this auction. On February 4, 2010, the Bureaus released a public notice seeking comment on competitive bidding procedures to be used in Auction 88. Interested parties submitted six comments and one reply comment in response to the *Auction 88 Comment Public Notice*, 75 FR 8070, Feb. 23, 2010.

#### B. Construction Permits in Auction 88

2. Auction 88 will offer construction permits for 13 commercial full-power FM stations, one commercial FM translator station, and one commercial AM station as listed in Attachment A of the *Auction 88 Procedures Public Notice*. The Bureaus explained that, due to a database error, the channel for the Rosendale, New York, FM allotment (construction permit MM-FM750-273A) was listed in Attachment A to the *Auction 88 Comment Public Notice* as Channel 273A, when in fact the correct channel (as reflected in Attachment A of the *Auction 88 Procedures Public Notice*) is Channel 255A at Rosendale. Accordingly, the winning bidder for the Rosendale permit will be required to amend its application to specify operation on Channel 255. In Auction

88, the construction permit will be referred to as MM-FM750-255A. Despite commenter suggestions that the Commission should postpone conducting any auction for a permit for the FM Channel 251A allotment at Santa Isabel, Puerto Rico, on the basis of uncertainties concerning technical issues that may pose difficulties in implementing broadcast operations on this channel, the Bureaus will offer this permit in Auction 88.

3. Attachment A of the *Auction 88 Procedures Public Notice* identifies the closed groups of mutually exclusive applications for each construction permit in this auction. Four applicants notified the Bureaus that changes to the applicant's name occurred after the original construction permit application had been filed. Notwithstanding notification of such a change through paper-filed application amendments, the Commission databases were never updated to reflect the new applicant name. Consequently, these applicants were listed under the original applicant name in the *Auction 88 Comment Public Notice*. Attachment A of the *Auction 88 Procedures Public Notice* reflects the name changes for the following four applicants: (i) BBK Broadcasting, Inc. to Radio Plus, Inc., (ii) Directel Inc. to SCHC Lubbock Application, Inc., (iii) Music Express Broadcasting, Inc. to Music Express Broadcasting Corp., and (iv) Rosen Broadcasting, Inc. to CHET-5 Broadcasting, L.P.

4. An applicant listed in Attachment A of the *Auction 88 Procedures Public Notice* may become qualified to bid only if it meets the filing, qualification and payment requirements. Each qualified bidder will be eligible to bid on only those construction permits specified for that qualified bidder in Attachment A of the *Auction 88 Procedures Public Notice*. All applicants within these groups of mutually exclusive applications (MX groups) are directly mutually exclusive with one another; therefore no more than one construction permit will be awarded for each MX group.

i. Dismissal of Applications for Failure To Submit FRN

5. The *Auction 88 Comment Public Notice* established a deadline for the submission to the Commission of an FCC Registration Number (FRN) by each applicant, and warned of disqualification from participation in the auction and dismissal of any application where the applicant failed to provide its FRN by the deadline on March 12, 2010. Attachment B of the *Auction 88 Procedures Public Notice*

lists applications that were dismissed as a result of the applicant's failure to submit the requested FRN by the specified deadline.

6. Due to these dismissals, some applications no longer were mutually exclusive with other applications and are included in Attachment C of the *Auction 88 Procedures Public Notice*. The removal of applications in some cases has resulted in the removal of entire MX groups from the auction. Specifically, the failure by an applicant to submit its FRN by the specified deadline resulted in the removal from this auction of two MX groups: An MX group for an AM station at Lansing/South Hill, New York (construction permit MM-AM041-750) and an MX group for an FM translator at Manahawkin/Warren Grove, New Jersey (construction permit MM-FMT010-273).

ii. Dismissal of Applications for Failure To Submit Required Section 307(b) Information

7. AM applications in each of the two Indiana MX groups originally scheduled for this auction proposed to serve different communities. In order to make the evaluation required by 47 U.S.C. 307(b), the Media Bureau directed each applicant in closed MX group MM-AM039-640 and MX group MM-AM040-1230 to submit section 307(b) information. Attachment B of the *Auction 88 Procedures Public Notice* lists applications that no longer will be included in Auction 88 as a result of the applicant's failure to submit information needed for determinations required by section 307(b).

8. With respect to MX group MM-AM039-640, only three applicants submitted Section 307(b) showings. Having found no dispositive section 307(b) preference for either of the communities specified, these three applicants will be included in Auction 88 as MX group MM-AM039-640. With respect to MX group MM-AM040-1230, one applicant submitted a timely section 307(b) showing. Therefore, the engineering proposal for this construction permit no longer was mutually exclusive with other application engineering proposals and is listed as a singleton in Attachment C of the *Auction 88 Procedures Public Notice*. The Media Bureau dismissed the short-form applications (FCC Form 175) of the remaining five applicants in the MX group. All six MX group MM-AM040-1230 applications were removed from Auction 88.

C. Rules and Disclaimers

i. Relevant Authority

9. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules, including recent amendments and clarifications, as well as Commission decisions in proceedings regarding competitive bidding procedures, application requirements, broadcast service rules and obligations of Commission licensees. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement information contained in its public notices at any time.

ii. Prohibited Communications and Compliance With Antitrust Laws

10. To ensure the competitiveness of the auction process, 47 CFR 1.2105(c) prohibits auction applicants for construction permits in any of the same geographic license areas from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications (FCC Form 175) as parties with whom they have entered into agreements pursuant to 47 CFR 1.2105(a)(2)(viii).

a. Entities Subject to Section 1.2105

11. Unless applicants have identified each other on their short-form applications seeking to participate in a Commission auction as parties with whom they have entered into agreements under 47 CFR 1.2105(a)(2)(viii), applicants for any of the same geographic license areas must affirmatively avoid all communications with or disclosures to each other that affect or 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 applies to all applicants regardless of whether such applicants become qualified bidders or actually bid. The geographic license area is the market designation of the particular service. For the FM service, the market designation is the particular vacant FM allotment (e.g., Greenwood, Arkansas, Channel 268A, MM-FM744-268A). In Auction 88, the rule would apply to applicants designated in Attachment A of the *Auction 88 Procedures Public Notice* for any of the same allotments or permits.

12. Applicants are also reminded that, for purposes of this prohibition on certain communications, 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, all controlling interests of that entity, as well as 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. For example, where an individual served as an officer for two or more applicants, the Bureaus have found that the bids and bidding strategies of one applicant are necessarily conveyed to the other applicant, and, absent a disclosed bidding agreement, an apparent violation of 47 CFR 1.2105(c) occurs.

13. Individuals and entities subject to 47 CFR 1.2105(c) should take special care in circumstances where their employees may receive information directly or indirectly from a competing applicant relating to any competing applicant's bids or bidding strategies. Moreover, Auction 88 applicants are encouraged not to use the same individual as an authorized bidder. A violation of 47 CFR 1.2105(c) 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 such applicants. 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 47 CFR 1.2105(c).

b. Prohibition Applies Until Down Payment Deadline

14. 47 CFR 1.2105(c)'s prohibition on certain communications 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.

c. Prohibited Communications

15. Applicants should note that they must not communicate directly or indirectly about bids or bidding strategy to other applicants in this auction. 47 CFR 1.2105(c) prohibits not only a communication about an applicant's own bids or bidding strategy, but also a

communication of another applicant's bids or bidding strategy. While 47 CFR 1.2105(c) does not prohibit business negotiations among auction applicants, applicants must remain vigilant so as not to communicate directly or indirectly information that affects, or could affect, bids or bidding strategy, or the negotiation of settlement agreements.

16. The Commission remains vigilant about prohibited communications taking place in other situations. For example, the Commission has warned that prohibited communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly. Applicants are hereby placed on notice that public disclosure of information relating to bids, or bidding strategies, or to post-auction market structures may violate 47 CFR 1.2105(c), including an applicant's use of the Commission's bidding system or a statement to the press, financial analyst or others.

#### d. Disclosure of Bidding Agreements and Arrangements

17. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form applications. If parties agree in principle on all material terms prior to the short-form application filing deadline, each party to the agreement must identify the other party or parties to the agreement on its 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 short-form filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiations, discussions or communications with any other applicants after the short-form application filing deadline.

#### e. Section 1.2105(c) Certification

18. By electronically submitting a short-form application, each applicant in Auction 88 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 a prohibited communication has occurred, nor will it preclude the initiation of an

investigation when warranted. The Commission has stated that it intends to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring. Any applicant found to have violated 47 CFR 1.2105(c) may be subject to sanctions.

#### f. Duty To Report Prohibited Communications: Reporting Procedure

19. 47 CFR 1.2105(c)(6) provides that any applicant that makes or receives a communication that appears to violate 47 CFR 1.2105(c) must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. The Commission has clarified that each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.

20. To maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission of any substantial change that may be of decisional significance to that application, an applicant is required by 47 CFR 1.65 to report to the Commission any communication the applicant has made to or received from another applicant after the short-form application filing deadline that affects or has the potential to affect bids or bidding strategy, unless such communication is made to or received from a party to an agreement identified under 47 CFR 1.2105(a)(2)(viii).

21. 47 CFR 1.65(a) and 1.2105(c) require applicants in competitive bidding proceedings to furnish additional or corrected information within five days of a significant occurrence, or to amend their short-form applications no more than five days after the applicant becomes aware of the need for amendment. A party reporting any communication pursuant to 47 CFR 1.65, 1.2105(a)(2), or 1.2105(c)(6) must take care to ensure that any reports of prohibited communications do not themselves give rise to a violation of 47 CFR 1.2105(c). For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection.

22. To minimize the risk of inadvertent dissemination of information in such reports, any reports required by 47 CFR 1.2105(c) must be filed consistent with the instructions set forth in the *Auction 88 Procedures*

*Public Notice.* For Auction 88, such reports should be filed with the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available. Specifically, any such report should be submitted by e-mail at the following address: [auction88@fcc.gov](mailto:auction88@fcc.gov), or delivered to the following address: Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room 6423, Washington, DC 20554.

23. A party seeking to report such prohibited communications should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection pursuant to 47 CFR 0.459. Such filers must have a cover page that prominently displays that confidential treatment is sought for the document, covering all of the material to which the request applies. Such parties also are encouraged to coordinate with the Auctions and Spectrum Access Division staff if they have any questions about the procedures for submitting such reports.

#### g. Winning Bidders Must Disclose Terms of Agreements

24. Applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in any bidding consortia, joint venture, partnership; or agreement, understanding, or other arrangement entered into relating to the competitive bidding process. Applicants must be aware that failure to comply with the Commission's rules can result in enforcement action.

#### h. Antitrust Laws

25. Applicants are also reminded that, regardless of compliance with the Commission's rules, they remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. Compliance with the disclosure requirements of 47 CFR 1.2105(c) will not insulate a party from enforcement of the antitrust laws. For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submitted a short-form application. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment or full bid amount and may be prohibited from participating in future

auctions, among other sanctions. See 47 CFR 1.2109(d).

iii. Due Diligence

26. The burden of due diligence is on the auction applicant. Potential applicants are reminded that they are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the construction permits for broadcast facilities they are seeking in this auction. It is each applicant's responsibility to assure itself that, if it wins a construction permit in this auction, it will be able to build and operate facilities in accordance with the Commission's rules. The Commission does not represent or warrant that licenses or permits offered are suitable for any particular service, nor does a Commission construction permit or license constitute a guarantee of business success.

iv. Use of Integrated Spectrum Auction System

27. The Commission will make available a browser-based bidding system to allow bidders to participate in Auction 88 over the Internet using the

Commission's Integrated Spectrum Auction System (ISAS or FCC Auction System). The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees, or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning, or use of the FCC Auction System that is accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming, or other advice or service provided in connection with the FCC Auction System.

v. Environmental Review Requirements

28. Permittees or licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other Federal environmental statutes. The construction of a broadcast facility is a Federal action and the permittee or licensee for each such facility must

comply with the Commission's environmental rules, 47 CFR 1.1301-1.1319.

D. Auction Specifics

i. Auction Start Date

29. Bidding in Auction 88 will begin on Tuesday, July 20, 2010. 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. Bidding Methodology

30. The bidding methodology for Auction 88 will be simultaneous multiple round (SMR) bidding. The Commission will conduct this auction over the Internet using the FCC Auction System, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically via the Internet or by telephone. All telephone calls are recorded.

iii. Pre-Auction Dates and Deadlines

31. The following dates and deadlines apply:

Auction Tutorial Available (via Internet) .....	May 4, 2010.
Short-Form Application (FCC Form 175):	
Filing Window Opens .....	May 4, 2010; 12 noon ET.
Short-Form Application (FCC Form 175):	
Filing Window Deadline .....	May 13, 2010; prior to 6 p.m. ET.
Upfront Payments (via wire transfer) .....	June 17, 2010; 6 p.m. ET.
Mock Auction .....	July 16, 2010.
Auction Begins .....	July 20, 2010.

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

A. General Information Regarding Short-Form Applications

32. An application to participate in an FCC auction, referred to as a short-form application or FCC Form 175, provides information used in determining whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or permits. Each applicant must take seriously its duties and responsibilities and carefully determine before filing an application that the applicant has the legal, technical and financial resources to participate in Auction 88, as well as construct and operate a broadcast station if the auction applicant becomes a licensee as a result of its participation in this auction. Eligibility to participate in bidding is based on the applicants' short-form applications and certifications under penalty of perjury, as well as their upfront payments.

33. All applicants for AM stations listed in Attachment A of the *Auction 88 Procedures Public Notice* previously filed short-form applications in response to the *Supplemental Terre Haute Window Notice*. All applicants for FM stations listed in Attachment A of the *Auction 88 Procedures Public Notice* previously filed long-form applications. All entities and individuals seeking construction permits in Auction 88 are required to file a new short-form application electronically via the FCC Auction System prior to 6 p.m. ET on May 13, 2010, following the procedures prescribed in Attachment D of the *Auction 88 Procedures Public Notice*, even if the applicant had previously filed a short-form application in response to the *Supplemental Terre Haute Window Notice* or a long-form application.

34. Applicants bear full responsibility for submitting 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 the instructions set forth in Attachment D of the *Auction 88 Procedures Public Notice* carefully and should consult the Commission's rules to ensure that, in addition to the materials, all the information that is required under the Commission's rules is included with their short-form applications. Auction 88 applicants are reminded that they are not permitted by 47 CFR 1.2105(b) to make major modifications to their applications as initially filed (whether long-form applications by applicants for FM stations or short-form applications by applicants for the AM station), including any change of their construction permit(s), any change of control of the applicant, or any change to claim eligibility for a higher percentage of bidding credit).

35. Applicants also should note that submission of a short-form application (and any amendments thereto)

constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Applicants are not permitted to make major modifications to their applications; such impermissible changes include a change of the certifying official to the application. 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.

#### *B. Construction Permits in Short-Form Application*

36. Auction 88 will resolve pending closed groups of mutually exclusive applications. Participation in this auction is limited to those applicants and applications identified in Attachment A of the *Auction 88 Procedures Public Notice*. Qualifying applicants will be eligible to bid only on those construction permits for which the applicant's application is designated in the particular MX group specified in Attachment A of the *Auction 88 Procedures Public Notice*. Therefore, applicants will not select permits when filing the FCC Form 175.

#### *C. New Entrant Bidding Credit*

37. The Commission adopted a tiered New Entrant Bidding Credit for broadcast auction applicants with no, or very few, other media interests. The interests of the applicant, and of any individuals or entities with an attributable interest in the applicant, in other media of mass communications are considered when determining an applicant's eligibility for the New Entrant Bidding Credit. In Auction 88, the bidder's attributable interests are determined as of the short-form application filing deadline. Thus, the applicant's maximum new entrant bidding credit eligibility will be determined as of the short-form application filing deadline. Applicants 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. Prospective bidders are reminded, however, 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.

38. Under traditional broadcast attribution rules, such as 47 CFR 73.3555 Note 2, those entities or individuals with an attributable interest in a bidder include: (1) All officers and directors of a corporate bidder; (2) any owner of 5 percent or more of the voting stock of a corporate bidder; (3) all partners and limited partners of a partnership bidder, unless the limited partners are sufficiently insulated; and (4) all members of a limited liability company, unless sufficiently insulated. In cases where an applicant's spouse or close family member holds other media interests, such interests are not automatically attributable to the bidder. 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.

39. Bidders are also reminded that, by the *New Entrant Bidding Credit Reconsideration Order*, 64 FR 44856, Aug. 18, 1999, 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 bidder 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.

40. In the *Diversity Order*, 73 FR 28361, May 16, 2008, the Commission relaxed the equity/debt plus (EDP) attribution standard, to allow for higher investment opportunities in entities meeting the definition of eligible entities. An eligible entity is defined in Note 2(i) of 47 CFR 73.3555. Pursuant to the *Diversity Order*, the Commission will now allow the holder of an equity or debt interest in the applicant to exceed the above-noted 33 percent threshold without triggering attribution provided (1) the combined equity and debt in the eligible entity is less than 50 percent; or (2) the total debt in the eligible entity does not exceed 80 percent of the asset value, and the interest holder does not hold any equity interest, option, or promise to acquire

an equity interest in the eligible entity or any related entity.

41. 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 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), and includes full service noncommercial educational stations, on both reserved and nonreserved channels.

#### *i. Application Requirements*

42. In addition to the ownership information required pursuant to 47 CFR 1.2112, applicants seeking a New Entrant Bidding Credit are required to establish on their short-form applications that they satisfy the eligibility requirements to qualify for the bidding credit. In those cases, 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 has any attributable interests in more than three media of mass communications, and must identify and describe such media of mass communications.

#### *ii. Bidding Credits*

43. 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: (1) 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; (2) 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; and (3) no bidding credit will be given if any of the commonly owned mass media facilities serve the same area as the broadcast station proposed in the auction, 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.

44. To the extent that one commenter suggested that the criteria for the new entrant bidding credit be modified for Auction 88 with a request that the Bureaus allow a bidding credit for any applicant with no other broadcast facilities, the Bureaus are unable to adopt any such revision of existing bidding credit rules, that already provide that broadcast auction applicants with no attributable interests in media of mass communications may seek a 35 percent bidding credit, or to adopt new bidding credits based on other criteria. The Bureaus will implement for this auction the broadcast bidding credit criteria as adopted by the Commission in 47 CFR 73.5007–73.5008.

45. 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. Applicants should note that unjust enrichment provisions under 47 CFR 73.5007(c) apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license or construction permit to an entity not qualifying for the same level of bidding credit.

#### *D. Disclosure of Bidding Arrangements*

46. Applicants will be required to identify in their short-form application all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the construction permits being auctioned, including any agreements relating to post-auction market structure.

47. Applicants also will be required to certify under penalty of perjury in their short-form applications that they have not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application, regarding

the amount of their bids, bidding strategies, or the particular construction permits on which they will or will not bid. If an applicant has had discussions, but has not reached an agreement by the short-form application filing deadline, it should not include the names of parties to the discussions on its application and may not continue such discussions with any applicants after the deadline.

48. After the filing of short-form applications, the Commission's rules do not prohibit a party holding a non-controlling, attributable interest in one applicant from acquiring an ownership interest in or entering into a joint bidding arrangement with other applicants, provided that: (1) The attributable interest holder certifies in accordance with 47 CFR 1.2105(c)(4)(i), (ii) 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 entered into a joint bidding arrangement; and (2) the arrangements do not result in a change in control of any of the applicants. While 47 CFR 1.2105(c) does 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. Compliance with the disclosure requirements of 47 CFR 1.2105(c) will not insulate a party from enforcement of the antitrust laws.

#### *E. Ownership Disclosure Requirements*

49. The ownership disclosure standards for the short-form application are prescribed in 47 CFR 1.2105 and 1.2112. Specifically, in completing the short-form application, all applicants will be required to fully disclose information on the real party- or parties-in-interest and ownership structure of the applicant, including both direct and indirect ownership interests of 10 percent or more. Each applicant is responsible for information submitted in its short-form application being complete and accurate.

50. For Auction 88, the ownership information must conform, in all material respects, to the ownership information appearing on the applicant's previously-filed long-form application (FM and FM translator applicants) or short-form application (AM applicants). Applicants are

cautioned that the long-form application will be considered newly filed according to 47 CFR 1.2105(b)(2) and 73.3573(a)(1) if the information submitted on the electronic short-form application reflects that there has been a change of control. In such a case, the applicant will not be eligible to participate in the auction. Accordingly, each applicant should carefully review any information automatically entered in its short-form application to confirm that it is complete and accurate as of the deadline for filing the short-form application.

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

51. Current defaulters or delinquents are not eligible to participate in Auction 88, but former defaulters or delinquents can participate so long as they are otherwise qualified and, make upfront payments that are fifty percent more than the normal upfront payment amounts. An applicant is considered a current defaulter or a current delinquent when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, are in default on any payment for any Commission construction permit or license (including a down payment) or are delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for short-form applications. An applicant is considered a former defaulter or a former delinquent when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, have defaulted on any Commission construction permit or license or been delinquent on any non-tax debt owed to any Federal agency, but have since remedied all such defaults and cured all of the outstanding non-tax delinquencies.

52. On the short-form application, an applicant must certify under penalty of perjury that it, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by 47 CFR 1.2110 currently are not in default on any payment for a Commission construction permit or license (including down payments) and that it is not currently delinquent on any non-tax debt owed to any Federal agency. Each applicant must also state under penalty of perjury whether it, its affiliates, its controlling interests, and the affiliates 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. 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. These statements and certifications are prerequisites to submitting an application to participate in an FCC auction.

53. Applicants are encouraged to review the Bureaus' previous guidance on default and delinquency disclosure requirements in the context of the 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 provisions of 47 CFR 1.2105(a) and 1.2106(a) regarding default and delinquency in connection with competitive bidding are limited to circumstances in which the relevant party has not complied with a final Commission payment deadline. Parties are also encouraged to consult with the Commission's Office of Managing Director or the Wireless Telecommunications Bureau's Auctions and Spectrum Access Division staff if they have any questions about default and delinquency disclosure requirements.

54. 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.

55. Applicants are reminded, however, that the Commission's Red

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

56. Moreover, prospective applicants in Auction 88 should note that any long-form applications filed after the close of bidding will be reviewed for compliance with the Commission's red light rule, and such review may result in the dismissal of a winning bidder's long-form application. Applicants that have their long-form application dismissed will be deemed to have defaulted and will be subject to default payments under 47 CFR 1.2104(g) and 1.2109(c).

#### *G. Optional Applicant Status Identification*

57. Applicants owned by members of minority groups and/or women, as defined in 47 CFR 1.2110(c)(3), and rural telephone companies, as defined in 47 CFR 1.2110(c)(4), may identify themselves regarding this status in filling out their short-form applications. This optional applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation in its auctions of designated entities, defined as small businesses, businesses owned by members of minority groups and/or women, and rural telephone companies.

#### *H. Minor Modifications to Short-Form Applications*

58. After the deadline for filing initial applications, 47 CFR 1.2105(b) specifies that an Auction 88 applicant is permitted to make only minor changes to its application. Permissible minor changes include, among other things, 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. An applicant is not permitted to make a major modification to its application (*e.g.*, change control of the applicant, change the certifying official, or claim eligibility for a higher percentage of bidding credit) after the initial application filing deadline. Thus, any change in control of an applicant, resulting from a merger, for example, will be considered a major modification to the applicant's application, which

will consequently be dismissed. In this regard, the Bureaus reiterated that, even if an applicant's short-form application is dismissed, the applicant would remain subject to the communication prohibitions of 47 CFR 1.2105(c) until the down payment deadline, which will be established after the auction closes.

59. Moreover, after the filing window has closed, ISAS will not permit applicants to make certain changes, such as the applicant's legal classification. Applicants also may not change the community of license prior to auction. While one commenter's request for a change in the community of license from New Holstein, Wisconsin, to Chilton, Wisconsin is not procedurally proper at this time, the winning bidder for FM Channel 225A will have the opportunity, when it files its post-auction FCC Form 301 application, to propose a new community of license, as long as the proposed change is mutually exclusive with the allotment and would represent a preferential arrangement of allotments.

60. If an applicant wishes to make permissible minor changes to its short-form application, such changes should be made electronically to its short-form application using the FCC Auction System whenever possible. Applicants are reminded to 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, submission date, and a unique file number.

61. An applicant cannot use the FCC Auction System outside of the initial and resubmission filing windows to make changes to its short-form application other than administrative changes (*e.g.* changing certain contact information or the name of an authorized bidder). If other permissible minor changes need to be made outside of these windows, the applicant must submit a letter briefly summarizing the changes and subsequently update its short-form application in ISAS once the system is available. Any letter describing changes to an applicant's short-form application should be submitted by e-mail to the following address: [auction88@fcc.gov](mailto:auction88@fcc.gov). The e-mail summarizing the changes must include a subject or caption referring to Auction 88 and the name of the applicant.

62. 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) an officer, director, or



duly authorized employee, if the applicant is a corporation; (4) a member who is an officer, if the applicant is an unincorporated association; (5) the trustee, if the applicant is an amateur radio service club; or (6) a duly elected or appointed official who is authorized to make such certifications under the laws of the applicable jurisdiction, if the applicant is a governmental entity.

63. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System which was used for submitting comments regarding Auction 88.

#### *I. Maintaining Current Information in Short-Form Applications*

64. 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. Changes that cause a loss of or reduction in the percentage of bidding credit specified on the originally submitted application 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 amendment. Events occurring after the application filing deadline, such as the acquisition of attributable interests in media of mass communications, may also cause diminishment or loss of the bidding credit, and must be reported immediately. 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 application.

65. After the application filing deadline, applicants may make only minor changes to their applications. Applicants must click on the SUBMIT button in the FCC Auction System for any changes to be submitted and considered by the Commission. If a submission in compliance with 47 CFR 1.65 is needed outside of the initial and resubmission filing windows, applicants must submit a brief letter summarizing the changes in accordance with the instructions specified in the *Auction 88 Procedures Public Notice*.

### **III. Pre-Auction Procedures**

#### *A. Online Auction Tutorial—Available May 4, 2010*

66. On Tuesday, May 4, 2010, the Commission will post an educational auction tutorial on the Auction 88 Web page for prospective bidders to familiarize themselves with the auction process. This online tutorial will provide information about pre-auction procedures, completing short-form applications, auction conduct, the FCC Auction Bidding System, auction rules, and broadcast services rules. The tutorial will also provide an avenue to ask FCC staff questions about the auction, auction procedures, filing requirements, and other matters related to this auction.

67. The auction tutorial will be accessible from the FCC's Auction 88 Web page at <http://wireless.fcc.gov/auctions/88/> through an Auction Tutorial link. Once posted, this tutorial will remain available for reference in connection with the procedures outlined in the *Auction 88 Procedures Public Notice*.

#### *B. Short-Form Applications—Due Prior to 6 p.m. ET on May 13, 2010*

68. In order to be eligible to bid in this auction, applicants must first follow the procedures set forth in Attachment D of the *Auction 88 Procedures Public Notice* to submit a short-form application (FCC Form 175) electronically via the FCC Auction System. This short-form application must be submitted through the FCC Auction System prior to 6 p.m. ET on May 13, 2010. Late applications will not be accepted. An applicant always must click on the SUBMIT button on the Certify & Submit screen to successfully submit its FCC Form 175 and any modification; otherwise the application or changes to the application will not be received or reviewed.

#### *C. Application Processing and Minor Corrections*

69. After the deadline for filing FCC Form 175 applications, the Commission will process all timely submitted applications to determine which are complete, and subsequently will issue a public notice identifying (1) those applications that are complete; (2) those applications that are rejected; and (3) those applications that are incomplete because of minor defects that may be corrected. The public notice will include the deadline for resubmitting corrected applications.

70. After the application filing deadline on May 13, 2010, applicants continue to be able to make only minor

corrections to their applications. Applicants will not be permitted to make major modifications to their applications (e.g., change control of the applicant, change the certifying official, or claim eligibility for a higher percentage of bidding credit).

71. Applicants should be aware the Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the applicant's short-form application, unless the applicant's certifying official or contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on its behalf. Such authorizations may be sent by e-mail to [auction88@fcc.gov](mailto:auction88@fcc.gov). In no event, however, will the FCC send registration materials to anyone other than the contact person listed on the applicant's FCC Form 175 or respond to a request for replacement registration materials from anyone other than an authorized bidder, contact person or certifying official listed on the applicant's FCC Form 175.

#### *D. Upfront Payments—Due June 17, 2010*

72. In order to be eligible to bid in this auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). The Bureaus note that all applicants for permits must make an upfront payment in order to qualify as a bidder and obtain a permit, whether or not any other applicant in their MX groups becomes a qualified bidder. An applicant must initiate the wire transfer through its bank, authorizing the bank to wire funds from the applicant's account to the Commission's auction payment lockbox bank, the U.S. Bank in St. Louis, Missouri. After completing its short-form application, an applicant will have access to an electronic version of the FCC Form 159 that can be printed and sent by fax to U.S. Bank in St. Louis, Missouri. All upfront payments must be made as instructed in this Public Notice and must be received in the proper account at U.S. Bank before 6 p.m. ET on June 17, 2010.

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

73. Wire transfer payments must be received before 6 p.m. ET on June 17, 2010. No other payment method is acceptable. The Commission will not accept checks, credit cards, or automated clearing house (ACH) payments. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their bankers several days before they



plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline.

74. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must fax a completed FCC Form 159 (Revised 2/03) to U.S. Bank at (314) 418-4232. On the fax cover sheet, applicants should write Wire Transfer—Auction Payment for Auction 88. In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account for Auction 88 before the deadline. The applicant is responsible for obtaining confirmation from its financial institution that U.S. Bank has timely received its upfront payment and deposited it in the proper account.

75. Please note the following information regarding upfront payments: (1) All payments must be made in U.S. dollars; (2) all payments must be made by wire transfer; (3) upfront payments for Auction 88 go to a lockbox number different from the lockboxes used in previous FCC auctions; and (4) failure to deliver a sufficient upfront payment as instructed by the specified deadline on June 17, 2010 will result in dismissal of the short-form application and disqualification from participation in the auction.

ii. FCC Form 159

76. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be faxed to U.S. Bank to accompany each upfront payment. Proper completion of FCC Form 159 is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment E of the *Auction 88 Procedures Public Notice*. An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payers using the pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed electronically, but must be filed with U.S. Bank by fax.

iii. Upfront Payments and Bidding Eligibility

77. Attachment A of the *Auction 88 Procedures Public Notice* sets forth minimum opening bids and upfront payments for permits being offered in this auction. Applicants must make upfront payments sufficient to obtain bidding eligibility on the construction permits on which they will bid. The

amount of the upfront payment determines 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 particular construction permit, a qualified bidder must be identified as an applicant for the construction permit in Attachment A of the *Auction 88 Procedures Public Notice* and 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 for which it is identified as an applicant in Attachment A of the *Auction 88 Procedures Public Notice*, or else the applicant will not be eligible to participate in the auction.

78. An applicant does not have to make an upfront payment to cover all construction permits for which it is identified as an applicant in Attachment A of the *Auction 88 Procedures Public Notice*, but only enough to cover the maximum 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 final winning bids if the auction were to close after the given round.

79. Some commenters requested reductions of minimum opening bids for specific construction permits which correspond to the specific upfront payments proposed by the Bureaus in the *Auction 88 Comment Public Notice*. To the extent that the Bureaus reduced minimum opening bid amounts, the corresponding upfront payment amount for that construction permit also was reduced. With these exceptions, the Bureaus adopted the upfront payments and bidding units proposed for each construction permit in Auction 88. Upfront payment amounts and bidding units are set forth in Attachment A of the *Auction 88 Procedures Public Notice*.

80. In calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) 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 bidding units for all construction permits on which it seeks to be active in any given round. Applicants should check their calculations carefully, as there is no provision for increasing a bidder's

eligibility after the upfront payment deadline. Further, a qualified bidder's maximum eligibility will not exceed the sum of the bidding units associated with the total number of construction permits identified for that applicant in Attachment A of the *Auction 88 Procedures Public Notice*. In some cases, a qualified bidder's maximum eligibility may be less than the amount of its upfront payment because the qualified bidder either has submitted an upfront payment that exceeds the total amount of bidding units associated with the construction permits identified for that applicant in Attachment A of the *Auction 88 Procedures Public Notice* or has previously been in default on a Commission construction permit or license or delinquent on non-tax debt owed to a Federal agency.

81. As explained previously in the *Auction 88 Procedures Public Notice*, applicants that are former defaulters must pay upfront payments 50 percent greater than non-former defaulters. If an applicant is a former defaulter, it must calculate its upfront payment for all of its identified construction permits by multiplying the number of bidding units on which it wishes to be active by 1.5. 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 designated for that applicant in Attachment A of the *Auction 88 Procedures Public Notice*, the applicant will not be eligible to participate in the auction.

E. Auction Registration

82. Approximately ten days before the auction, the Bureaus will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants with submitted FCC Form 175 applications that are deemed timely-filed, accurate, and complete, provided that such applicants have timely submitted an upfront payment that is sufficient to qualify them to bid.

83. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID® tokens that will be required to place bids, the Integrated Spectrum Auction System (ISAS) Bidder's Guide, and the Auction Bidder Line phone number. 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 Wednesday, July 14, 2010, should call (717) 338-2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

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

#### F. Remote Electronic Bidding

85. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Only qualified bidders are permitted to bid. Each applicant should indicate its bidding preference—electronic or telephonic—on its FCC Form 175. In either case, each authorized bidder must have its own SecurID® token, which the Commission will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. For security purposes, the SecurID® tokens, the telephonic bidding telephone 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. Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 88.

#### G. Mock Auction—July 16, 2010

86. All qualified bidders will be eligible to participate in a mock auction on Friday, July 16, 2010. The mock auction will enable qualified bidders 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

87. The first round of bidding for Auction 88 will begin on Tuesday, July 20, 2010. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is to

be released approximately 10 days before the start of the auction.

#### A. Auction Structure

##### i. Simultaneous Multiple Round Auction

88. All construction permits in Auction 88 will be auctioned in a single auction using the Commission's standard simultaneous multiple-round auction format. This type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual construction permits. A bidder may bid on, and potentially win, any number of construction permits. Unless otherwise announced, bids will be accepted on all construction permits in each round of the auction until bidding stops on every construction permit.

##### ii. Eligibility and Activity Rules

89. The Bureaus will use upfront payments to determine initial (maximum) eligibility (as measured in bidding units) for Auction 88. The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. As noted earlier, each construction permit is assigned a specific number of bidding units listed in Attachment A of the *Auction 88 Procedures Public Notice*. 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 of the construction permits for which it is designated an applicant in Attachment A of the *Auction 88 Procedures Public Notice*, as long as the total number of bidding units associated with those construction permits does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. At a minimum, an applicant's upfront payment must cover the bidding units for at least one of the construction permits for which it is designated an applicant in Attachment A of the *Auction 88 Procedures Public Notice*. The total upfront payment does not affect the total dollar amount a bidder

may bid on any given construction permit.

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

91. A bidder's activity level in a round is the sum of the bidding units associated with any construction permits covered by new and provisionally winning bids. A bidder is 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.

92. The eligibility and activity rules for Auction 88 require a bidder to be active on 100 percent of its current eligibility during each round of the auction. That is, a bidder must either place a bid or be a provisionally winning bidder during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

##### iii. Activity Rule Waivers

93. In Auction 88, each bidder in the auction will be provided with three activity rule waivers. It is important for bidders to understand that applying a waiver is irreversible. Once a bidder submits a proactive waiver, the bidder cannot unsubmit the waiver even if the round has not yet ended.

##### iv. Auction Stopping Rules

94. For Auction 88, the Bureaus will employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all construction permits remain available for bidding until bidding closes simultaneously on all construction permits. More specifically, bidding will close simultaneously on all construction permits after the first round in which no bidder submits any new bids or applies a proactive waiver. The Bureaus also adopted alternative versions of the simultaneous stopping rule for Auction 88 as specified in the *Auction 88 Comment Public Notice*. The Bureaus retained the discretion to exercise any of options with or without prior announcement during the auction.

v. Auction Delay, Suspension, or Cancellation

95. 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, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding.

B. Bidding Procedures

i. Round Structure

96. 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 followed by the release of round results. Multiple bidding rounds may be conducted in a given day.

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

ii. Reserve Price and Minimum Opening Bids

98. There will be no reserve price for the construction permits to be offered in Auction 88. In the *Auction 88 Comment Public Notice*, the Bureaus proposed minimum opening bids and corresponding upfront payments for the permits being offered in this auction. The Commission received several comments requesting a reduction of the proposed minimum opening bids for specific construction permits in this auction.

99. A commenter requested a reduction from \$25,000 to \$7,500 of the minimum opening bid for the FM station construction permit for New Holstein, Wisconsin, alleging difficulty in finding transmitter sites. The Bureaus agreed that some reduction in the minimum opening bid was warranted and reduced the minimum opening bid for MM-FM755-225A to \$15,000.

100. A commenter sought to postpone any auction of the permit for Channel 251A at Santa Isabel, Puerto Rico. Recognizing the technical challenges that may be involved in implementing a broadcast operation with this permit, the Bureaus reduced the minimum

opening bid for Channel 251A at Santa Isabel to \$25,000.

101. For the construction permits listed in Attachment A of the *Auction 88 Procedures Public Notice*, the Bureaus adopted the minimum opening bid amounts proposed in the *Auction 88 Comment Public Notice*, with the exception of the reduced minimum opening bid amounts for the New Holstein and Santa Isabel construction permits. The specific minimum opening bid amounts for the construction permits available in Auction 88 are set forth in Attachment A of the *Auction 88 Procedures Public Notice*.

iii. Bid Amounts

102. If a bidder has sufficient eligibility to place a bid on the particular construction permit, an eligible bidder will be able to place a bid on a given construction permit in any of up to nine different amounts. The FCC Auction System interface will list the nine acceptable bid amounts for each construction permit. In the event of duplicate bid amounts due to rounding, the FCC Auction System will omit the duplicates and will list fewer acceptable bid amounts for the license. The Bureaus retained the discretion to change, on a construction permit by construction permit basis, the minimum acceptable bid amounts, the minimum acceptable bid percentage, the bid increment percentage, and the number of acceptable bid amounts if the Bureaus determine that circumstances so dictate, as well as the discretion to limit (a) the amount by which a minimum acceptable bid for a construction permit may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount.

iv. Provisionally Winning Bids

103. 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.

104. In Auction 88, a random number generator will be used to select a single provisionally winning bid in the event of identical high bid amounts being submitted on a construction permit in a

given round (*i.e.*, tied bids) as described in the *Auction 88 Procedures Public Notice*.

v. Bidding

105. 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 88. Please note that telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of ten minutes.

106. A bidder's ability to bid on specific construction permits is determined by two factors: (1) The construction permits for which it is designated an applicant in Attachment A of the *Auction 88 Procedures Public Notice* and (2) the bidder's eligibility. The bid submission screens will allow bidders to submit bids on only those construction permits designated for that applicant in Attachment A of the *Auction 88 Procedures Public Notice*.

107. 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® token and a personal identification number 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.

108. If a bidder has sufficient eligibility to place a bid on a particular permit, an eligible bidder will be able in each round to place bids on a given construction permit in any of up to nine pre-defined bid amounts. For each construction permit, the FCC Auction System will list the 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.

109. 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 are bids on a construction permit, minimum acceptable bids for a construction permit for the following round will be determined as described in the *Auction 88 Procedures Public Notice*.

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

vi. Bid Removal and Bid Withdrawal

111. In Auction 88, each bidder will have the option of removing any bids placed in a round provided that such bids are removed before the close of that bidding 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. 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.

112. Once a round closes, a bidder may no longer remove a bid. In Auction 88, bidders are prohibited from withdrawing any bids after the round in which bids were placed has closed. Bidders are cautioned to select bid amounts carefully because no bid withdrawals will be allowed in Auction 88, even if a bid was mistakenly or erroneously made.

vii. Round Results

113. Reports reflecting bidders' identities for Auction 88 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

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

viii. Auction Announcements

115. The Commission will use auction announcements to announce items such as schedule changes. All auction announcements will be available by

clicking a link in the FCC Auction System.

**V. Post-Auction Procedures**

116. Shortly after bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, final payments, and the long-form applications (FCC Forms 301 or 349).

*A. Down Payments*

117. Within ten business days after release of the auction closing public notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 88 to 20 percent of the net amount of its winning bids (gross bids less any applicable new entrant bidding credits).

*B. Final Payments*

118. Each winning bidder will be required to submit the balance of the net amount of its winning bids within ten business days after the applicable deadline for submitting down payments. In a departure from the final payment rule revision adopted for broadcast auctions in the *CSEA/Part 1 Report and Order*, 71 FR 6992, Feb. 10, 2006, a commenter proposed that any winning bidder with no other broadcast facilities be allowed to delay payment of the balance of its bid until the submission of its long-form application. The Bureaus are unable to modify this rule which was established by the Commission in a rulemaking proceeding. The balance of the net amount of each winning bid will be due within ten business days after the deadline for submitting down payments for this auction.

*C. Long-Form Application (FCC Forms 301 or 349)*

119. The Commission's rules currently provide that within thirty days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 301, Application for Construction Permit for Commercial Broadcast Station, or FCC Form 349, Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station) and required exhibits for each construction permit won through Auction 88. Winning bidders claiming new entrant bidding status must include an exhibit demonstrating their eligibility for the bidding credit in accordance with 47 CFR 1.2112(b) and

73.5005. Further instructions on these and other filing requirements will be provided to winning bidders in the auction closing public notice.

*D. Default and Disqualification*

120. Any winning bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). The payments include both a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

121. The percentage of the applicable bid to be assessed as an additional payment for defaults in a particular auction is established in advance of the auction. The additional default payment for this auction was set at twenty percent of the applicable bid.

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

*E. Refund of Remaining Upfront Payment Balance*

123. After the auction, applicants that are not winning bidders or are winning bidders whose upfront payment exceeded the total net amount of their winning bids may be entitled to a refund of some or all of their upfront payment. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise. Bidders that drop out of the auction completely (have exhausted all of their activity rule waivers and have no remaining bidding eligibility) may request a refund of their upfront

payments before the close of the auction.

**William W. Huber,**

*Associate Chief, Auctions and Spectrum Access Division, WTB, Federal Communications Commission.*

[FR Doc. 2010-10155 Filed 4-29-10; 8:45 am]

**BILLING CODE 6712-01-P**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager**

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Update listing of financial institutions in liquidation.

**SUMMARY:** Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the

**INSTITUTIONS IN LIQUIDATION**

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10218 .....	Amcore Bank, National Association .....	Rockford .....	IL .....	4/23/2010
10219 .....	Broadway Bank .....	Chicago .....	IL .....	4/23/2010
10220 .....	Citizens Bank and Trust Company of Chicago .....	Chicago .....	IL .....	4/23/2010
10221 .....	Lincoln Park Savings Bank .....	Chicago .....	IL .....	4/23/2010
10222 .....	New Century Bank .....	Chicago .....	IL .....	4/23/2010
10223 .....	Peotone Bank and Trust Company .....	Peotone .....	IL .....	4/23/2010
10224 .....	Wheatland Bank .....	Naperville .....	IL .....	4/23/2010

[FR Doc. 2010-10159 Filed 4-29-10; 8:45 am]

**BILLING CODE 6714-01-P**

**FEDERAL RESERVE SYSTEM**

**Formations of, Acquisitions by, and Mergers of Bank Holding Companies**

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also

includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 27, 2010.

**A. Federal Reserve Bank of Dallas** (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Independent Bank Group, Inc.*, McKinney, Texas; to acquire 100 percent of the voting shares of Town Center Bank, Coppell, Texas.

Board of Governors of the Federal Reserve System, April 27, 2010.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2010-10134 Filed 4-29-10; 8:45 am]

**BILLING CODE 6210-01-S**

listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as "of record" notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at <http://www.fdic.gov/bank/individual/failed/banklist.html> or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: April 26, 2010.

Federal Deposit Insurance Corporation.

**Valerie J. Best,**

*Assistant Executive Secretary.*

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

[OMB Control No. 9000-0168; Docket 2010-0083; Sequence 20]

**Submission for OMB Review; American Recovery and Reinvestment Act—One-Time Reporting, Compensation Requirements**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Withdrawal of Notice.

**SUMMARY:** The notice, OMB Control No. 9000-0168, American Recovery and Reinvestment Act—One-time Reporting, Compensation Requirements published in the **Federal Register** is being withdrawn and no longer is accepting comments.

**DATES:** April 30, 2010.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ernest Woodson, Procurement Analyst, Contract Policy Branch, at telephone (202) 501-3775 or via e-mail to [ernest.woodson@gsa.gov](mailto:ernest.woodson@gsa.gov). Please cite