



# PUBLIC NOTICE

**Federal Communications Commission**  
45 L Street, NE  
Washington, DC 20554

News Media Information: 202-418-0500  
Internet: [www.fcc.gov](http://www.fcc.gov)  
TTY: 888-835-5322

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## **AUCTION OF CONSTRUCTION PERMITS FOR FULL POWER TELEVISION STATIONS**

### **COMMENT SOUGHT ON COMPETITIVE BIDDING PROCEDURES FOR AUCTION 112**

**AU Docket No. 21-449**

**Comment Date: December 13, 2021**

**Reply Comment Date: December 23, 2021**

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ATTACHMENT A: CONSTRUCTION PERMITS IN AUCTION 112	

## I. INTRODUCTION

1. By this Public Notice, the Office of Economics and Analytics (OEA) and the Media Bureau (MB) seek comment on the procedures to be used for Auction 112, an auction of construction permits for full power television (FPTV) stations. We expect the bidding for Auction 112 to commence in June 2022.

## II. CONSTRUCTION PERMITS TO BE OFFERED IN AUCTION 112

2. Auction 112 will offer 27 construction permits for FPTV stations. The permits that will be available in Auction 112 are listed in Attachment A to this Public Notice.

3. The permits that will be available in Auction 112 are for channel allotments contained in the Table of Television Allotments (TV Table) and assigned at the indicated communities for which there currently is not a licensee.<sup>1</sup> Each permit awarded will be for one of the allotted-but-unlicensed channels currently contained in the TV Table.

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

4. Consistent with the provisions of section 309(j)(3)(E)(i) of the Communications Act of 1934 (the Act), and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, we seek comment on a variety of auction-specific procedures relating to the conduct of Auction 112.<sup>2</sup>

5. The Commission's part 1 and part 73 competitive bidding rules require each applicant seeking to bid to acquire a construction permit in a broadcast auction to provide certain information in a short-form application (FCC Form 175), including ownership details and numerous certifications.<sup>3</sup> The competitive bidding rules in part 1, subpart Q, and part 73 also contain a framework for the

<sup>1</sup> The TV Table was recently updated to codify Commission actions taken over the past several years that modified the channel allotments reflected in the TV Table, including primarily actions related to the incentive auction and repacking process authorized by the Spectrum Act. *See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auction*, Order, FCC 21-111 (rel. Oct. 25, 2021); The Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402 (codified at 47 U.S.C. § 309(j)(8)(G)), 6403 (codified at 47 U.S.C. § 1452), 126 Stat. 156 (2012) (Spectrum Act); *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567, 6568-70, para. 1, *aff'd*, *National Ass'n of Broadcasters v. FCC*, 789 F.3d 165 (D.C. Cir. 2015) (subsequent citations omitted); *Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, GN Docket No. 12-268, Public Notice, 32 FCC Rcd 2786 (2017).

<sup>2</sup> 47 U.S.C. § 309(j)(3)(E)(i). OEA works in conjunction with MB with respect to the design, implementation, and administration of auctions, as well as helping develop policies, programs, and rules concerning auctions of broadcast permits. *See* 47 CFR § 0.21(m).

<sup>3</sup> *See generally* 47 CFR §§ 1.2105, 73.5002.

implementation of a competitive bidding design, application and certification procedures, reporting requirements, and the prohibition of certain communications.<sup>4</sup>

**A. Certification of Notice of Auction 112 Requirements and Procedures**

6. We propose to require any party seeking to participate in Auction 112 to certify in its short-form application, under penalty of perjury, that it has read the public notice adopting procedures for the auction and that it has familiarized itself both with the auction procedures and with the requirements for obtaining a construction permit for an FPTV station.<sup>5</sup> We believe that this requirement, which was also recently implemented in Auction 110,<sup>6</sup> would help ensure that the applicant has reviewed the procedures for participation in the auction process and has investigated and evaluated those technical and marketplace factors that may have a bearing on its potential use of any permits won at auction. Consequently, we believe this requirement would promote an applicant's successful participation and minimize its risk of defaulting on its auction obligations. As with other certifications required under section 1.2105, an auction applicant's failure to make the required certification in its short-form application by the applicable filing deadline would render its application unacceptable for filing, and its application would be dismissed with prejudice.<sup>7</sup> We seek comment on this proposal. Are there alternative procedures that could be implemented that would better ensure that an applicant has thoroughly reviewed the auction's procedures and considered all relevant factors that may affect its participation in the auction and use of any permits for which it is the winning bidder?

**B. Information Procedures During the Auction Process**

7. We propose to limit information available in Auction 112 to discourage unproductive and anti-competitive strategic behavior. Accordingly, if this proposal is adopted, we will not identify bidders placing particular bids until after the bidding has closed.<sup>8</sup> While we generally make available to the public information provided in each applicant's FCC Form 175 following an initial review by Commission staff, we propose to not make public until after bidding has closed: (1) the permits that an applicant selects for bidding in its short-form application, (2) the amount of any upfront payment made by or on behalf of an applicant, (3) any applicant's bidding eligibility, and (4) any other bidding-related information that might reveal the identity of the bidder placing a bid.<sup>9</sup>

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<sup>4</sup> See generally *id.* §§ 1.2101-1.2114, 73.5000-73.5009.

<sup>5</sup> This proposed certification requirement is subject to approval by the Office of Management and Budget (OMB), pursuant to the Paperwork Reduction Act of 1995, Public Law 104-13. 44 U.S.C. §§ 3501, *et seq.* The certification requirement would therefore apply to Auction 112 only if it has been approved by OMB and notice of such approval has been published in the Federal Register prior to the opening of the short-form application window for Auction 112.

<sup>6</sup> See generally *Certification Adopted for Auction of Flexible-Use Service Licenses in the 3.45–3.55 GHz Band for Next-Generation Wireless Services (Auction 110)*, AU Docket No. 21-62, Public Notice, DA 21-567 (OEA/WTB May 19, 2021).

<sup>7</sup> See 47 CFR. § 1.2105(b)(1).

<sup>8</sup> The Commission has instituted limited information procedures in most recent spectrum auctions. See, e.g., *Auction of Flexible-Use Service Licenses in the 3.45–3.55 GHz Band for Next-Generation Wireless Services; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 110; Bidding in Auction 110 Scheduled to Begin October 5, 2021*, AU Docket No. 21-62, Public Notice, DA 21-655, at 15, paras. 37-42 (OEA/WTB 2021); *Rural Digital Opportunity Fund Phase I Auction Scheduled For October 29, 2020; Notice and Filing Requirements and Other Procedures For Auction 904*, AU Docket No. 20-34, WC Docket Nos. 19-126 and 10-90, Public Notice, 35 FCC Rcd 6077, 6129-6131, paras. 140-145 (2020); see also 47 CFR § 1.2104(h).

<sup>9</sup> Similarly, this nonpublic information may not be communicated from one applicant to another. Such communications could violate section 1.2105(c) of the Commission's rules. Section 1.2105(c)(1) provides that, subject to specified exceptions, all applicants are prohibited from cooperating or collaborating with respect to, or communicating with or disclosing to each other in any manner, the substance of their own, or each other's, or any other applicant's bids or bidding strategies (including post-auction market structure), or discussing or negotiating (continued...)

8. Under this proposal, we would not make public any real-time information on bidding activity until the close of the auction. However, bidders would have access to additional information related to their own bidding and bid eligibility before and during the auction via the FCC auction bidding system.<sup>10</sup>

9. Under this proposal, after the close of bidding, bidders' permit selections, upfront payment amounts, bidding eligibility, bids, and other bidding-related information would be made publicly available.

10. We seek comment on the above details of our proposal for implementing limited information procedures, or anonymous bidding, in Auction 112. Commenters opposing the use of limited information procedures in Auction 112 should explain their reasoning and propose alternative information rules.

### C. Upfront Payments and Bidding Eligibility

11. In keeping with the usual practice in spectrum auctions, we propose that applicants be required to submit upfront payments as a prerequisite to becoming qualified to bid.<sup>11</sup> An upfront payment is a refundable deposit made by an applicant to establish its eligibility to bid on construction permits. Upfront payments that are related to the specific construction permits being auctioned protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of bidding.<sup>12</sup>

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

13. We further propose that the amount of the upfront payment submitted by an applicant will determine its initial bidding eligibility in bidding units, which are a measure of bidder eligibility and bidding activity. We propose to assign each construction permit a specific number of bidding units, equal to one bidding unit per one thousand dollars of the upfront payment listed in Attachment A. The number of bidding units for a given construction permit is fixed and does not change during the auction as prices change. If an applicant is found to be qualified to bid on more than one permit being offered in Auction 112, such bidder may place bids on multiple construction permits, provided that the total number of bidding units associated with those construction permits does not exceed that bidder's current eligibility. A bidder cannot increase its eligibility during the auction; it can only maintain or decrease its eligibility. In calculating its upfront payment amount and hence its initial bidding eligibility, an applicant must determine the maximum number of bidding units on which it may wish to bid (or hold provisionally

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settlement agreements, until after the deadline for winning bidders to submit down payment. 47 CFR § 1.2105(c)(1). Section 1.2105(c)(5)(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% or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application. *Id.* § 1.2105(c)(5)(i). A party that submits an application becomes an "applicant" under the rule at the application filing deadline and that status does not change based on later developments. 47 CFR § 1.2105(c)(1).

<sup>10</sup> See Section IV.D., "Availability of Bidding Information," below.

<sup>11</sup> 47 CFR § 1.2106.

<sup>12</sup> See *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Second Report and Order, 9 FCC Rcd 2348, 2377-79, paras. 169-76 (1994) (*Competitive Bidding Second Report and Order*). We note that "[a]ny auction applicant that, pursuant to § 1.2105(a)(2)(xii), certifies that it is a former defaulter must submit an upfront payment equal to 50% more than the amount that would otherwise be required." 47 CFR § 1.2106(a).

winning bids) in any single round and submit an upfront payment amount covering that total number of bidding units. We seek comment on these proposals.

<b>Example: Upfront Payments, Bidding Eligibility, and Bidding Flexibility</b>			
<b>Construction Permit</b>	<b>Market Name</b>	<b>Bidding Units</b>	<b>Upfront Payment</b>
TV-PST23	Grand Forks, ND	500	\$500,000
TV-PST19	Carlsbad, NM	200	\$200,000

If a bidder wishes to bid on both construction permits in a round, it must have selected both on its FCC Form 175 and purchased at least 700 bidding units (500 + 200) of bidding eligibility. If it only wishes to bid on one, but not both, purchasing 500 bidding units would meet the eligibility requirement for either construction permit. The bidder would be able to bid on either construction permit, but not both at the same time. If the bidder purchased only 200 bidding units, the bidder would have enough eligibility for the Carlsbad, NM, construction permit but not for the Grand Forks, ND, construction permit.

#### **D. Minimum Opening Bids or Reserve Prices**

14. As part of the pre-bidding process for each auction, we seek comment on the use of a minimum opening bid amount and/or reserve price, as mandated by section 309(j) of the Act. We propose to establish minimum opening bid amounts for Auction 112. Based on our experience in past broadcast auctions, we have found that setting a minimum opening bid amount judiciously is an effective bidding tool for accelerating the competitive bidding process.<sup>13</sup> In the most recent television broadcast auctions—for low power television (LPTV) construction permits (Auctions 104 and 111)—we have similarly proposed establishing minimum opening bids but not reserve prices; in those auctions, no comments opposed the proposal, and we adopted it both times.<sup>14</sup> Based on these facts, we propose establishing minimum opening bids for Auction 112. We do not propose to establish separate reserve prices for any of the construction permits to be offered in Auction 112, nor do we see any reason to propose an aggregate reserve price for this auction.

15. For auctions of broadcast permits, we generally propose minimum opening bid amounts that have been determined by taking into account the type of service and class of facility offered, market size, population covered by the proposed broadcast facility, and recent broadcast transaction data, to the extent such information is available.<sup>15</sup> We seek comment on the proposed minimum opening bid amounts for Auction 112, which are specified in Attachment A.

<sup>13</sup> See, e.g., *Auction of FM Broadcast Construction Permits Scheduled for July 23, 2015; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 98*, AU Docket No. 15-3, Public Notice, 30 FCC Rcd 3544, 3579, para. 139 (WTB/MB 2015) (*Auction 98 Procedures Public Notice*).

<sup>14</sup> See, e.g., *Auction of Construction Permits for Low Power Television and TV Translator Stations Scheduled for September 10, 2019; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 104*, AU Docket No. 19-61, Public Notice, 34 FCC Rcd 4216, 4248, paras. 119-20 (OEA/MB 2019) (*Auction 104 Procedures Public Notice*); *Auction of Construction Permits for Low Power Television and TV Translator Stations; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 111; Bidding Scheduled to Begin February 23, 2022*, AU Docket No. 21-284, Public Notice, DA 21-1176, at 45, para. 150 (OEA/MB 2021) (*Auction 111 Procedures Public Notice*).

<sup>15</sup> See, e.g., *Auction 104 Procedures Public Notice*, 34 FCC Rcd at 4248, paras. 119-20; see also *Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses; Reexamination of the Policy Statement on Comparative Broadcast Hearings, Proposals to Reform the Commission’s Comparative Hearing Process to Expedite the Resolution of Cases*, MM Docket No. 97-234, GC Docket No. 92-52, GEN Docket No. 90-264, First Report and Order, 13 FCC Rcd 15920, 15971, para. 134 (1998) (*Broadcast Competitive Bidding Order*) (“With respect to the methodology to be employed in establishing [minimum opening bid amounts], among the factors the Bureaus may consider are the type of service (continued....)”).

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

#### **E. Auction Delay, Suspension, or Cancellation**

17. For Auction 112, we propose that at any time before or during the bidding process OEA, in conjunction with MB, may delay, suspend, or cancel bidding in the auction in the event of a natural disaster, technical obstacle, network interruption, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding.<sup>16</sup> In such a case, OEA would notify participants of any such delay, suspension, or cancellation by public notice or through the FCC auction bidding system's messages function. We propose that, if bidding is delayed or suspended, OEA may, in its sole discretion, elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. We propose to exercise this authority solely at our discretion, and not as a substitute for situations in which bidders may wish to apply activity rule waivers. We seek comment on these proposals.

#### **F. Interim Withdrawal Payment Percentage**

18. As discussed below, we propose not to allow bid withdrawals in Auction 112.<sup>17</sup> In the event bid withdrawals are permitted in Auction 112, however, we propose the interim bid withdrawal payment be 20% of the withdrawn bid.<sup>18</sup> A bidder that withdraws a provisionally winning bid during an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or a subsequent auction.<sup>19</sup> However, if a construction permit for which a bid has been withdrawn does not receive a subsequent higher bid or winning bid in the same auction, the Commission cannot calculate the final withdrawal payment until that construction permit receives a higher bid or winning bid in a subsequent auction. In such cases, when that final withdrawal payment cannot yet be calculated, the Commission imposes on the bidder responsible for the withdrawn bid an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed.<sup>20</sup>

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that will be offered, the amount of spectrum being auctioned, the degree of competition from incumbent providers, the size of the geographic service areas, potential advertising revenue, unalterable limitations due to physical phenomena (e.g., propagation losses), equipment design limitations, issues of interference with other spectrum bands, and other relevant factors that could reasonably have an impact on valuation of the spectrum being auctioned.”)

<sup>16</sup> 47 CFR § 1.2104(i).

<sup>17</sup> See Section IV.I., “Bid Removal and Bid Withdrawal,” below.

<sup>18</sup> See generally *Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures*, WT Docket No. 05-211, Report and Order, 21 FCC Rcd 891, 903-04, paras. 30-31 (2006) (*CSEA/Part 1 Report and Order*).

<sup>19</sup> 47 CFR § 1.2104(g)(1).

<sup>20</sup> *Id.*

19. The percentage amount of the interim bid withdrawal payment is established in advance of bidding in each auction and may range from 3% to 20% of the withdrawn bid amount.<sup>21</sup> The Commission has determined that the level of interim withdrawal payment in a particular auction will be based on the nature of the service and the inventory of the licenses being offered.<sup>22</sup> The Commission noted specifically that a higher interim withdrawal payment percentage is warranted to deter the anti-competitive use of withdrawals when, for example, bidders will not need to aggregate the licenses being offered in the auction or when there are few synergies to be captured by combining licenses.<sup>23</sup> In light of these considerations with respect to the construction permits being offered in this auction, we propose to use the maximum interim bid withdrawal payment percentage permitted by section 1.2104(g)(1) in the event bid withdrawals are allowed in this auction. We request comment on using 20% for calculating an interim bid withdrawal payment amount in Auction 112 in the event that bidders would be permitted to withdraw bids. Commenters advocating the use of bid withdrawals should also address the percentage of the interim bid withdrawal payment.

#### **G. Deficiency Payments and Additional Default Payment Percentage**

20. Any winning bidder that defaults or is disqualified after the close of an auction (i.e., fails to remit the required down payment by the specified deadline, fails to make full and timely final payment, fails to submit a timely long-form application, or whose long-form application is not granted for any reason, or is otherwise disqualified) is liable for a default payment under section 1.2104(g)(2) of the rules.<sup>24</sup> This payment consists of a deficiency payment, equal to the difference between the amount of the Auction 112 bidder's winning bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.<sup>25</sup>

21. The Commission's rules provide that, in advance of each auction, it will establish a percentage between 3% and 20% of the applicable winning bid to be assessed as an additional default payment.<sup>26</sup> As the Commission has indicated, the level of this additional payment in each auction will be based on the nature of the service and the construction permits being offered.<sup>27</sup>

22. For Auction 112, we propose to establish an additional default payment of 20%, which is consistent with the percentage in prior auctions of broadcast construction permits.<sup>28</sup> As the Commission has noted, defaults weaken the integrity of the auction process and may impede the deployment of service to the public, and an additional 20% default payment will be more effective in deterring defaults than the 3% used in some earlier auctions.<sup>29</sup> In light of these considerations, we propose for Auction 112 an additional default payment of 20% of the relevant bid. We seek comment on this proposal.

### **IV. PROPOSED BIDDING PROCEDURES**

#### **A. Simultaneous Multiple-Round Auction Design**

23. We propose to use the Commission's simultaneous multiple-round auction format for Auction 112.<sup>30</sup> As described further below, this type of auction offers every construction permit for bid at

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<sup>21</sup> *Id.*

<sup>22</sup> *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 903-04, para. 31.

<sup>23</sup> *Id.* at 903-04, para. 31 & n.57.

<sup>24</sup> 47 CFR § 1.2104(g)(2); *see also id.* § 1.2109.

<sup>25</sup> *Id.* § 1.2104(g)(2).

<sup>26</sup> *Id.* § 1.2104(g)(2)(ii).

<sup>27</sup> *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 903-04, para. 31.

<sup>28</sup> *See, e.g., Auction 104 Procedures Public Notice*, 34 FCC Rcd at 4252, para. 139 (setting additional default payment at 20% of the applicable bid); *Auction 111 Procedures Public Notice* at 48-49, para. 172 (same).

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

the same time and consists of successive bidding rounds in which qualified bidders may place bids on individual construction permits. Typically, bidding remains open on all construction permits until bidding stops on every construction permit. We seek comment on this proposal.

### **B. Bidding Rounds**

24. The Commission will conduct Auction 112 over the Internet using the FCC auction bidding system. A bidder will also have the option of placing bids by telephone through a dedicated auction bidder line.<sup>31</sup>

25. Under this proposal, Auction 112 would consist of sequential bidding rounds, each followed by the release of round results. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of bidding. Details on viewing round results, including the location and format of downloadable round results files, will be included in the same public notice.

26. We propose that the initial bidding schedule may be adjusted in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. Under this proposal, such changes may include the amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors. We seek comment on this proposal. Parties commenting on this issue should address the role of the bidding schedule in managing the pace of the auction, specifically discussing the tradeoffs in managing auction pace by bidding schedule changes, by changing the activity requirement(s) or bid amount parameters, or by using other means.

### **C. Stopping Rule**

27. We have discretion to establish stopping rules before or during multiple-round auctions in order to complete the auction within a reasonable time.<sup>32</sup> For Auction 112, we propose to employ a simultaneous stopping rule approach, which means all construction permits remain available for bidding until bidding stops on every construction permit. Specifically, bidding will close on all construction permits after the first round in which no bidder submits any new bid, applies a proactive activity rule waiver, or withdraws any provisionally winning bid (if bid withdrawals are permitted in this auction).<sup>33</sup> Thus, under the proposed simultaneous stopping rule, bidding would remain open on all construction permits until bidding stops on every construction permit. Consequently, under this approach, it is not possible to determine in advance how long the bidding in this auction will last.

28. Further, we propose to retain the discretion to exercise any of the following stopping options during Auction 112:

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

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<sup>30</sup> For a general discussion of competitive bidding design see *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2360-75, paras. 68-159.

<sup>31</sup> The toll-free telephone number for the auction bidder line will be provided to qualified bidders prior to the start of bidding in the auction.

<sup>32</sup> 47 CFR § 1.2104(e).

<sup>33</sup> In Section IV.I., "Bid Removal and Bid Withdrawal," we seek comment on whether bid withdrawals should be permitted in Auction 112. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round; they are discussed in Section IV.H., "Provisionally Winning Bids." Proactive waivers are described in Section IV.F., "Activity Rule Waivers and Reducing Eligibility," and bid withdrawals are described in Section IV.I., "Bid Removal and Bid Withdrawal."

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

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

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

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

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

#### **D. Availability of Bidding Information**

30. We propose to make available, after each round closes, for each permit its current provisionally winning bid amount, the minimum acceptable bid amount for the following round, and the amounts of all bids placed on the permit during the round. These reports would be publicly accessible. Moreover, after the auction closes, we propose to make available complete reports of all bids placed during each round of the auction, including bidder identities.<sup>34</sup>

31. We also propose to provide bidders with secure access to certain non-public bidding information while bidding is ongoing. Specifically, after each round ends, and before the next round begins, we propose to make the following information available to individual bidders:

- The bidder's activity, based on all bids in the previous round; and
- Summary statistics of the bidder's bidding and other bidding-related actions in each round, including the permits on which it bid and the price it bid for each of those permits, the result of each of its bids, whether it has any provisionally winning bids, and remaining activity rule waivers.

32. We believe that limiting the availability of bidding information during the auction balances our interest in providing bidders with sufficient information about the status of their own bids and the general level of bidding on all permits to allow them to bid confidently and effectively, while

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<sup>34</sup> See Section III.B., "Information Procedures During the Auction Process," above.

restricting the availability of information that may facilitate identification of bidders placing particular bids, which could potentially lead to undesirable strategic bidding. We seek comment on this view.

#### **E. Activity Rule**

33. To ensure that the auction closes within a reasonable period, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. For purposes of the activity rule, the FCC auction bidding system calculates a bidder's activity in a round as the sum of the bidding units associated with any construction permits upon which it places bids during the current round and the bidding units associated with any construction permits for which it holds provisionally winning bids.<sup>35</sup> Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. We propose a single-stage auction with a 100% activity requirement. That is, in each bidding round, a bidder desiring to maintain its current bidding eligibility will be required to be active on 100% of its bidding eligibility. Under this proposal, the activity requirement would be satisfied when a bidder has bidding activity on construction permits with bidding units that total 100% of its current eligibility in the round. If the activity rule is met, then the bidder's eligibility does not change in the next round. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility for the next round of bidding, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.<sup>36</sup> A reduction in the bidder's eligibility would be to the amount that would bring the bidder into compliance with the activity requirement. With a 100% activity requirement, a bidder's eligibility would be reduced to equal its activity. We seek comment on these activity requirements. We encourage commenters that oppose a 100% activity requirement to explain their reasons with specificity and to propose alternative approaches.

#### **F. Activity Rule Waivers and Reducing Eligibility**

34. For our proposed simultaneous multiple-round auction format, we propose that when a bidder's activity in the current round is below the required minimum level, it may preserve its current level of eligibility through an activity rule waiver, if the bidder has any available. Consistent with prior Commission auctions of broadcast construction permits, we propose that each bidder in Auction 112 be provided with three activity rule waivers that may be used as set forth below at the bidder's discretion during the course of the auction.

35. An activity rule waiver applies to an entire round of bidding, not to a particular construction permit. Activity rule waivers can be either proactive or automatic. Activity rule waivers are primarily a mechanism for a bidder to avoid the loss of bidding eligibility in case exigent circumstances prevent it from bidding in a particular round.

36. The FCC auction bidding system will assume that a bidder that does not meet the activity requirement would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required unless: (1) the bidder has no activity rule waiver remaining; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the activity requirement. If a bidder has no waivers remaining and does not satisfy the required activity level, the bidder's current eligibility will be permanently reduced, possibly curtailing or eliminating the ability to place additional bids in the auction.

37. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the *reduce eligibility* function in the FCC auction bidding system. In this case, the bidder's eligibility would be permanently reduced to bring it into compliance with the

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<sup>35</sup> See 47 CFR § 1.2104(f) (providing for the establishment of activity rules).

<sup>36</sup> See Section IV.F., "Activity Rule Waivers and Reducing Eligibility," below.

activity rule described above. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder cannot regain its lost bidding eligibility.

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

### **G. Bid Amounts**

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

40. *Minimum Acceptable Bid Amounts.* The first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid for the construction permit. Once there is a provisionally winning bid for a construction permit, the minimum acceptable bid amount for that construction permit will be equal to the amount of the provisionally winning bid plus a specified percentage of that bid amount. The percentage used for this calculation, the *minimum acceptable bid increment percentage*, is multiplied by the provisionally winning bid amount, and the resulting amount is added to the provisionally winning bid amount. If, for example, the minimum acceptable bid increment percentage is 10%, then the provisionally winning bid amount is multiplied by 10%. The result of that calculation is added to the provisionally winning bid amount, and that sum is rounded using the Commission's standard rounding procedure for auctions.<sup>38</sup> If bid withdrawals are permitted in this auction, in the case of a construction permit for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the construction permit.<sup>39</sup>

41. *Additional Bid Amounts.* Under this proposal, the Commission will calculate the eight additional bid amounts using the minimum acceptable bid amount and an additional bid increment percentage. The minimum acceptable bid amount is multiplied by the additional bid increment percentage, and that result (rounded)<sup>40</sup> is the additional increment amount. The first additional acceptable bid amount equals the minimum acceptable bid amount plus the additional increment amount. The second additional acceptable bid amount equals the minimum acceptable bid amount plus two times the additional increment amount; the third additional acceptable bid amount is the minimum acceptable bid amount plus three times the additional increment amount; etc. If, for example, the additional bid increment percentage is 5%, then the calculation of the additional increment amount would be (minimum acceptable bid amount) \* (0.05), rounded. The first additional acceptable bid amount equals (minimum acceptable bid amount) + (additional increment amount); the second additional acceptable bid amount equals (minimum acceptable bid amount) + (2\*(additional increment amount)); the third additional

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<sup>37</sup> Bidders must have sufficient eligibility to place a bid on the particular construction permit. See Section III.C., "Upfront Payments and Bidding Eligibility," above.

<sup>38</sup> The result of that calculation is subject to a minimum of \$100 and results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10.

<sup>39</sup> See Section IV.I., "Bid Removal and Bid Withdrawal," below.

<sup>40</sup> For a discussion concerning rounding, see note 38, above.

acceptable bid amount equals (minimum acceptable bid amount) + (3\*(additional increment amount)); etc.

42. For Auction 112, we propose to use a minimum acceptable bid increment percentage of 10%. This means that the minimum acceptable bid amount for a construction permit will be approximately 10% greater than the provisionally winning bid amount for the construction permit. To calculate the additional acceptable bid amounts, we propose to use a bid increment percentage of 5%. We seek comment on these proposals.

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

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

#### **H. Provisionally Winning Bids**

45. Under the proposed simultaneous multiple-round auction format, the FCC auction bidding system would determine provisionally winning bids consistent with practice in past auctions.<sup>42</sup> At the end of a bidding round, the bidding system would determine a provisionally winning bid for each construction permit based on the highest bid amount received for that permit. The FCC auction bidding system would advise bidders of the status of their bids when round results are released. A provisionally winning bid would remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round, unless the provisionally winning bid is withdrawn (if bid withdrawals are permitted in this auction). Provisionally winning bids at the end of the auction would become the winning bids. As a reminder, provisionally winning bids count toward activity for purposes of the activity rule.<sup>43</sup>

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<sup>41</sup> See, e.g., *Auction 98 Procedures Public Notice*, 30 FCC Rcd at 3581, paras. 147-48; see also 47 CFR § 1.2104(d) (“The Commission may, by announcement before or during an auction, require minimum bid increments in dollar or percentage terms.”).

<sup>42</sup> See, e.g., *Auction 104 Procedures Public Notice*, 34 FCC Rcd at 4250, para. 126; see also *Auction 111 Procedures Public Notice* at 46, para. 159.

<sup>43</sup> See Section IV.E., “Activity Rule,” above.

46. The FCC auction bidding system assigns a pseudo-random number generated by an algorithm to each bid when the bid is entered. If identical high bid amounts are submitted on a construction permit in any given round (i.e., tied bids), the FCC auction bidding system will use these pseudo-random generated numbers to select a single provisionally winning bid from among the tied bids. The tied bid with the highest pseudo-random number wins the tiebreaker and becomes the provisionally winning bid. The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid. If the construction permit receives any bids in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the construction permit.

#### I. Bid Removal and Bid Withdrawal

47. *Bid Removal.* The FCC auction bidding system allows each bidder to remove any of the bids it placed in a round before the close of that round. By removing a bid placed within a round, a bidder effectively “unsubmits” the bid. In contrast to the bid withdrawal provisions described below, a bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid. Consistent with the design of the bidding system, we propose that bidders in Auction 112 would be permitted to remove bids placed in a round before the close of that round.

48. *Bid Withdrawal.* We propose not to permit bidders in Auction 112 to withdraw bids. When permitted in an auction, bid withdrawals provide a bidder with the option of withdrawing bids placed in prior rounds that have become provisionally winning bids. A bidder would be able to withdraw its provisionally winning bids using the *withdraw* function in the FCC auction bidding system. A bidder that withdraws its provisionally winning bid(s), if permitted, is subject to the bid withdrawal payment provisions of the Commission’s rules.<sup>44</sup>

49. The Commission has recognized that bid withdrawals may be a helpful tool in certain circumstances for bidders seeking to efficiently aggregate products or implement backup strategies.<sup>45</sup> The Commission has also acknowledged that allowing bid withdrawals may encourage insincere bidding or increased opportunities for undesirable strategic bidding in certain circumstances.<sup>46</sup> The Commission stated that we should exercise discretion assertively, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if we find a bidder is abusing the Commission’s bid withdrawal procedures.<sup>47</sup> In managing the auction, therefore, we have discretion to limit the number of withdrawals to prevent bidding abuses.

50. Based on this guidance and on our experience with past auctions of broadcast construction permits, we propose to prohibit bidders from withdrawing any bid after the close of the round in which that bid was placed. We make this proposal in light of the site-specific nature and wide geographic dispersion of the permits available in this auction, which suggest that potential applicants for this auction may have fewer incentives to aggregate permits through the auction process (as compared with bidders in many auctions of wireless licenses). Thus, we believe that it is unlikely that bidders will have a need to withdraw bids in this auction. Further, we are mindful that bid withdrawals, particularly if they were made late in this auction, could result in delays in licensing new broadcast stations and attendant delays in the offering of new broadcast service to the public. We seek comment on our proposal to prohibit bid withdrawals in Auction 112. Commenters advocating alternative approaches should

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<sup>44</sup> 47 CFR §§ 1.2104(g)(1).

<sup>45</sup> See *Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures; Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use; 4660-4685 MHz*, WT Docket No. 97-82, ET Docket No. 94-32, Third Report and Order, 13 FCC Rcd 374, 460, para. 150 (1997). (*Part 1 Third Report and Order*).

<sup>46</sup> *Id.* at 458-60, paras. 148-50. See *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 902-04, para. 29 & n.57.

<sup>47</sup> *Part 1 Third Report and Order*, 13 FCC Rcd at 460, para. 150.

support their arguments by taking into account the construction permits offered, the impact of auction dynamics and the pricing mechanism, and the effects on the bidding strategies of other bidders.

## V. TUTORIAL AND ADDITIONAL INFORMATION FOR APPLICANTS

51. The Commission intends to provide additional information on the bidding system and to offer demonstrations and other educational opportunities for applicants in Auction 112 to familiarize themselves with the FCC auction application system and the auction bidding system. For example, we intend to release an online tutorial that will help applicants understand the procedures to be followed in the filing of their auction short-form applications (FCC Form 175) and on the bidding procedures for Auction 112.

## VI. PROCEDURAL MATTERS

### A. Paperwork Reduction Act

52. This Public Notice contains proposed new or modified information collection requirements. As part of the Commission's continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995 (PRA).<sup>48</sup> In addition, pursuant to the Small Business Paperwork Relief Act of 2002,<sup>49</sup> we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

### B. Supplemental Initial Regulatory Flexibility Analysis

53. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>50</sup> the Commission prepared Initial Regulatory Flexibility Analyses (IRFAs) in connection with the *Broadcast Competitive Bidding Notice of Proposed Rulemaking* (NPRM),<sup>51</sup> and other Commission NPRMs (collectively, Competitive Bidding NPRMs) pursuant to which Auction 112 will be conducted.<sup>52</sup> Final Regulatory Flexibility Analyses (FRFAs) likewise were prepared in the *Broadcast Competitive Bidding Order*<sup>53</sup> and other Commission rulemaking orders (collectively, Competitive Bidding Orders) pursuant to which Auction 112 will be conducted.<sup>54</sup> The Office of Economics and Analytics (OEA), in conjunction with the Media Bureau (MB), has prepared this Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this Public Notice, to supplement the Commission's Initial and Final Regulatory Flexibility Analyses completed in the *Competitive Bidding NPRMs* and the *Competitive Bidding Orders*

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<sup>48</sup> 44 U.S.C. §§ 3501-21.

<sup>49</sup> See 44 U.S.C. § 3506(c)(4).

<sup>50</sup> 5 U.S.C. § 603. The Regulatory Flexibility Act, see 5 U.S.C. §§ 601-12, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>51</sup> *Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, MM Docket No. 97-234, Notice of Proposed Rulemaking, 12 FCC Rcd 22363, 22416-22, Appendix B (1997) (*Broadcast Competitive Bidding NPRM*).

<sup>52</sup> See *Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures*, Declaratory Ruling and Notice of Proposed Rule Making, 20 FCC Rcd 11268, 11301-07, Appendix B (2005) (*CSEA Declaratory Ruling/NPRM*); *Amendment of Part 1 of the Commission's Rules – Competitive Bidding Proceeding*, Order, WT Docket No. 97-82, Memorandum Opinion and Order and Notice of Proposed Rule Making, 12 FCC Rcd 5686, 5749-53, Appendix C (1997) (*Part 1 Order/NPRM*); *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Notice of Proposed Rule Making, 8 FCC Rcd 7635, 7666, Appendix (1993) (*Competitive Bidding NPRM*).

<sup>53</sup> *Broadcast Competitive Bidding Order*, 13 FCC Rcd at 16015-27, Appendix B.

<sup>54</sup> See *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 927-34, Appendix C; *Part 1 Third Report and Order*, 13 FCC Rcd at 492-503, Appendix B; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2400, paras. 299-302.

pursuant to which Auction 112 will be conducted.<sup>55</sup> Written public comments are requested on this Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be filed by the same filing deadlines for comments specified on the first page of this Public Notice. The Commission will send a copy of the Public Notice, including this Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>56</sup> In addition, a summary of the Public Notice, including this Supplemental IRFA, will be published in the *Federal Register*.<sup>57</sup>

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

54. The proposed procedures for the conduct of Auction 112, as described in this Public Notice, would constitute the more specific implementation of the competitive bidding rules contemplated by parts 1 and 73 of the Commission's rules, adopted by the Commission in multiple notice-and-comment rulemaking proceedings,<sup>58</sup> including the Commission's establishment in the underlying rulemaking orders of additional procedures to be used on delegated authority. More specifically, this Public Notice seeks comment on proposed procedures, terms, and conditions governing Auction 112, as well as the minimum opening bid amounts for the specified construction permits, and it is fully consistent with the underlying rulemaking orders, including the *Broadcast Competitive Bidding Order* and other relevant competitive bidding orders.

55. This Public Notice provides notice of proposed auction procedures and adequate time for Auction 112 applicants to comment on those proposed procedures.<sup>59</sup> To promote the efficient and fair administration of the competitive bidding process for all Auction 112 participants, including small businesses, this Public Notice seeks comment on the following proposed procedures:

- a requirement that any applicant seeking to participate in Auction 112 certify in its short-form application, under penalty of perjury, that it has read the public notice adopting procedures for Auction 112 that will be released in advance of the short-form deadline, and that it has familiarized itself with those procedures and the requirements for obtaining a construction permit for an FDTV station;
- establishment of an interim bid withdrawal percentage of 20% of the withdrawn bid in the event that we allow bid withdrawals in Auction 112;
- establishment of an additional default payment of 20% under section 1.2104(g)(2) in the event that a winning bidder defaults or is disqualified after the auction;
- use of a simultaneous multiple-round auction format, consisting of sequential bidding rounds with a simultaneous stopping rule (with discretion to exercise alternative stopping rules under certain circumstances);
- retention by OEA, in conjunction with MB, of its discretion to delay, suspend, or cancel bidding in Auction 112 for any reason that affects the fair and efficient conduct of the competitive bidding process;
- retention by OEA of its discretion to adjust the bidding schedule in order to manage the pace of Auction 112;
- a specific minimum opening bid amount for each construction permit available in Auction 112;
- a specific number of bidding units for each construction permit;

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<sup>55</sup> See decisions cited in notes 51-54 above.

<sup>56</sup> See 5 U.S.C. § 603(a).

<sup>57</sup> See *id.*

<sup>58</sup> See notes 51-54, above.

<sup>59</sup> 47 U.S.C. § 309(j)(3)(E)(i) (requirement to seek comment on auction procedures).

- a specific upfront payment amount for each construction permit;
- establishment of a bidder's initial bidding eligibility in bidding units based on that bidder's upfront payment through assignment of a specific number of bidding units for each construction permit;
- use of an activity requirement so that bidders must bid actively during the auction rather than waiting until late in the auction before participating;
- a single stage auction in which a bidder is required to be active on 100% of its bidding eligibility in each round of the auction;
- provision of three activity waivers for each qualified bidder to allow it to preserve eligibility during the course of the auction;
- use of minimum acceptable bid amounts and additional bid increments, along with a proposed methodology for calculating such amounts, while retaining discretion to change their methodology if circumstances dictate;
- bid removal procedures; and
- proposal to allow for bid removals (before the close of a bidding round) but not allow bid withdrawals (after the close of a bidding round).

## 2. Legal Basis

56. The Commission's statutory obligations to small businesses participating in a spectrum auction under the Act are found in sections 309(j)(3)(B) and 309(j)(4)(D). The statutory basis for the Commission's competitive bidding rules is found in various provisions of the Act, including 47 U.S.C. §§ 154(i), 301, 303(e), 303(f), 303(r), 304, 307, and 309(j). The Commission has established a framework of competitive bidding rules pursuant to which it has conducted auctions since the inception of the auction program in 1994 and would conduct Auction 112.<sup>60</sup> The Commission has directed that we, under delegated authority, seek comment on a variety of auction-specific procedures prior to the start of bidding in each auction.<sup>61</sup>

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

57. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed procedures, if adopted.<sup>62</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small government jurisdiction."<sup>63</sup> In addition, the term "small business" has

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<sup>60</sup> See generally 47 CFR pt. 1, subpart Q; see also 47 CFR §§ 73.5000, 73.5002-73.5003, 73.5005-73.5009. In promulgating those rules, the Commission conducted numerous Initial Regulatory Flexibility Act analyses to consider the possible impact of those rules on small businesses that might seek to participate in Commission auctions. See, e.g., *CSEA Declaratory Ruling/NPRM*, 20 FCC Rcd at 11301-07, Appendix B; *Broadcast Competitive Bidding NPRM* 12 FCC Rcd at 22416-22, Appendix B; *Part 1 Order Notice*, 12 FCC Rcd at 5749-53, Appendix C; *Competitive Bidding NPRM*, 8 FCC Rcd at 7666, Appendix. In addition, multiple Final Regulatory Flexibility Analyses (FRFAs) were included in the rulemaking orders which adopted or amended rule provisions relevant to this Public Notice. See *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 927-34, Appendix C; *Broadcast Competitive Bidding Order*, 13 FCC Rcd at 16015-27, Appendix B; *Part 1 Third Report and Order*, 13 FCC Rcd at 492-503, Appendix B; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2400, paras. 299-302.

<sup>61</sup> 47 U.S.C. § 309(j)(3)(E)(i), (j)(4)(F); 47 CFR § 1.2104(c)-(g), (i); *Part 1 Third Report and Order*, 13 FCC Rcd at 447-49, paras. 123-25; *Broadcast Competitive Bidding Order*, 13 FCC Rcd at 15967-68, paras. 127-28. See generally *Part 1 Order*, 12 FCC Rcd at 5697-98, para. 16.

<sup>62</sup> 5 U.S.C. § 603(b)(3).

<sup>63</sup> 5 U.S.C. § 601(6).

the same meaning as the term “small business concern” under the Small Business Act.<sup>64</sup> A “small business concern” is one which: (1) is independently owned and operated, (2) is not dominant in its field of operation, and (3) satisfies any additional criteria established by the SBA.<sup>65</sup>

58. The specific procedures and minimum opening bid amounts on which comment is sought in this Public Notice will directly affect all applicants participating in Auction 112. We expect that the pool of applicants who seek to bid in Auction 112 will include firms of all sizes.

59. *Television Broadcasting.* This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.”<sup>66</sup> These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.<sup>67</sup> These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having \$41.5 million or less in annual receipts.<sup>68</sup> The 2012 Economic Census reports that 751 firms operated that entire year.<sup>69</sup> Of that number, 656 had annual receipts of \$25,000,000 or less, and 25 had annual receipts between \$25,000,000 and \$49,999,999.<sup>70</sup> Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

60. Additionally, the Commission has estimated the number of licensed commercial television stations to be 1,374.<sup>71</sup> Of this total, 1,269 stations (or about 92.5%) had revenues of \$41.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) in April 20, 2021, and therefore these stations qualify as small entities under the SBA definition.

61. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 384.<sup>72</sup> These stations are non-profit, and therefore considered to be small entities.<sup>73</sup>

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<sup>64</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>65</sup> 15 U.S.C. § 632.

<sup>66</sup> See U.S. Census Bureau, *2017 NAICS Definition, “515120 Television Broadcasting”*, <https://www.census.gov/naics/?input=515120&year=2017&details=515120>.

<sup>67</sup> *Id.*

<sup>68</sup> See 13 CFR § 121.201, NAICS Code 515120.

<sup>69</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series – Estab. and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 515120, <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=515120&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false>.

<sup>70</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>71</sup> Broadcast Station Totals as of March 31, 2021, News Release (MB Apr. 5, 2021) (March 31, 2021 Broadcast Station Totals), available at [www.fcc.gov/document/broadcast-station-totals-march-31-2021](http://www.fcc.gov/document/broadcast-station-totals-march-31-2021) (*April 2021 Station Totals News Release*). While the Commission also reports the number of licensed noncommercial educational (NCE) broadcast stations, it does not compile and does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities. Further, the Local Radio Ownership Rule, the Local Television Ownership Rule and the Dual Network Rule apply only to combinations of commercial entities.

62. There are also 2,371 low power television stations, including Class A stations, and 3,306 TV translators.<sup>74</sup> Given the nature of these services, we presume that all of these entities qualify as small entities under the SBA small business size standard.

63. We note, however, that the SBA size standard data does not enable us to make a meaningful estimate of the number of small entities that may participate in Auction 112.

64. In assessing whether a business entity qualifies as small under the SBA definition, business control affiliations must be included.<sup>75</sup> Our estimate therefore likely overstates the number of small entities that might be affected by this auction because the revenue figures on which this estimate is based does not include or aggregate revenues from affiliated companies. Moreover, the definition of small business also requires that an entity not be dominant in its field of operation and that the entity be independently owned and operated. The estimate of small businesses to which Auction 112 competitive bidding rules may apply does not exclude any television station from the definition of a small business on these bases and is therefore over-inclusive to that extent. Furthermore, we are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation.

65. We also note that we are unable to accurately develop an estimate of how many of the potential Auction 112 applicants might prove to be small businesses based on the number of small entities that applied to participate in prior broadcast auctions because that information is not collected from applicants for broadcast auctions in which bidding credits are not based on an applicant's size (as is the case in some auctions of licenses for wireless services). We conclude, however, that the majority of Auction 112 eligible bidders will likely meet the SBA's definition of a small business concern.

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

66. The Commission designed the auction application process itself to minimize reporting and compliance requirements for all applicants, including small business applicants. To participate in this auction, parties will file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications.<sup>76</sup> Eligibility to participate in bidding is based on an applicant's short-form application and certifications, as well as its upfront payment. In the second phase of the process, there are additional compliance requirements for winning bidders. Thus, a small business that fails to become a winning bidder does not need to satisfy additional requirements of a winning bidder.

67. We do not expect the processes and procedures proposed in this Public Notice will require small entities to hire attorneys, engineers, consultants, or other professionals to participate in Auction 112 and comply with the procedures we ultimately adopt because of the information, resources, and guidance we make available to potential and actual participants. For example, we intend to release an online tutorial that will help applicants understand the procedures for filing the auction short-form application (FCC Form 175). We also intend to make information on the bidding system available and to offer demonstrations and other educational opportunities for applicants in Auction 112 to familiarize themselves with the FCC auction application system and the auction bidding system. By providing these resources as well as the resources discussed below, we expect small business entities who use the available resources to experience lower participation and compliance costs. Nevertheless, while we cannot quantify the cost of compliance with the proposed procedures, we do not believe that the costs of compliance will unduly burden small entities that choose to participate in the auction because the

(Continued from previous page) \_\_\_\_\_  
<sup>72</sup> *Id.*

<sup>73</sup> See generally 5 U.S.C. § 601(4), (6).

<sup>74</sup> See April 2021 Station Totals News Release.

<sup>75</sup> Business concerns are affiliates of each other when one concern controls—or has the power to control—the other, or when a third party either controls both concerns or has the power to control them. 13 CFR § 121.103(a)(1).

<sup>76</sup> See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2376-77, paras. 163-66.

proposals for Auction 112 are similar in many respects to the procedures in recent auctions conducted by the Commission.<sup>77</sup>

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

68. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”<sup>78</sup>

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

70. We also make various databases and other sources of information, including the Auctions program websites and copies of Commission decisions, available to the public without charge, providing a low-cost mechanism for small entities to conduct research prior to and throughout the auction. Prior to and at the close of Auction 112, we will post public notices on the Auctions website, which articulate the procedures and deadlines for the auction. We make this information easily accessible and without charge to benefit all Auction 112 applicants, including small entities, thereby lowering their administrative costs to comply with the Commission’s competitive bidding rules.

71. Prior to the start of bidding, eligible bidders will be given an opportunity to become familiar with auction procedures and the bidding system by participating in a mock auction. Further, we intend to conduct Auction 112 electronically over the Internet using a web-based auction system that eliminates the need for bidders to be physically present in a specific location. Qualified bidders also have the option to place bids by telephone. These mechanisms are made available to facilitate participation in Auction 112 by all eligible bidders and may result in significant cost savings for small business entities that use these alternatives. Moreover, the adoption of bidding procedures in advance of the auction, consistent with statutory directive, is designed to ensure that the auction will be administered predictably and fairly for all participants, including small entities.

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

72. None.

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<sup>77</sup> See generally, e.g., *Auction of AM and FM Broadcast Construction Permits Scheduled for July 27, 2021; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 109*, AU Docket No. 21-39, Public Notice, DA 21-361 (OEA/MB Apr. 1, 2021).

<sup>78</sup> 5 U.S.C. § 603(c)(1)-(4).

### C. Deadlines and Filing Procedures

73. Interested parties may file comments or reply comments on or before the dates indicated on the first page of this document in AU Docket No. 21-449. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).<sup>79</sup>

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

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

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand delivered or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.<sup>80</sup>

75. *Email.* We also request that a copy of all comments and reply comments be submitted electronically to the following address: [auction112@fcc.gov](mailto:auction112@fcc.gov).

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

77. *Ex Parte Requirements.* This proceeding has been designated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>81</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to the Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b). In proceedings governed by section 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the Electronic Comment Filing System available for that proceeding, and must be filed in their native

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<sup>79</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (May 1, 1998).

<sup>80</sup> See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OMD 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

<sup>81</sup> 47 CFR §§ 1.1200(a), 1.1206.

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

**D. Contact Information**

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

**Video Division, Media Bureau**

Full power television station service questions: Shaun Maher (legal) at (202) 418-2324, or Kevin Harding (technical questions) at (202) 418-7077

**Auctions Division, Office of Economics and Analytics**

Auction legal questions: Mary Lovejoy or Andrew McArdell at (202) 418-0660  
General auction questions: Auctions Hotline at (717) 338-2868

**Office of Communications Business Opportunities**

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

**Consumer and Governmental Affairs Bureau**

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

**Press Information:** Janice Wise (202) 418-8165

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**ATTACHMENT A:  
CONSTRUCTION PERMITS IN AUCTION 112**

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