



PUBLIC NOTICE

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November 9, 2001

AUCTION OF CONSTRUCTION PERMITS FOR NEW ANALOG TELEVISION STATIONS SCHEDULED FOR FEBRUARY 5, 2002

COMMENT SOUGHT ON RESERVE PRICES OR MINIMUM OPENING BIDS AND OTHER AUCTION PROCEDURAL ISSUES

Report No. AUC-01-82-B (Auction No. 82)

By this Public Notice, the Mass Media Bureau (“MMB”) and the Wireless Telecommunications Bureau (“WTB”) (collectively, “Bureaus”) announce the auction of four construction permits for new analog television stations to commence on February 5, 2002 (“Auction No. 82”). A list of the channels and communities of these stations is included as Attachment A. These new television stations are the subject of pending, mutually exclusive short-form applications (FCC Form 175) filed on or before June 29, 2001. Pursuant to the *Broadcast First Report and Order*,¹ **participation in the auction will be limited to those applicants. A list of those applicants is also identified in Attachment A.**

The Balanced Budget Act of 1997 requires the Commission to “ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed . . . before issuance of bidding rules, to permit notice and comment on proposed auction procedures”² Consistent with the provisions of the Balanced Budget 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, the

¹ The Commission adopted service and competitive bidding rules for mass media services, including standard broadcast (AM), frequency modulation (FM), full service commercial television (TV) and Instructional Television Fixed Service (ITFS). Also adopted were rules for the secondary services of low power television (LPTV), FM translator and television translator. See Implementation of Section 309(j) of the Communications Act — Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, GC Docket No. 92-52, GEN Docket No. 90-264, *Report and Order*, 13 FCC Rcd 15920 (1998) (“*Broadcast First Report and Order*”); Implementation of Section 309(j) of the Communications Act — Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, *Memorandum Opinion and Order*, 14 FCC Rcd 8724 (1999) (“*Broadcast Reconsideration Order*”); 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, Gen Docket No. 90-264, *Memorandum Opinion and Order*, 14 FCC Rcd 12541 (1999) (“*Second Memorandum Opinion and Order*”).

² Section 3002(a)(E)(i), Balanced Budget Act of 1997, Pub. L. 105-33, 111 Stat. 251 (1997) (“Balanced Budget Act”), amending Section 309(j) of the Communications Act, 47 U.S.C. § 309(j).

Commission directed the Bureaus, under their existing delegated authority,³ to seek comment on a variety of auction-specific procedures prior to the start of each auction.⁴ We therefore seek comment on the following issues relating to Auction No. 82.

I. Auction Structure

A. Multiple Round Auction Design

We propose to award these construction permits in a simultaneous multiple-round auction. As described further below, this methodology offers every construction permit for bid at the same time with successive bidding rounds in which bidders may place bids. We seek comment on this proposal.

B. Upfront Payments and Initial Maximum Eligibility

The Bureaus have delegated authority and discretion to determine an appropriate upfront payment for the construction permits being auctioned taking into account such factors as the efficiency of the auction and the value of similar spectrum.⁵ As described further below, the upfront payment is a refundable deposit made by each bidder to determine and establish eligibility to bid on the permits. An upfront payment related to the specific spectrum subject to auction protects against frivolous or insincere bidding and provides the Commission with a source of funds from which to collect payments owed at the close of the auction.⁶ For Auction No. 82, we propose to make the upfront payments equal to the minimum opening bids, which are established based on similar facts as described in section II.B, below. The specific upfront payments for each construction permit are set forth in Attachment A. We seek comment on this proposal.

The upfront payment submitted by a bidder will determine the number of bidding units on which a bidder may place bids. This limit is a bidder's "maximum initial eligibility." Each construction permit is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A, on a bidding unit per dollar basis. This number does not change as prices rise during the auction. A bidder may place bids on multiple construction permits, if selected on the FCC Form 175, as long as the total number of bidding units associated with those construction permits does not exceed its maximum initial eligibility. Eligibility cannot be increased during the auction. 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

³ See Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, WT Docket No. 97-82, *Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making*, 12 FCC Rcd 5686, 5697, ¶ 16 (1997) ("Part 1 Order") ("We also clarify that pursuant to Section 0.131 of our rules, the Chief, Wireless Telecommunications Bureau, has delegated authority to implement all of the Commission's rules pertaining to auctions procedures").

⁴ 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 and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 448, ¶ 124 (1998) ("Part 1 Third Report and Order"). The Commission directed the Bureau to seek comment on specific mechanisms related to day-to-day auction conduct including, for example, the structure of bidding rounds and stages, establishment of minimum opening bids or reserve prices, minimum accepted bids, initial maximum eligibility for each bidder, activity requirements for each stage of the auction, activity rule waivers, criteria for determining reductions in eligibility, information regarding bid withdrawal and bid removal, stopping rules, and information relating to auction delay, suspension or cancellation. *Id.* at ¶ 125. See also *Broadcast First Report and Order*, 13 FCC Rcd at 15967-68, ¶¶ 127-28.

⁵ See *Part 1 Order*, 12 FCC Rcd at 5697-98, ¶ 16 (1997).

⁶ 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, 2378-79, ¶¶ 171-76 (1994).

high bids on) in any single round, and submit an upfront payment covering that number of bidding units. We seek comment on this proposal.

C. Activity Rules

In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to either bid actively on a percentage of their current bidding eligibility and/or be the standing high bidder during each round of the auction rather than waiting until the end to participate. A bidder that does not satisfy the activity rule will either lose bidding eligibility in the next round or must use an activity rule waiver (if any remain).

We propose a single stage auction with the following activity requirement: In each round of the auction, a bidder desiring to maintain its eligibility to participate in the auction is required to be active on one hundred (100) percent of its bidding eligibility. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's bidding eligibility. We seek comment on this proposal.

D. Activity Rule Waivers and Reducing Eligibility

Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required activity level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit. Activity waivers are principally a mechanism for auction participants to avoid the loss of auction eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

The FCC auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any bidding period where a bidder's activity is below the required activity level unless: (1) there are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements. If a bidder has no waivers remaining and does not satisfy the required activity level, the system will permanently reduce their current eligibility to bring them into compliance with the activity rule.

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 period by using the reduce eligibility function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described above. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

A bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the Proactive Waiver function in the bidding system) during a bidding period in which no bids or withdrawals are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids will not keep the auction open.

We propose that each bidder in Auction No. 82 be provided with three activity rule waivers that may be used at the bidder's discretion during the course of the auction as set forth above. We seek comment on this proposal.

E. Information Relating to Auction Delay, Suspension or Cancellation

For Auction No. 82, we propose that, by public notice or by announcement during the auction, the Bureaus may delay, suspend or cancel the auction in the event of natural disaster or national emergency, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding.⁷ In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureaus, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. We seek comment on this proposal.

II. Bidding Procedures

A. Round Structure

The Commission will use its Automated Auction System to conduct the electronic simultaneous multiple round auction format for Auction No. 82. Auction No. 82 will be conducted over the Internet. However, as in prior auctions, the FCC Wide Area Network will be available at the standard charge, and telephonic bidding will also be available. Prospective bidders concerned about their access to the Internet may want to establish a connection to the FCC Wide Area Network as a backup. Full information regarding how to establish such a connection, and related charges, will be provided in the public notice announcing details of auction procedures.

In past auctions, we have used the timing of bids to select a high bidder when multiple bidders submit identical high bids on a construction permit in a given round. Given that bidders will access the Internet at differing speeds, we will not use this procedure in Auction No. 82. For Auction No. 82, we propose to use a random number generator to select a high bidder from among such bidders. As with prior auctions, remaining bidders will be able to submit higher bids in subsequent rounds. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction, and will be included in the registration mailings. The simultaneous multiple round format will consist of sequential bidding rounds, each followed by the release of round results. Details regarding the location and format of round results will be included in the same public notice.

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

B. Reserve Price or Minimum Opening Bid

The Balanced Budget Act calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses or construction permits are subject to auction (*i.e.*, when the Commission has accepted mutually exclusive applications for licenses or construction permits), unless the Commission determines that a reserve price or minimum bid is not in the public interest.⁸ Consistent with this mandate, the Commission has directed the Bureaus to seek comment on the use of minimum opening bids and/or reserve price prior to the start of each auction.⁹

⁷ See 47 C.F.R. § 1.2104(i).

⁸ See Balanced Budget Act, Section 3002(a). The Commission's authority to establish a reserve

Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which *no bids* are accepted. It is generally used to accelerate the competitive bidding process. Also, in a minimum opening bid scenario, the auctioneer generally has the discretion to lower the amount later in the auction. It is also possible for the minimum opening bid and the reserve price to be the same amount.

In light of the Balanced Budget Act's requirements, the Bureaus propose to establish a minimum opening bid for Auction No. 82. The Bureaus believe a minimum opening bid, which has been utilized in other auctions, is an effective bidding tool.¹⁰ A minimum opening bid, rather than a reserve price, will help to regulate the pace of the auction and provides flexibility.

For Auction No. 82, the proposed minimum opening bid prices were determined by taking into account various factors related to the efficiency of the auction and the potential value of the spectrum, including the type of service, market size, industry cash flow data and recent broadcast transactions. The specific minimum opening bid for each construction permit is set forth in Attachment A herein. We seek comment on this proposal.

If commenters believe that these minimum opening bids will result in unsold construction permits, or are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. Alternatively, comment is sought on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

C. Minimum Accepted Bids and Bid Increments

In each round, eligible bidders will be able to place bids on a given construction permit in any of nine different amounts.¹¹ The Automated Auction System interface will list the nine acceptable bid amounts for each construction permit. Once there is a standing high bid on the construction permit, the Automated Auction System will calculate a minimum acceptable bid for that construction permit for the following round, as described below. The difference between the minimum acceptable bid and the standing high bid for each construction permit will define the *bid increment*. The nine acceptable bid amounts for each construction permit consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

price or minimum opening bid is set forth in 47 C.F.R. § 1.2104(c) and (d).

⁹ See *Part I Third Report and Order*, 13 FCC Rcd at 454-55, ¶ 141 (1998).

¹⁰ See, *e.g.*, Auction of 800 MHz SMR Upper 10 MHz Band, Minimum Opening Bids or Reserve Prices, *Order*, 12 FCC Rcd 16354 (1997); Auction of the Phase II 220 MHz Service Licenses, Auction Notice and Filing Requirements for 908 Licenses Consisting of Economic Area (EA), Economic Area Grouping (EAG), and Nationwide Licenses, Scheduled for September 15, 1998, Minimum Opening Bids and Other Procedural Issues, *Public Notice*, 13 FCC Rcd 16445 (1998).

¹¹ Bidders must have sufficient eligibility to place a bid on the particular construction permits. See Section I.B., "Upfront Payments and Initial Maximum Eligibility," *supra*.

Until a bid has been placed on a construction permit, the minimum acceptable bid for that construction permit will be equal to its minimum opening bid. The additional bid amounts for construction permits that have not yet received a bid will be calculated differently, as explained below.

For Auction No. 82, we propose to calculate minimum acceptable bids by using a smoothing methodology, as we have done in several other auctions. The smoothing formula calculates minimum acceptable bids by first calculating a *percentage increment*, not to be confused with the *bid increment*, for each construction permit based on a weighted average of the activity received on each construction permit in all previous rounds. This methodology tailors the percentage increment for each construction permit based on activity, rather than setting a global increment for all construction permits.

In a given round, the calculation of the percentage increment for each construction permit is made at the end of the previous round. The computation is based on an activity index, which is calculated as the weighted average of the activity in that round and the activity index from the prior round. The activity index at the start of the auction (round 0) will be set at 0. The current activity index is equal to a weighting factor times the number of new bids received on the construction permit in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The activity index is then used to calculate a percentage increment by multiplying a minimum percentage increment by one plus the activity index with that result being subject to a maximum percentage increment. The Commission will initially set the weighting factor at 0.5, the minimum percentage increment at 0.1 (10%), and the maximum percentage increment at 0.2 (20%).

Equations

$$A_i = (C * B_i) + ((1-C) * A_{i-1})$$

$$I_{i+1} = \text{smaller of } ((1 + A_i) * N) \text{ and } M$$

$$X_{i+1} = I_{i+1} * Y_i$$

where,

A_i = activity index for the current round (round i)

C = activity weight factor

B_i = number of bids in the current round (round i)

A_{i-1} = activity index from previous round (round i-1), A_0 is 0

I_{i+1} = percentage increment for the next round (round i+1)

N = minimum percentage increment or percentage increment floor

M = maximum percentage increment or percentage increment ceiling

X_{i+1} = dollar amount associated with the percentage increment

Y_i = high bid from the current round

Under the smoothing methodology, once a bid has been received on a construction permit, the minimum acceptable bid for that construction permit in the following round will be the high bid from the current round plus the dollar amount associated with the percentage increment, with the result rounded to the nearest thousand if it is over \$10,000, to the nearest hundred if it is under \$10,000 but over \$1,000, or to the nearest ten if it is below \$1,000.

Examples

Construction Permit 1

C=0.5, N = 0.1, M = 0.2

Round 1 (2 new bids, high bid = \$1,000,000)

1. Calculation of percentage increment for round 2 using the smoothing formula:

$$A_1 = (0.5 * 2) + (0.5 * 0) = 1$$

$$I_2 = \text{The smaller of } ((1 + 1) * 0.1) = 0.2 \text{ or } 0.2 \text{ (the maximum percentage increment)}$$

2. Calculation of dollar amount associated with the percentage increment for round 2 (using I_2 from above):

$$X_2 = 0.2 * \$1,000,000 = \$200,000$$

3. Minimum acceptable bid for round 2 = \$1,200,000

Round 2 (3 new bids, high bid = \$2,000,000)

1. Calculation of percentage increment for round 3 using the smoothing formula:

$$A_2 = (0.5 * 3) + (0.5 * 1) = 2$$

$$I_3 = \text{The smaller of } ((1 + 2) * 0.1) = 0.3 \text{ or } 0.2 \text{ (the maximum percentage increment)}$$

2. Calculation of dollar amount associated with the percentage increment for round 3 (using I_3 from above):

$$X_3 = 0.2 * \$2,000,000 = \$400,000$$

3. Minimum acceptable bid for round 3 = \$2,400,000

Round 3 (1 new bid, high bid = \$2,400,000)

1. Calculation of percentage increment for round 4 using the smoothing formula:

$$A_3 = (0.5 * 1) + (0.5 * 2) = 1.5$$

$$I_4 = \text{The smaller of } ((1 + 1.5) * 0.1) = 0.25 \text{ or } 0.2 \text{ (the maximum percentage increment)}$$

2. Calculation of dollar amount associated with the percentage increment for round 4 (using I_4 from above):

$$X_4 = 0.2 * \$2,400,000 = \$480,000$$

3. Minimum acceptable bid for round 4 = \$2,880,000

As stated above, until a bid has been placed on a construction permit, the minimum acceptable bid for that construction permit will be equal to its minimum opening bid. The additional bid amounts are calculated using the difference between the minimum opening bid times one plus the minimum percentage increment, rounded as described above, and the minimum opening bid. That is, $I = (\text{minimum opening bid})(1 + N)\{\text{rounded}\} - (\text{minimum opening bid})$. Therefore, when N equals 0.1, the first additional bid amount will be approximately ten percent higher than the minimum opening bid; the second, twenty percent; the third, thirty percent; etc.

In the case of a construction permit for which the standing high bid has been withdrawn,¹² the minimum acceptable bid will equal the second highest bid received for the construction permit. The additional bid

¹² See Section II.D., "Information Regarding Bid Withdrawal and Bid Removal," *infra*.

amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid.

The Bureaus retain the discretion to change the minimum acceptable bids and bid increments if it determines that circumstances so dictate. The Bureaus will do so by announcement in the Automated Auction System. We seek comment on these proposals.

D. Information Regarding Bid Withdrawal and Bid Removal

For Auction No. 82, we propose the following bid removal and bid withdrawal procedures. Before the close of a bidding period, a bidder has the option of removing any bid placed in that round. By using the Remove Selected Bids function in the bidding 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 a withdrawal payment.

Once a round closes, a bidder may no longer remove a bid. However, in any subsequent round, a high bidder may withdraw its standing high bids from previous rounds using the Withdraw function in the bidding system. A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payment provisions of the Commission rules.¹³ We seek comment on these bid removal and bid withdrawal procedures.

In the *Part 1 Third Report and Order*, the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of efficient backup strategies as information becomes available during the course of an auction. The Commission noted, however, that, in some instances, bidders may seek to withdraw bids for improper reasons. The Bureaus, therefore, have discretion, in managing the auction, to limit the number of withdrawals to prevent any bidding abuses. The Commission stated that the Bureaus should assertively exercise their discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if the Bureaus find that a bidder is abusing the Commission’s bid withdrawal procedures.¹⁴

Applying this reasoning, we propose to limit each bidder in Auction No. 82 to withdrawing standing high bids in no more than one round during the course of the auction. To permit a bidder to withdraw bids in more than one round would likely encourage insincere bidding or the use of withdrawals for anti-competitive purposes. The round in which withdrawals are utilized will be at the bidder’s discretion; withdrawals otherwise must be in accordance with the Commission’s rules. There is no limit on the number of standing high bids that may be withdrawn in the round in which withdrawals are utilized. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission’s rules. We seek comment on this proposal.

E. Stopping Rule

For Auction No. 82, the Bureaus propose to employ a simultaneous stopping rule approach. The Bureaus have discretion “to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time.”¹⁵ A simultaneous stopping rule means that all construction permits remains open until the first round in which no new acceptable bids, proactive waivers, or withdrawals are received. After the first such round, bidding closes simultaneously on all construction permits. Thus, unless circumstances dictate otherwise, bidding would remain open until bidding stops on all construction permits.

¹³ See 47 C.F.R. §§ 1.2104(g), 1.2109.

¹⁴ *Part 1 Third Report and Order*, 13 FCC Rcd at 460, ¶ 150.

¹⁵ See 47 C.F.R. § 1.2104(e).

However, the Bureaus propose to retain the discretion to exercise any of the following options during Auction No. 82:

1. Utilize a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all construction permits after the first round in which no bidder submits a proactive waiver, withdrawal, or a new bid on any construction permit on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the standing high bidder would not keep the auction open under this modified stopping rule.
2. Keep the auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. The activity rule, therefore, will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver.
3. Declare that the auction will end after a specified number of additional rounds (“special stopping rule”). If the Bureaus invoke this special stopping rule, it will accept bids in the specified final round(s) only for construction permits on which the high bid increased in at least one of the preceding specified number of rounds.

The Bureaus propose to exercise these options only in certain circumstances, such as, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureaus are likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of construction permits where there is still a high level of bidding activity. We seek comment on these proposals.

III. Due Diligence

Potential bidders are solely responsible for investigating and evaluating all technical and market place factors that may have a bearing on the value of the television facilities in this auction. **The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that a FCC auction represents an opportunity to become a FCC permittee in the broadcast service, subject to certain conditions and regulations. A FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does a FCC construction permit or license constitute a guarantee of business success.** Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

Potential bidders are strongly encouraged to conduct their own research prior to Auction No. 82 in order to determine the existence of pending proceedings that might affect their decisions regarding participation in the auction. Participants in Auction No. 82 are strongly encouraged to continue such research during the auction.

Potential bidders should note that, in November 1999, Congress enacted the Community Broadcasters Protection Act of 1999 (CBPA) which established a new Class A television service.¹⁶ In response to the enactment of the CBPA, the Commission adopted rules to establish the new Class A television service.¹⁷ In the *Class A Report and Order*, the Commission adopted rules to provide interference protection for

¹⁶ Pub. L. No. 106-113, 113 Stat. 1501 (1999), codified at 47 U.S.C. § 336(f).

¹⁷ See Establishment of a Class A Television Service, MM Docket No. 00-10, *Report and Order*, FCC 00-115 (rel. April 4, 2000) (“*Class A Report and Order*”).

eligible Class A television stations from new full power television stations.¹⁸ Given the Commission's ruling in the *Class A Report and Order*, the winning bidders in Auction No. 82, upon submission of their long-form applications (FCC Form 301), will have to provide interference protection to qualified Class A television stations. Therefore, potential bidders are encouraged to perform engineering studies to determine the existence of Class A television stations and their effect on the ability to operate the full power television stations proposed in this auction. Information about the identity and location of Class A television stations is available from the Mass Media Bureau's Consolidated Database System (CDBS) (public access available at: <http://www.fcc.gov/mmb>) and on the Mass Media Bureau's Class A television web page:

<http://www.fcc.gov/mmb/vsd/files/classa.html>.

Potential bidders are also reminded that full service television stations are in the process of converting from analog to digital operation and that stations may have pending applications to construct and operate digital television facilities, construction permits and/or licenses for such digital facilities. Bidders should investigate the impact such applications, permits and licenses may have on their ability to operate the facilities proposed in this auction.

IV. Prohibition of Collusion

Bidders are reminded that Section 1.2105(c) of the Commission's rules prohibits applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements unless they have identified each other as parties with whom they have entered into agreements under Section 1.2105(a)(2)(viii). For Auction No. 82, this prohibition became effective at the short-form application filing deadline on Friday, June 29, 2001, and will end on the post-auction down payment deadline, which will be announced in a future public notice.¹⁹ If parties had agreed in principle on all material terms, those parties must have been identified on the short-form application under Section 1.2105(c), even if the agreement had not been reduced to writing. If parties had not agreed in principle by the filing deadline, an applicant should not have included the names of those parties on its application, and must not have continued negotiations with other applicants for licenses in the same geographic area.²⁰

In addition, Section 1.65 of the Commission's rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional importance to that application.²¹ Thus, Section 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders therefore are required to make such notification to the Commission immediately upon discovery.²²

¹⁸ *Id.* at ¶¶ 37-38.

¹⁹ 47 C.F.R. § 1.2105(c)(1).

²⁰ "Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules," *Public Notice*, 11 FCC Rcd 9645 (1995).

²¹ *See* 47 C.F.R. § 1.65.

²² The Commission recently amended Section 1.2105 to require auction applicants to report prohibited communications in writing to the Commission immediately, but in no case later than five business days after the communication occurs. Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, *Seventh Report and Order*, FCC 00-1270, at 10 (rel. Sept. 27, 2001). This rule takes effect 30 days after publication in the Federal Register, *i.e.*, November 28, 2001. 66 Fed. Reg. 54447 (October 29, 2001).

V. Maintaining the Accuracy of FCC Form 175 Information

As noted in the *Auction No. 82 Filing Window Public Notice*²³, after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and certain revision of exhibits. At this time, filers must submit a letter summarizing the changes to:

Margaret Wiener, Chief
Auctions and Industry Analysis Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW, Room 4-A760
Washington, DC 20554

A separate copy of the letter should be mailed to Shaun Maher, Video Services Division, Mass Media Bureau, Federal Communications Commission, 445 12th Street, SW, Room 2-A820, Washington, DC 20554 and faxed to the attention of Kathryn Garland at (717) 338-2850. Questions about other changes should be directed to Shaun Maher at (202) 418-1600.

VI. Conclusion

Comments are due on or before November 26, 2001, and reply comments are due on or before December 3, 2001. An original and four copies of all pleadings must be filed with the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, Room TW-A325, 445 Twelfth Street, S.W., Washington, DC 20054, in accordance with Section 1.51(c) of the Commission's rules. See 47 C.F.R. § 1.51(c). In addition, one copy of each pleading must be delivered to each of the following locations: (1) the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554; (2) Office of Media Relations, Public Reference Center, 445 Twelfth Street, S.W., Suite CY-A257, Washington, DC 20554; (3) Rana Shuler, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 445 Twelfth Street, S.W., Suite 4-A628, Washington, DC 20554; (4) Shaun Maher, Video Services Division, Mass Media Bureau, 445 Twelfth Street, S.W., Suite 2-A820, Washington, DC 20554. Applicants that send their comments via Federal Express or any other express mail service should use the zip code "20024." Hand-delivered or messenger-delivered comments will be accepted at 9300 East Hampton Drive, Capitol Heights, Maryland, 20743.²⁴ Comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY-A257, 445 12th Street, S.W., Washington, D.C. 20554.

In addition, the Bureaus request that commenters fax a courtesy copy of their comments and reply comments to the attention of Kathryn Garland at (717) 338-2850.

This proceeding has been designated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.²⁵ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and

²³ See Auction Filing Window For New Analog Television Stations Auction No. 82, *Public Notice*, DA 01-1300 (rel. May 25, 2001) ("*Auction No. 82 Filing Window Public Notice*").

²⁴ See FCC Announces Changes in Filing Procedures, *Public Notice*, DA 01-2430 (rel. Oct. 17, 2001); FCC Announces Change in Filing Location for Paper Documents, *Public Notice*, DA 01-2436 (rel. Oct. 17, 2001); Clarification on FCC's Announced Changes in Filing Procedures, *Public Notice*, DA 01-2451 (rel. Oct. 18, 2001).

²⁵ See 47 C.F.R. §§ 1.1200(a), 1.1206.

arguments presented is generally required.²⁶ Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in Section 1.1206(b) of the Commission's rules.²⁷

For further information concerning this proceeding, contact:

Video Services Division:

Shaun Maher at (202) 418-1600

Auctions and Industry Analysis Division:

Kenneth Burnley, Legal Branch at (202) 418-0660

Linda Sanderson, Operations Branch at (717) 338-2888

Requests for information can also be e-mailed to auctionsinquiry@fcc.gov.

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²⁶ See 47 C.F.R. § 1.1206(b).

²⁷ See 47 C.F.R. § 1.1206(b).

ATTACHMENT A

New Analog Television Station Construction Permits

MX Group	Location	Channel	Bidding Units	Upfront Payment	Minimum Opening Bid	Applicants
PST1	Columbia, SC	47	295,000	\$295,000.00	\$295,000.00	Alliance Trust Christian Television Corporation, Inc. Equity Broadcasting Corporation Fant Broadcast Development, L.L.C Gary Cooper George S. Flinn, Jr. Glory TV Grant Video Inc. Innovative Television III, G.P. Knoxville Channel 25, L.L.C. Marcia T. Turner d/b/a/ Turner Enterprises Outlook Communications, Inc. Pappas Telecasting Companies Pegasus Broadcast Television, Inc. Powell Meredith Communications Company Richard Alan Cooper Richland Holdings, LLC Roberts Broadcasting USA, LLC Terrill Weiss Trinity Christian Center of Santa Ana, Inc. d/b/a Trinity Broadcasting Network Venture Technologies Group, LLC
PST2	Pittsfield, MA	51	420,000	\$420,000.00	\$420,000.00	CAM Broadcasting Company, Inc. Equity Broadcasting Corporation George S. Flinn, Jr. Grant Video Inc. Hubbard Broadcasting, Inc. Marcia T. Turner d/b/a/ Turner Enterprises Outlook Communications, Inc. Pappas Telecasting of America, A California Limited Partnership Powell Meredith Communications Company Roberts Broadcasting USA, LLC Terrill Weiss Trinity Christian Center of Santa Ana, Inc. d/b/a Trinity Broadcasting Network Venture Technologies Group, LLC

ATTACHMENT A

New Analog Television Station Construction Permits

MX Group	Location	Channel	Bidding Units	Upfront Payment	Minimum Opening Bid	Applicants
PST3	Magee, MS	34	295,000	\$295,000.00	\$295,000.00	Christian Television Corporation, Inc. Equity Broadcasting Corporation Evergreen Trust George S. Flinn, Jr. Grant Video Inc. KM Communications, Inc. Marcia T. Turner d/b/a/ Turner Enterprises Marri Broadcasting, L.P. Pappas Telecasting of America, A California Limited Partnership Powell Meredith Communications Company Richard Alan Cooper Roberts Broadcasting USA, LLC Terrill Weiss Venture Technologies Group, LLC
PST4	Scottsbluff, NE	16	160,000	\$160,000.00	\$160,000.00	Equity Broadcasting Corporation George S. Flinn, Jr. KM Communications, Inc. Marcia T. Turner d/b/a/ Turner Enterprises Pappas Telecasting of America, A California Limited Partnership Powell Meredith Communications Company Roberts Broadcasting USA, LLC Terrill Weiss WyoMedia Corp.