



# PUBLIC NOTICE

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## **CLOSED AUCTION OF AM BROADCAST CONSTRUCTION PERMITS SCHEDULED FOR MAY 6, 2014**

### **COMMENT SOUGHT ON COMPETITIVE BIDDING PROCEDURES FOR AUCTION 84**

AU Docket No. 13-268

Comments Due: December 6, 2013

Reply Comments Due: December 20, 2013

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## I. INTRODUCTION

1. By this Public Notice, the Wireless Telecommunications and Media Bureaus (the “Bureaus”) announce an auction of certain AM broadcast construction permits and seek comment on the procedures to be used for this auction. This auction is scheduled to commence on May 6, 2014, and is designated as Auction 84. Auction 84 will be a “closed” auction; only those entities listed in Attachment A to this Public Notice will be eligible to participate in this auction.

## II. BACKGROUND

2. Auction 84 will resolve pending groups of mutually exclusive applications for AM construction permits. On November 6, 2003, the Bureaus announced an auction filing window for applications for new AM stations and major modifications to authorized AM stations.<sup>1</sup> By Public Notice dated June 15, 2005,<sup>2</sup> the Bureaus provided a list of all applications received during the filing window that were mutually exclusive with other applications submitted in the filing window.<sup>3</sup> In the *AM Auction 84 MX Public Notice*, applicants in several of the listed groups of mutually exclusive applications (“MX groups”) were given the opportunity to eliminate their mutual exclusivity with other applicants by means of settlement or technical modification to their proposals.<sup>4</sup> In addition, for each MX group in which applicants proposed to serve different communities, an analysis under Section 307(b) of the Communications Act of 1934, as amended, was required.<sup>5</sup> Finally, any MX group consisting of only new commercial AM station applications for the same community did not require a Section 307(b) analysis

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<sup>1</sup> AM New Station and Major Modification Auction Filing Window; Minor Modification Application Freeze, *Public Notice*, DA 03-3532, 18 FCC Rcd 23016 (MB/WTB 2003) (“*AM Auction 84 Window Notice*”). The window opened on January 26, 2004, and closed on January 30, 2004. Applicants were required to file an Application to Participate in an FCC Auction (FCC Form 175) and certain sections of FCC Form 301, Application for Construction Permit for Commercial Broadcast Station, which permitted the staff to determine mutual exclusivities between applicants.

<sup>2</sup> AM Auction No. 84 Mutually Exclusive Applicants Subject to Auction; Settlement Period Announced for Certain Mutually Exclusive Application Groups; September 16, 2005 Deadline Established for Section 307(b) Submissions, *Public Notice*, DA 05-1604, 20 FCC Rcd 10563 (MB/WTB 2005) (“*AM Auction 84 MX Public Notice*”), as extended by Auction No. 84 Settlement Period and Section 307(b) Submission Deadline Extended to October 31, 2005, *Public Notice*, DA 05-2401, 20 FCC Rcd 14492 (MB/WTB 2005).

<sup>3</sup> In determining mutual exclusivity the staff applied the following rule sections: 47 C.F.R. §§ 73.37, 73.182, 73.183(b)(1), 73.3571. See Review of the Technical Assignment Criteria for the AM Broadcast Service, MM Docket No 87-267, *Report and Order*, FCC 91-303, 6 FCC Rcd 6273 (1991), *recon granted in part and denied in part*, *Memorandum Opinion and Order*, FCC 93-198, 8 FCC Rcd 3250 (1993); Nelson Enterprises, Inc., *Memorandum Opinion and Order*, FCC 03-38, 18 FCC Rcd 3414 (2003) (clarifying standards to establish mutual exclusivity between window-filed AM applications); Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures, MM Docket No. 09-52, *Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rule Making*, FCC 11-28, 26 FCC Rcd 2556, 2580-84 ¶¶ 46-53 (2011) (codifying technical standards for determining AM nighttime mutual exclusivity among window-filed AM applications).

<sup>4</sup> Specifically, MX groups that included at least one AM major modification application, or at least one noncommercial educational (“NCE”) application, were given a limited opportunity to settle. See *AM Auction 84 MX Public Notice*, 20 FCC Rcd at 10564. See also 47 C.F.R. § 73.5002(d); Reexamination of the Comparative Standard for Noncommercial Educational Applicants, MM Docket No. 95-31, *Second Report and Order*, FCC 03-44, 18 FCC Rcd 6691 (2003) (“*NCE Second Report and Order*”).

<sup>5</sup> *AM Auction 84 MX Public Notice*, 20 FCC Rcd at 10565-67. See also 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, *First Report and Order*, FCC 98-194, 13 FCC Rcd 15920, 15964-65 ¶¶ 117-20 (1998) (“*Broadcast First Report and Order*”) (prior to conducting an auction for the AM service, staff must undertake a traditional Section 307(b) analysis), *on recon.*, *Memorandum Opinion and Order*, FCC 99-74, 14 FCC Rcd 8724, *on further recon.*, *Memorandum Opinion and Order*, FCC 99-201, 14 FCC Rcd 12541 (1999).

and was deemed ready to proceed to auction.<sup>6</sup> On August 30, 2007, the Bureaus announced a limited, supplemental auction filing window to permit the filing of applications for a new AM station on 1700 kHz in a community located in Rockland County, New York.<sup>7</sup> The Bureaus will now proceed to auction with the 22 MX groups identified in Attachment A, which are specifically, those MX groups for which no community merited a dispositive Section 307(b) preference, those MX groups in which all of the applicants (or all of the remaining applicants after a Section 307(b) analysis) specified the same community, and the Rockland County applicants.

### III. CONSTRUCTION PERMITS IN AUCTION 84

3. As discussed in greater detail below, Auction 84 will offer construction permits for 22 new commercial AM stations. A list of the locations and frequencies of these stations is included as Attachment A. Attachment A also sets forth proposed minimum opening bids and upfront payments for permits being offered in this auction.

4. An applicant listed in Attachment A may become qualified to bid only if it meets the additional filing, qualification and payment requirements.<sup>8</sup> Each qualified bidder will be eligible to bid on only those construction permits specified for that qualified bidder in Attachment A to this Public Notice. All applicants within each MX group are directly mutually exclusive with one another; therefore, no more than one construction permit will be awarded for each MX group identified in Attachment A.

### IV. DUE DILIGENCE

5. Each potential bidder is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the construction permits for AM broadcast facilities that it is seeking in this auction. Each bidder is responsible for assuring that, if it wins a construction permit, it will be able to build and operate facilities in accordance with the Commission's rules. **The FCC makes no representations or warranties about the use of this spectrum for particular services. Each applicant should be aware that an FCC auction represents an opportunity to become an FCC permittee in the broadcast service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success.**

6. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. Each potential bidder should perform technical analyses and/or refresh any previous analyses to assure itself that, should it become a winning bidder for any Auction 84 construction permit, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements. We strongly encourage each applicant to inspect any prospective

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<sup>6</sup> See *AM Auction 84 MX Public Notice*, 20 FCC Rcd at 10564. See also 47 C.F.R. §§ 73.5002(c) and (d); *Orion Communications Limited v. FCC*, 213 F.3d 761 (D.C. Cir. 2000).

<sup>7</sup> On August 22, 2006, the Commission released a *Memorandum Opinion and Order* directing the Media Bureau to open a limited filing window to permit the filing of applications for a new AM station on 1700 kHz in a community located in Rockland County, New York. Alexander Broadcasting, Inc., *Memorandum Opinion and Order*, FCC 06-125, 21 FCC Rcd 9968 (2006) ("*Alexander*"); Supplemental AM New Station and Major Modification Auction Filing Window for Auction 84, Minor Modification Application Freeze; Notice and Filing Requirements Regarding October 1-5, 2007, Window for Certain AM Construction Permit Applications for Rockland County, New York; Notice Regarding Freeze on the Filing of AM Expanded Band Minor Change Construction Permit Applications, *Public Notice*, DA 07-3793, 22 FCC Rcd 16217 (MB/WTB 2007) ("*Supplemental Rockland County Window Notice*").

<sup>8</sup> All AM applicants listed in Attachment A previously filed short-form applications (FCC Form 175) in either the filing window announced in the *AM Auction 84 Window Notice* or the *Supplemental Rockland County Window Notice*. After evaluating any comments received in response to this Public Notice, the Bureaus will release a public notice that will describe procedures pursuant to which the listed applicants may qualify to participate and bid in Auction 84.

transmitter sites located in, or near, the service area for which it plans to bid; confirm the availability of such sites; and familiarize itself with the Commission's rules regarding the National Environmental Policy Act.<sup>9</sup>

7. We also strongly encourage each applicant to conduct its own research prior to Auction 84 in order to determine the existence of pending administrative or judicial proceedings that might affect its decisions regarding participation in the auction.

8. We strongly encourage participants in Auction 84 to continue such research throughout the auction. The due diligence considerations mentioned in this Public Notice do not comprise an exhaustive list of steps that should be undertaken prior to participating in this auction. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon the specific facts and circumstances related to its interests.

## **V. SHORT-FORM APPLICATIONS (FCC FORM 175) REQUIREMENTS**

9. The Bureaus will specify procedures for updating Auction 84 applicants' short-form applications (FCC Form 175) in a future public notice. Those procedures will include instructions on how an applicant can submit any new or updated information in the Commission's Integrated Spectrum Auction System (ISAS) to comply with current short-form application requirements, including any changes to be reported pursuant to Section 1.65 of the Commission's rules.<sup>10</sup> Each applicant is reminded that certain changes may be considered a "major modification" and could result in dismissal of its application and its disqualification from participation in Auction 84.<sup>11</sup>

## **VI. BUREAUS SEEK COMMENT ON AUCTION PROCEDURES**

10. Consistent with the provisions of section 309(j)(3)(E)(i) of the Communications Act of 1934, as amended, 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 Commission directed the Bureaus, under delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction.<sup>12</sup> We therefore seek comment on the following issues relating to the conduct of Auction 84.

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<sup>9</sup> 47 C.F.R. Chapter I, Part 1, Subpart I, §§ 1.1301 *et seq.*

<sup>10</sup> 47 C.F.R. § 1.65 (making applicants responsible for the continuing accuracy and completeness of information furnished in a pending application). The majority of the Auction 84 short-form applications listed in Attachment A were submitted through the Commission's since-retired Automated Auction System, although some Auction 84 short-form applications were submitted using ISAS, the current auction system. The Commission will process Auction 84 short-form applications using ISAS.

<sup>11</sup> See 47 C.F.R. §§ 1.2105(b)(2), 73.5002(c).

<sup>12</sup> 47 U.S.C. § 309(j)(3)(E)(i). See Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 447-49 ¶¶ 123-25, FCC 97-413 (1997) ("*Part 1 Third Report and Order*") (directing WTB 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 acceptable 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); see also *Broadcast First Report and Order*, 13 FCC Rcd at 15967-68 ¶¶ 127-28 (consistent with the Part 1 rules, the Commission also delegated authority to the Media Bureau to seek comment and establish an appropriate auction design methodology prior to the start of each broadcast auction). See generally 47 C.F.R. § 0.131(c); Amendment of Part 1 of the Commission's Rules – Competitive Bidding Proceeding, WT Docket No. 97-82, *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, FCC 97-60, 12 FCC Rcd 5686, 5697-98 ¶ 16 (1997) ("*Part 1 Order*").

## **A. Auction Structure**

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

11. We propose to auction all construction permits included in Auction 84 using the Commission's standard simultaneous multiple-round auction format.<sup>13</sup> As described further below, this type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual construction permits. Typically, bidding remains open on all construction permits until bidding stops on every construction permit. We seek comment on this proposal.

### **2. Bidding Rounds**

12. Auction 84 will 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 the auction. Details on viewing round results, including the location and format of downloadable round results files, will be included in the same public notice.

13. The Commission will conduct Auction 84 over the Internet using the Commission's Integrated Spectrum Auction System ("FCC Auction System"). Bidders will also have the option of placing bids by telephone through a dedicated Auction Bidder Line. The toll-free telephone number for the Auction Bidder Line will be provided to qualified bidders prior to the start of the auction.

14. We propose to retain the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. Under this proposal, we may change 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. Commenters 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 requirements or bid amount parameters, or by using other means.

### **3. Stopping Rule**

15. The Bureaus have discretion to establish stopping rules before or during multiple round auctions in order to complete the auction within a reasonable time.<sup>14</sup> For Auction 84, 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. More specifically, bidding will close on all construction permits after the first round in which no bidder submits any new bids, applies a proactive waiver, or withdraws any provisionally winning bids (if bid withdrawals are permitted in this auction).<sup>15</sup> Thus, unless we announce alternative procedures, the simultaneous stopping rule will be used in this auction, and bidding will remain open on all construction permits until bidding stops on every construction permit. Consequently, it is not possible to determine in advance how long the bidding in this auction will last.

16. Further, we propose to retain the discretion to exercise any of the following options during Auction 84:

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<sup>13</sup> See Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, FCC 94-61, 9 FCC Rcd 2348, 2360-75 ¶¶ 68-159 (1994) ("*Second Report and Order*") for a general discussion of competitive bidding design.

<sup>14</sup> 47 C.F.R. § 1.2104(e).

<sup>15</sup> 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 VI.B.6. "Provisionally Winning Bids." Proactive waivers are described in Section VI.B.3. "Activity Rule Waivers and Reducing Eligibility," and bid withdrawals are described in Section VI.B.7. "Bid Removal and Bid Withdrawal," below.

- a) Use a modified version of the simultaneous stopping rule that would close the auction for all construction permits after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid (if withdrawals are permitted in this auction), or places any new bids on a construction permit for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule.
- b) Use a modified version of the simultaneous stopping rule that would close the auction for all construction permits after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid (if withdrawals are permitted in this auction), or places any new bids on a construction permit that is not FCC held. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit that does not already have a provisionally winning bid (an “FCC-held” construction permit) would not keep the auction open under this modified stopping rule.
- c) Use a modified version of the simultaneous stopping rule that combines (a) and (b) above.
- d) Declare that the auction will end after a specified number of additional rounds (“special stopping rule”). If the Bureaus invoke this special stopping rule, they will accept bids in the specified final round(s), after which the auction will close.
- e) Keep the auction open even if no bidder places any new bids, applies a waiver, or withdraws any provisionally winning bids (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.

17. 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 of time or will close prematurely. Before exercising these options, we are likely to attempt to change the pace of the auction. For example, the Bureaus may adjust the pace of bidding by changing the number of bidding rounds per day and/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.

#### **4. Information Relating to Auction Delay, Suspension, or Cancellation**

18. For Auction 84, we propose that the Bureaus may delay, suspend, or cancel the auction in the event of a natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding.<sup>16</sup> We will notify participants of any such delay, suspension or cancellation by public notice and/or through the FCC Auction System’s announcement function. If the auction is delayed or suspended we may, in our 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. Network interruption may cause the Bureaus to delay or suspend the auction. We emphasize that we will exercise this authority solely at our discretion, and not as a substitute for situations in which bidders may wish to apply their activity rule waivers. We seek comment on this proposal.

#### **B. Auction Procedures**

##### **1. Upfront Payments and Bidding Eligibility**

19. The Bureaus have delegated authority and discretion to determine an appropriate upfront payment for each construction permit being auctioned, taking into account such factors as the efficiency

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<sup>16</sup> 47 C.F.R. § 1.2104(i).

of the auction process and the potential value of similar construction permits.<sup>17</sup> As described further below, the upfront payment is a refundable deposit made by each bidder to establish 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 the auction.<sup>18</sup> With these considerations in mind, we propose the upfront payments set forth in Attachment A to this Public Notice. We seek comment on the upfront payments specified in Attachment A.

20. The Bureaus further propose that the amount of the upfront payment submitted by a bidder will determine its initial bidding eligibility in bidding units. We propose to assign each construction permit a specific number of bidding units, equal to one bidding unit per dollar 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. A bidder may place bids on multiple construction permits, provided that (1) each such construction permit is designated for that bidder in Attachment A of this Public Notice, and (2) the total number of bidding units associated with those construction permits does not exceed its current eligibility. A bidder cannot increase its eligibility during the auction; it can only maintain its eligibility or decrease its eligibility. Thus, 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 winning bids) in any single round, and submit an upfront payment amount covering that total number of bidding units. We request 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>
MM-AM84-26	Oregon 1 - Deschutes River Woods	2,500	\$2,500
MM-AM84-130	Idaho 1 - Kuna	5,000	\$5,000

If a bidder wishes to bid on both construction permits in a round, each construction permit must be designated for that bidder in Attachment A of this Public Notice, and that bidder must have purchased at least 7,500 bidding units (2,500 + 5,000) of bidding eligibility. If it only wishes to bid on one, but not both, purchasing 5,000 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 2,500 bidding units, the bidder would have enough eligibility for the Oregon 1 construction permit but not for the Idaho 1 construction permit.

Please note that this example does not take into consideration the activity rule, which is explained below.

## **2. Activity Rule**

21. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. We propose a single stage auction with the following activity requirement: In each round of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on 100 percent of its bidding eligibility. A bidder's activity in a round will be the sum of the bidding units associated with any construction permits upon which it places bids during the current round and the

<sup>17</sup> See *Part 1 Order*, 12 FCC Rcd at 5697-98 ¶ 16. See also *Part 1 Third Report and Order*, 13 FCC Rcd at 425 ¶ 86; *Second Report and Order*, 9 FCC Rcd at 2377-79 ¶¶ 169-75.

<sup>18</sup> See *Second Report and Order*, 9 FCC Rcd at 2377-79 ¶¶ 169-76.

bidding units associated with any construction permits for which it holds provisionally winning bids. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.<sup>19</sup> We seek comment on this proposal.

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

22. When a bidder's eligibility in the current round is below the required minimum level, it may preserve its current level of eligibility through an activity rule waiver. 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 principally a mechanism for a bidder to avoid the loss of bidding eligibility in the event that exigent circumstances prevent it from bidding in a particular round.

23. The FCC Auction System assumes 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 waivers 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.

24. 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 System. In this case, the bidder's eligibility is permanently reduced to bring it into compliance with the activity rule described above. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility, even if the round has not yet closed.

25. Under the proposed simultaneous stopping rule, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity rule waiver (using the "apply waiver" function in the FCC Auction System) during a bidding round in which no bids are 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 System in a round in which there are no new bids, withdrawals (if bid withdrawals are permitted in this auction), or proactive waivers will not keep the auction open. A bidder cannot apply a proactive waiver after bidding in a round, and applying a proactive waiver will preclude it from placing any bids in that round.<sup>20</sup> Applying a waiver is irreversible; once a proactive waiver is submitted, it cannot be unsubmitted, even if the round has not yet closed.

26. Consistent with recent FCC spectrum auctions, the Bureaus propose that each bidder in Auction 84 be provided with three activity rule waivers that may be used as set forth above at the bidder's discretion during the course of the auction. The Bureaus seek comment on this proposal.

### **4. Reserve Price or Minimum Opening Bids**

27. Consistent with the statutory mandate of section 309(j),<sup>21</sup> the Commission has directed the Bureaus to seek comment on the use of a minimum opening bid amount and/or reserve price prior to the start of each auction.<sup>22</sup>

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<sup>19</sup> See Section VI.B.3. "Activity Rule Waivers and Reducing Eligibility," above.

<sup>20</sup> In general, once a bidder places a proactive waiver during a round, the FCC Auction System does not allow the bidder to take any other bidding-related action in that round, including placing bids or withdrawing bids (if bid withdrawals are permitted in this auction).

<sup>21</sup> 47 U.S.C. § 309(j)(4)(F). See also 47 C.F.R. § 1.2104(c), (d).



28. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. 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. It is possible for the minimum opening bid and the reserve price to be the same amount.

29. The Bureaus propose to establish minimum opening bid amounts for Auction 84. The Bureaus believe that a minimum opening bid amount, which has been used in other broadcast auctions, is an effective bidding tool for accelerating the competitive bidding process.<sup>23</sup> The Bureaus do not propose to establish separate reserve prices for the construction permits to be offered in Auction 84.

30. For Auction 84, the Bureaus propose minimum opening bid amounts 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. Attachment A to this Public Notice lists a proposed minimum opening bid amount for each construction permit available in Auction 84. The Bureaus seek comment on the minimum opening bid amounts specified in Attachment A.

31. If commenters believe that these minimum opening bid amounts will result in unsold construction permits, 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. We ask commenters to support their claims with valuation analyses and suggested amounts or formulas for reserve prices or minimum opening bids. In establishing the minimum opening bid amounts, we particularly seek comment on factors that could reasonably have an impact on valuation of the broadcast spectrum, including the type of service and class of facility offered, market size, population covered by the proposed AM broadcast facility and any other relevant factors.

## 5. Bid Amounts

32. We propose that, in each round, an eligible bidder will be able to place a bid on a given construction permit in any of up to nine different amounts.<sup>24</sup> Under this proposal, the FCC Auction System interface will list the acceptable bid amounts for each construction permit.<sup>25</sup>

33. 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. After there is a provisionally winning bid for a construction permit, the minimum acceptable bid amount will be a certain percentage higher. That is, the FCC will calculate the minimum acceptable bid amount by multiplying the provisionally winning bid amount times one plus the minimum acceptable bid percentage. If, for example, the minimum acceptable bid percentage is 10 percent, the minimum acceptable bid amount will equal (provisionally winning bid amount) \* (1.10), rounded.<sup>26</sup> If bid withdrawals are permitted in this

(Continued from previous page)

<sup>22</sup> *Broadcast First Report and Order*, 13 FCC Rcd at 15971 ¶ 134; *Part 1 Third Report and Order*, 13 FCC Rcd at 454-56 ¶ 139-41. See 47 C.F.R. § 1.2104(c), (d).

<sup>23</sup> See, e.g., Auction of FM Broadcast Construction Permits Scheduled For March 27, 2012; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction 93, *Public Notice*, DA 11-1845, 26 FCC Rcd 15484, 15518 ¶ 132 (MB/WTB 2011).

<sup>24</sup> Bidders must have sufficient eligibility to place a bid on the particular construction permit. See Section VI.B.1. "Upfront Payments and Bidding Eligibility," above.

<sup>25</sup> In the event of duplicate bid amounts due to rounding, the FCC Auction System will omit the duplicates and will list fewer than nine acceptable bid amounts for the construction permit.

<sup>26</sup> Results are rounded using the Commission's standard rounding procedure for auctions: 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.

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>27</sup>

34. The FCC will calculate the eight additional bid amounts using the minimum acceptable bid amount and a bid increment percentage, which need not be the same as the percentage used to calculate the minimum acceptable bid amount. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded. If, for example, the bid increment percentage is 5 percent, the calculation is (minimum acceptable bid amount) \* (1 + 0.05), rounded, or (minimum acceptable bid amount) \* 1.05, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) \* 1.10, rounded; etc. The Bureaus will round the results using the Commission's standard rounding procedures for auctions.<sup>28</sup>

35. For Auction 84, the Bureaus propose to use a minimum acceptable bid percentage of 10 percent. This means that the minimum acceptable bid amount for a construction permit will be approximately 10 percent greater than the provisionally winning bid amount for the construction permit. To calculate the additional acceptable bid amounts, the Bureaus propose to use a bid increment percentage of 5 percent. The Bureaus seek comment on these proposals.

36. The Bureaus retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the bid increment percentage, and the number of acceptable bid amounts if the Bureaus determine that circumstances so dictate. Further, the Bureaus retain the discretion to do so on a construction permit-by-construction permit basis. The Bureaus also 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, the Bureaus could set a \$10,000 limit on increases in minimum acceptable bid amounts over provisionally winning bids. Thus, if calculating a minimum acceptable bid using the minimum acceptable bid percentage results in a minimum acceptable bid amount that is \$12,000 higher than the provisionally winning bid on a construction permit, the minimum acceptable bid amount would instead be capped at \$10,000 above the provisionally winning bid. We seek comment on the circumstances under which the Bureaus should employ such a limit, factors the Bureaus 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 System during the auction.

## **6. Provisionally Winning Bids**

37. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round. At the end of a bidding round, the FCC Auction System determines a provisionally winning bid for each construction permit based on the highest bid amount received. If identical high bid amounts are submitted on a construction permit in any given round (i.e., tied bids), the FCC Auction System will use a random number generator to select a single provisionally winning bid from among the tied bids. (The Auction System assigns a random number to each bid when the bid is entered. The tied bid with the highest random number wins the tiebreaker.) 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.

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<sup>27</sup> See Section VI.B.7. "Bid Removal and Bid Withdrawal," below.

<sup>28</sup> See note 26 (concerning rounding), above.

38. A provisionally winning bid will be retained until there is a higher bid on the construction permit at the close of a subsequent round, unless the provisionally winning bid is withdrawn (if bid withdrawals are permitted in this auction). We remind bidders that provisionally winning bids count toward activity for purposes of the activity rule.<sup>29</sup>

## **7. Bid Removal and Bid Withdrawal**

39. For Auction 84, the Bureaus propose the following bid removal procedures. Before the close of a bidding round, a bidder has the option of removing any bid placed in that round. By removing a selected bid in the FCC Auction System, a bidder may effectively “unsubmit” any bid placed within that round. 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. We seek comment on this bid removal proposal.

40. The Bureaus also seek comment on whether bid withdrawals should be permitted in Auction 84. 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 may withdraw its provisionally winning bids using the “withdraw bids” function in the FCC Auction System. A bidder that withdraws its provisionally winning bid(s), if permitted, is subject to the bid withdrawal payment provisions of the Commission rules.<sup>30</sup>

41. The Commission has recognized that bid withdrawals may be a helpful tool for bidders seeking to efficiently aggregate licenses or implement backup strategies in certain auctions.<sup>31</sup> The stand-alone nature of AM facilities, however, suggest that it is not necessary for bidders to aggregate facilities being offered in the same auction in order to realize full value from those facilities, or to put the spectrum to effective and efficient use.

42. Based on the nature of the permits being offered and on our experience with past auctions of broadcast construction permits, we propose to prohibit bidders from withdrawing any bids after the close of the round in which bids were placed. We make this proposal in light of the site- and applicant-specific nature and wide geographic dispersion of the permits available in this closed auction, which suggests that potential applicants for this auction will have limited opportunity to aggregate construction permits through the auction process (as compared with bidders in many auctions of wireless licenses) because of the pre-established closed MX groups. Thus, we believe that it is unlikely that bidders will have a need to withdraw bids in this auction. We also remain mindful that bid withdrawals, particularly those made late in this auction, could result in delays in licensing new AM stations and attendant delays in the offering of new broadcast service to the public. We seek comment on our proposal to prohibit bid withdrawals.

### **C. Post-Auction Payments**

#### **1. Interim Withdrawal Payment Percentage**

43. In the event the Bureaus allow bid withdrawals in Auction 84, we propose the interim bid withdrawal payment be 20 percent of the withdrawn bid. A bidder that withdraws a 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>32</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 FCC 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

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<sup>29</sup> See Section VI.B.2. “Activity Rule,” above.

<sup>30</sup> 47 C.F.R. §§ 1.2104(g), 1.2109.

<sup>31</sup> See *Part 1 Third Report and Order*, 13 FCC Rcd at 458-60 ¶ 148-50.

<sup>32</sup> 47 C.F.R. § 1.2104(g)(1).

cannot yet be calculated, the FCC 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>33</sup>

44. The amount of the interim bid withdrawal payment may range from three percent to twenty percent of the withdrawn bid amount, with the percentage generally being higher where there is greater risk of bid withdrawals being used for anti-competitive purposes, such as when there is little need for bidders to aggregate permits. As discussed above, this is the case in Auction 84. In light of these considerations, the Bureaus propose to use the maximum interim bid withdrawal payment percentage allowed by section 1.2104(g)(1) in the event bid withdrawals are allowed. The Bureaus request comment on using twenty percent for calculating an interim bid withdrawal payment amount in Auction 84. Commenters advocating the use of bid withdrawals should also address the percentage of the interim bid withdrawal payment.

## 2. Additional Default Payment Percentage

45. Any winning bidder that defaults or is disqualified after the close of an auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full and timely final payment, or is otherwise disqualified) is liable for a default payment under 47 C.F.R. § 1.2104(g)(2). This payment consists of a deficiency payment, equal to the difference between the amount of the Auction 84 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.

46. The Commission's rules provide that, in advance of each auction, it will establish a percentage between three percent and twenty percent of the applicable bid to be assessed as an additional default payment.<sup>34</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>35</sup>

47. For Auction 84, we propose to establish an additional default payment of twenty percent. As noted in the *CSEA/Part 1 Report and Order*, defaults weaken the integrity of the auction process and may impede the deployment of service to the public, and an additional twenty percent default payment will be more effective in deterring defaults than the three percent used in some earlier auctions.<sup>36</sup> In light of these considerations, the Bureaus propose for Auction 84 an additional default payment of twenty percent of the relevant bid. Moreover, a twenty percent additional default payment amount is consistent with the percentage used in recent auctions of FM permits.<sup>37</sup> The Bureaus seek comment on this proposal.

## VII. DEADLINES AND FILING PROCEDURES

48. Comments are due on or before December 6, 2013, and reply comments are due on or before December 20, 2013. All filings related to procedures for Auction 84 must refer to AU Docket No. 13-268. Comments may be submitted using the Commission's Electronic Comment Filing System ("ECFS") or by filing paper copies.<sup>38</sup> We strongly encourage interested parties to file comments electronically.

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<sup>33</sup> *Id.*

<sup>34</sup> *See* 47 C.F.R. § 1.2104(g)(2).

<sup>35</sup> *See* 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*, FCC 06-4, 21 FCC Rcd 891, 903-04 ¶¶ 30-31 (2006).

<sup>36</sup> *Id.*, 21 FCC Rcd at 902-03 ¶ 29.

<sup>37</sup> *See, e.g.*, "Auction of FM Broadcast Construction Permits Scheduled for March 27, 2012; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 93," AU Docket No. 11-146, *Public Notice*, DA 11-1845, 26 FCC Rcd 15484, 15522-23 ¶¶ 159-60 (WTB/MB 2011) (setting additional default payment for Auction 93 permits at twenty percent of the applicable bid.)

<sup>38</sup> *See* Electronic Filing of Documents in Rulemaking Proceedings, GC Docket No. 97-113, *Report and Order*, FCC (continued....)

49. *Electronic Filers*: Comments may be filed electronically using the Internet by accessing the ECFS at <http://www.fcc.gov/cgb/ecfs>. Filers should follow the instructions provided on the website for submitting comments. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number, AU Docket No. 13-268. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message: “get form.” A sample form and directions will be sent in response.

50. *Paper Filers*: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, 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 Attn: WTB/ASAD, Office of the Secretary, Federal Communications Commission.

- The Commission’s contractor will receive hand-delivered or messenger-delivered paper filings for the Commission’s Secretary at the FCC Headquarters building located at 445 12<sup>th</sup> Street, SW, Room TW-A325, Washington, DC 20554. The filing hours at this location are 8:00 a.m. to 7:00 p.m. Eastern Time (ET). All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

51. *Auction 84 E-mail Box*: We also request that a copy of all comments and reply comments be submitted electronically to the following address: [auction84@fcc.gov](mailto:auction84@fcc.gov).

52. Copies of comments and reply comments will be available for public inspection between 8:00 a.m. and 4:30 p.m. ET Monday through Thursday, or 8:00 a.m. to 11:30 a.m. ET on Fridays, in the FCC Reference Information Center, Room CY-A257, 445 12th Street, SW, Washington, DC 20554, and will also be accessible through the search function on the ECFS web page at <http://www.fcc.gov/cgb/ecfs>.

53. This proceeding has been designated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>39</sup> 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 arguments presented is generally required. Other provisions 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.<sup>40</sup>

54. To request materials in accessible formats (Braille, large print, electronic files, audio format) for people with disabilities, send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Government Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

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98-56, 13 FCC Rcd 11322 (1998).

<sup>39</sup> 47 C.F.R. §§ 1.1200(a), 1.1206.

<sup>40</sup> The Commission substantially revised its *ex parte* rules in 2011. These rules require for example, that an *ex parte* notice must be filed for each oral *ex parte* presentation, not just for those presentations that involve new information or arguments not already in the record. Further, a filer typically must submit an *ex parte* notice electronically in machine-readable format. A filer may not submit a PDF image created by scanning a paper document, except in a situation in which a word processing version of the document is not available. See Amendment of the Commission’s *Ex Parte* Rules and Other Procedural Rules, GC Docket No. 10-43, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-11, 26 FCC Rcd 4517 (2011).

## VIII. CONTACTS

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

### **Audio Division, Media Bureau**

For AM service rule questions: Lisa Scanlan or Tom Nessinger at (202) 418-2700

### **Auctions and Spectrum Access Division, Wireless Telecommunications Bureau**

For general auction questions: Jeff Crooks at (202) 418-0660 or Linda Sanderson at (717) 338-2868

For auctions legal questions: Lynne Milne at (202) 418-0660

### **Office of Communications Business Opportunities**

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

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