



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 73

[AU Docket No. 19-290; DA 19-1027]

Auction of FM Broadcast Construction Permits Scheduled for April 28, 2020; Comment Sought on Competitive Bidding Procedures for Auction 106

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; proposed auction procedures.

SUMMARY: The Office of Economics and Analytics (OEA), in conjunction with the Media Bureau (MB), announce an auction of certain FM broadcast construction permits. This public notice also seeks comment on competitive bidding procedures and proposed minimum opening bid amounts for Auction 106.

DATES: Comments are due on or before November 6, 2019, and reply comments are due on or before November 20, 2019. Bidding in Auction 106 is scheduled to begin on April 28, 2020.

ADDRESSES: Interested parties may submit comments in response to the [Auction 106 Comment Public Notice](#), identified by AU Docket No. 19-290, by any of the following methods:

- FCC's Web Site: Federal Communications Commission's Electronic Comment Filing System (ECFS): <http://www.fcc.gov/ecfs/>. Follow the instructions for submitting comments.
- Mail: FCC Headquarters, 445 12th Street SW, Room TW-A325, Washington, DC 20554.
- People with Disabilities: Contact the Consumer & Governmental Affairs Bureau to request reasonable accommodations (accessible format documents (braille, large print, electronic files, audio format), sign language interpreters, CART, etc.) by email to FCC504@fcc.gov or call 202-418-0530 (voice), 202-418-0432 (TTY).

For detailed instructions for submitting comments, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For auction legal questions, Lynne Milne in the OEA

Auctions Division at (202) 418-0660. For general auction questions, the Auctions Hotline at (717) 338-2868. For FM service questions, Lisa Scanlan, Tom Nessinger or James Bradshaw in the MB Audio Division at (202) 418-2700.

SUPPLEMENTARY INFORMATION: This is a summary of the Auction 106 Comment Public Notice, released October 10, 2019. The complete text of this document, including attachment, is available for public inspection and copying from 8 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW, Room CY-A257, Washington, DC 20554. The Auction 106 Comment Public Notice and related documents also are available on the Internet at the Commission's website: www.fcc.gov/auction/106, or by using the search function for AU Docket No. 19-290 on the Commission's ECFS web page at www.fcc.gov/ecfs.

All filings in response to the Auction 106 Comment Public Notice must refer to AU Docket No. 19-290. Interested parties are strongly encouraged to file comments electronically, and to submit electronically an additional copy of all comments and reply comments to the following address: auction106@fcc.gov.

Electronic Filers: Comments may be filed electronically using the Internet by accessing ECFS: www.fcc.gov/ecfs. Follow the instructions for submitting comments.

Paper Filers: Parties who choose to file by paper must file an original and one copy 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, Office of the Secretary, Federal Communications Commission (FCC). All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to the FCC Headquarters at 445 12th Street SW, Room TW-A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. ET. All hand deliveries must be held together with rubber bands or fasteners. Any envelope or box 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 9050 Junction Drive, Annapolis Junction, MD 20701.

U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

I. CONSTRUCTION PERMITS IN AUCTION 106

1. Auction 106 will offer 130 construction permits in the FM broadcast service for 130 FM allotments, including 34 construction permits that were offered but not sold or were defaulted upon in prior auctions. Attachment A of the [Auction 106 Comment Public Notice](#) lists these specific vacant FM allotments added to the Table of FM Allotments, 47 CFR 73.202(b), and assigned at the indicated communities. Attachment A also lists the reference coordinates for each vacant FM allotment. Each Auction 106 applicant may submit in its short-form application (FCC Form 175) a set of preferred site coordinates for any of its selected construction permits as an alternative to the reference coordinates for that vacant FM allotment.

2. Under established Commission policies, an applicant may apply for any vacant FM allotment listed in Attachment A. If two or more FCC Forms 175 specify the same FM allotment, they will be considered mutually exclusive, and the construction permit for that FM allotment will be awarded by competitive bidding procedures. Once mutual exclusivity exists for auction purposes, even if only one applicant is qualified to bid for a particular construction permit in Auction 106, that applicant is required to submit a bid in order to obtain the construction permit.

II. PROPOSED BIDDING PROCEDURES

3. *Simultaneous Multiple Round Auction Design.* This public notice proposes to auction all construction permits included in Auction 106 using the Commission's standard simultaneous multiple-round auction format. This type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which qualified bidders may place bids on individual construction permits. Typically, bidding remains open on all construction permits until bidding stops on every construction permit. OEA and MB seek comment on this proposal.

4. *Bidding Rounds.* The Commission will conduct Auction 106 over the Internet using the FCC auction bidding system. Bidders will also have the option of placing bids by telephone through a

dedicated auction bidder line.

5. Auction 106 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 bidding.

6. OEA and MB seek comment on the proposal to retain the discretion to adjust the initial bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and change their bidding strategies. Under this proposal, such adjustments may include the amount of time for bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors. 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 requirement or bid amount parameters, or by using other means.

7. *Stopping Rule.* To complete bidding in the auction within a reasonable time, pursuant to 47 CFR 1.2104(e), it is proposed to employ a simultaneous stopping rule approach for Auction 106, which means all construction permits remain available for bidding until bidding stops on every construction permit. Specifically, bidding would close on all construction permits after the first round in which no bidder submits any new bid, applies a proactive waiver, or, if bid withdrawals are permitted in this auction, withdraws any provisionally winning bid which is a bid that would become a final winning bid if the auction were to close in that given round. Thus, under the proposed simultaneous stopping rule, bidding would 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.

8. Further, the following stopping options are proposed as alternatives during Auction 106. (1) The auction would close 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 bid 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. (2) The auction would close 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 bid on a construction permit that is not FCC held, a construction permit that does not already have a provisionally winning bid. Thus, absent any other bidding activity, a bidder placing a new bid on an FCC-held construction permit would not keep the auction open under this modified stopping rule. (3) Use a modified version of the simultaneous stopping rule that combines options (1) and (2) above. (4) The auction would close after a specified number of additional rounds to be announced in advance in the FCC auction bidding system. If this special stopping rule is invoked, bids are accepted in the specified final round(s), after which the auction would close. (5) The auction would remain open even if no bidder places any new bid, applies a waiver, or withdraws any provisionally winning bid (if withdrawals are permitted in this auction). In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

9. These options would be exercised 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, it is likely that there will be an attempt to change the pace of the auction by changing the number of bidding rounds per day or the minimum acceptable bids. OEA and MB propose to retain the discretion to exercise any of these options with or without prior announcement during the auction. OEA and MB seek comment on these proposals. Commenters should provide specific reasons for supporting or objecting to these proposals.

10. *Information Relating to Auction Delay, Suspension or Cancellation.* Pursuant to 47 CFR 1.2104(i), OEA and MB may delay, suspend, or cancel bidding in the auction in the event of a natural disaster, technical obstacle, network interruption, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and

efficient conduct of competitive bidding. Auction 106 participants will be notified of any such delay, suspension or cancellation by public notice or through the FCC auction bidding system's messages function. If bidding is delayed or suspended, OEA and MB may, in their 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. OEA and MB will exercise this authority solely at their discretion, and not as a substitute for situations in which bidders may wish to apply activity rule waivers. OEA and MB seek comment on these proposals.

11. *Upfront Payments and Bidding Eligibility.* As specified in 47 CFR 1.2106, it is proposed that applicants be required to submit upfront payments as a prerequisite to becoming qualified to bid. Upfront payments are refundable deposits that are related to the specific construction permits being auctioned and 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 bidding.

12. OEA and MB seek comment on the upfront payment amounts proposed in Attachment A of the Auction 106 Comment Public Notice, which were developed by taking into account such factors as the efficiency of the auction process and the potential value of similar construction permits.

13. OEA and MB request comment on the proposal that the amount of the upfront payment submitted by a bidder will determine its initial bidding eligibility in bidding units. Under this proposal, each construction permit will be assigned a specific number of bidding units, equal to one bidding unit per dollar of the upfront payment listed in Attachment A of the Auction 106 Comment Public Notice. The number of bidding units for a given construction permit is fixed and does not change during the auction as prices change. If an applicant is found to be qualified to bid on more than one permit in Auction 106, such a bidder may place bids on multiple construction permits, provided that the total number of bidding units associated with those construction permits does not exceed the bidder's 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.

14. *Activity Rule.* 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. 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 bidding units associated with any construction permits for which it holds provisionally winning bids. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. OEA and MB request comment on the proposal for a single stage auction with the following activity requirement: In each bidding round, a bidder desiring to maintain its current bidding eligibility is required to be active on 100% of its bidding eligibility. Thus, the activity requirement would be satisfied when a bidder has bidding activity on construction permits with bidding units that total 100% of its current eligibility in the round. If the activity rule is met, then the bidder's eligibility does not change in the next round. Failure to maintain the requisite activity level would 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. Commenters that oppose a 100% activity requirement are encouraged to explain their reasons with specificity.

15. *Activity Rule Waivers and Reducing Eligibility.* When a bidder's activity in the current round is below the required minimum level, it may preserve its current level of eligibility through an activity rule waiver, if available. 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.

16. The FCC auction bidding system will assume that a bidder that does not meet the activity requirement would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a

bidder's activity is below the minimum required unless: (1) the bidder has no activity rule waiver remaining or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the activity requirement. If a bidder has no waiver 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.

17. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC auction bidding system. In this case, the bidder's eligibility would be permanently reduced to bring it into compliance with the specified activity requirement. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder cannot regain its lost bidding eligibility.

18. Under the proposed simultaneous stopping rule, a bidder would be permitted to apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity rule waiver (using the proactive waiver function in the FCC auction bidding system) during a bidding round in which no bid is placed or withdrawn (if bid withdrawals are permitted in this auction), the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC auction bidding system in a round in which there is no new bid, no bid withdrawal (if bid withdrawals are permitted in this auction), and no proactive waiver will not keep the auction open. Comment is requested on the proposal that each bidder in Auction 106 be provided with three activity rule waivers that may be used at the bidder's discretion during the course of the auction.

19. *Reserve Price or Minimum Opening Bids.* Normally, a reserve price is an absolute minimum price below which a construction permit or license will not be sold in a given auction. See 47 CFR 1.2104(c). OEA and MB propose to establish no separate reserve prices for the Auction 106 construction permits offered in Auction 106.

20. A minimum opening bid is the minimum bid price set at the beginning of the auction

below which no bids are accepted. See 47 CFR 1.2104(d). Attachment A of the Auction 106 Comment Public Notice lists a proposed minimum opening bid amount for each construction permit offered in Auction 106. These minimum opening bid amounts for Auction 106 were determined by taking into account the type of service and class of facility offered, market size, population covered by the proposed broadcast facility, and recent broadcast transaction data, to the extent such information is available. Consistent with 47 U.S.C. 309(j)(4)(f), OEA and MB seek comment on the minimum opening bid amounts specified in Attachment A of the Auction 106 Comment Public Notice.

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

22. *Bid Amounts.* If the bidder has sufficient eligibility to place a bid on a particular construction permit in a round, a qualified bidder will be able to place a bid on that construction permit in any of up to nine different amounts. Under this proposal, the FCC auction bidding system interface will list the acceptable bid amounts for each construction permit.

23. 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 equal to the amount of the provisionally winning bid plus a specified percentage of that bid amount. The percentage used for this calculation, the minimum acceptable bid increment percentage, is multiplied by the provisionally winning bid amount, and the resulting amount is added to the provisionally winning bid amount. If, for example, the minimum acceptable bid increment percentage is 10%, then the provisionally winning bid amount is multiplied by 10%. The result of that calculation is added to the provisionally winning bid amount, and that sum is rounded using the Commission's standard rounding procedure for auctions, as described in this public notice. If bid withdrawals are permitted in this auction, in the case of a construction permit for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the construction permit.

24. The FCC will calculate the eight additional bid amounts using the minimum acceptable bid amount and an additional bid increment percentage. The minimum acceptable bid amount is multiplied by the additional bid increment percentage, and that result, rounded, is the additional increment amount. The first additional acceptable bid amount equals the minimum acceptable bid amount plus the additional increment amount. The second additional acceptable bid amount equals the minimum acceptable bid amount plus two times the additional increment amount; the third additional acceptable bid amount is the minimum acceptable bid amount plus three times the additional increment amount; etc. If, for example, the additional bid increment percentage is 5%, then the calculation of the additional increment amount would be (minimum acceptable bid amount) * (0.05), rounded. The first additional acceptable bid amount equals (minimum acceptable bid amount) + (additional increment amount); the second additional acceptable bid amount equals (minimum acceptable bid amount) + (2 *(additional increment amount)); the third additional acceptable bid amount equals (minimum acceptable bid amount) + (3 *(additional increment amount)); etc. The results then will be rounded using the Commission's standard rounding procedures for auctions.

25. For Auction 106, the proposal is to use a minimum acceptable bid increment percentage of 10%. This means that the minimum acceptable bid amount for a construction permit will be

approximately 10% greater than the provisionally winning bid amount for the construction permit. To calculate the additional acceptable bid amounts, an additional bid increment percentage of 5% is proposed. OEA and MB seek comment on these proposals.

26. OEA and MB propose to retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid increment percentage, the additional bid increment percentage, and the number of acceptable bid amounts if circumstances so dictate. Further, OEA and MB propose to retain the discretion to do so on a construction-permit-by-construction-permit basis. OEA and MB also propose to retain the discretion to limit: (a) the amount by which a minimum acceptable bid for a construction permit may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, a \$1,000 limit could be set on increases in minimum acceptable bid amounts over provisionally winning bids. In this example, if calculating a minimum acceptable bid using the minimum acceptable bid increment percentage results in a minimum acceptable bid amount that is \$1,200 higher than the provisionally winning bid on a construction permit, the minimum acceptable bid amount would instead be capped at \$1,000 above the provisionally winning bid. OEA and MB seek comment on the circumstances under which such a limit should be employed, factors to be considered 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 OEA and MB exercise this discretion, they will alert bidders by announcement in the FCC auction bidding system during the auction.

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

28. *Provisionally Winning Bids.* At the end of each bidding round, the bidding system will

determine a provisionally winning bid for each construction permit based on the highest bid amount received for that permit. The FCC auction bidding system will advise bidders of the status of their bids when round results are released. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round, unless the provisionally winning bid is withdrawn (if bid withdrawals are permitted in this auction). Provisionally winning bids at the end of the auction become the winning bids.

29. The FCC auction bidding system assigns a pseudo-random number generated by an algorithm to each bid when the bid is entered. If identical high bid amounts are submitted on a construction permit in any given round (i.e., tied bids), the FCC auction bidding system will use a pseudo-random number generator to select a single provisionally winning bid from among the tied bids. The tied bid with the highest pseudo-random number wins the tiebreaker and becomes the provisionally winning bid. The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to close 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.

30. *Bid Removal.* The FCC auction bidding system allows each bidder to remove any of the bids it placed in a round before the close of that round. By removing a bid placed within a round, a bidder effectively unsubmitted the bid. 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.

31. *Bid Withdrawal.* When permitted in an auction, bid withdrawals provide a bidder with the option of withdrawing a bid placed in a prior round that has become a provisionally winning bid. A bidder that withdraws its provisionally winning bid(s), if permitted in this auction, is subject to the bid withdrawal payment provisions of 47 CFR 1.2104(g) and 1.2109.

32. 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. The

Commission has also acknowledged that allowing bid withdrawals may encourage insincere bidding or increased opportunities for anti-competitive bidding in certain circumstances. The Commission encouraged assertive exercise of discretion, including limiting the number of rounds in which bidders may withdraw bids, and preventing bidders from bidding on a particular market if a bidder is found to be abusing the Commission's bid withdrawal procedures. In managing the auction, therefore, OEA and MB may limit the number of withdrawals to prevent bidding abuses.

33. Based on this guidance and on experiences with past auctions of FM broadcast construction permits, the public notice proposes to prohibit bidders from withdrawing any bid after the close of the round in which that bid was placed. This proposal is made in light of the site-specific nature and wide geographic dispersion of the permits available in this auction, which suggests that potential applicants for this auction may have fewer incentives to aggregate permits through the auction process (as compared with bidders in many auctions of wireless licenses). Thus, it is unlikely that bidders will have a need to withdraw bids in this auction. Also, bid withdrawals, particularly if they were made late in this auction, could result in delays in licensing new FM stations and attendant delays in the offering of new broadcast service to the public. OEA and MB seek comment on this proposal to prohibit bid withdrawals in Auction 106. Commenters advocating alternative approaches should support their arguments by taking into account the construction permits offered, the impact on auction dynamics and the pricing mechanism, and the effects on the bidding strategies of other bidders.

34. *Interim Withdrawal Payment Percentage.* If bid withdrawals are permitted in Auction 106, OEA and MB propose the interim bid withdrawal payment be 20% of the withdrawn bid. In accordance with 47 CFR 1.2104(g)(1), 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. 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. When that final withdrawal payment 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.

35. The amount of the interim bid withdrawal payment is established in advance of bidding in each auction and may range from 3% to 20% of the withdrawn bid amount. The Commission has determined that the level of interim withdrawal payment in a particular auction will be based on the nature of the service and the inventory of the licenses being offered. The Commission noted specifically that a higher interim withdrawal payment percentage is warranted to deter the anti-competitive use of withdrawals when, for example, bidders will not need to aggregate the licenses being offered in the auction or when there are few synergies to be captured by combining licenses. In light of these considerations with respect to the construction permits being offered in this auction, this public notice proposes to use the maximum interim bid withdrawal payment percentage permitted by section 1.2104(g)(1) in the event bid withdrawals are allowed in this auction. OEA and MB request comment on using 20% of the withdrawn bid for calculating an interim bid withdrawal payment amount in Auction 106. Commenters advocating the use of bid withdrawals should also address the interim bid withdrawal payment percentage.

36. *Additional Default Payment Percentage.* Any winning bidder that defaults or is disqualified after the close of an auction (i.e., fails to remit the required down payment by the specified deadline, fails to make a full and timely final payment, whose long-form application is not granted for any reason or is otherwise disqualified) is liable for a default payment under 47 CFR 1.2104(g)(2). This default payment consists of a deficiency payment equal to the difference between the amount of the Auction 106 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.

37. Based on the nature of the FM service and the construction permits being offered, an additional default payment of 20% of the relevant bid is proposed for Auction 106, which is consistent with the percentage in recent auctions of FM construction permits. Defaults weaken the integrity of the

auction process and may impede the deployment of service to the public, and an additional 20% default payment will be more effective in deterring defaults than the 3% used in some earlier auctions. In light of these considerations, OEA and MB seek comment on the proposal to use for Auction 106 an additional default payment of 20% of the relevant bid.

III. PROCEDURAL MATTERS

38. *Paperwork Reduction Act.* The Office of Management and Budget (OMB) has approved the information collections in the application to participate in an FCC auction, FCC Form 175. OMB Control No. 3060-0600. This public notice proposes no new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. Therefore, it also does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198. See 44 U.S.C. 3506(c)(4).

39. *Ex Parte Rules.* This proceeding has been designated as a permit but disclose proceeding in accordance with the Commission's ex parte rules. Participants in this proceeding should familiarize themselves with the Commission's ex parte rules, especially 47 CFR 1.1200(a) and 1.1206.

IV. SUPPLEMENTAL INITIAL REGULATORY FLEXIBILITY ANALYSIS

40. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), 5 U.S.C. 601-612, the Commission prepared Initial Regulatory Flexibility Analyses (IRFAs) in connection with the Broadcast Competitive Bidding Notice of Proposed Rulemaking (NPRM), and other Commission NPRMs (collectively, Competitive Bidding NPRMs) pursuant to which Auction 106 will be conducted. Final Regulatory Flexibility Analyses (FRFAs) likewise were prepared in the Broadcast Competitive Bidding Order and other Commission rulemaking orders (collectively, Competitive Bidding Orders) pursuant to which Auction 106 will be conducted. The Office of Economics and Analytics (OEA), in conjunction with the Media Bureau (MB), has prepared this Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) of the possible significant economic impact on a substantial number of small entities of the policies and rules proposed in this public notice, to supplement the Commission's

Initial and Final Regulatory Flexibility Analyses completed in the Broadcast Competitive Bidding Order and other Commission orders pursuant to which Auction 106 will be conducted. Written public comments are requested on this Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be filed by the same filing deadlines for comments specified on the first page of the Auction 106 Comment Public Notice. The Commission will send a copy of the public notice, including this Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). 5 U.S.C. 603(a).

41. *Need for, and Objectives of, the Public Notice.* The proposed procedures for the conduct of Auction 106 as described in the Auction 106 Comment Public Notice would constitute the more specific implementation of the competitive bidding rules contemplated by 47 CFR parts 1 and 73, adopted by the Commission in multiple notice-and-comment rulemaking proceedings, including the Commission's establishing in the underlying rulemaking orders additional procedures to be used on delegated authority. More specifically, the Auction 106 Comment Public Notice seeks comment on proposed procedures, terms and conditions governing Auction 106 and the post-auction application and payment processes, as well as seeking comment on the minimum opening bid amounts for 130 specified construction permits, and is fully consistent with the underlying rulemaking orders, including the Broadcast Competitive Bidding Order and other relevant competitive bidding orders.

42. Consistent with 47 U.S.C. 309(j)(3)(E)(i), the Auction 106 Comment Public Notice is intended to provide notice of proposed auction procedures and adequate time for Auction 106 applicants to comment on those proposed procedures. To promote the efficient and fair administration of the competitive bidding process for all Auction 106 participants, including small businesses, this public notice seeks comment on the following proposed procedures: (1) use of a simultaneous multiple-round auction format, consisting of sequential bidding rounds with a simultaneous stopping rule (with discretion to exercise alternative stopping rules under certain circumstances); (2) a specific minimum opening bid amount for each construction permit offered in Auction 106; (3) a specific number of bidding units for each construction permit; (4) a specific upfront payment amount for each construction permit; (5)

establishment of a bidder's initial bidding eligibility in bidding units based on that bidder's upfront payment through assignment of a specific number of bidding units for each construction permit; (6) use of a single-stage auction in which a qualified bidder is required to be active on 100% of its bidding eligibility in each bidding round as an activity requirement; (7) provision of three activity rule waivers for each qualified bidder to allow it to preserve eligibility during the course of the auction; (8) use of minimum acceptable bid amounts and additional bid increments, along with a proposed methodology for calculating such amounts, while retaining discretion to change the methodology if circumstances dictate; (9) a procedure for breaking ties if identical high bid amounts are submitted on a construction permit in a given round; (10) whether to permit use of bid withdrawals; (11) establishment of an interim bid withdrawal percentage of 20% of the withdrawn bid in the event bid withdrawals are permitted in Auction 106; and (12) establishment of an additional default payment of 20% under 47 CFR 1.2104(g)(2) in the event that a winning bidder defaults or is disqualified after the auction.

43. *Legal Basis.* The Commission's statutory obligations to small businesses participating in a spectrum auction are found in 47 U.S.C. 309(j)(3)(B) and 309(j)(4)(D). The statutory basis for the Commission's competitive bidding rules is found in 47 U.S.C. 154(i), 301, 303(e), 303(f), 303(r), 304, 307, and 309(j). The Commission has established a framework of competitive bidding rules pursuant to which it has conducted auctions since the inception of the auction program in 1994 and would conduct Auction 106. The Commission has directed that OEA, in conjunction with MB, under delegated authority, seek comment on a variety of auction-specific procedures prior to the start of bidding in each auction.

44. *Description and Estimate of the Number of Small Entities to Which the Proposed Procedures Will Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed procedures, if adopted. 5 U.S.C. 603(b)(3). The RFA generally defines the term small entity as having the same meaning as the terms small business, small organization, and small governmental jurisdiction. 5 U.S.C. 601(6). In addition, the term small business has the same meaning as the term small business concern under the

Small Business Act. 5 U.S.C. 601(3). A small business concern is one which: (1) is independently owned and operated, (2) is not dominant in its field of operation, and (3) satisfies any additional criteria established by the SBA. 15 U.S.C. 632.

45. The specific procedures and minimum opening bid amounts on which comment is sought in the Auction 106 Comment Public Notice will affect directly all applicants participating in Auction 106. The number of entities that may apply to participate in Auction 106 is unknown. Based on the number of applicants in prior FM auctions, we estimate that the number of applicants for Auction 106 may range from approximately 175 to 260. This estimate is based on the number of applicants who filed short-form applications to participate in previous open auctions of FM construction permits held to date, an average of 1.98 short-form applications were filed per construction permit offered, with a median of 1.365 applications per permit. The actual number of applicants for Auction 106 could vary significantly as any individual's or entity's decision to participate may be affected by a number of factors beyond the Commission's control.

46. *Radio Stations.* This U.S. Economic Census category comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in its own studio, from an affiliated network, or from external sources. According to the rulemaking order to assess 2019 annual regulatory fees, Commission staff identified from MB's Consolidated Database System (CDBS) 10,011 licensed radio facilities subject to annual regulatory fees as of October 1, 2018, excluding from this count radio stations exempt from required annual regulatory fees.

47. The SBA has established a small business size standard for this category as firms having \$41.5 million or less in annual receipts. 13 CFR 121.201; NAICS code 51512. Economic Census data from 2012 shows that 2,849 radio station firms operated during that year. Of that number, 2,806 firms operated with annual receipts of less than \$25 million per year, 17 with annual receipts between \$25 million and \$49,999,999 and 26 with annual receipts of \$50 million or more. Therefore, based on the SBA's size standard, the majority of such entities are small entities.

48. According to Commission staff review of the BIA/Kelsey, LLC's Media Access Pro

Radio Database as of September 17, 2019, about 11,033 (or about 99.95%) of 11,039 commercial radio stations had revenues of \$41.5 million or less and thus qualify as small entities under the SBA definition. The SBA size standard data, however, does not enable a meaningful estimate of the number of small entities who may participate in Auction 106.

49. In assessing whether a business entity qualifies as small under the SBA definition, business control affiliations must be included. Business concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both. 13 CFR 121.103(a)(1). The estimate of the number of small entities that might be affected by Auction 106 likely overstates the estimate because the revenue figure on which small business concerns are based does not include or aggregate revenues from affiliated companies. Moreover, the definition of small business also requires that an entity not be dominant in its field of operation and that the entity be independently owned and operated. The estimate of small businesses to which Auction 106 competitive bidding rules may apply does not exclude any radio station from the definition of a small business on these bases and is therefore over-inclusive to that extent. Further, it is not possible at this time to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. In addition, it is difficult to assess these criteria in the context of media entities and therefore estimates of small businesses to which they apply may be over-inclusive to this extent.

50. It also is not possible to accurately develop an estimate of how many of the entities in this auction would be small businesses based on the number of small entities that applied to participate in prior broadcast auctions, because that information is not collected from applicants for broadcast auctions in which bidding credits are not based on an applicant's size (as is the case in auctions of licenses for wireless services).

51. In 2013, the Commission estimated that 97% of radio broadcasters met the SBA's prior definition of small business concern based on annual revenues of \$7 million. The SBA has since increased that revenue threshold to \$41.5 million, which suggests that an even greater percentage of radio broadcasters would fall within the SBA's definition. Based on Commission staff review of BIA/Kelsey,

LLC's Media Access Pro Radio Database, 6,739 (99.91%) of 6,745 FM radio stations have revenue of \$41.5 million or less. Accordingly, based on this data, it is estimated that the majority of Auction 106 applicants would likely meet the SBA's definition of a small business concern.

52. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* The Auction 106 Comment Public Notice proposes no new reporting, recordkeeping, or other compliance requirements for small entities or other auction applicants. The Commission designed the auction application process itself to minimize reporting and compliance requirements for applicants, including small business applicants. To participate in this auction, parties will file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on an applicant's short-form application and certifications, as well as its upfront payment. In the second phase of the auction process, there are additional compliance requirements for winning bidders. Thus, a small business that fails to become a winning bidder does not need to file a long-form application and provide the additional showings and more detailed demonstrations required of a winning bidder.

53. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered.* The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c)(1)-(4).

54. The proposals of the Auction 106 Comment Public Notice to facilitate participation in Auction 106 will result in both operational and administrative cost savings for small entities and other auction participants. In light of the numerous resources that will be available from the Commission at no cost, the processes and procedures proposed for Auction 106 in this public notice should result in minimal

economic impact on small entities. For example, prior to the auction, the Commission will hold a mock auction to allow qualified bidders the opportunity to familiarize themselves with both the bidding processes and systems that will be used in Auction 106. During the auction, participants will be able to access and participate in bidding via the Internet using a web-based system, or telephonically, providing two cost-effective methods of participation and avoiding the cost of travel for in-person participation. Further, small entities as well as other auction participants will be able to avail themselves of a telephone hotline for assistance with auction processes and procedures as well as a telephone technical support hotline to assist with issues such as access to or navigation within the electronic FCC Form 175 and use of the FCC's auction system. In addition, all auction participants, including small business entities, will have access to various other sources of information and databases through the Commission that will aid in both their understanding of and participation in the process. These mechanisms are made available to facilitate participation in Auction 106 by all qualified bidders and may result in significant cost savings for small business entities that utilize these mechanisms. These steps, coupled with the advance description of the bidding procedures in Auction 106, should ensure that the auction will be administered efficiently and fairly, thus providing certainty for small entities as well as other auction participants.

55. *Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules.* None.
Federal Communications Commission.

William Huber,

Associate Chief, Auctions Division, Office of Economics and Analytics.

[FR Doc. 2019-24227 Filed: 11/4/2019 8:45 am; Publication Date: 11/5/2019]