

EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

**DATES:** Comments must be submitted on or before October 30, 2006.

**Availability:** The proposed settlement is available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed settlement may be obtained from Bethany Dreyfus, Assistant Regional Counsel (ORC-3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Comments should reference "Environmental Education Center, South Bay Asbestos Area Superfund Site," and "Docket No. R9-2006-14".

**FOR FURTHER INFORMATION CONTACT:** Bethany Dreyfus, Assistant Regional Counsel (ORC-3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; e-mail: [dreyfus.bethany@epa.gov](mailto:dreyfus.bethany@epa.gov); phone: (415) 972-3886.

Dated: September 5, 2006.

**E. Adams,**

*Acting Director, Superfund Division, U.S. EPA, Region IX.*

[FR Doc. E6-15977 Filed 9-27-06; 8:45 am]

**BILLING CODE 6560-50-P**

## EXPORT-IMPORT BANK

[Public Notice 91]

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Export-Import Bank of the U.S.

**ACTION:** Notice and Request for Comments.

**SUMMARY:** The Export-Import Bank, as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995. Our customers will be able to submit this form electronically. The proposed forms may be viewed on our Web site at [http://www.exim.gov/pub/ins/pdf/eib92-31\\_prop.pdf](http://www.exim.gov/pub/ins/pdf/eib92-31_prop.pdf), [http://www.exim.gov/pub/ins/pdf/eib92-32\\_prop.pdf](http://www.exim.gov/pub/ins/pdf/eib92-32_prop.pdf), [http://www.exim.gov/pub/ins/pdf/eib92-53\\_prop.pdf](http://www.exim.gov/pub/ins/pdf/eib92-53_prop.pdf), [http://www.exim.gov/pub/ins/pdf/eib99-17\\_prop.pdf](http://www.exim.gov/pub/ins/pdf/eib99-17_prop.pdf).

**DATES:** Written comments should be received on or before October 30, 2006 to be assured of consideration.

**ADDRESSES:** Direct all comments to David Rostker, Office of Management and Budget, Office of Information and Regulatory Affairs, NEOB, Room 10202, Washington, DC 20503 (202) 395-3897.

### SUPPLEMENTARY INFORMATION:

#### Titles and Form Numbers

EIB 92-31 Notification by Insured of Amounts Payable Under Multi-Buyer Export Credit Insurance Policy.

EIB 92-32 Notification by Insured of Amounts Payable Under Single-Buyer Export Credit Insurance Policy.

EIB 92-53 Small Business Multi-Buyer Export Credit Insurance Policy (ENB/ENV) Enhanced Assignment of Policy Proceeds.

EIB 99-17 Single Buyer Export Credit Insurance Policy (ESS/ESSP) Enhanced Assignment of Policy Proceeds.

*OMB Numbers:* None.

*Type of Review:* Regular.

*Need and Use:* The information requested allows for the assignment of the proceeds of an insurance policy to a financial institution.

*Affected Public:* The form affects entities involved in the export of U.S. goods and services.

*Estimated Annual Respondents:* 170 (new estimate).

*Estimated Responses:* 680 (4 originals per respondent).

*Estimated time per Respondent:* 10 minutes.

*Estimate Annual Burden:* 113.33 hours (new estimate).

*Frequency of Reporting or Use:* annually for an enhanced assignment and once for the life of a policy for the standard assignment.

Dated: September 22, 2006.

**Solomon Bush,**

*Agency Clearance Officer.*

[FR Doc. 06-8325 Filed 9-27-06; 8:45 am]

**BILLING CODE 6690-01-M**

## FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC-06-70-A (Auction No. 70); AU Docket No. 06-170; DA 06-1810]

### Auction of FM Broadcast Construction Permits Scheduled for March 7, 2007; Comments Sought on Competitive Bidding Procedures for Auction No. 70

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the auction of certain FM broadcast construction permits scheduled to

commence on March 7, 2007 (Auction No. 70). This document also seeks comments on minimum opening bids and other procedures for Auction No. 70.

**DATES:** Comments are due on or before October 5, 2006, and reply comments are due on or before October 13, 2006.

**ADDRESSES:** Comments and reply comments must be identified by AU Docket No. 06-170; DA 06-1810. The Bureaus request that a copy of all comments and reply comments be submitted electronically to the following address: [auction70@fcc.gov](mailto:auction70@fcc.gov). In addition, comment and reply comments may be submitted by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Federal Communications Commission's Web site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

- 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 (although the Bureaus continues to experience delays in receiving 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 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. eastern time (ET). All hand deliveries must be held together with rubber bands or fasteners. 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 should be addressed to 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Media Bureau, Audio Division, for rules service questions: Lisa Scanlan or Tom Nessinger at (202) 418-2700 Wireless Telecommunications Bureau, Auctions

and Spectrum Access Division, *for auctions legal questions*: Lynne Milne at (202) 418-0660. *For general auction questions*: Jeff Crooks at (202) 418-0660 or Linda Sanderson at (717) 338-2888.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Auction No. 70 Comment Public Notice* released on September 21, 2006. The complete text of the *Auction No. 70 Comment Public Notice*, including attachments and related Commission documents, is available for public inspection and copying from 8 a.m. to 4:30 p.m. ET Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The *Auction No. 70 Comment Public Notice*, including attachments and related Commission documents also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-488-5300, facsimile 202-488-5563, or you may contact BCPI at its Web site: <http://www.BCPIWEB.com>. When ordering documents from BCPI, please provide the appropriate FCC document number for example, DA 06-1810. The *Auction No. 70 Comment Public Notice* and related documents also are available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/70/>.

## **I. Constuction Permits to be Offered in Auction No. 70**

1. The Media and Wireless Telecommunications Bureaus (Bureaus) announce that Auction No. 70 will offer 124 construction permits in the FM broadcast service as listed in Attachment A of the *Auction No. 70 Comment Public Notice*.

2. Attachment A of the *Auction No. 70 Comment Public Notice* lists vacant FM allotments, reflecting FM channels assigned to the Table of FM Allotments, 47 CFR 73.202(b), pursuant to the Commission's established rulemaking procedures, designated for use in the indicated community. Pursuant to the policies established in the *Broadcast First Report and Order*, 64 FR 24523, May 7, 1999, applicants may apply for any vacant FM allotment, as specified in Attachment A. Applications specifying the same FM allotment will be considered mutually exclusive and, thus, the construction permit for the FM allotment will be awarded by competitive bidding procedures.

## **II. Bureaus Seek Comment on Auction Procedures**

3. Consistent with the provisions of section 309(j)(3) 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 Bureaus seek comment on the following issues relating to Auction No. 70.

### **A. Auction Structure**

#### **i. Simultaneous Multiple Round Auction Design**

4. The Bureaus propose to award all construction permits included in Auction No. 70 in a simultaneous multiple-round (SMR) auction. This type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual construction permits. A bidder may bid on, and potentially win, any number of construction permits. Typically, bidding remains open on all construction permits until bidding stops on every construction permit, unless a modified stopping rule is invoked. The Bureaus seek comment on this proposal.

#### **ii. Round Structure**

5. The Commission will conduct Auction No. 70 over the Internet. Alternatively, telephonic bidding also will be available.

6. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction. The SMR format will consist of sequential bidding rounds, each followed by the release of round results.

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

#### **iii. Stopping Rule**

8. The Bureaus have discretion to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time. For Auction No. 70, the Bureaus propose to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all construction permits remain available for bidding until bidding

closes simultaneously on all construction permits. More specifically, bidding will close simultaneously on all construction permits after the first round in which no bidder submits any new bids, applies a proactive waiver, or, if applicable, withdraws any provisionally winning bids. Thus, unless circumstances dictate otherwise, bidding will remain open on all construction permits until bidding stops on every construction permit.

9. The Bureaus propose to retain the discretion to exercise any of the following options during Auction No. 70: (a) Use a modified version of the simultaneous stopping rule, based on the failure to submit during a prior round of a waiver or a new bid by a bidder who is not a provisionally winning bidder for that construction permit, as described in the *Auction No. 70 Comment Public Notice*; (b) keep the auction open even if no bidder submits any new bids or applies a waiver; and (c) declare that the auction will end after a specified number of additional rounds (special stopping rule).

10. The Bureaus propose to exercise these options only in certain circumstances, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising these options, the Bureaus are likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or changing the minimum acceptable bids. The Bureaus seek comment on these proposals.

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

11. For Auction No. 70, the Bureaus propose that, by public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. The Bureaus emphasize that exercise of this authority is solely within the discretion of the Bureaus, and its use is not intended to be a substitute for situations in which

bidders may wish to apply their activity rule waivers. The Bureaus seek comment on this proposal.

### B. Bidding Procedures

#### i. Upfront Payments and Bidding Eligibility

12. The Bureaus have delegated authority and discretion to determine an appropriate upfront payment for each FM construction permit being auctioned, taking into account such factors as the efficiency of the auction process and the potential value of similar spectrum. The upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on construction permits. Upfront payments related to the specific spectrum subject to auction 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. With these guidelines in mind, the Bureaus propose the schedule of upfront payments for each construction permit as set forth in Attachment A of the *Auction No. 70 Comment Public Notice*. The Bureaus seek comment on this proposal.

13. The Bureaus further propose that the amount of the upfront payment submitted by a bidder will determine the maximum number of bidding units on which a bidder may place bids. This limit is a bidder's initial bidding eligibility. Each FM construction permit is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 70 Comment Public Notice*, on a bidding unit per dollar basis. Bidding units for a given construction permit do not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific construction permits. Rather, a bidder may place bids on any combination of construction permits that it selected in its short form application (FCC Form 175), as long as the total number of bidding units associated with those construction permits does not exceed the bidder's current eligibility. In order to bid on a construction permit, qualified bidders must have an eligibility level that meets or exceeds the number of bidding units assigned to that construction permit. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on (or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that

total number of bidding units. The Bureaus seek comment on this proposal.

#### ii. Activity Rule

14. In order to ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. 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. 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 bids in the auction.

15. The Bureaus propose to divide the auction into two stages, each characterized by a different activity requirement. The auction will start in Stage One. It proposes that the auction generally will advance from Stage One to Stage Two when the auction activity level, as measured by the percentage of bidding units receiving new provisionally winning bids, is approximately twenty percent or below for three consecutive rounds of bidding. However, the Bureaus further propose that it retain the discretion to change stages unilaterally by announcement during the auction. In exercising this discretion, the Bureaus will consider a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentage of construction permits (as measured in bidding units) on which there are new bids, and the number of new bids.

16. For Auction No. 70, the Bureaus propose the following activity requirements: *Stage One*: In each round of the first stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on construction permits representing at least 75 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by four-thirds ( $\frac{4}{3}$ ). *Stage Two*: In each round of the second stage, a bidder desiring to

maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage Two, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by twenty-nineteenths ( $\frac{20}{19}$ ).

17. The Bureaus seek comment on this proposal. Commenters that believe this activity rule should be modified should explain their reasoning and comment on the desirability of an alternative approach. The Bureaus also invite comment on, in the alternative, conducting the auction with a single stage that would use an activity requirement of 100 percent. Commenters are advised to support their claims with analyses and suggested alternative activity rules.

#### iii. Activity Rule Waivers and Reducing Eligibility

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

19. The Commission's Integrated Spectrum Auction System ("ISAS" or "FCC Auction System") assumes that a bidder that does not meet the activity requirement would prefer to apply 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 where a bidder's activity level is below the minimum required unless: (1) The bidder has no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirement. If a bidder has no waivers remaining and does not satisfy the required activity level, its eligibility will be permanently reduced, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

20. 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 the bidder into compliance with the activity rules as 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.

21. 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 or withdrawals (if permitted) are submitted, 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 or withdrawals (if permitted) will not keep the auction open. A bidder cannot submit a proactive waiver after submitting a bid in a round, and submitting a proactive waiver will preclude a bidder from placing any bids in that round. Applying a waiver is irreversible; once a proactive waiver is submitted, that waiver cannot be unsubmitted, even if the round has not yet closed.

22. The Bureaus propose that each bidder in Auction No. 70 be provided with three activity rule waivers that may be used at the bidder's discretion during the course of the auction. The Bureaus seek comment on this proposal.

#### iv. Reserve Price or Minimum Opening Bid

23. The Bureaus seek comment on the use of a minimum opening bid amount and/or a reserve price in Auction No. 70. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid amount, 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. The auctioneer has the discretion to lower minimum opening bid amounts during the course of the auction. It is also possible for the minimum opening bid amount and the reserve price to be the same amount.

24. The Bureaus propose to establish minimum opening bid amounts for Auction No. 70. The Bureaus believe a minimum opening bid amount, which has been used in other auctions, is an

effective bidding tool for accelerating the competitive bidding process. The Bureaus do not propose a separate reserve price for the construction permits to be made available in Auction No. 70.

25. For Auction No. 70, the proposed minimum opening bids were determined by taking into account various factors related to the efficiency of the auction and the potential value of the spectrum, including the type of service and class of facility offered, market size, population covered by the proposed FM broadcast facility, industry cash flow data and recent broadcast transactions. The specific minimum opening bid for each construction permit available in Auction No. 70 is set forth in Attachment A of the *Auction No. 70 Comment Public Notice*. The Bureaus seek comment on this proposal.

26. If commenters believe that these minimum opening bid amounts will result in unsold construction permits, or are not reasonable amounts, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid amount levels or formulas. In establishing the minimum opening bid amounts, the Bureaus particularly seek comment on such factors as the potential value of the spectrum being auctioned, including the type of service and class of facility offered, market size, population covered by the proposed FM broadcast facility and other relevant factors that could reasonably have an impact on valuation of the broadcast spectrum. The Bureaus also seek comment on whether, consistent with section 309(j), the public interest would be served by having no minimum opening bid amount or reserve price.

#### v. Bid Amounts

27. The Bureaus propose that, in each round, eligible bidders be able to place bids on a given construction permit in any of nine different amounts, if a bidder has sufficient eligibility to place a bid on that construction permit. Under this proposal, the FCC Auction System interface will list the nine acceptable bid amounts for each construction permit.

28. The first of the nine 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 calculated 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.

29. The eight additional bid amounts are calculated 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 10 percent, the calculation is (minimum acceptable bid amount) \* (1 + 0.10), rounded, or (minimum acceptable bid amount) \* 1.10, 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) \* 1.20, rounded; the third additional acceptable bid amount equals the minimum acceptable bid amount times one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) \* 1.30, rounded; etc. The Bureaus will round the result using our standard rounding procedures.

30. For Auction No. 70, 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. The Bureaus also propose to use a bid increment percentage of 10 percent to calculate the eight additional acceptable bid amounts.

31. The Bureaus retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, and the bid increment percentage if they determine that circumstances so dictate. The Bureaus will do so by announcement in the FCC Auction System during the auction. The Bureaus seek comment on these proposals.

#### vi. Provisionally Winning Bids

32. 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, a provisionally winning bid

amount for each construction permit will be determined based on the highest bid amount received for the construction permit. In the event of identical high bid amounts being submitted on a construction permit in a given round (*i.e.*, tied bids), the Bureaus will use a random number generator to select a single provisionally winning bid from among the tied bids. (Each bid is assigned a random number, and 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 selected provisionally winning bid. If any bids are received on the construction permit in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the construction permit.

33. 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. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.

#### vii. Bid Removal and Bid Withdrawal

34. For Auction No. 70, 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 selected bids 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 any penalties. Once a round closes, a bidder may no longer remove a bid.

35. The Bureaus also seek comment on bid withdrawal procedures to be used for Auction No. 70. Where permitted, bid withdrawals provide a bidder with the option of withdrawing bids placed in prior rounds that have become provisionally winning bids. A bidder that withdraws any of its provisionally winning bids is subject to the bid withdrawal payment provisions of the Commission rules.

36. For Auction No. 70, the Bureaus propose to prohibit bidders from withdrawing any bids after the round in which bids were placed has closed. The Bureaus proposal is made in recognition of the site-specific nature and wide geographic dispersion of the permits available in this auction, which suggests that FM broadcast interests may have

fewer incentives to aggregate permits through the auction process (as compared with bidders in many auctions of wireless licenses). The Bureaus also remain mindful that withdrawals, particularly those made in late stages of an auction, could result in delays in licensing new FM stations and attendant delays in the offering of new broadcast service to the public.

37. As an alternative, the Bureaus seek comment on whether to permit each bidder to withdraw provisionally winning bids in no more than one round during the course of the auction. To permit a bidder to withdraw bids in more than one round may encourage insincere bidding or the use of withdrawals for anti-competitive purposes. The round in which a withdrawal may be used would be at the bidder's discretion; bid withdrawal otherwise must be in accordance with the Commission's rules. Should this approach be adopted, there would no limit on the number of provisionally winning bids that may be withdrawn in the round in which a withdrawal is used. Any withdrawal would remain subject to the bid withdrawal payment provisions specified in the Commission's rules.

38. If permitted, a bidder would have the option to withdraw its provisionally winning bids using the "withdraw bids" function in the FCC Auction System. A bidder that withdraws its provisionally winning bid(s) would be subject to the bid withdrawal payment provisions of the Commission rules.

#### C. Due Diligence

39. Potential bidders are solely responsible for investigating and evaluating all technical and market place factors that may have a bearing on the value of the broadcast facilities in this auction. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that 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. Applicants should perform their individual due diligence before proceeding as they would with any new business venture. In particular, potential bidders are strongly encouraged to review all underlying Commission orders, such as the specific Report and Order amending the FM Table of Allotments and allotting the

FM channel(s) on which they plan to bid. Reports and Orders adopted in FM allotment rulemaking proceedings often include anomalies such as site restrictions or expense reimbursement requirements. Additionally, potential bidders should perform technical analyses sufficient to assure them that, should they prevail in competitive bidding for a given FM construction permit, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements. Applicants are strongly encouraged to inspect any prospective transmitter sites located in, or near, the service area for which they plan to bid, and also to familiarize themselves with the Commission's rules regarding the National Environmental Policy Act.

40. Potential bidders are strongly encouraged to conduct their own research prior to Auction No. 70 in order to determine the existence of pending proceedings, including pending rulemaking proceedings that might affect their decisions regarding participation in the auction. Participants in Auction No. 70 are strongly encouraged to continue such research during the auction.

#### D. Post-Auction Procedures

##### i. Establishing the Interim Withdrawal Payment Percentage

41. As noted above, the Bureaus propose not to permit bids to be withdrawn in Auction No. 70. However, in the event that Bureaus choose to permit bidders to withdraw bids in Auction No. 70, we seek comment on the appropriate percentage of a withdrawn bid that should be assessed as an interim withdrawal payment, which is an amount that is assessed in the event that a final withdrawal payment cannot be determined at the close of the auction. In general, the Commission's rules provide that 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 subsequent auction(s). However, if a permit for which there has been a withdrawn bid is neither subject to a subsequent higher bid nor won in the same auction, the final withdrawal payment cannot be calculated until a corresponding permit is subject to a higher bid or won in a subsequent auction. When that final payment cannot yet be calculated, the bidder responsible for the withdrawn bid is assessed an interim bid withdrawal payment, which will be applied toward

any final bid withdrawal payment that is ultimately assessed. The Commission's recently adopted rules provide that in advance of the auction, the Commission shall establish the percentage of the withdrawn bid to be assessed as an interim bid withdrawal payment between three percent and twenty percent.

42. When it adopted the new rule, the Commission indicated that the level of the interim withdrawal payment in a particular auction will be based on the nature of the service and the inventory of the authorizations being offered. The Commission noted that it may impose a higher interim withdrawal payment percentage to deter the anti-competitive use of withdrawals when, for example, bidders likely will not need to aggregate permits offered, such as when few permits are offered that are not on adjacent frequencies or in adjacent areas, or there are few synergies to be captured by combining permits.

43. The Commission has observed that it may be appropriate to impose a higher interim withdrawal payment percentage to deter the anti-competitive use of withdrawals in auctions where it is much less likely that bidders will need to assemble complete sets of licenses. With respect to the permits being offered in Auction No. 70, the Bureaus have little evidence that bidders have a significant need to use withdrawals to avoid incomplete combinations of licenses. Citing experience with FM Auction No. 37, among others, the Commission has "observed a disproportionate number of withdrawals late in our auctions, indicating that some bidders have been placing and then withdrawing bids primarily to discourage potential or existing market competitors from seeking to acquire licenses." Consistent with its interest in deterring strategic withdrawals, the Bureaus propose to establish the percentage of the withdrawn bid to be assessed as an interim bid withdrawal payment at the maximum twenty percent permitted under the Commission's rules. The Bureaus seek comment on this proposal.

#### ii. Establishing the Additional Default Payment Percentage

44. 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 payment, or is otherwise disqualified) is liable for a default payment under 47 CFR 1.2104(g)(2). This payment consists of a deficiency payment, equal to the difference between the amount of the

bidder's bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less. Until recently, this additional payment for most auctions has been set at three percent of the defaulter's bid or of the subsequent winning bid, whichever is less.

45. On January 24, 2006, the Commission released the *Commercial Spectrum Enhancement Act Report and Order (CSEA/Part 1 Report and Order)*, 71 FR 6214, February 7, 2006, in which it modified § 1.2104(g)(2) by increasing the three percent limit on the additional default payment for non-combinatorial auctions to twenty percent. Under the modified rule, the Commission will, in advance of each auction, establish an additional default payment for that auction of three percent up to a maximum of twenty percent. The level of this payment in each case will be based on the nature of the service and the inventory of the construction permits being offered.

46. For Auction No. 70, the Bureaus propose to establish additional default payment of twenty percent. As noted in the *CSEA/Part 1 Report and Order*, defaults weaken the integrity of the auctions process and may impede the deployment of service to the public, and an additional default payment of more than the previous three percent will be more effective in deterring defaults. In light of its proposal for the interim bid withdrawal payment amount as discussed above, the Bureaus are concerned that setting an additional default payment of less than the twenty percent maximum amount may encourage post-auction defaults, which further undermine the integrity of the auction process. In light of these considerations for Auction No. 70, the Bureaus propose an additional default payment of twenty percent of the relevant bid. The Bureaus seek comment on this proposal.

### III. Conclusion

47. This proceeding has been designated as a permit-but-disclose proceeding in accordance with the Commission's *ex parte* rules. 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 rules pertaining to oral

and written *ex parte* presentations in permit-but-disclose proceedings are set forth in 47 CFR 1.1206(b).

Federal Communications Commission.

**Gary D. Michaels,**

*Deputy Chief, Auctions and Spectrum Access Division, WTB.*

[FR Doc. 06-8366 Filed 9-27-06; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting Notice

#### PREVIOUSLY SCHEDULED DATE AND TIME:

*Thursday, September 28, 2006, Meeting Open to the Public. This meeting was cancelled.*

**DATE AND TIME:** *Tuesday, October 3, 2006 at 10 a.m.*

**PLACE:** 999 E Street, NW., Washington, DC.

**STATUS:** This meeting will be closed to the public.

#### ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

**DATE AND TIME:** *Wednesday, October 4, 2006 at 10 a.m.*

**PLACE:** 999 E Street, NW., Washington, DC (Ninth Floor).

**STATUS:** This meeting will be open to the public.

#### ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes. Advisory Opinion 2006-20: Unity 08 by counsel, John J. Duffy.

Advisory Opinion 2006-24: National Republican Senatorial Committee by General Counsel William J. McGinley; Democratic Senatorial Campaign Committee by counsel, Marc Elias; Republican State Committee of Pennsylvania by General Counsel Lawrence J. Tabas.

Report of the Audit Division on Daniel Mongiardo for U.S. Senate.

Management and Administrative Matters.

#### PERSON TO CONTACT FOR INFORMATION:

Mr. Robert Biersack, Press Officer.

**Mary W. Dove,**

*Secretary of the Commission.*

[FR Doc. 06-8376 Filed 9-26-06; 2:51 pm]

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