

subsequent higher bid nor won in the same auction, the final withdrawal payment cannot be calculated until a corresponding license 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 When that final payment cannot yet be calculated, the bidder responsible for the withdrawn bid is assessed an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed.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 recently amended its rules to provide that in advance of the auction, the Commission shall establish the percentage of the withdrawn bid to be assessed as an interim bid withdrawal payment between three percent (3%) and twenty percent (20%).

48. 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 licenses 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 licenses offered, such as when few licenses are offered that are not on adjacent frequencies or in adjacent areas, or there are few synergies to be captured by combining licenses.

49. With respect to an auction of the licenses in the 1.4 GHz Bands, the service rules permit a variety of fixed and mobile services, some of which may best be offered by combining licenses on adjacent frequencies or in adjacent areas. Balancing the potential need for bidders to use withdrawals to avoid incomplete combinations of licenses with our interest in deterring strategic withdrawals, the Bureau proposes a percentage below the maximum 20 percent (20%) permitted under the current rules but above the 3 percent (3%) previously provided by the Commission's rules. Specifically, the Bureau proposes to establish the percentage of the withdrawn bid to be assessed as an interim bid withdrawal payment at ten percent (10%) for the 1.4 GHz Bands auction. The Bureau seeks comment on this proposal.

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

50. 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 license 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 non-combinatorial auctions has been set at 3 percent of the defaulter's bid or of the subsequent winning bid, whichever is less.

51. The *CSEA/Part 1 Report and Order*, 71 FR 6214, February 7, 2006, modified section 1.2104(g)(2) by, *inter alia*, increasing the 3 percent limit on the additional default payment for non-combinatorial auctions to 20 percent. Under the modified rule, the Commission will, in advance of each non-combinatorial auction, establish an additional default payment for that auction of 3 percent up to a maximum of 20 percent. As the Commission has indicated, the level of this payment in each case will be based on the nature of the service and the inventory of the licenses being offered.

52. For Auction No. 69, the Bureau proposes to establish an additional default payment of 10 percent. As noted in the *CSEA/Part 1 Report and Order*, defaults weaken the integrity of the auctions process and impede the deployment of service to the public, and an additional default payment of more than the previous 3 percent will be more effective in deterring defaults. At the same time, the Bureau does not believe the detrimental effects of any defaults in Auction No. 69 are likely to be unusually great. Balancing these considerations, the Bureau proposes an additional default payment of 10 percent of the relevant bid. The Bureau seeks comment on this proposal.

### III. Conclusion

53. Comments are due on or before September 11, 2006, and reply comments are due on or before September 18, 2006. All filings related to the auction of 1.4 GHz Bands licenses should refer to AU Docket No. 06-104. Comments may be submitted using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. The Bureau strongly encourages interested parties to file comments electronically, and requests submission of a copy via the Auction No. 69 e-mail box ([auction69@fcc.gov](mailto:auction69@fcc.gov)).

54. 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 § 1.1206(b) of the Commission's rules.

Federal Communications Commission.

**William W. Huber,**

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

[FR Doc. E6-14526 Filed 8-30-06; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC-06-68-A (Auction No. 68); DA 06-997; AU Docket No. 06-101]

### Auction of FM Broadcast Construction Permits Scheduled for January 10, 2007; Comments Sought on Competitive Bidding Procedures for Auction No. 68

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the auction of nine FM broadcast construction permits scheduled to commence on January 10, 2007 (Auction No. 68). This document also seeks comments on reserve prices or minimum opening bids and other procedures for Auction No. 68.

**DATES:** Comments are due on or before September 6, 2006 and reply comments are due on or before September 13, 2006.

**ADDRESSES:** Comments and reply comments must be identified by AU Docket No. 06-101; DA 06-997. The Bureaus request that a copy of all comments and reply comments be submitted electronically to the following address: [auction68@fcc.gov](mailto:auction68@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 continue 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. 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:**

Wireless Telecommunications Bureau, Auctions and Spectrum Access Division, for legal questions: Lynne Milne at (202) 418-0660. For general auction questions: Linda Sanderson or Debbie Smith at (717) 338-2888. Media Bureau, Audio Division, for service questions: Lisa Scanlan or Tom Nessinger at (202) 418-2700.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction No. 68 Comment Public Notice* released on August 24, 2006. The complete text of the *Auction No. 68 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. Monday through Thursday or from 8 a.m. to 11:30 a.m. on Friday at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The *Auction No. 68 Comment Public Notice* 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 06-997. The *Auction No. 68 Comment Public Notice* and related documents also are available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/68/>.

**I. Construction Permits To Be Offered in Auction No. 68**

1. The Media and Wireless Telecommunications Bureaus (Bureaus) announce that Auction No. 68 is composed of nine construction permits in the FM broadcast service as listed in Attachment A of the *Auction No. 68 Comment Public Notice*. The construction permits to be auctioned are unsold FM construction permits from Auction Nos. 37 and 62, which closed on November 23, 2004 and January 31, 2006, respectively.

2. These nine construction permits are 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 Auction First Report and Order*, 63 FR 48615, September 11, 1998, applicants may apply for any vacant FM allotment specified in Attachment A of the *Auction No. 68 Comment Public Notice*. Applications specifying the same FM allotment will be considered mutually exclusive and, thus, 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 for the same construction permit in Auction No. 68 submits an upfront payment, that applicant is required to submit a bid in order to obtain the construction permit. Any applicant that submits a short-form application that is accepted for filing but fails to timely submit an upfront payment will retain its status as an applicant in Auction No. 68 and will remain subject to the Commission's anti-collusion rule, 47 CFR 1.2105(c), but, having purchased no bidding eligibility, will not be eligible to bid.

**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. 68.

*A. Auction Structure*

i. Simultaneous Multiple Round Auction Design

4. The Bureaus propose to award all construction permits included in Auction No. 68 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. 68 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 simultaneous multiple-round 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. 68, 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, or applies a proactive waiver. 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. 68: (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. 68 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 increasing the minimum acceptable bid percentage for the limited number of construction permits on which there is still a high level of bidding activity. The Bureaus seek comment on these proposals.

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

11. For Auction No. 68, 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. 68 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. 68 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 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. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round. 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 a single stage auction with the following activity requirement: In each round of the auction, a bidder desiring to maintain its eligibility to participate in the auction is required to be active on one hundred (100) percent of its bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used).

16. 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. Commenters are advised to support their claims with analyses and suggested alternative activity rules.

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

17. 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.

18. The 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.

19. 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.

20. A bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity rule waiver (using the apply waiver function in the FCC Auction System) during a bidding round in which no bids are 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 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.

21. The Bureaus propose that each bidder in Auction No. 68 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

22. The Bureaus seek comment on the use of a minimum opening bid amount and/or a reserve price in Auction No. 68. 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. Also, the auctioneer, however, has the discretion to lower the minimum opening bid amount 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.

23. The Bureaus propose to establish minimum opening bid amounts for Auction No. 68. 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.

24. For Auction No. 68, 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. 68 is set forth in Attachment A of the *Auction No. 68 Comment Public Notice*. The Bureaus seek comment on this proposal.

25. If commenters believe that these minimum opening bid amounts will result in unsold construction permits, or are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid 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

26. 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.

27. 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.

28. 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.

29. For Auction No. 68, 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.

30. The Bureaus retain the discretion to change the minimum acceptable bid amounts, the parameters of the formula to determine the percentage increment, and the bid increment percentage if it determines 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

31. 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.

32. 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

33. For Auction No. 68, 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. 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.

34. In the *Part 1 Third Report and Order*, 63 FR 2315, January 15, 1998, the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and construction permits and the pursuit of backup strategies as information becomes available during the course of an auction. Given the limited number and wide geographic dispersion of the permits available in this auction,

however, these rationales are less compelling. The Commission also noted that, in some instances, bidders may seek to withdraw bids for improper reasons. The permits being offered in Auction No. 68 are, in fact, permits for which provisionally winning bids were withdrawn in previous FM Broadcast auctions, in some cases in successive auctions by the same bidders. The Bureaus have discretion, in managing the auction, to limit the number of withdrawals to prevent any bidding abuses. The Commission stated that the Bureaus should assertively exercise their discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular construction permit if the Bureaus find that a bidder is abusing the Commission's bid withdrawal procedures.

35. Applying this reasoning, the Bureaus propose that bidders in Auction No. 68 not be permitted to withdraw bids placed in any round after it has closed. To permit bidders further opportunities to withdraw bids may encourage insincere bidding or the use of withdrawals for anti-competitive purposes. Moreover, given that the permits offered in Auction No. 68 have already been subject to bid withdrawals in at least one auction, our paramount concern is that the permits be awarded and broadcast service be initiated to the public in the communities listed. The Bureaus seek comment on this proposal.

#### C. Due Diligence

36. 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.

37. Potential bidders are strongly encouraged to conduct their own research prior to Auction No. 68 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. 68 are strongly encouraged to continue such research during the auction.

#### D. Post-Auction Procedures

##### i. Default and Disqualification

38. 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 3 percent of the defaulter's bid or of the subsequent winning bid, whichever is less.

39. On January 24, 2006, the Commission released the *Commercial Spectrum Enhancement Act Report and Order*, 71 FR 6214, February 7, 2006, in which it modified § 1.2104(g)(2) by, *inter alia*, increasing the 3 percent limit on the additional default payment for non-combinatorial auctions to 20 percent. Under the modified rule, the Commission will, in advance of each auction, establish an additional default

payment for that auction of 3 percent up to a maximum of 20 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.

40. As noted in this rulemaking order, defaults weaken the integrity of the auctions process and impede the deployment of service to the public, and an additional default payment of more than the previous 3 percent will be more effective in deterring defaults.

Accordingly, for Auction No. 68, the Bureaus propose an additional default payment of 10 percent of the relevant bid. The Bureaus seek comment on this proposal.

**III. Conclusion**

41. Comments are due on or before September 6, 2006, and reply comments are due on or before September 13, 2006. All filings related to the auction of FM broadcast construction permits must refer to AU Docket No. 06-101. Comments may be submitted using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. The Bureaus encourage interested parties to file electronically. The Bureaus also request that all comments and reply comments be filed electronically to the following address: *auction68@fcc.gov*. In addition, commenters should format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

42. 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.

**William W. Huber,**

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

[FR Doc. E6-14527 Filed 8-30-06; 8:45 am]

**BILLING CODE 6712-01-P**

**FEDERAL ELECTION COMMISSION**

[Notice 2006-14]

**Filing Dates for the Ohio Special Election in the 3rd Congressional District**

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of filing dates for special election.

**SUMMARY:** Ohio has scheduled a special primary election on September 15, 2006, to fill the vacancy on the November 7, 2006, general election ballot that was created by the withdrawal of Democratic candidate Stephanie Studebaker.

Committees participating in the Ohio Special Primary Election are required to file pre-election reports.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kevin R. Salley, Information Division, 999 E Street, NW., Washington, DC 20463; Telephone: (202) 694-1100; Toll Free (800) 424-9530.

**SUPPLEMENTARY INFORMATION:**

**Principal Campaign Committees**

All principal campaign committees of candidates who participate in the Ohio Special Primary shall file a 12-day Pre-Primary Report on September 3, 2006.

(See chart below for the closing date for each report.)

**Unauthorized Committees (PACs and Party Committees)**

Political committees filing on a quarterly basis in 2006 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Ohio Special Primary Election by the close of books for the applicable report(s). (See chart below for the closing date for each report.)

Committees filing monthly that support candidates in the Ohio Special Primary Election should continue to file according to the monthly reporting schedule.

**Disclosure of Electioneering Communications (Individuals and Other Unregistered Organizations)**

As required by the Bipartisan Campaign Reform Act of 2002, the Federal Election Commission promulgated new electioneering communications rules governing television and radio communications that refer to a clearly identified federal candidate and are distributed within 30 days prior to a special primary election or 60 days prior to a special general election. 11 CFR 100.29. The statute and regulations require, among other things, that individuals and other groups not registered with the FEC who make electioneering communications costing more than \$10,000 in the aggregate in a calendar year disclose that activity to the Commission within 24 hours of the distribution of the communication. See 11 CFR 104.20.

The 30-day electioneering communications period in connection with the Ohio Special Primary runs from August 16, 2006 through September 15, 2006.

**CALENDAR OF REPORTING DATES FOR OHIO SPECIAL ELECTION FOR COMMITTEES INVOLVED IN THE SPECIAL PRIMARY (09/15/06)**

Report	Close of books <sup>1</sup>	Reg./cert. & overnight mailing date	Filing date
Pre-Primary .....	08/26/06	08/31/06	<sup>2</sup> 09/03/06
October Quarterly .....	09/30/06	10/15/06	<sup>2</sup> 10/15/06

<sup>1</sup> The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

<sup>2</sup> Notice that this deadline falls on a holiday or a weekend. Filing dates are not extended when they fall on nonworking days.