



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
445 12th STREET, S.W.
WASHINGTON, D.C. 20554

News Media Information: 202-418-0500
Fax-On-Demand: 202-418-2830
Internet: <http://www.fcc.gov>
<ftp://ftp.fcc.gov>

DA 02-2955
November 4, 2002

New AM Broadcast Stations Auction No. 32

Status of Applications to Participate in the Auction

Report No. AUC-02-32-I (Auction No. 32)

The Federal Communications Commission ("Commission") has received seven timely filed FCC Form 175 applications to participate in Auction No. 32, scheduled to begin Tuesday, December 10, 2002, for construction permits for three new AM broadcast stations. These applications have been reviewed for completeness and compliance with the Commission's rules, and have been classified into the following categories:

ACCEPTED FOR FILING.....2 Applications

INCOMPLETE.....5 Applications

All Applicants: Applicants submitted their original FCC Form 175 applications by using a Taxpayer Identification Number (TIN) but were recently notified of requirements to obtain and provide the FCC Operations Group with an FCC Registration Number (FRN).¹ Any review of and/or updates to these applications will require the use of that FRN and a password. Applicants were also instructed to submit additional information for incorporation as part of their short-form application (FCC Form 175).² Applicants are therefore encouraged to review their electronic applications for accuracy. Electronic applications can be viewed by logging on via the Form 175 Homepage. To obtain this page, go to the Auction Systems page at <http://auctions.fcc.gov/> and click the Form 175 Application & Search link. Applicants are encouraged to print a copy of their displayed FCC Form 175. Information for reviewing and accessing the FCC Form 175 is also included in Attachment C.

¹ See Auction No. 32 Construction Permits for New AM Broadcast Stations Scheduled for December 10, 2002, *Public Notice*, DA 02-2623, Section II.B. (rel. October 15, 2002) ("*Auction No. 32 Procedures Public Notice*"); see also Additional Information Required for Completion of FCC Form 175 and Exhibits for Auction No. 32; Auction of Construction Permits for New AM Broadcast Stations Scheduled for December 10, 2002, *Public Notice*, DA 02-2757 (rel. October 21, 2002) ("*Auction No. 32 Additional Information Public Notice*").

² *Auction No. 32 Additional Information Public Notice* at 2.

Accepted: Applications accepted for filing are listed alphabetically in Attachment A. **These applicants will become qualified bidders upon receipt of the required upfront payment due by 6:00 p.m. ET on Friday, November 15, 2002.**³ With respect to the FCC Form 175 applications, once the electronic application is reviewed, these applicants need take no further action except as may be necessary to maintain the accuracy of their applications.⁴ Attachment A also includes FCC account numbers that were automatically created by the Auction System for each applicant and indicates the construction permit selected by each applicant on its FCC Form 175 filing.

Incomplete: Applications found to be incomplete are listed alphabetically in Attachment B. Applicants whose FCC Form 175 applications have been deemed incomplete will receive overnight correspondence indicating what information is required to make the applications acceptable for filing. **These applicants may become qualified bidders only if they: (1) make the required upfront payments by 6:00 p.m. ET on Friday, November 15, 2002; and (2) resubmit their applications by 6:00 p.m. ET on Friday, November 15, 2002, to correct the deficiencies indicated.** Applicants also must maintain the accuracy of their FCC Form 175 applications as required by the Commission's rules.⁵ Applicants are advised that Attachment B includes FCC account numbers that were automatically created by the Auction System for each applicant.

The filing window for resubmitting FCC Form 175 applications is now open. Corrected applications must be filed no later than **6:00 p.m. ET on Friday, November 15, 2002.** This will be the only opportunity to cure FCC Form 175 defects; late resubmissions will not be accepted. In addition, if an application remains incomplete or otherwise deficient after the resubmission deadline has passed, the application will be dismissed.

UPFRONT PAYMENT DEADLINE

Upfront payments and accompanying FCC Remittance Advice (FCC Form 159) for Auction No. 32 are due at Mellon Bank, Pittsburgh, Pennsylvania, **no later than 6:00 p.m. ET on Friday, November 15, 2002. Payments must be made by wire transfer and applicants must include their FRN.** No other payment method is acceptable for this auction. Applicants are reminded to use their FRN/TIN, not their FCC Account Numbers on the FCC Form 159. Applicants must fax a completed FCC Form 159 (Revised February 2000) to Mellon Bank at (412) 209-6045 at least one hour before placing the order for the wire transfer (but on the same business day).

Applicants that have filed applications deemed to be incomplete, as noted in this public notice, must submit timely and sufficient upfront payments before the Commission will review their resubmitted applications. If no upfront payment is made or the application remains incomplete following its resubmission, the application will be dismissed. If the applicant has provided its FRN, TIN, and wire transfer instructions, any upfront payment made prior to dismissal will be refunded automatically.

We remind applicants that to avoid untimely upfront payments they should discuss arrangements (including bank closing schedules) with their banker several days before making the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Detailed information regarding upfront payments including additional requirements for "former defaulters" can be found in the *Auction No. 32 Procedures Public Notice* under Section III.C.⁶

³ 47 C.F.R. § 1.2106.

⁴ 47 C.F.R. § 1.65.

⁵ *Id.*

⁶ See *Auction No. 32 Procedures Public Notice* at Section III.C. See also *Auction No. 32 Additional Information Public Notice* at 2.

Note: Applicants are reminded to submit the same FRN with all future payments.

OTHER IMPORTANT INFORMATION

Qualified Bidders: Approximately one week after the upfront payment deadline, following Commission review of resubmitted FCC Form 175 applications, and correlation of payments and applications, a public notice listing all applicants qualified to bid in the auction will be released. The same public notice will also include instructions for participating in the mock auction and a bidding schedule for the mock auction and the first day of the auction.

Due Diligence: Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and market place factors that may have a bearing on the value of the AM broadcast facilities in this auction. The FCC makes no representations or warranties about the use of this spectrum for particular services. Potential bidders are strongly encouraged to conduct their own research prior to Auction No. 32 in order to determine the existence and status of any pending proceedings that might affect their decisions regarding participation in the auction. Participants in Auction No. 32 are strongly encouraged to continue such research during the auction. For further details regarding due diligence, please refer to the *Auction No. 32 Procedures Public Notice* under Section I.B.3.

Prohibition of Collusion: Bidders are reminded that Section 1.2105(c) of the Commission's rules prohibits competing applicants from communicating with each other during the auction about bids, bidding strategies, or settlements unless they have identified each other as parties with whom they have entered into agreements under Section 1.2105(a)(2)(viii). For Auction No. 32, this prohibition became effective at the short-form application filing deadline on Tuesday, February 1, 2000, and will end on the post-auction down payment deadline, which will be announced in a future public notice.⁷ If parties had agreed in principle on all material terms, those parties must be identified on the short-form application under Section 1.2105(c), even if the agreement had not been reduced to writing. If parties had not agreed in principle by the filing deadline, an applicant should not have included the names of those parties on its application, and must not have continued negotiations with other competing applicants.⁸

In addition, Section 1.65 of the Commission's Rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional importance to that application.⁹ Thus, Section 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders therefore are required to make such notification to the Commission immediately upon discovery.¹⁰ For further details regarding the prohibition against collusion, refer to the *Auction No. 32 Procedures Public Notice* under Section I.B.2.

⁷ 47 C.F.R. § 1.2105(c)(1).

⁸ See Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, DA 95-2244 (rel. October 26, 1995), 11 FCC Rcd 9645 (1995).

⁹ 47 C.F.R. § 1.65.

¹⁰ The Commission recently amended Section 1.2105 to require auction applicants to report prohibited communications in writing to the Commission immediately, but in no case later than five business days after the communication occurs. Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, *Seventh Report and Order*, 16 FCC Rcd 17546, 17555, ¶ 17 (2001).

Winning bidders will be required to disclose in their long-form applications the specific terms, conditions and parties involved in all bidding consortia, joint ventures, partnerships, and other arrangements entered into relating to the competitive bidding process.¹¹ Bidders found to have violated the anti-collusion rule may be subject to sanctions.¹² In addition, applicants are reminded that they are subject to the antitrust laws, which are designed to prevent anti-competitive behavior in the marketplace. If a bidder is found to have violated the antitrust laws in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions.¹³

Ex Parte Rule: Applicants should also be aware that the Commission has generally exempted auction proceedings from the strict requirements of the *ex parte* rule found in Section 1.1208¹⁴ of the Commission's rules.¹⁵

Mock Auction: All applicants found to be qualified bidders will be eligible to participate in a mock auction on Thursday, December 5, 2002. We encourage all qualified bidders to take advantage of this mock auction to become familiar with the FCC Automated Auction System. In the *Qualified Bidders Public Notice*, the Bureau will announce the bidding schedule for the mock auction and give details about participation. The mock auction will be conducted over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network will be available as well. The telephone number through which the backup FCC Wide Area Network may be accessed will be announced in a later public notice.

Electronic Bidding: Applicants are reminded that qualified bidders are eligible to bid either electronically or telephonically. Applicants should specify their bidding preference on the FCC Form 175 by **6:00 p.m. ET on Friday, November 15, 2002**. All applicants will be deemed electronic, unless the telephonic bidding selection is specified.

Bidders can access the FCC Automated Auction System over the Internet. As a contingency, bidders can also access the FCC Automated Auction System over the FCC's Wide Area Network. Access to the system via the Internet requires, at a minimum, the following hardware and software:

- CPU: Pentium 133 or above
- RAM: 32 MB (64 MB recommended)
- Monitor: VGA or above
- Mouse or other pointing device

¹¹ Section 73.5005(a) of the Commission's rules requires that post-auction filings include the exhibits required by 47 C.F.R. Section 1.2107(d) (concerning any bidding consortia, joint bidding arrangements or other agreements relating to the competitive bidding process); Section 1.2110(i) (concerning designated entity status, if applicable); and Section 1.2112(a) and (b) (concerning disclosure of ownership and real party in interest information.)

¹² 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

¹³ 47 C.F.R. §1.2109 (d).

¹⁴ 47 C.F.R. § 1.1202(d) note (1); *see also* Commission Announces that Mutually Exclusive "Short-Form" Applications (Form 175) to Participate in Competitive Bidding Process ("Auctions") Are Treated as Exempt for Ex Parte Purposes, *Public Notice*, 9 FCC Rcd 6760 (1994).

¹⁵ Commission Announces that Mutually Exclusive "Short-Form" Applications (Form 175) to Participate in Competitive Bidding Process ("Auctions") Are Treated as Exempt for Ex Parte Purposes, *Public Notice*, 9 FCC Rcd 6760 (1994).

- Operating System: Microsoft® Windows™ 95™, 98™, 2000™, ME™, NT™
- Web Browser, either of the following:
 - ◆ Microsoft® Internet Explorer 4.0 or higher (recommended). If you have Internet Explorer 5.0 or higher, your browser must have either Microsoft VM or Java Plug-In Version 1.3.1 installed.
 - ◆ Netscape® Communicator™ 4.0 or higher, with Java Plug-In Version 1.3.1.

Java Plug-In Version 1.3.1 is available for downloading at <http://java.sun.com/getjava/download.html>.

In addition, users accessing the FCC Automated Auction System via the FCC's Wide Area Network will need:

- Modem: 28.8 Kbps Hayes© compatible modem or faster (56.6 Kbps recommended)
- Point-to-Point Protocol (PPP) Dialer: Use the Dial-Up Networking feature included with the operating system

Bidder Alert: All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326-2222 and from the SEC at (202) 942-7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876-7060. Consumers who have concerns about specific proposals may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225-5322).

* * * *

CONTACT INFORMATION

For questions about payment or instructions for wiring upfront payments, contact Gail Glasser, Auctions Accounting Group at (202) 418-0578 or Tim Dates, Auctions Accounting Group, at (202) 418-0496.

For specific questions about an applicant's incomplete status, the applicant should contact the staff reviewer identified in the correspondence sent to the applicant by overnight mail.

For technical assistance with using the FCC Automated Auction System, contact the FCC Technical Support Hotline at (202) 414-1250 (V) or (202) 414-1255 (TTY). The FCC Technical Support Hotline is generally available Monday through Friday from 8:00 a.m. to 6:00 p.m. ET. *All calls to the FCC Technical Support Hotline are recorded.*

For additional information, contact: Audio Division: Lisa Scanlan at (202) 418-2700; Auctions and Industry Analysis Division: Kenneth Burnley, Auctions Legal Branch (regarding legal questions) at (202) 418-0660; Roy Knowles, Analyst, Auctions Operations (regarding bidding and auction structure) at (717) 338-2888; or Linda Sanderson, Auctions Operations (regarding bidding and general filing status) at (717) 338-2888.

- FCC -