



# PUBLIC NOTICE

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**DA 02-3214**  
**November 22, 2002**

## AUCTION OF CONSTRUCTION PERMITS FOR NEW AM BROADCAST STATIONS

### 5 Qualified Bidders

#### **Report No. AUC-02-32-J (Auction No. 32)**

In this *Public Notice*, the Federal Communications Commission (“FCC” or “Commission”) identifies **5** applicants found to be qualified to bid in the upcoming auction of three construction permits for new AM broadcast stations (“Auction No. 32”). Auction No. 32 is scheduled to begin on Tuesday, December 10, 2002. In addition, this *Public Notice* contains bidding instructions and other important information regarding Auction No. 32.

**Attachment A** lists each of the **5** qualified bidders, their upfront payments, and maximum eligibility in bidding units.

**Attachment B** lists the construction permits selected on each qualified bidder’s FCC Form 175.

**Attachment C** lists the applicants that submitted FCC Form 175 applications, but did not qualify to bid in this auction.

**Attachment D** describes how to participate in the mock auction.

**Attachment E** provides information on “How to Monitor the FCC Auctions On-line,” and round results file formats for use during the auction.

In order to participate effectively in the auction, qualified bidders should again familiarize themselves with the auction rules and other information contained in the *Auction No. 32 Procedures Public Notice* and related public notices.<sup>1</sup> This *Public Notice* and other documents related to Auction No. 32 are

<sup>1</sup> See Auction No. 32 Construction Permits for New AM Broadcast Stations Scheduled for December 10, 2002, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedural Issues, *Public Notice*, DA 02-2623 (rel. October 15, 2002), 67 Fed. Reg. 66632 (November 1, 2002) (“*Auction No. 32 Procedures Public Notice*”); see also AM Auction Filing Window and Application Freeze, *Public Notice*, DA 99-2585 (rel. November 19, 1999) (“*Auction No. 32 Filing Window Public Notice*”); New AM Broadcast Stations; Auction No. 32; Status of Applications to Participate in the Auction, *Public Notice*, DA 02-2955 (rel. November 4, 2002).

available on the Commission's auctions website, <http://wireless.fcc.gov/auctions>. The following information provides additional guidance.

**Registration.** Qualified bidders have been automatically registered for the auction. For security reasons, the Commission will confirm registration through two separate mailings of registration materials. Both mailings will be sent to the bidder's contact person at the contact address identified in the bidder's FCC Form 175. Upon receipt of both mailings, each bidder should be in possession of the following information:

- Bidder Identification Number
- At least two SecurID cards
- Bidding System User Manual
- FCC Telephonic Bidding phone number

**Qualified bidders are solely responsible for ensuring the security of their computer systems, security of their registration materials, and that only authorized bidders place bids on their behalf. The FCC assumes no responsibility or liability for these matters.**

**WARNING: Any unauthorized entity accessing or tampering with an FCC or other government computer will be prosecuted to the full extent of the law.**

Any qualified bidder listed in Attachment A of this *Public Notice* that has not received both registration mailings **by noon on Tuesday, December 3, 2002**, must contact the Auctions Hotline directly at (717) 338-2888. Receipt of both registration mailings is critical to participating in both the mock auction and the actual auction event, and it is the responsibility of each qualified bidder to ensure that all registration information has been received.

**Registration Material Replacement.** Lost bidder identification numbers or SecurID cards can be replaced only by appearing in person at the FCC Headquarters, located at 445 12<sup>th</sup> Street, SW, Washington, DC. Only an authorized bidder, the contact person or the certifying official, as designated on the applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacements. Qualified bidders requiring replacements must call Technical Support prior to arriving at the FCC.

If a bidder receives a damaged card(s), the bidder's contact person should call Technical Support to request a replacement. Technical Support will verify that the card is unusable, and a new card will be sent by Federal Express along with a self-addressed stamped envelope for returning the damaged card(s).

**Bidding.** As stated in the *Broadcast First Report and Order*, all pending mutually exclusive applications for broadcast services must be resolved through a system of competitive bidding.<sup>2</sup> When two or more short-form applications are accepted for filing within an MX Group, mutual exclusivity exits for auction

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<sup>2</sup> Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, GC Docket No. 92-52 and GEN Docket No. 90-264, *First Report and Order*, 13 FCC Rcd 15920, 15923-25, ¶¶ 7-12 (1998) (“*Broadcast First Report and Order*”).

purposes.<sup>3</sup> Once mutual exclusivity exists for auction purposes, even if only one applicant within an MX Group submits an upfront payment, that applicant is required to submit a bid in order to obtain the construction permit.<sup>4</sup>

The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network will be available as well. For details about connecting to the FCC Wide Area Network, refer to Attachment E of this public notice.<sup>5</sup> Qualified bidders are permitted to bid electronically or telephonically. In either case, **each authorized bidder** must have its own Remote Security Access SecurID card, which the FCC will provide at no charge. Each applicant with less than three authorized bidders will be issued two SecurID cards, while applicants with three authorized bidders will be issued three cards. For security purposes, the SecurID cards and the instructions for using them are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID card is tailored to a specific auction. SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 32. The telephonic bidding phone number will be supplied in the first mailing along with the confidential bidder identification number.

Please note that the SecurID cards can be recycled, and we encourage bidders to return the cards to the FCC. We will provide pre-addressed envelopes that bidders may use to return the cards once the auction is over.

**Bidding Contingency Plan.** Bidders should develop comprehensive contingency plans that can be quickly implemented if bidders experience difficulty participating in the auction. While the FCC will correct any problems within Commission-controlled facilities, bidders are solely responsible for anticipating and overcoming problems such as bidder technical failures, local telephone service interruptions, adverse local weather conditions, unavailability of authorized bidders, or the loss or breach of confidential security codes.

In their registration materials, all qualified bidders will be supplied with a telephone number for telephonic bidding. Bidders choosing to bid telephonically are required to use this telephone number to place bids. Electronic bidders may use this telephone number as an alternate method of bidding in the event they are unable to submit their bids electronically. **Telephonic bidders are reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round.**

**Minimum Opening Bids.** There will be a minimum opening bid for each construction permit in Auction No. 32, calculated in accordance with the potential value of the spectrum, including the type of service, market size, industry cash flow data and recent broadcast transactions.<sup>6</sup> The minimum opening bid

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<sup>3</sup> *Broadcast First Report and Order*, 13 FCC Rcd at 15978-80, ¶¶ 149-154. See also Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-252, *Second Report and Order*, 9 FCC Rcd 2348, 2376, ¶ 165 (1994).

<sup>4</sup> Any applicant that submits a short-form application that is accepted for filing but fails to timely submit an upfront payment will retain its place in the MX Group but, having purchased no bidding eligibility, will not be eligible to bid.

<sup>5</sup> See Attachment E, *infra*, entitled “How to Monitor the FCC Auctions On-Line.”

<sup>6</sup> *Auction No. 32 Procedures Public Notice* at 19-20.

amount is subject to reduction at the discretion of the Commission. However, bidders should be aware that the Commission will not entertain requests to lower minimum opening bids. The agency will exercise its discretion, if at all, independent of any communications from bidders.

**Messages and Announcements.** The FCC will post pertinent auction information as messages and announcements. Bidders should routinely check for messages and announcements each time they enter the FCC Automated Auction System, and should read this information carefully.

**Bidding Schedule.** The bidding schedule for Tuesday, December 10, 2002, will be:

Bidding Period	9:00 a.m.	-	10:00 a.m. ET
Bidding Period	11:00 a.m.	-	12:00 p.m. ET
Bidding Period	1:30 p.m.	-	2:30 p.m. ET
Bidding Period	3:30 p.m.	-	4:30 p.m. ET

The bidding schedule for Wednesday, December 11, 2002, and continuing until further notice, will be:

Bidding Period	9:00 a.m.	-	9:30 a.m. ET
Bidding Period	10:30 a.m.	-	11:00 a.m. ET
Bidding Period	12:00 p.m.	-	12:30 p.m. ET
Bidding Period	1:30 p.m.	-	2:00 p.m. ET
Bidding Period	3:00 p.m.	-	3:30 p.m. ET
Bidding Period	4:30 p.m.	-	5:00 p.m. ET

Round results will be provided approximately 10 to 15 minutes after the close of each round. The FCC will set the pace of the auction based upon its monitoring of the bidding and its assessment of the auction's progress. All subsequent schedule changes will be made by announcement during the course of the auction.

**Bidder Questions during the Auction.** FCC auction officials and Technical Support staff will be available during the course of the auction to answer questions from authorized bidders. Bidders should identify themselves as a bidder with time sensitive auction questions when calling any number. Help can be obtained through the following telephone numbers:

FCC Bidder Line (telephonic bidding, auction conduct questions)	Use telephonic bid number supplied in registration mailing
FCC Technical Support Hotline (all technical questions, software and hardware)	(202) 414-1250
FCC Auctions Division (legal questions)	(202) 418-0660

**Monitoring Round Results.** Attachment E (“How to Monitor the FCC Auctions On-Line,” *infra*) of this *Public Notice* provides instructions for reviewing and downloading round results, as well as other material related to Auction No. 32, that will be released by the Commission during the course of the auction.

**Amendments to FCC Form 175s.** Applicants are responsible for maintaining the accuracy and completeness of information furnished in their FCC Form 175 and exhibits.<sup>7</sup> Applicants should amend their applications within ten business days from the occurrence of a reportable change. Filers should make modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division, at the following address: [auction32@fcc.gov](mailto:auction32@fcc.gov). A separate copy of the letter should be faxed to Kenneth Burnley, Auctions and Industry Analysis Division, at (202) 418-4426. Questions about other changes should be directed to Kenneth Burnley at (202) 418-0660.

As described in the Commission's rules, applicants may make only minor corrections to their FCC Form 175 applications (*e.g.*, authorized bidder, fax number).<sup>8</sup> Major modifications (*e.g.*, changing the markets applied for, changing control of the applicant, changing the certifying official) will not be accepted.<sup>9</sup> Bidders are reminded that any changes affecting eligibility for the new entrant bidding credit, insofar as it results in the diminishment or loss of the new entrant bidding credit claimed on the Form 175 application, such information must be clearly stated in the bidder's amendment material and in the summary letter referenced above. In such cases, the Commission will make appropriate adjustments in the New Entrant Bidding Credit prior to the computation of down and final payment amounts due from any affected winning bidders.<sup>10</sup>

**Due Diligence.** Potential bidders are further 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

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<sup>7</sup> 47 C.F.R. § 1.65.

<sup>8</sup> 47 C.F.R. § 1.2105(b).

<sup>9</sup> *Id.*

<sup>10</sup> 47 C.F.R. §§ 73.5007; 73.5008.

might affect their decisions regarding participation in the auction.<sup>11</sup> Participants in Auction No. 32 are strongly encouraged to continue such research during the auction. **Bidders are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may effect their ability to bid on, otherwise acquire, or make use of the construction permits available in Auction No. 32.** For further details regarding due diligence, please refer to the *Auction No. 32 Procedures Public Notice* under Section I.B.3.

**Mock Auction.** The FCC will conduct a mock auction on Thursday, December 5, 2002, which will allow qualified bidders to familiarize themselves with the Internet bidding system. Only qualified bidders will be permitted to participate in the mock auction. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network will be available as well. For details about connecting to the FCC Wide Area Network, refer to Attachment E of this public notice.<sup>12</sup> Qualified bidders that wish to place bids telephonically, should use the telephone number supplied in the Auction No. 32 registration materials.

The mock auction will include all Auction No. 32 construction permits, and will follow the rules governing the actual auction. **The mock auction will be identified as Auction No. 74. The program will assume that each bidder applied for all construction permits. The program will also assume that each bidder submitted upfront payments of \$50,000, which corresponds to 50,000 bidding units.** The mock auction will simulate the start of the auction and all bidders will be required to be active on 100 percent of their bidding units, or risk having a waiver automatically applied. If there are no waivers remaining, the current eligibility will be permanently reduced, eliminating the bidder from the auction.

Electronic bidders participating in the mock auction are advised to review the Bidding System User Manual provided in the second mailing. Attachment D of this *Public Notice* provides instructions for accessing the FCC Mock Auction site.

The mock auction bidding schedule for Thursday, December 5, 2002, will be:

<u>Round 1 Bidding Period</u>	9:00 a.m. - 10:00 a.m. ET
<u>Round 2 Bidding Period</u>	11:00 a.m. - 11:30 a.m. ET
<u>Round 3 Bidding Period</u>	1:30 p.m. - 2:00 p.m. ET
<u>Round 4 Bidding Period</u>	3:00 p.m. - 3:15 p.m. ET

#### **OTHER IMPORTANT INFORMATION**

**Prohibition of Collusion.** All parties that submitted short-form applications to participate in Auction No. 32, including but not limited to qualified 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

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<sup>11</sup> See *Auction No. 32 Procedures Public Notice* at Section I.B.3.

<sup>12</sup> See Attachment E, *infra*, entitled "How to Monitor the FCC Auctions On-Line."

whom they have entered into agreements under Section 1.2105(a)(2)(viii). For Auction No. 32, this prohibition became effective at the filing deadline of short-form applications on Tuesday, February 1, 2000, and will end on the post-auction down payment deadline. The post-auction down payment deadline will be announced in a future public notice. If parties had agreed in principle on all material terms, those parties must have been 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.<sup>13</sup>

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.<sup>14</sup> 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.<sup>15</sup> For further details regarding the prohibition against collusion, refer to the *Auction No. 32 Procedures Public Notice* under Section I.B.2.

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. Bidders found to have violated the anti-collusion rule may be subject to sanctions.<sup>16</sup> 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.<sup>17</sup>

**Long-Form Applications.** Within thirty days after release of the auction closing public notice, winning bidders must electronically submit a properly completed long-form application, including required exhibits, for the construction permit won through Auction No. 32.<sup>18</sup> Winning bidders that are claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit.<sup>19</sup> Further filing instructions will be provided to the auction winners at the close of the auction.

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<sup>13</sup> See Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, DA 95-2244 (rel. October 26, 1995), 11 FCC Rcd 9645 (1995).

<sup>14</sup> 47 C.F.R. § 1.65.

<sup>15</sup> 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).

<sup>16</sup> 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

<sup>17</sup> 47 C.F.R. § 1.2109(d).

<sup>18</sup> 47 C.F.R. § 73.5005.

<sup>19</sup> 47 C.F.R. §§ 1.2112(b), 73.5005, 73.5007.

For additional information regarding this *Public Notice*, please contact Linda Sanderson, Auctions Project Manager, or Roy Knowles, Auctions Analyst, at (717) 338-2888, Kenneth Burnley, Auctions Attorney at (202) 418-0660.

Technical questions about software or hardware should be directed to Technical Support at (202) 414-1250.

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