



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

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CLOSED BROADCAST AUCTION NO. 54 CONSTRUCTION PERMITS FOR NEW BROADCAST STATIONS

6 Qualified Bidders

Report No. AUC-03-54-D (Auction No. 54)

In this *Public Notice*, the Federal Communications Commission (“FCC” or “Commission”) identifies six applicants found to be qualified to bid in the upcoming auction of construction permits for one new full power television (TV) and three FM broadcast stations (“Auction No. 54”). Auction No. 54 is scheduled to begin on Wednesday, July 23, 2003. In addition, this *Public Notice* contains bidding instructions and other important information regarding Auction No. 54.

Attachment A lists each of the six 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. 54 Procedures Public Notice* and subsequent public notices.¹ This *Public Notice* and other documents related to Auction No. 54 are available on the Commission’s auctions website, <http://wireless.fcc.gov/auctions/>. The following information provides additional guidance.

¹ See Closed Broadcast Auction No. 54 Construction Permits for New Broadcast Stations Scheduled for July 23, 2003, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures, *Public Notice*, DA 03-1547 (rel. May 12, 2003) (“*Auction No. 54 Procedures Public Notice*”); see also Closed Broadcast Auction No. 54, Construction Permits for New Broadcast Stations, Status of FCC Form 175 Applications to Participate in the Auction, *Public Notice*, DA 03-2098 (rel. June 27, 2003).

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 Wednesday, July 16, 2003**, 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 12th 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.² When two or more short-form applications are accepted for filing within an MX Group, mutual exclusivity exits for auction purposes.³ Once mutual exclusivity exists for auction purposes, even if only one applicant within an MX

² 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*”).

³ *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).

Group submits an upfront payment, that applicant is required to submit a bid in order to obtain the construction permit.⁴

The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. As a contingency plan, bidders may also dial in to the FCC Wide Area Network. Qualified bidders are permitted to bid telephonically or electronically. 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 only one authorized bidder will be issued two SecurID cards, while applicants with two or 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. 54. 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. 54, calculated in accordance with the potential value of the spectrum, including the type of service, proposed population coverage, market size, industry cash flow data and recent broadcast transactions.⁵ The minimum opening bid 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.

⁴ 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.

⁵ *Auction No. 54 Procedures Public Notice* at 24-25. Attachment A of the *Auction No. 54 Procedures Public Notice* sets forth the minimum opening bids for each construction permit offered in Auction No. 54.

Bidding Schedule. The bidding schedule for Wednesday, July 23, 2003, will be:

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

The bidding schedule for Thursday, July 24, 2003, 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 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) of this *Public Notice* provides instructions for reviewing and downloading round results, as well as other material related to Auction No. 54, 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.⁶ 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: auction54@fcc.gov. A separate copy of the letter should be faxed to Kenneth Burnley, Auctions and Industry Analysis Division, (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).⁷ Major modifications (*e.g.*, changing the markets applied for, changing control of the applicant, changing the certifying official) will not be accepted.⁸ 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, must be clearly stated in the bidder's amended 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.⁹

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 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. 54 in order to determine the existence of pending proceedings that might affect their decisions regarding participation in the auction. Participants in Auction No. 54 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. 54.** For further details regarding due diligence, please refer to the *Auction No. 54 Procedures Public Notice* under Section I.B.3.

Mock Auction. The FCC will conduct a mock auction on Friday, July 18, 2003, which will allow qualified bidders to familiarize themselves with the FCC Automated Auction System. Only qualified bidders will be permitted to participate in the mock auction. The Bureau will conduct this auction over the Internet, and telephonic bidding will be available as well. As a contingency plan, bidders may also dial in to the FCC Wide Area Network. Qualified bidders that wish to place bids telephonically should use the telephone number supplied in the Auction No. 54 registration materials.

The mock auction will include all Auction No. 54 construction permits, and will follow the rules governing the actual auction. **The mock auction will be identified as Auction No. 74. The program will reflect all the construction permits each bidder applied for and the associated upfront**

⁶ 47 C.F.R. § 1.65.

⁷ 47 C.F.R. § 1.2105(b).

⁸ *Id.*

⁹ 47 C.F.R. §§ 73.5007; 73.5008.

payments, which in turn corresponds to the number of bidding units allocated. The mock auction will simulate the start of the auction, and all bidders will be required to be active on 100 percent of their current bidding eligibility. A bidder not meeting this requirement will have a waiver automatically applied (if the bidder has any waivers available), or its current eligibility will be permanently reduced (if the bidder has no waivers remaining), possibly 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 Friday, July 18, 2003, 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. Bidders are reminded that Sections 1.2105(c) and 73.5002 of the Commission's rules prohibits applicants for the same market 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. 54, this prohibition became effective at the short-form application filing deadline on Friday, June 20, 2003, and will end on the down payment deadline after the auction, which will be announced in a future public notice.¹⁰ Bidders competing for construction permits in the same market are encouraged not to use the same individual as an authorized bidder. If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application pursuant to Section 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other applicants for the same market.¹¹

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 significance to that application.¹² Thus, Section 1.65 requires auction applicants that engage in communications of bids or bidding strategies that result in a bidding agreement, arrangement or understanding not already identified on their short-form applications to promptly disclose any such agreement, arrangement or understanding to the Commission by amending their pending applications. In addition, Section 1.2105(c)(6) requires all auction applicants to report prohibited discussions or disclosures regarding bids or bidding strategy to the Commission in writing immediately but in no case later than five business days after the communication occurs, even if the

¹⁰ See 47 C.F.R. §§ 1.2105(c)(1).

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

¹² See 47 C.F.R. § 1.65.

communication does not result in an agreement or understanding regarding bids or bidding strategy that must be reported under Section 1.65.¹³ For further details regarding the prohibition against collusion refer to the *Auction No. 54 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.¹⁴ 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.¹⁵

Long-Form Applications. Within thirty days after release of the auction closing public notice, winning bidders must submit any necessary minor amendments to their previously filed long-form application, including required exhibits, for the construction permit won through Auction No. 54.¹⁶ Winning bidders that are claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit.¹⁷ Further filing instructions will be provided to the auction winners at the close of the auction.

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

Technical questions about software or hardware should be directed to Technical Support at (202) 414-1250 (V) or (202) 414-1255 (TTY).

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¹³ 47 C.F.R. § 1.2105(c)(6); *see also* Amendment of Part 1 of the Commission's Rules - Competitive Bidding Procedures, *Seventh Report and Order*, 16 FCC Rcd 17546, 17555, ¶ 17 (2001).

¹⁴ *See* 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

¹⁵ 47 C.F.R. § 1.2109 (d).

¹⁶ 47 C.F.R. § 73.5005.

¹⁷ 47 C.F.R. §§ 1.2112(b), 73.5005, 73.5007.