



PUBLIC NOTICE

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WIRELESS TELECOMMUNICATIONS BUREAU REMINDER OF ANTI-COLLUSION RULE OBLIGATIONS

The Wireless Telecommunications Bureau wishes to remind prospective applicants for upcoming Auction No. 58 and other parties that may be engaged in discussion with such prospective applicants of the need to comply with the Commission's anti-collusion rule, Section 1.2105(c).¹ Section 1.2105(c) of the Commission's rules prohibits applicants for any of the same geographic license areas from communicating with each other during the auction about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications to participate in the auction (FCC Form 175) as parties with whom they have entered into agreements under Section 1.2105(a)(2)(viii).²

An auction applicant must identify on its short-form application any parties with whom the applicant has entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings that relate in any way to the licenses being auctioned, including any agreements relating to post-auction market structure.³ An auction applicant also must certify on its short-form application that it has not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in its application, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid.⁴

The anti-collusion rule prohibits not only a communication about an applicant's own bids or bidding strategy, but also a communication of another applicant's bids or bidding strategy.⁵ While the anti-collusion rule provisions do not prohibit non-auction related business negotiations among auction applicants, applicants must remain vigilant so as not to communicate directly or indirectly information that affects, or could affect, bids or bidding strategy, or the negotiation of settlement agreements. Further, auction applicants that make or receive a prohibited communication of bids or bidding strategies must report the communication immediately to the Commission in writing.⁶

¹ 47 C.F.R. § 1.2105(c).

² 47 C.F.R. § 1.2105(a)(2)(viii); 47 C.F.R. § 1.2105(c)(1). *See also* 47 C.F.R. § 1.2105(a)(2)(ix). Consistent with usual practice, the Bureau previously provided detailed guidance on the anti-collusion rule in an earlier public notice which also describes procedures and other important information for entities that seek to participate in Auction No. 58. *See* "Broadband PCS Spectrum Auction Scheduled for January 12, 2005; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 58," *Public Notice*, DA 04-3005 (rel. Sept. 16, 2004) ("*Auction No. 58 Procedures Public Notice*"). Applicants that are 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. *See* 47 C.F.R. § 1.2107(d).

³ 47 C.F.R. §§ 1.2105(a)(2)(viii), (c)(1). *See also Auction No. 58 Procedures Public Notice* at 10-11 (outlining requirements for completing Exhibit B disclosure of bidding agreements).

⁴ 47 C.F.R. § 1.2105(a)(2)(ix).

⁵ *See Western PCS BTA 1 Corp.*, 14 FCC Rcd 21571 (1999).

⁶ Section 1.2105(c)(6) requires any such report to be submitted immediately but in no case later than five business

The collusion prohibition begins on the deadline for filing the auction short-form application, which for Auction No. 58 is November 30, 2004, 6:00 p.m. ET, and ends at the down payment deadline after the auction.⁷

Individuals and entities should be aware that they may be subject to compliance with the anti-collusion rule obligations even though they may not have filed an application in their own name or may not have actually placed bids in the auction. For example, if an individual or entity files a short-form application, the anti-collusion rule applies, whether or not the applicant is found to be a qualified bidder, withdraws its application, fails to make an upfront payment, fails to bid, or stops bidding. For purposes of this prohibition, an “applicant” includes all “controlling interests” in the entity submitting a short-form application to participate in the auction, as well as all holders of partnership and other ownership interests and any stock interest amounting to ten percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application, and all officers and directors of that entity.⁸

Any applicant found to have violated the anti-collusion rule may be subject to sanctions, including forfeiture of its upfront payment, down payment or full bid amount, and may be prohibited from participating in future auctions.⁹ In addition, applicants are reminded that they are subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. If an applicant 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.

The *Auction No. 58 Procedures Public Notice* provides additional information on compliance with the anti-collusion rule. We urge potential auction applicants and others with whom they are doing business to review our previous guidance on this subject as well as Commission orders and precedent on this topic.¹⁰ Applicants may direct questions regarding the anti-collusion rule to the Auctions and Spectrum Access Division at (202) 414-0660 (voice) or via electronic mail to the following address: auction58@fcc.gov.

Action by the Wireless Telecommunications Bureau.

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days after the communication occurs. 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. 17,546, 17,555 ¶ 17 (2001). “Controlling interests” include individuals or entities, or groups of individuals or entities, that have control of the applicant under the principles of either *de jure* or *de facto* control, and include an entity’s officers and directors. *See* 47 C.F.R. § 1.2110(c)(2).

⁷ 47 C.F.R. § 1.2105(c)(1).

⁸ 47 C.F.R. § 1.2105(c)(7)(i).

⁹ *See* 47 C.F.R. § 1.2109(d).

¹⁰ On occasion, the Bureau has previously provided guidance to prospective auction applicants on the anti-collusion rule. *See* “Wireless Telecommunications Bureau Responds to Questions about the Local Multipoint Distribution Service Auction,” *Public Notice*, 13 FCC Rcd 341 (Wireless Telecom. Bur. 1998); “Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E and F Block Bidders,” *Public Notice*, 11 FCC Rcd 10134 (Wireless Telecom. Bur. 1996); “FCC Staff Clarifies Application of Anti-Collusion Rule to Broadband PCS ‘C’ Block Reauction,” *Public Notice*, 11 FCC Rcd 7031 (Wireless Telecom. Bur. 1996); “Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules,” *Public Notice*, 11 FCC Rcd 9645 (Wireless Telecom. Bur. 1995). Copies of these public notices as well as certain Commission orders and decisions concerning the anti-collusion rule are available on the Web at: http://wireless.fcc.gov/auctions/default.htm?job=anti_collusion.