



# PUBLIC NOTICE

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## AUCTION OF FM BROADCAST CONSTRUCTION PERMITS SCHEDULED FOR JANUARY 10, 2007

### Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 68

**AU Docket No. 06-101**

Report No. AUC-06-68-B (Auction No. 68)

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## I. GENERAL INFORMATION

### A. Introduction

1. By this Public Notice, the Media Bureau (“MB”) and Wireless Telecommunications Bureau (“WTB”) (collectively the “Bureaus”) announce the procedures and minimum opening bid amounts for the upcoming auction of certain FM broadcast construction permits scheduled to begin on January 10, 2007 (Auction No. 68). On August 24, 2006, in accordance with Section 309(j)(3) of the Communications Act of 1934, as amended,<sup>1</sup> the Bureaus released a public notice seeking comment on reserve prices or minimum opening bid amounts and the procedures to be used in Auction No. 68.<sup>2</sup> Interested parties submitted six comments and one reply comment in response to the *Auction No. 68 Comment Public Notice*.<sup>3</sup>

#### 1. Construction Permits to be Auctioned

2. Auction No. 68 will offer nine construction permits in the FM broadcast service as listed in Attachment A. The construction permits to be auctioned are nine unsold FM construction permits from Auction Nos. 37 and 62.<sup>4</sup> These construction permits are for vacant FM allotments, reflecting FM channels assigned to the FM Table of Allotments,<sup>5</sup> pursuant to the Commission’s established rulemaking procedures, and are designated for use in the indicated communities.

3. Pursuant to the policies established in the *Broadcast Competitive Bidding First Report and Order*, applicants may apply for any vacant FM allotment listed in Attachment A.<sup>6</sup> When two or more short-form applications (FCC Form 175) specifying the same FM allotment are accepted for filing, mutual exclusivity

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<sup>1</sup> 47 U.S.C. § 309(j)(3)(E)(i)(requirement to seek comment on proposed auction procedures); *see* 47 U.S.C. § 309(j)(4)(F)(authorization to prescribe reserve price or minimum bid); *see also* 47 C.F.R. § 1.2104(c) and (d).

<sup>2</sup> “Auction of FM Broadcast Construction Permits Scheduled for January 10, 2007; Comment Sought on Competitive Bidding Procedures for Auction No. 68,” AU Docket No. 06-101, *Public Notice*, DA 06-997 (“*Auction No. 68 Comment Public Notice*”).

<sup>3</sup> Concerned Citizens of Hawaii, Legacy Media Company, Inc., Mullaney Engineering, Inc., National Public Radio, and Steven R. Bartholomew filed comments. Houston Christian Broadcasters, Inc., the Sister Sherry Lynn Foundation, Inc., and Revival Christian Ministries, Inc. jointly filed “Petition for Reconsideration” by the deadline for comments; as discussed further below, we are treating this submission in the same manner as comments received in this proceeding. Steven R. Bartholomew submitted reply comments.

<sup>4</sup> “FM Broadcast Construction Permits Auction Closes, Auction No. 37 Winning Bidders Announced; Payment and Application Deadlines Established,” *Public Notice*, 20 FCC Rcd 1021 (WTB/MB 2004); “Auction of FM Broadcast Construction Permits Closes, Winning Bidders Announced for Auction No. 62, Down Payments due February 23, 2006, FCC Form 301 due March 10, 2006,” *Public Notice*, 21 FCC Rcd 1071 (WTB/MB 2006). *See also Letter to Alva Fearon, President, In Vibration, Inc.*, 20 FCC Rcd 7791 (WTB/MB 2005).

<sup>5</sup> 47 C.F.R. § 73.202(b).

<sup>6</sup> *See* 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, *First Report and Order*, 13 FCC Rcd 15920 (1998) (“*Broadcast Competitive Bidding First Report and Order*”), *Memorandum Opinion and Order*, 14 FCC Rcd 8724 (1999) (“*Broadcast Competitive Bidding First Reconsideration Order*”), *Memorandum Opinion and Order*, 14 FCC Rcd 12541 (1999), *aff’d*, *Orion Communications Ltd. V. FCC*, 221 F.3d 196, No. 98-1424, slip op. (D.C. Cir. June 13, 2000) (unpublished opinion available at 2000 WL 816046 (D.C. Cir.), *aff’d*, *Orion Communications Ltd. V. FCC*, 213 F.3d 761 (D.C. Cir. 2000). Attachment A also lists the reference coordinates for each vacant FM allotment. With regard to the FM service, the Commission gave applicants the opportunity to submit a set of preferred site coordinates as an alternative to the reference coordinates for the vacant FM allotment upon which they intend to bid. Further information regarding preferred site coordinates may be found in Attachment B to this public notice. *See Broadcast Competitive Bidding First Report and Order*, 13 FCC Rcd at 15974-75 and n.153.

(“MX”) exists for auction purposes,<sup>7</sup> and thus, that construction permit for the FM allotment will be awarded by competitive bidding procedures.<sup>8</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>9</sup>

4. National Public Radio (“NPR”) contends that the *Auction No. 68 Comment Public Notice* is deficient in that it does not sufficiently encourage the submission of applications for noncommercial educational (“NCE”) broadcast stations.<sup>10</sup> NPR surmises that the previously unsold construction permits available in Auction No. 68 show a lack of interest in providing commercial service in these areas, and therefore suggests that encouraging applications for NCE stations might result in new NCE service to these locations.<sup>11</sup> NPR’s suggestion rests on an erroneous premise that there was a lack of interest in these permits. Rather, as discussed further below, the permits in this auction received multiple bids in those prior auctions. These permits are now available because either a bidder withdrew a high bid during the auction or a winning bidder defaulted after the close of the auction.<sup>12</sup>

5. NPR also suggests that the *Auction No. 68 Comment Public Notice* is deficient because it does not contain instructions for the submission of applications for NCE stations.<sup>13</sup> NPR cites to a portion of Section 73.5002(a) of the Commission’s rules which states that “initial and other public notices will contain” instructions for completing applications to participate in the broadcast auction, and applications for NCE stations.<sup>14</sup> NPR’s argument fails to recognize that an initial auction public notice is limited to “announcing the upcoming auction and specifying [filing] the period” for short-form applications.<sup>15</sup> The Commission’s initial auction public notices for FM auctions do not supply specific application filing instructions. Rather, such instructions are typically supplied in a subsequent public notice, such as this one, which announces the procedures to be followed for the upcoming broadcast auction and provides filing instructions. The instructions for the filing of short-form applications for both commercial and NCE stations are provided in detail below.<sup>16</sup> Moreover, the Commission’s competitive bidding and broadcast service rules are specifically designed to accommodate applicants for NCE broadcast stations who seek to use nonreserved spectrum.<sup>17</sup> In order to maximize opportunity for noncommercial broadcasters, the Commission has also permitted applicants

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<sup>7</sup> *Broadcast Competitive Bidding 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. 93-253, *Second Report and Order*, 9 FCC Rcd 2348, 2376 ¶ 165 (1994) (“*Competitive Bidding Second Report & Order*”).

<sup>8</sup> *Broadcast Competitive Bidding First Report and Order*, 13 FCC Rcd at 15923-25 ¶¶ 7-12.

<sup>9</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 status as an applicant in Auction No. 68 and will remain subject to the Commission’s anti-collusion rules, 47 C.F.R. §§ 1.2105(c) and 73.5002(d), but, having purchased no bidding eligibility, will not be eligible to bid. See *Broadcast Competitive Bidding First Report and Order*, 13 FCC Rcd at 15980 ¶ 153.

<sup>10</sup> NPR Comments.

<sup>11</sup> See NPR Comments at 3-4.

<sup>12</sup> This Public Notice explains below that bid withdrawals will not be permitted in this auction and additional payments will be imposed to deter post-auction defaults. For detailed information on the bids placed during the previous FM auctions (Auction Nos. 37 and 62), auction results, and post-auction decisions, see the Commission’s Auctions web page at <http://wireless.fcc.gov/auctions>.

<sup>13</sup> See NPR Comments at 2-3.

<sup>14</sup> See *id.*, at 2 (citing 47 C.F.R. § 73.5002(a)).

<sup>15</sup> 47 C.F.R. § 73.5002(a).

<sup>16</sup> See Attachment B.

<sup>17</sup> See 47 C.F.R. § 73.5002 (a) and (b).

for NCE stations the opportunity to obtain licenses to use nonreserved spectrum by participating in auction filing windows. In a decision resolving the issues raised by the court in *National Public Radio v. FCC*, the Commission determined that an applicant for an NCE station would be permitted to submit an application for nonreserved spectrum in an auction filing window, subject to being returned as unacceptable for filing if such application is mutually exclusive with an application for a commercial station.<sup>18</sup> The opening of the upcoming window for nonreserved FM allotments for Auction No. 68 provides a filing opportunity for both NCE and commercial applicants. As with the previous two FM auctions,<sup>19</sup> applicants for NCE broadcast stations will be allowed to submit short-form applications (FCC Forms 175) for the specific nonreserved spectrum to be auctioned in Auction No. 68 in the forthcoming filing window.<sup>20</sup>

6. The broad principle of NCE auction participation is simply not a subject matter for which the Bureaus seek comment. The Bureaus released the *Auction No. 68 Comment Public Notice* pursuant to statutory directive. Section 309(j)(3) of the Act requires the Commission to “ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed . . . before issuance of bidding rules, to permit notice and comment on proposed auction procedures . . . .”<sup>21</sup> As stated in the *Auction No. 68 Comment Public Notice*, 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 Commission ordered the Bureaus to seek comment on a variety of auction-specific procedures prior to the start of each auction.<sup>22</sup> Specifically, the Commission directed the Bureaus to seek comment on particular mechanisms related to auction conduct, mechanisms including the structure of the bidding rounds, establishment of minimum opening bids, activity requirements, activity rule waivers and information relating to auction delay, suspension or cancellation. Thus, the concerns raised by NPR lie outside of the scope of this proceeding.

7. Three entities filed jointly a “petition for reconsideration” in response to the *Auction No. 68 Comment Public Notice*, requesting that we delete four permits from the Auction No. 68 inventory.<sup>23</sup> In their view, the FM construction permits at Perry, Florida, Parowan, Utah, Cedar Key, Florida, and Tecopa, California should be removed from the inventory and awarded on a first-come, first-served basis. Each of these three entities had its short-form application dismissed in an earlier FM auction because each was mutually exclusive with one or more applications for a commercial station for the same FM construction permit.<sup>24</sup> These entities contend that the Commission should follow “a longstanding ‘first come, first served’ policy, and should

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<sup>18</sup> See Reexamination of the Comparative Standards for Noncommercial Educational Applicants, MM Docket No. 95-31, *Second Report and Order*, 18 FCC Rcd 6691, 6699-6700 ¶ 21 (2003) (“*NCE Second Report and Order*”), recons pending.

<sup>19</sup> “*Auction of FM Broadcast Construction Permits Scheduled for November 1, 2005, Auction No. 62,*” 20 FCC Rcd 10492 (WTB / MB 2005); “*Auction of FM Broadcast Construction Permits Scheduled for November 3, 2004, Auction No. 37,*” Public Notice, 19 FCC Rcd 10570 (WTB / MB 2004).

<sup>20</sup> NPR’s complaint that the *Auction No. 68 Comment Public Notice* does not mention that NCE applicants need not pay minimum opening bids, upfront payments or filing fees is misdirected because the Bureaus’ proposals in that public notice were only intended to apply where applications submitted in an auction filing window are found to be mutually exclusive. In such event, Section 309(j) of the Communications Act requires that such mutual exclusivity must be resolved through the use of competitive bidding procedures. See *Broadcast Competitive Bidding First Report and Order*, 13 FCC Rcd at 5920.

<sup>21</sup> 47 U.S.C. § 309(j)(3).

<sup>22</sup> See Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rulemaking*, 13 FCC Rcd 374, 448 (1997).

<sup>23</sup> “Petition for Reconsideration” of Houston Christian Broadcasters, Inc., the Sister Sherry Lynn Foundation, Inc., and Revival Christian Ministries, Inc. (filed Sept. 12, 2006) (*Houston Christian PFR*).

<sup>24</sup> See “Auction of FM Broadcast Permits; Status of Applications to Participate in Auction No. 37,” Public Notice, 19 FCC Rcd 17,938 (2004) (rejecting applications for NCE FM broadcast stations that were mutually exclusive with applications for FM commercial broadcast stations).

immediately issue construction permits for these four FM stations to them.<sup>25</sup> The parties claim that, because these permits were offered but not awarded in Auction Nos. 37 or 62, they should now be available to them. We hereby deny this request. We decline to adopt the proposal made by these three former applicants because it would violate the Commission's rules and policies as established in the *NCE Second Report and Order* concerning the processing of mutual exclusive NCE and commercial applications. Implementation of this proposal would require amendment of the Commission's competitive bidding and broadcast service rules. The Bureau's process for seeking comment on auction procedures is not the appropriate forum in which either to challenge determinations made in a rulemaking proceeding or to propose additional rule changes.

## **B. Rules and Disclaimers**

### **1. Relevant Authority**

8. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules, including recent amendments and clarifications.<sup>26</sup> Broadcasters should also familiarize themselves with the Commission's rules relating to the FM broadcast service contained in 47 C.F.R. §§ 73.201 – 73.333 and 73.1001 – 73.5009. Prospective bidders must also be familiar with the rules relating to broadcast auctions and competitive bidding proceedings contained in 47 C.F.R. §§ 1.2001 – 1.2112 and 73.5000 – 73.5009. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions contained in this public notice, the *Auction No. 68 Comment Public Notice* and the *Broadcast Competitive Bidding First Report and Order*,<sup>27</sup> the *Broadcast Competitive Bidding First Reconsideration Order*<sup>28</sup> and the *New Entrant Bidding Credit Reconsideration Order*<sup>29</sup> and the *NCE Second Report and Order*.<sup>30</sup>

9. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most auctions-related Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at <http://wireless.fcc.gov/auctions>. Additionally, documents are available for public inspection and copying between 8:00 a.m. and 4:30 p.m. Eastern Time (ET) Monday through Thursday or 8:00 a.m. to 11:30 a.m. ET Fridays at the FCC Reference Information Center, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. Documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. ("BCPI"), 445 12th Street, SW, Room CY-B402, Washington, DC 20554, 800-378-3160 or at <http://www.bcpweb.com>.<sup>31</sup>

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<sup>25</sup> *Houston Christian PFR* at 4.

<sup>26</sup> See, e.g., Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd 15293 (2000) ("*Fifth Report and Order*"); *id.*, *Seventh Report and Order*, 16 FCC Rcd 17546 (2001) ("*Seventh Report and Order*"); *id.*, *Eighth Report and Order*, 17 FCC Rcd 2962 (2002); *id.*, *Second Order on Reconsideration of the Third Report and Order and Order on Reconsideration of the Fifth Report and Order*, 18 FCC Rcd 10180 (2003).

<sup>27</sup> *Broadcast Competitive Bidding First Report and Order*, 13 FCC Rcd at 15920.

<sup>28</sup> *Broadcast Competitive Bidding First Reconsideration Order*, 14 FCC Rcd at 8724.

<sup>29</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, *Memorandum Opinion and Order*, 14 FCC Rcd 12541 (1999) ("*New Entrant Bidding Credit Reconsideration Order*").

<sup>30</sup> *NCE Second Report and Order*, 18 FCC Rcd at 6691.

<sup>31</sup> When ordering documents from BCPI, please provide the appropriate FCC document number (for example, DA 06-997 for the *Auction No. 68 Comment Public Notice*, or DA 06-1949 for this Public Notice).

## 2. Prohibition of Collusion; Compliance with Antitrust Laws

10. To ensure the competitiveness of the auction process, Section 1.2105(c) of the Commission's rules prohibits applicants competing for construction permits in any of the same geographic license areas from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications (FCC Forms 175) as parties with whom they have entered into agreements pursuant to Section 1.2105(a)(2)(viii).<sup>32</sup> Thus, applicants for any of the same geographic license areas must affirmatively avoid all communications with each other that affect or, in their reasonable assessment, have the potential to affect bids or bidding strategy. In some instances, this prohibition extends to communications regarding the post-auction market structure. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction.<sup>33</sup> **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.**<sup>34</sup> The "geographic license area" is the market designation of the particular service.<sup>35</sup> For the FM service, the market designation is the particular vacant FM allotment (*e.g.*, Covelo, California, Channel 245A, Market FM366-A). In Auction No. 68, for example, the rule would apply to applicants designating on the short-form application any of the same FM allotments. Therefore, applicants that apply to bid for an FM construction permit for the same allotment would be precluded from engaging in prohibited communications during the period from the short-form application deadline until the down payment deadline following the close of the auction. In addition, even if auction applicants are each eligible to bid on only one common FM allotment, they may not discuss with each other their bids or bidding strategies relating to any FM allotment that either designates on its short-form application.

11. For purposes of this prohibition, Section 1.2105(c)(7)(i) defines "applicant" as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application.<sup>36</sup>

12. Applicants for construction permits for any of the same allotments must not communicate directly or indirectly about bids or bidding strategy.<sup>37</sup> Accordingly, such applicants are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between such applicants. Also, if the authorized bidders are different individuals employed by the same organization (*e.g.*, law firm or engineering firm or consulting firm), a violation similarly could occur.<sup>38</sup> In such a case, at a minimum, applicants should certify on their applications that precautionary

<sup>32</sup> 47 C.F.R. §§ 1.2105(a)(2)(viii), 1.2105(c)(1), and 73.5002. *See also Part 1 Seventh Report and Order*, 16 FCC Rcd 17546 (2001); *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15297-98 ¶¶ 7-8.

<sup>33</sup> 47 C.F.R. § 1.2105(c)(1).

<sup>34</sup> *See, e.g.*, *Star Wireless, LLC, Forfeiture Order*, 19 FCC Rcd 18626, 18628 ¶ 4, n.19 (EB 2004), application for review pending (collusion rule applies to applicants regardless of whether they are qualified to bid); Letter to Robert Pettit, Esquire, from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 16 FCC Rcd 10080 (WTB 2000) (declining to exempt an applicant's controlling interest from coverage by the anti-collusion rule, even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder).

<sup>35</sup> *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17549 n.12.

<sup>36</sup> 47 C.F.R. § 1.2105(c)(7)(i).

<sup>37</sup> *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17549-50 ¶ 6.

<sup>38</sup> *See* Application of Nevada Wireless for a License to Provide 800 MHz Specialized Mobile Radio Service in the Farmington, NM-CO Economic Area (EA-155) Frequency Band A, *Memorandum Opinion and Order*, 13 FCC Rcd 11973, 11977 ¶ 11 (1998) ("*Nevada Wireless Order*").

steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.<sup>39</sup> A violation of the anti-collusion rule could occur in other contexts, such as an individual serving as an officer for two or more applicants.<sup>40</sup> Moreover, the Commission has found a violation of the anti-collusion rule where a bidder used the Commission's bidding system to disclose "its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets,"<sup>41</sup> and has placed auction participants on notice that the use of its bidding system "to disclose market information to competitors will not be tolerated and will subject bidders to sanctions."<sup>42</sup> Bidders are cautioned that the Commission remains vigilant about prohibited communications taking place in other situations. For example, the Commission has warned that prohibited "communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly."<sup>43</sup> Auction participants are hereby placed on notice that public disclosure of information relating to bidder interests, bids and bidder identities that typically has been revealed prior to and during past Commission auctions may violate the anti-collusion rule.<sup>44</sup> Bidders should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become a conduit for the communication of prohibited bidding information.

13. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form application.<sup>45</sup> If parties agree in principle on all material terms prior to the short-form filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under Section 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the short-form filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiations, discussions or communications with any other applicants after the short-form filing deadline.<sup>46</sup>

14. By electronically submitting its short-form application, each applicant certifies its compliance with Sections 1.2105(c) and 73.7002. However, the Bureaus caution that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted.<sup>47</sup> The Commission has stated that it "intend[s] to scrutinize

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<sup>39</sup> *Id.*

<sup>40</sup> See, e.g., *Letter to Colby M. May, TCCSA, Inc., d/b/a Trinity Broadcasting Network, from Barbara A. Kreisman, Chief, Video Division, Media Bureau, and Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau*, 20 FCC Rcd 14648 (WTB/MB 2005) (finding apparent violation of anti-collusion rule where applicants with mutually exclusive applications reported sharing same individual as an officer and director and reported having no bidding agreement).

<sup>41</sup> *Mercury PCS II, LLC, Notice of Apparent Liability for Forfeiture*, 12 FCC Rcd 17970, 17976 ¶ 12 (1997).

<sup>42</sup> *Mercury PCS II, LLC, Memorandum Opinion and Order*, 13 FCC Rcd 23755, 23760 ¶ 11 (1998).

<sup>43</sup> *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, *Memorandum Opinion and Order*, 9 FCC Rcd 7684, 7689 ¶ 12 (1994).

<sup>44</sup> Cf. *Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction, Public Notice*, 13 FCC Rcd 341, 347-8 (1998) ("Public statements can give rise to collusion concerns. This has occurred in the antitrust context, where certain public statements can support other evidence which tends to indicate the existence of a conspiracy.").

<sup>45</sup> 47 C.F.R. § 1.2105(c)(7)(i).

<sup>46</sup> See *Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, Public Notice*, 11 FCC Rcd 9645 (1995) ("*Anti-Collusion Public Notice*").

<sup>47</sup> *Nevada Wireless Order*, 13 FCC Rcd at 11978 ¶ 13.

carefully any instances in which bidding patterns suggest that collusion may be occurring.<sup>48</sup> Any applicant found to have violated the anti-collusion rule may be subject to sanctions.<sup>49</sup>

15. **Applicants are also reminded that, regardless of compliance with the Commission's rules, they remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace.**<sup>50</sup> **Compliance with the disclosure requirements of the Commission's anti-collusion rule will not insulate a party from enforcement of the antitrust laws.**<sup>51</sup> For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submits a short form application.<sup>52</sup> The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws: for example, actual or potential competitors may not agree to divide territories horizontally in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another for the other.<sup>53</sup> Similarly, the Bureaus have long reminded potential applicants and others that “[e]ven where the applicant discloses parties with whom it has reached an agreement on the short-form application, thereby permitting discussions with those parties, the applicant is nevertheless subject to existing antitrust laws.”<sup>54</sup> To the extent the Commission becomes aware of specific allegations that may give rise to violations of the federal antitrust laws, the Commission may refer such allegations to the United States Department of Justice for investigation.<sup>55</sup> If an applicant is found to have violated the antitrust laws or the Commission's rules 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, among other sanctions.<sup>56</sup>

16. 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.<sup>57</sup> Thus, Section 1.65 requires an auction applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. Applicants are therefore required by Section 1.65

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<sup>48</sup> Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, 9 FCC Rcd 7684, 7689 ¶ 12 (1994).

<sup>49</sup> See 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

<sup>50</sup> See Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Further Notice of Proposed Rule Making*, 14 FCC Rcd 21558, 21560 ¶ 4 and n. 4 (1999) citing Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, 9 FCC Rcd 7684, 7689 ¶ 12 (1994) (“[W]e wish to emphasize that all applicants and their owners continue to be subject to existing antitrust laws. Applicants should note that conduct that is permissible under the Commission's Rules may be prohibited by the antitrust laws.”); Implementation of Section 309(j) of the Communications Act-Competitive Bidding, PP Docket No. 93-253, *Fourth Memorandum Opinion & Order*, 9 FCC Rcd 6858, 6869 n. 134 (1994) (“[A]pplicants will also be subject to existing antitrust laws.”) (“*Fourth Memorandum Opinion and Order*”).

<sup>51</sup> See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226. See also “Justice Department Sues Three Firms Over FCC Auction Practices,” *Press Release* 98-536 (DOJ Nov. 10, 1998).

<sup>52</sup> The Commission has cited a number of examples of such anticompetitive behavior. See, e.g., Implementation of Section 309(j) of the Communications Act-Competitive Bidding, PP Docket No. 93-253, *Fourth Memorandum Opinion & Order*, 9 FCC Rcd 6858 at 6869 n.134.

<sup>53</sup> *Id.*; see also *Anti-Collusion Public Notice*, 11 FCC Rcd 9645.

<sup>54</sup> See *Anti-Collusion Public Notice*, *id.*

<sup>55</sup> See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226.

<sup>56</sup> See 47 C.F.R. § 1.2109(d); see also *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226.

<sup>57</sup> 47 C.F.R. § 1.65.

to report to the Commission any communications they have made to or received from another applicant after the short-form filing deadline that affect or have the potential to affect bids or bidding strategy unless such communications are made to or received from parties to agreements identified under Section 1.2105(a)(2)(viii). In addition, Section 1.2105(c)(6) requires that any applicant that makes or receives a communication prohibited by Section 1.2105(c) must report such communication to the Commission in writing immediately, and in no case later than five business days after the communication occurs.<sup>58</sup>

17. Applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in any bidding consortia, joint venture, partnership, or agreement or other arrangement entered into relating to the competitive bidding process.<sup>59</sup>

18. A summary listing of documents issued by the Commission and the Bureau addressing the application of the anti-collusion rule may be found in Attachment D. These documents are available on the Commission's auction anti-collusion web page.<sup>60</sup>

### 3. Due Diligence

19. Potential applicants 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. 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.

20. In particular, potential applicants 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.<sup>61</sup> Reports and orders adopted in FM allotment rulemaking proceedings often include anomalies such as site restrictions or expense reimbursement requirements.<sup>62</sup> Bidders are also responsible for reviewing all pending rulemaking petitions and open proceedings that might affect the FM allotment(s) on which they plan to bid. Additionally, potential bidders should perform technical analyses sufficient to assure themselves that, should they prevail in competitive bidding for a given FM allotment, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements.

21. Potential applicants are also strongly encouraged to conduct their own research prior to the beginning of bidding in Auction No. 68 in order to determine the existence of any pending administrative or judicial proceedings that might affect their decision to participate in the auction. Participants in Auction No. 68 are strongly encouraged to continue such research throughout the auction.

22. Applicants should also be aware that certain pending and future proceedings, including applications (including those for modification), petitions for rulemaking, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal oppositions, and applications for review, before the Commission may relate to particular applicants or incumbent permittees, or

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<sup>58</sup> 47 C.F.R. § 1.2105(c)(6); *see also Part 1 Seventh Report and Order*, 16 FCC Rcd at 17555 ¶ 17.

<sup>59</sup> 47 C.F.R. § 1.2107(d).

<sup>60</sup> <http://wireless.fcc.gov/auctions/anticollusion>

<sup>61</sup> *See* 47 C.F.R. § 73.202.

<sup>62</sup> *See, e.g., Charlotte Amalie, Frederiksted, and Christiansted, U.S. Virgin Islands, Memorandum Opinion & Order*, 19 FCC Rcd 30 (MB 2004); *Cheyenne, Wyoming and Gering, Nebraska, Memorandum Opinion & Order*, 15 FCC Rcd 7528 (MMB 2000); *Circleville, Ohio, Memorandum Opinion & Order*, 9 F.C.C.2d 159 (1967).

incumbent licensees, or the construction permits available in Auction No. 68. In addition, pending and future judicial proceedings may relate to particular applicants or incumbent permittees, or incumbent licensees, or the construction permits available in Auction No. 68. Prospective applicants are responsible for assessing the likelihood of the various possible outcomes, and considering their potential impact on construction permits available in this auction.

23. Applicants should perform due diligence to identify and consider all proceedings that may affect the construction permits being auctioned and that could have an impact on the availability of spectrum for Auction No. 68. In addition, although the Commission may continue to act on various pending applications, informal objections, petitions, and other requests for Commission relief, some of these matters may not be resolved by the beginning of bidding in the auction.

24. **Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the construction permits available in Auction No. 68.** Potential applicants are strongly encouraged to physically inspect any prospective sites located in, or near, the service area for which they plan to bid, and also to familiarize themselves with the environmental assessment obligations described below in Section I.B.6.

25. Applicants may research the licensing database for the Media Bureau on the Internet in order to determine which channels are already licensed to incumbent licensees or previously-authorized to construction permittees. Licensing records for the Media Bureau are contained in the Media Bureau's Consolidated Data Base System (CDBS) and may be researched on the Internet at <http://www.fcc.gov/mb>. Potential bidders may query the database online and download a copy of their search results if desired. Detailed instructions on using Search for Station Information, Search for Ownership Report Information and Search for Application Information and downloading query results are available online by selecting the CDBS Public Access (main) button at the bottom of the Electronic Filing and Public Access list section. The database searches return either station or application data. The application search provides an application link that displays the complete electronically filed application in application format. An AL/TC search under the application search link permits searching for Assignment of License/Transfer of Control groups using the AL/TC group lead application. For further details, click on the Help file. Potential bidders should direct questions regarding the search capabilities of CDBS to the Media Bureau help line at (202) 418-2662, or via e-mail at [mbinfo@fcc.gov](mailto:mbinfo@fcc.gov).

26. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, applicants may obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

#### **4. Use of Integrated Spectrum Auction System**

27. The Commission will make available a browser-based bidding system to allow bidders to participate in Auction No. 68 over the Internet using the Commission's Integrated Spectrum Auction System ("ISAS" or "FCC Auction System"). The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning or use of the FCC Auction System that is accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming or other advice or service provided in connection with the FCC Auction System.

## 5. Bidder Alerts

28. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 68 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a “cold call” from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of investment is less than \$25,000.
- The sales representative makes verbal representations that: (a) the Internal Revenue Service (“IRS”), Federal Trade Commission (“FTC”), Securities and Exchange Commission (“SEC”), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

29. 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 regarding Auction No. 68 may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225-5322).

## 6. National Environmental Policy Act Requirements

30. Permittees or licensees must comply with the Commission’s rules regarding implementation of the National Environmental Policy Act (“NEPA”).<sup>63</sup> The construction of a broadcast facility is a federal action and the permittee must comply with the Commission’s NEPA rules for each such facility.<sup>64</sup> The Commission’s NEPA rules require, among other things, that the permittee or licensee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corps of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). In assessing the effect of facilities construction on historic properties, the licensee must follow the provisions of the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process.<sup>65</sup> The permittee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The permittee also must prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

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<sup>63</sup> 47 C.F.R. Ch. 1, Subpart I.

<sup>64</sup> 47 C.F.R. §§ 1.1305-1.1319.

<sup>65</sup> See 47 C.F.R. Part 1, Appendix C.

**C. Auction Specifics****1. Auction Date**

31. Bidding in Auction No. 68 will begin on Wednesday, January 10, 2007, as announced in the *Auction No. 68 Comment Public Notice*.<sup>66</sup> The initial schedule for bidding will be announced by public notice at least one week before the start of the auction.

32. Unless otherwise announced, bidding on construction permits will be conducted on each business day until bidding has stopped on all construction permits.

**2. Auction Title**

33. Auction No. 68 – FM Broadcast

**3. Bidding Methodology**

34. As discussed in more detail below, the bidding methodology for Auction No. 68 will be simultaneous multiple round bidding.<sup>67</sup> The Commission will conduct this auction over the Internet using the FCC Auction System, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically via the Internet or by telephone.<sup>68</sup> All telephone calls are recorded.

**4. Pre-Auction Dates and Deadlines**

35. Dates and Deadlines

Short-Form Application (FCC Form 175) Filing Window Opens.....	November 6, 2006; 12:00 noon. ET
Short-Form Application (FCC Form 175) Filing Window Deadline...	November 13, 2006; 6:00 p.m. ET
Upfront Payments (via wire transfer).....	December 11, 2006; 6:00 p.m. ET
Mock Auction.....	January 8, 2007
Auction Begins.....	January 10, 2007

**5. Requirements for Participation**

36. Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically prior to 6:00 p.m. Eastern Time (ET), November 13, 2006, following the electronic filing procedures set forth in Attachment B to this Public Notice.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) before 6:00 p.m. ET, December 11, 2006.
- Comply with all provisions outlined in this Public Notice and applicable Commission rules.

**6. General Contact Information**

37. General Contact Information

<sup>66</sup> *Auction No. 68 Comment Public Notice* at 1.

<sup>67</sup> See *infra* Section IV.A.1. “Simultaneous Multiple Round Auction.”

<sup>68</sup> For additional information regarding ISAS, including sample screen shots, visit the “About ISAS” web page at [http://wireless.fcc.gov/auctions/about\\_isas](http://wireless.fcc.gov/auctions/about_isas).

**GENERAL AUCTION INFORMATION**

General Auction Questions

FCC Auctions Hotline

(888) 225-5322, option two;

or (717) 338-2868

Hours of service: 8:00 a.m. – 5:30 p.m. ET,

Monday through Friday

**AUCTION LEGAL INFORMATION**

Auction Rules, Policies, Regulations

Auctions and Spectrum Access Division

(202) 418-0660

**LICENSING INFORMATION**

Service Rules, Policies, Regulations

Licensing Issues, Engineering Issues

Due Diligence, Incumbency Issues

Audio Division

(202) 418-2700

**TECHNICAL SUPPORT**

Electronic Filing

FCC Auction System

FCC Auctions Technical Support Hotline

(877) 480-3201, option nine; or (202) 414-1250

(202) 414-1255 (TTY)

Hours of service: 8:00 a.m. – 6:00 p.m. ET,

Monday through Friday

**PAYMENT INFORMATION**

Wire Transfers

Refunds

FCC Auctions Accounting Branch

(202) 418-0578

(202) 418-2843 (Fax)

**AUCTION BIDDER LINE**

Will be furnished only to qualified bidders

**FCC COPY CONTRACTOR**

Additional Copies of

Commission Documents

Best Copy and Printing, Inc

445 12th Street, SW, Room CY-B402

Washington, DC 20554

(800) 378-3160

<http://www.bcpweb.com>**PRESS INFORMATION**

Chelsea Fallon (202) 418-7991

**FCC FORMS**

(800) 418-3676 (outside Washington, DC)

(202) 418-3676 (in the Washington area)

<http://www.fcc.gov/formpage.html>**ACCESSIBLE FORMATS**

Braille, large print, electronic files, or

audio format for people with disabilities

Consumer and Governmental Affairs Bureau

(202) 418-0530 or (202) 418-0432 (TTY)

[fcc504@fcc.gov](mailto:fcc504@fcc.gov)**FCC INTERNET SITES**<http://www.fcc.gov><http://wireless.fcc.gov/auctions><http://wireless.fcc.gov/uls><http://www.fcc.gov/mb>

## II. SHORT-FORM APPLICATION (FCC FORM 175) REQUIREMENTS

38. An application to participate in an FCC auction, referred to as a short-form application or FCC Form 175, provides information used in determining whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or permits.<sup>69</sup> The short-form application is the first part of the Commission's two-phased auction application process. In the first phase of this process, parties desiring to participate in the auction file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications.<sup>70</sup> Eligibility to participate in bidding is based on the applicants' short-form applications and certifications as well as their upfront payments, as explained below.<sup>71</sup> In the second phase of the process, winning bidders file a more comprehensive long-form application.<sup>72</sup>

39. Entities and individuals seeking construction permits available in Auction No. 68 must file a short-form application electronically via the FCC Auction System before 6:00 p.m. ET on November 13, 2006, following the procedures prescribed in Attachment B to this Public Notice. If an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 will be used in determining whether the applicant is eligible for the claimed bidding credit. Applicants bear full responsibility for submitting accurate, complete and timely short-form applications. All applicants must certify under penalty of perjury on their short-form applications that they are legally, technically, financially and otherwise qualified to hold a license.<sup>73</sup> Applicants should read the instructions set forth in Attachment B to this Public Notice carefully and should consult the Commission's rules to ensure that, in addition to the materials described below all the information that is required under the Commission's rules is included with their short-form applications.<sup>74</sup>

40. An entity may not submit more than one short-form application for a single auction. In the event that a party submits multiple short-form applications, only one application will be accepted for filing.

41. Applicants also should note that submission of a short-form application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true, complete and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

### A. New Entrant Bidding Credit

42. To fulfill its obligations under Section 309(j) and further its long-standing commitment to the diversification of broadcast facility ownership, the Commission adopted a tiered New Entrant Bidding Credit for broadcast auction applicants with no, or very few, other media interests.

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<sup>69</sup> See 47 C.F.R. § 1.2105.

<sup>70</sup> See *id.*; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2376 ¶ 163.

<sup>71</sup> See *infra* Section III.D. "Upfront Payments – Due December 11, 2006."

<sup>72</sup> See 47 C.F.R. §§ 1.2107, 73.5005.

<sup>73</sup> See 47 C.F.R. § 1.2105(a)(2)(v).

<sup>74</sup> As discussed generally in *NCE Second Report and Order*, the opening of a window for nonreserved vacant FM allotments provides a filing opportunity for both NCE and commercial applicants. However, as discussed in Section III.C, *infra*, while non-mutually exclusive NCE applications will not be resolved through competitive bidding, any applications specifying NCE facilities that are mutually exclusive with any applications specifying commercial facilities will be returned as unacceptable for filing. 47 C.F.R. § 73.5002(b).

## 1. Eligibility

43. The interests of the applicant, and of any individuals or entities with an attributable interest in the applicant, in other media of mass communications shall be considered when determining an applicant's eligibility for the New Entrant Bidding Credit.<sup>75</sup> The bidder's attributable interests shall be determined as of the short-form application (FCC Form 175) filing deadline – November 13, 2006. Thus, the applicant's maximum new entrant bidding credit eligibility will be determined as of the short-form application filing deadline. Applicants intending to divest a media interest or make any other ownership changes, such as resignation of positional interests, in order to avoid attribution for purposes of qualifying for the New Entrant Bidding Credit must have consummated such divestment transactions or have completed such ownership changes by no later than the short-form filing deadline – November 13, 2006.<sup>76</sup> Prospective bidders are reminded, however, that events occurring after the short-form filing deadline, such as the acquisition of attributable interests in media of mass communications, may cause diminishment or loss of the bidding credit, and must be reported immediately.

44. Under traditional broadcast attribution rules, those entities or individuals with an attributable interest in a bidder include:

- all officers and directors of a corporate bidder;
- any owner of 5 percent or more of the voting stock of a corporate bidder;
- all partners and limited partners of a partnership bidder, unless the limited partners are sufficiently insulated; and
- all members of a limited liability company, unless sufficiently insulated.<sup>77</sup>

45. In cases where an applicant's spouse or close family member holds other media interests, such interests are not automatically attributable to the bidder. The Commission decides attribution issues in this context based on certain factors traditionally considered relevant.<sup>78</sup> Applicants should note that the mass media attribution rules were revised in 1999.<sup>79</sup>

46. Bidders are also reminded that, by the *New Entrant Bidding Credit Reconsideration Order*, the Commission further refined the eligibility standards for the New Entrant Bidding Credit, judging it appropriate to attribute the media interests held by very substantial investors in, or creditors of, an applicant claiming new entrant status. Specifically, the attributable mass media interests held by an individual or entity with an equity and/or debt interest in an applicant shall be attributed to that bidder for purposes of determining its eligibility for the New Entrant Bidding Credit, if the equity and debt interests, in the aggregate, exceed 33 percent of the total asset value of the applicant, even if such an interest is non-voting.<sup>80</sup>

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<sup>75</sup> “Media of mass communication” include both commercial and NCE full-power broadcast stations.

<sup>76</sup> The fact that, on November 13, 2006, an applicant has a pending or granted application to assign or transfer control of a media interest shall not be sufficient to avoid attribution. Applicants must have consummated the transaction by November 13, 2006, to avoid attribution. Thus, an applicant could not qualify for a bidding credit, nor upgrade a previously claimed bidding credit, based upon ownership or positional changes occurring after the short-form filing deadline. *See Liberty Productions, a Limited Partnership, Memorandum Opinion and Order*, 16 FCC Rcd 12061, *stay denied*, 16 FCC Rcd 18966 (2001), *aff'd sub nom, Biltmore Forest Broadcasting FM, Inc. v. F.C.C.*, 321 F.3d 155 (D.C. Cir.), *cert. denied*, 540 U.S. 981 (2003) (“*Liberty Productions*”).

<sup>77</sup> *See* 47 C.F.R. § 73.3555 Note 2.

<sup>78</sup> *See Clarification of Commission Policies Regarding Spousal Attribution, Memorandum Opinion and Order*, 7 FCC Rcd 1920 (1992).

<sup>79</sup> *See Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, MM Docket No. 94-150, *Report and Order*, 14 FCC Rcd 12559 (1999) (prior history omitted).

<sup>80</sup> *See* 47 C.F.R. § 73.5008(c).

47. Generally, media interests will be attributable for purposes of the New Entrant Bidding Credit to the same extent that such other media interests are considered attributable for purposes of the broadcast multiple ownership rules.<sup>81</sup> However, attributable interests held by a winning bidder in existing low power television, television translator or FM translator facilities will not be counted among the bidder's other mass media interests in determining its eligibility for a New Entrant Bidding Credit.<sup>82</sup> A medium of mass communications is defined in 47 C.F.R. § 73.5008(b). Full service noncommercial educational stations, on both reserved and nonreserved channels, are included among "media of mass communications" as defined in Section 73.5008(b).<sup>83</sup>

## **B. Application Requirements**

48. In addition to the ownership information required pursuant to § 1.2112, applicants are required to establish on their short-form applications that they satisfy the eligibility requirements to qualify for a New Entrant Bidding Credit.<sup>84</sup> In those cases where a New Entrant Bidding Credit is being sought, a certification under penalty of perjury must be provided in completing the applicant's short-form application. An applicant claiming that it qualifies for a 35 percent new entrant bidding credit must certify that neither it nor any of its attributable interest holders have any attributable interests in any other media of mass communications. An applicant claiming that it qualifies for a 25 percent new entrant bidding credit must certify that neither it nor any of its attributable interest holders have any attributable interests in more than three media of mass communications, and must identify and describe such media of mass communications.<sup>85</sup>

### **1. Bidding Credits**

49. Applicants that qualify for the New Entrant Bidding Credit, as specified in the applicable rule,<sup>86</sup> are eligible for a bidding credit that represents the amount by which a bidder's winning bid is discounted. The size of a New Entrant Bidding Credit depends on the number of ownership interests in other media of mass communications that are attributable to the bidder-entity and its attributable interest-holders:

- A 35 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has no attributable interest in any other media of mass communications, as defined in 47 C.F.R. § 73.5008;
- A 25 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has an attributable interest in no more than three mass media facilities, as defined in 47 C.F.R. § 73.5008;
- No bidding credit will be given if any of the commonly owned mass media facilities serve the same area as the proposed broadcast station, as defined in 47 C.F.R. § 73.5007(b), or if the winning bidder, and/or any individual or entity with an attributable interest in the winning bidder, has attributable interests in more than three mass media facilities.

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<sup>81</sup> Further, any bidder asserting new entrant status must have *de facto* as well as *de jure* control of the entity claiming the bidding credit. 47 C.F.R. § 73.5007. Typically, *de jure* control is evidenced by ownership of at least 50.1 percent of an entity's voting stock or equivalent level of interest in cases where the bidder is not a corporate entity. *De facto* control is determined on a case-by-case basis.

<sup>82</sup> *Broadcast Competitive Bidding Reconsideration Order*, 14 FCC Rcd at 8764 ¶ 75; 47 C.F.R. § 73.5007.

<sup>83</sup> See *Minnesota Christian Broadcasters, Inc., Memorandum Opinion and Order*, 18 FCC Rcd 614 (2003), *aff'd sub nom. Carol DeLaHunt v. F.C.C.*, No. 03-1029 (D.C. Cir. Feb. 4, 2004) and *Minnesota Christian Broadcasters, Inc. v. FCC*, No. 03-1439 (D.C. Cir. June 14, 2005).

<sup>84</sup> See 47 C.F.R. §§ 1.2105(a), 73.3555 and Note 2, 73.5007, 73.5008.

<sup>85</sup> See 47 C.F.R. §§ 73.5007, 73.5008.

<sup>86</sup> See 47 C.F.R. § 73.5007.

50. Bidding credits are not cumulative; qualifying applicants receive either the 25 percent or the 35 percent bidding credit, but not both. Attributable interests are defined in 47 C.F.R. § 73.3555 and Note 2 of that section.<sup>87</sup> Applicants should note that unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license or construction permit to an entity not qualifying for the same level of bidding credit.<sup>88</sup>

## **2. Installment Payments**

51. Installment payment plans will not be available in Auction No. 68.

## **C. Permit Selection**

52. In Auction No. 68, applicants must select the construction permits on which they want to bid from the “Eligible Permits” list. There will be no opportunity to change construction permit selection after the short-form filing deadline.<sup>89</sup> It is critically important that an applicant confirm its construction permit selections before submitting its short-form application because the FCC Auction System will not accept bids on construction permits that an applicant has not selected on its short-form application.

## **D. Disclosure of Bidding Arrangements**

53. Applicants will be required to identify in their short-form applications all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the construction permits being auctioned, including any agreements relating to post-auction market structure.<sup>90</sup> Applicants also will be required to certify under penalty of perjury in their short-form applications that they have 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 the application, regarding the amount of their bids, bidding strategies, or the particular construction permits on which they will or will not bid.<sup>91</sup> If an applicant has had discussions, but has not reached a joint bidding agreement by the short-form application filing deadline, it would not include the names of parties to the discussions on its application and may not continue such discussions with any applicants after the deadline.<sup>92</sup>

54. After the filing of short-form applications, the Commission’s rules do not prohibit a party holding a non-controlling, attributable interest in one applicant from acquiring an ownership interest in or entering into a joint bidding arrangement with other applicants provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants.<sup>93</sup> While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.<sup>94</sup> Such subject areas include, but are not limited to, issues such as management sales, local marketing agreements, rebroadcast agreements, and other

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<sup>87</sup> See 47 C.F.R. § 73.5008.

<sup>88</sup> See 47 C.F.R. § 73.5007(c).

<sup>89</sup> See 47 C.F.R. § 1.2105(b)(2).

<sup>90</sup> See 47 C.F.R. § 1.2105(a)(2)(viii), (c)(1).

<sup>91</sup> See 47 C.F.R. § 1.2105(a)(2)(ix).

<sup>92</sup> See *supra* Section I.B.2 “Prohibition of Collusion; Compliance with Antitrust Laws.”

<sup>93</sup> See 47 C.F.R. § 1.2105(c)(4)(i), (ii).

<sup>94</sup> See *supra* Section I.B.2 “Prohibition of Collusion; Compliance with Antitrust Laws.”

transactional agreements. Further, as discussed above, compliance with the disclosure requirements of the Commission’s anti-collusion rule will not insulate a party from enforcement of the antitrust laws.<sup>95</sup>

#### **E. Ownership Disclosure Requirements**

55. The Commission specified in the *Broadcast Competitive Bidding First Report and Order* that, for purposes of determining eligibility to participate in a broadcast auction, all applicants must comply with the uniform Part 1 ownership disclosure standards and provide information required by Sections 1.2105 and 1.2112 of the Commission’s rules.<sup>96</sup> Specifically, in completing the short-form application, applicants will be required to fully disclose information on the real party or parties-in-interest and ownership structure of the applicant. The ownership disclosure standards for the short form are prescribed in Sections 1.2105 and 1.2112 of the Commission’s rules.<sup>97</sup> Each applicant is responsible for information submitted in its short-form application being complete and accurate.

56. In certain circumstances an applicant’s most current ownership information on file with the Commission, if in an electronic format compatible with the short-form application (FCC Form 175) (such as information submitted in an on-line FCC Form 602 or in an FCC Form 175 filed for a previous auction using ISAS) will automatically be entered into the applicant’s short-form application. Applicants are responsible for ensuring that the information submitted in their short-form application for Auction No. 68 is complete and accurate. Accordingly, applicants should carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for filing the short-form application. Applicants can update any information that was entered automatically and needs to be changed directly in the short-form application.

#### **F. Provisions Regarding Former and Current Defaulters**

57. Each applicant must state under penalty of perjury on its short-form application whether or not the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by Section 1.2110,<sup>98</sup> have ever been in default on any Commission construction permit or license or have ever been delinquent on any non-tax debt owed to any Federal agency.<sup>99</sup> In addition, each applicant must certify under penalty of perjury on its short-form application that as of the short-form filing deadline, the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by Section 1.2110, are not in default on any payment for a Commission construction permit or license (including a down payment) and that they are not delinquent on any non-tax debt owed to any Federal agency.<sup>100</sup> Prospective applicants 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.

58. “Former defaulters” — *i.e.*, applicants, including any of their affiliates, any of their controlling interests, or any of the affiliates of their controlling interests, that in the past have defaulted on any Commission construction permit or license or been delinquent on any non-tax debt owed to any Federal

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<sup>95</sup> *See id.*

<sup>96</sup> 47 C.F.R. § 1.2105 requires the disclosure on the short-form application of the applicant’s ownership information as set forth in 47 C.F.R. §§ 1.2105 and 1.2112.

<sup>97</sup> Section 73.5002 of the Commission’s rules specifies the bidding procedures, certification requirements and the anti-collusion rules applicable to mutually exclusive applications for commercial broadcast services subject to auction. Subsection (b) of that rule requires the timely submission of short form applications, along with the required certifications, information and exhibits, pursuant to the provisions of 47 C.F.R. § 1.2105(a) and any Commission public notices. 47 C.F.R. § 1.2105 requires the disclosure on the short-form application of the applicant’s ownership information as set forth in 47 C.F.R. § 1.2112.

<sup>98</sup> *See* 47 C.F.R. § 1.2110.

<sup>99</sup> *See* 47 C.F.R. § 1.2105(a)(2)(xi); *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317 ¶ 42 and n. 142.

<sup>100</sup> *See* 47 C.F.R. § 1.2105(a)(2)(x); *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317 ¶ 42.

agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies — are eligible to bid in Auction No. 68, provided that they are otherwise qualified. However, as discussed in Section III.D.3., *infra*, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.<sup>101</sup>

59. “Current defaulters” — *i.e.*, applicants, including any of their affiliates, any of their controlling interests, or any of the affiliates of their controlling interests, that are in default on any payment for any Commission construction permit or license (including a down payment) or are delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for applications to participate in this auction — are not eligible to bid in Auction No. 68.<sup>102</sup>

60. Applicants are encouraged to review the Wireless Telecommunications Bureau’s previous guidance on default and delinquency disclosure requirements in the context of the short-form application process.<sup>103</sup> For example, it has been determined that to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for purposes of Sections 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline.<sup>104</sup> Therefore, with respect to regulatory or application fees, the provisions of Sections 1.2105(a) and 1.2106(a) regarding default and delinquency in connection with competitive bidding are limited to circumstances in which the relevant party has not complied with a final Commission payment deadline.<sup>105</sup>

61. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the “red light rule,” that implement the Commission’s obligations under the Debt Collection Improvement Act of 1996, which governs the collection of claims owed to the United States.<sup>106</sup> Under the red light rule, the Commission will not process applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission. In the same rulemaking order, the Commission explicitly declared, however, that the Commission’s competitive bidding rules “are not affected” by the red light rule.<sup>107</sup> As a consequence, the

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<sup>101</sup> See 47 C.F.R. § 1.2106(a).

<sup>102</sup> See 47 C.F.R. §§ 1.2105(a)(2)(x) and 1.2105(b)(1); see *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317 ¶ 42 and n.142. (“If any one of an applicant’s controlling interests or their affiliates...is in default on any Commission licenses or is delinquent on any non-tax debt owed to any Federal agency at the time the applicant files it[s] Form 175, the applicant will not be able to make the certification required by Section 1.2105(a)(2)(x)...and will not be eligible to participate in Commission auctions.”)

<sup>103</sup> See “WTB Reminds Prospective Broadband PCS Spectrum Auction Applicants of Default and Delinquency Disclosure Requirements,” *Public Notice*, 19 FCC Rcd 21920 (2004) (“*Auction Default Disclosure Public Notice*”). This public notice may be found at <http://wireless.fcc.gov/auctions/58/>.

<sup>104</sup> See Letter to Cheryl A. Tritt, Esq., Morrison and Foerster, LLP, from Margaret Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, 19 FCC Rcd 22907 (2004) (clarifying the term “debt” or “non-tax debt” as referenced in 47 C.F.R. §§ 1.2105(a) and 1.2106(a)). This letter may be found at <http://wireless.fcc.gov/auctions/58/>.

<sup>105</sup> Even where Commission rules expressly permit late payment, subject to payment of an additional late fee, and do not impose a final payment deadline, the Commission may in some cases issue a demand for payment by a date certain. See 47 C.F.R. § 1.1164(a). Failure to comply with the terms of a particular demand letter in the time period provided may render the subject debt delinquent, notwithstanding rules generally permitting late payment.

<sup>106</sup> Amendment of Parts 0 and 1 of the Commission’s Rules; Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors, MD Docket No. 02-339, *Report and Order*, 19 FCC Rcd 6540 (2004) (implementing Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996)) (“*Debt Collection Report and Order*”).

<sup>107</sup> *Debt Collection Report and Order*, 19 FCC Rcd at 6541 n.11. Footnote 11 specifically mentions 47 C.F.R. § 1.2105(a)(2)(x) and (xi).

Commission's adoption of the red light rule does not alter the applicability of any of the Commission's competitive bidding rules, including the provisions and certifications of Sections 1.2105 and 1.2106, with regard to current and former defaults or delinquencies. Applicants are reminded, however, that the Commission's Red Light Display System, which provides information regarding debts owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of section 1.2105.<sup>108</sup> Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant's "red light" status is not necessarily determinative of its eligibility to participate in this auction or of its upfront payment obligation.

62. Prospective applicants in Auction No. 68 should note that any long-form applications filed after the close of competitive bidding will be reviewed for compliance with the Commission's red light rule,<sup>109</sup> and such review may result in the dismissal of a winning bidder's long-form application.<sup>110</sup>

### **G. Other Information**

63. Applicants owned by members of minority groups and/or women, as defined in Section 1.2110(c)(3),<sup>111</sup> may identify themselves in filling out their short-form applications regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of "designated entities" in its auctions.<sup>112</sup>

### **H. Minor Modifications to Short-Form Applications (FCC Forms 175)**

64. After the deadline for filing short-form applications (FCC Forms 175) at **6:00 p.m. ET on November 13, 2006**, applicants are permitted to make only minor changes to their applications. Applicants are not permitted to make major modifications to their applications (*e.g.*, change their construction permit selections, change control of the applicant, claim eligibility for a higher percentage of bidding credit or change their self-identification as noncommercial educational).<sup>113</sup> Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons.

65. Any application amendment and related statements of fact must be certified by: (1) the applicant, if the applicant is an individual, (2) one of the partners if the applicant is a partnership, (3) an officer, director, or duly authorized employee, if the applicant is a corporation, (4) by a member who is an officer, if the applicant is an unincorporated association, (5) the trustee if the applicant is an amateur radio service club, or (6) a duly elected or appointed official who is authorized to make such certifications under the laws of the applicable jurisdiction, if the applicant is a governmental entity.<sup>114</sup>

66. An applicant must make permissible minor changes to its short-form application, as such changes are defined by Section 1.2105(b), electronically, using the FCC Auction System. Applicants must click on the **SUBMIT** button in the FCC Auction System for the changes to be submitted and considered by the

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<sup>108</sup> See *Auction Default Disclosure Public Notice*, 19 FCC Rcd at 21920 (addressing relationship between Commission's Red Light Display System and FCC Form 175 default and delinquency disclosure requirements for auction applicants).

<sup>109</sup> See *Debt Collection Report and Order*, 19 FCC Rcd 6540. See also 47 C.F.R. § 1.1112.

<sup>110</sup> Applicants that have their long-form applications dismissed will be deemed to have defaulted and will be subject to default payments under 47 C.F.R. §§ 1.2104(g) and 1.2109(c).

<sup>111</sup> See 47 C.F.R. § 1.2110(c)(3).

<sup>112</sup> Designated entities are defined as small businesses, businesses owned by members of minority groups and/or women, and rural telephone companies. 47 C.F.R. § 1.2110(a).

<sup>113</sup> See 47 C.F.R. § 1.2105(b).

<sup>114</sup> See 47 C.F.R. § 1.917; see also 47 C.F.R. § 73.3513.

Commission. After the revised application has been submitted, a confirmation page will be displayed that states the submission time and date, along with a unique file number.

67. In addition, an applicant should submit a letter briefly summarizing the changes and subsequently update their short-form applications in ISAS as soon as possible. Note: After the filing window has closed, the auction system will not permit applicants to make certain changes, such as legal classification, NCE status, and bidding credit. Any letter describing changes to an applicant's short-form application must be submitted by electronic mail to the following address: [auction68@fcc.gov](mailto:auction68@fcc.gov). The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 68 and the name of the applicant (e.g., "RE: Changes to Auction No. 68 Short-Form Application of ABC Corp."). The Bureaus request that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Questions about short-form application (FCC Form 175) amendments should be directed to Lynne Milne of the Auctions and Spectrum Access Division at (202) 418-0660.

68. Applicants must **not** submit application-specific material through the Commission's Electronic Comment Filing System (ECFS), which was used for submitting comments regarding Auction No. 68 procedures.

### **I. Maintaining Current Information in Short-Form Applications (FCC Form 175)**

69. 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.<sup>115</sup> Changes that cause a loss of or reduction in the percentage of bidding credit specified on the originally submitted Form 175 application must be reported immediately.<sup>116</sup> If an amendment reporting substantial changes is a "major amendment" as defined by 47 C.F.R. § 1.2105, the major amendment will not be accepted and may result in the dismissal of the short-form application.<sup>117</sup>

#### **1. Maintaining the Accuracy of FCC Form 175 Information**

70. As noted in Section II.H., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications, for example, deletion and addition of authorized bidders (to a maximum of three). Applicants must click on the **SUBMIT** button in the FCC Auction System for the changes to be submitted and considered by the Commission. In addition, applicants must submit a letter, briefly summarizing the changes, by electronic mail at the following address: [auction68@fcc.gov](mailto:auction68@fcc.gov). The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 68 and the name of the applicant. The Bureaus requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

71. Applicants must **not** submit application-specific material through ECFS into the record of the proceeding concerning Auction No. 68 procedures.

### **III. PRE-AUCTION PROCEDURES**

#### **A. Auction Seminar**

72. There will be no auction seminar for Auction No. 68. A previously held FM broadcast auction seminar is available for individuals to view. The Auction No. 62 seminar provided attendees information about

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<sup>115</sup> See 47 C.F.R. § 1.65.

<sup>116</sup> For example, if ownership changes result in the attribution of new interest holders that affect the applicant's qualifications for a new entrant bidding credit, such information must be clearly stated in the bidder's amendment. See *Liberty Productions*, 16 FCC Rcd at 12078. Events occurring after the short-form filing deadline, such as the acquisition of attributable interests in media of mass communications, may also cause diminishment or loss of the bidding credit, and must be reported immediately.

<sup>117</sup> See 47 C.F.R. § 1.2105(b)(2).

pre-auction procedures, completing FCC Form 175, auction conduct, the FCC Auction System, auction rules, and the FM broadcast service rules. The Audio/Video webcast of the Auction No. 62 seminar is available from the FCC's Auction No. 62 web page at <http://wireless.fcc.gov/auctions/62/>. Select the "Auction Seminar" link. FCC staff are available to answer questions concerning the auction, auction procedures, filing requirements, and other matters related to this auction. (Note that, to the extent that competitive bidding procedures discussed in that presentation may have differed from those described in this public notice, the procedures and instructions described herein will control and must be followed.)

**B. Short-Form Application (FCC Form 175) — Due Before 6:00 p.m. ET on November 13, 2006**

73. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application electronically via the FCC Auction System.<sup>118</sup> This application must be received at the Commission prior to 6:00 p.m. ET on November 13, 2006. **Late applications will not be accepted.** There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment.<sup>119</sup>

74. Applications may generally be filed at any time beginning at noon ET on November 6, 2006, until 6:00 p.m. ET on November 13, 2006. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their applications multiple times until the filing deadline on November 13, 2006.

75. An applicant must always click on the **SUBMIT** button on the Certify & Submit screen of the electronic form to successfully submit its FCC Form 175 or modifications. Any form that is not submitted will not be reviewed by the FCC. Information about accessing, completing, and viewing the FCC Form 175 is included in Attachment B. FCC Auctions Technical Support is available at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET. In order to provide better service to the public, all calls to Technical Support are recorded.

**C. Application Processing and Minor Corrections**

76. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (1) those applications accepted for filing; (2) those applications rejected; and (3) those applications which have minor defects that may be corrected, and the deadline for resubmitting corrected applications.

77. Non-mutually exclusive applications will be listed in a subsequent public notice to be released by the Bureaus. Such applications will not proceed to auction, but will proceed in accordance with instructions set forth in that public notice.<sup>120</sup> All mutually exclusive applications will be considered under the relevant procedures for conflict resolution. Mutually exclusive commercial applications will proceed to auction.<sup>121</sup> In the *NCE Second Report and Order*, the Commission held that applications for NCE FM stations on nonreserved spectrum, filed during an FM filing window, will be returned as unacceptable for filing if mutually exclusive with any application for a commercial station.<sup>122</sup> Accordingly, if an FCC Form 175 filed during the

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<sup>118</sup> See 47 C.F.R. § 12105(a).

<sup>119</sup> See *infra* Section III.D. "Upfront Payments — Due December 11, 2006."

<sup>120</sup> See 47 C.F.R. § 73.3573(f)(4).

<sup>121</sup> In the *NCE Second Report and Order*, the Commission determined that short-form applicants that do not identify themselves on their FCC Form 175 as "noncommercial educational" will be considered, as a matter of law, applicants for commercial broadcast stations. *NCE Second Report and Order*, 18 FCC Rcd at 6700 ¶ 22.

<sup>122</sup> *Id.* at 6699-6701. See also 47 C.F.R. § 73.5002(b).

Auction No. 68 filing window identifying the applicant as noncommercial educational is mutually exclusive with any application filed during that window by an applicant for a commercial station, the former will be returned as unacceptable for filing.<sup>123</sup>

78. As described more fully in the Commission's rules, after the short-form filing deadline on November 13, 2006, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their construction permit selections, change control of the applicant, claim eligibility for a higher percentage of bidding credit or change their self-identification as NCE).<sup>124</sup>

#### **D. Upfront Payments — Due December 11, 2006**

79. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and sent by facsimile to Mellon Bank in Pittsburgh, PA. **All upfront payments must be received in the proper account at Mellon Bank before 6:00 p.m. ET on December 11, 2006.**

##### **1. Making Auction Payments by Wire Transfer**

80. Wire transfer payments must be received before 6:00 p.m. ET on December 11, 2006. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261

Receiving Bank: Mellon Pittsburgh  
500 Ross St.  
Pittsburgh, PA 15262

BENEFICIARY: FCC/Account # 910-0180

Originating Bank Information (OBI Field): (Skip one space between each information item)  
"AUCTIONPAY"

APPLICANT FCC REGISTRATION NUMBER (FRN): (same as FCC Form 159, block 21)

PAYMENT TYPE CODE: (same as FCC Form 159, block 24A: "A68U")

FCC CODE 1: (same as FCC Form 159, block 28A: "68")

PAYER NAME: (same as FCC Form 159, block 2)

LOCKBOX NO. # 358420

**NOTE:** The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

81. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must send by facsimile a completed FCC Form 159 (Revised 2/03) to Mellon Bank at (412) 209-6045. On the cover sheet of the facsimile, write "Wire Transfer — Auction Payment for Auction No. 68." In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account before the deadline.<sup>125</sup> **Applicants are responsible for obtaining confirmation from their financial institution that Mellon Bank has timely received their upfront payment and deposited it in the proper account.**

<sup>123</sup> *NCE Second Report and Order*, 18 FCC Rcd at 6699-6701. See also 47 C.F.R. § 73.5002(b).

<sup>124</sup> See 47 C.F.R. § 1.2105(b); see also *Two Way Radio of Carolina, Inc., Memorandum Opinion and Order*, 14 FCC Rcd 12035 (1999).

<sup>125</sup> See Letter to Patrick Shannon, Counsel for Lynch 3G Communications Corp., 18 FCC Rcd 11552 (WTB 2003).

82. Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 68 go to a lockbox number different from the lockboxes used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the specified deadline on December 11, 2006, will result in dismissal of the application and disqualification from participation in the auction.

## 2. FCC Form 159

83. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be sent by facsimile to Mellon Bank to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/03) is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment C to this Public Notice. An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payors using a pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

## 3. Upfront Payments and Bidding Eligibility

84. In the *Part 1 Order*, the Commission delegated to the Bureaus the authority and discretion to determine appropriate upfront payment(s) for each auction.<sup>126</sup> In addition, in the *Part 1 Fifth Report and Order*, the Commission ordered that applicants that are “former defaulters” be required to pay upfront payments 50 percent greater than non-former defaulters.<sup>127</sup> For purposes of this calculation, the “applicant” includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by Section 1.2110 of the Commission’s rules.<sup>128</sup>

85. In the *Auction No. 68 Comment Public Notice*, we proposed that the amount of the upfront payment would determine a bidder’s initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids.<sup>129</sup> In order to bid on a construction permit, otherwise qualified bidders that selected that construction permit on FCC Form 175 must have a current eligibility level that meets or exceeds the number of bidding units assigned to that construction permit. At a minimum, therefore, an applicant’s total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits selected on its FCC Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all construction permits the applicant selected on its FCC Form 175, but rather to cover the maximum number of bidding units that are associated with construction permits on which the bidder wishes to place bids and hold provisionally winning bids at any given time.<sup>130</sup>

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<sup>126</sup> Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Proceeding, *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, 12 FCC Rcd 5686, 5697-98 ¶ 16 (1997) (“*Part 1 Order*”).

<sup>127</sup> See *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15316-17 ¶¶ 40-42; 47 C.F.R. § 1.2106(a); see *supra* Section II.F. “Provisions Regarding Former and Current Defaulters.”

<sup>128</sup> 47 C.F.R. § 1.2110(c).

<sup>129</sup> *Auction No. 68 Comment Public Notice* at 4.

<sup>130</sup> Provisionally winning bids are bids that would become final winning bids if the auction were to close after the given round. See *infra* Section IV.B.4. “Provisionally Winning Bids.”

86. In the *Auction No. 68 Comment Public Notice*, the Bureaus proposed upfront payments for each construction permit taking into account various factors related to the efficiency of the auction process and the potential value of similar spectrum and sought comment on this proposal. The specific upfront payments and bidding units for each construction permit are set forth in Attachment A of this Public Notice.

87. In calculating its upfront payment amount, an applicant should determine the **maximum** number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all construction permits on which it seeks to be active in any given round. **Applicants should check their calculations carefully, because it is not possible to increase a bidder's eligibility after the upfront payment deadline.**

<b>Example: Upfront Payments and Bidding Flexibility</b>			
<b>Construction Permit</b>	<b>Market Name</b>	<b>Bidding Units</b>	<b>Upfront Payment</b>
MM-FM366-A	Covelo, CA	7,500	\$7,500
MM-FM068-A	Perry, FL	15,000	\$15,000

If a bidder wishes to bid on both construction permits in a round, it must have selected both on its FCC Form 175 and purchased at least 22,500 bidding units (7,500 + 15,000). If a bidder only wishes to bid on one, but not both, purchasing 15,000 bidding units would meet the requirement for either construction permit. The bidder would be able to bid on either construction permit, **but not both at the same time**. If the bidder purchased only 7,500 bidding units, it would have enough eligibility for the Covelo, CA, construction permit but not for the Perry, FL, construction permit.

88. "Former defaulters" should calculate their upfront payment for all construction permits by multiplying the number of bidding units on which they wish to be active by 1.5.<sup>131</sup> In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit. If a "former defaulter" fails to submit a sufficient upfront payment to establish eligibility to bid on at least one of the construction permits for which the applicant applied on its FCC Form 175, the applicant will not be eligible to participate in the auction.

#### **4. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments**

89. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information listed below be supplied to the FCC. Applicants can provide the information electronically during the initial application filing window after the application has been submitted. (Applicants are reminded that information submitted as part of an FCC Form 175 will be available to the public; for that reason, wire transfer information should **not** be included in an FCC Form 175.) Wire Transfer Instructions can also be manually sent by facsimile to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Gail Glasser, at (202) 418-2843. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call Gail Glasser at (202) 418-0578.

Name of Bank  
 ABA Number  
 Address of Bank

<sup>131</sup> See 47 C.F.R. § 1.2106(a).

Contact and Phone Number  
Account Number to Credit  
Name of Account Holder  
FCC Registration Number (FRN)  
Taxpayer Identification Number (see below)  
Correspondent Bank (if applicable)  
ABA Number  
Account Number

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.<sup>132</sup>) Eligibility for refunds is discussed in Section V.E., below.

#### E. Auction Registration

90. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the construction permits for which they applied.

91. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID<sup>®</sup> cards that will be required to place bids, the Integrated Spectrum Auction System (ISAS) Bidder's Guide, and the Auction Bidder Line phone number.

92. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder that has not received this mailing by noon on Thursday, January 4, 2007, should call (717) 338-2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

93. In the event that SecurID<sup>®</sup> cards are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacement registration material. Qualified bidders requiring the replacement of these items must call Technical Support at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY).

#### F. Remote Electronic Bidding

94. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically and telephonically. Each applicant should indicate its bidding preference – electronic or telephonic – on the FCC Form 175. In either case, each authorized bidder must have its own SecurID<sup>®</sup> card, which the FCC will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID<sup>®</sup> cards, while applicants with two or three authorized bidders will be issued three cards. **For security purposes, the SecurID<sup>®</sup> cards, the telephonic bidding telephone number, and the Integrated Spectrum Auction System (ISAS) Bidder's Guide are only mailed to the contact person at the contact address listed on the FCC Form 175.** Please note that each SecurID<sup>®</sup> card is tailored to a specific auction; therefore, SecurID<sup>®</sup> cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 68.

95. Please note that the SecurID<sup>®</sup> 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 closed.

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<sup>132</sup> See 47 C.F.R. §1.1910.

**G. Mock Auction – January 8, 2007**

96. All qualified bidders will be eligible to participate in a mock auction on Monday, January 8, 2007. The mock auction will enable applicants to become familiar with the FCC Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

**IV. AUCTION EVENT**

97. The first round of bidding for Auction No. 68 will begin on Wednesday, January 10, 2007. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is to be released approximately 10 days before the start of the auction.

**A. Auction Structure****1. Simultaneous Multiple Round Auction**

98. In the *Auction No. 68 Comment Public Notice*, we proposed to auction all construction permits in Auction No. 68 in a single auction using the Commission's standard simultaneous multiple-round ("SMR") auction format.<sup>133</sup> As described further below, 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.

99. Mullaney Engineering, Inc. ("Mullaney") in its comments suggests that rather than keep bidding open until bidding stops on all permits, we close bidding on each permit once there has been no activity on that permit for ten rounds.<sup>134</sup> Mullaney insists that keeping all permits open "increases the administrative costs for the new entrant bidder" because that bidder is "forced to continue monitoring each round of the bidding despite the fact that their allotment may not have had any activity for ten or more rounds."<sup>135</sup>

100. Through its experience with auctions, the Commission has found that the simultaneous multiple round bidding design best advances the goals of competitive bidding. This auction design generates the most information about relative prices during the course of the auction and provides bidders with the greatest flexibility to pursue back-up strategies. Adoption of Mullaney's proposal would reduce the flexibility of bidders to implement backup strategies in response to price information developed as the auction continues. Furthermore, in addition to the informational and bidding flexibility advantages, simultaneous multiple round auctions engender vigorous competition and are more likely to place construction permits in the hands of the bidder with the highest valuation.<sup>136</sup> We therefore conclude that it is operationally feasible and appropriate to auction the FM broadcast stations construction permits through a simultaneous multiple round auction, and we decline to adopt Mullaney's proposal. Unless otherwise announced, bids will be accepted on all construction permits in each round of the auction.

**2. Eligibility and Activity Rules**

101. In the *Auction No. 68 Comment Public Notice*, we proposed that the amount of the upfront payment submitted by a bidder would determine the initial (maximum) eligibility (as measured in bidding units) for each bidder.<sup>137</sup> We received no comments concerning the eligibility rule.

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<sup>133</sup> *Auction No. 68 Comment Public Notice* at 2.

<sup>134</sup> Mullaney Comments at 2.

<sup>135</sup> *Id.*

<sup>136</sup> *Part 1 Second Report and Order*, 9 FCC Rcd at 2366.

<sup>137</sup> *Auction No. 68 Comment Public Notice* at 4.

102. Accordingly, we adopt the proposed use of upfront payments to determine initial (maximum) eligibility (as measured in bidding units) for Auction No. 68. The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. As noted earlier, each construction permit is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A 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 of the construction permits selected on its FCC Form 175 as long as the total number of bidding units associated with those construction permits does not exceed its current eligibility. 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. **The total upfront payment does not affect the total dollar amount a bidder may bid on any given construction permit.**

103. 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. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction.

104. In the *Auction No. 68 Comment Public Notice*, the Bureaus proposed to conduct this auction in one stage and employ a 100 percent activity rule. We received no comments on our proposal for a single stage auction. Because we expect our proposals in this regard to maintain an appropriate pace of bidding in this auction, we adopt our proposal for one stage with the following activity requirement: a bidder is required to be active on 100 percent of its current eligibility during each round of the auction.

105. A bidder's activity level in a round is the sum of the bidding units associated with construction permits on which the bidder is active. A bidder is considered active on a construction permit in the current round if it is either the provisionally winning bidder at the end of the previous bidding round or if it submits a bid in the current round (*see* "Bid Amounts" in Section IV.B.3, *below*). 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.<sup>138</sup>

### 3. Activity Rule Waivers

106. In the *Auction No. 68 Comment Public Notice*, we proposed that each bidder in the auction be provided with three activity rule waivers.<sup>139</sup> We received no comments on this issue. Therefore, we adopt our proposal that each bidder be provided three activity rule waivers. We are satisfied that providing three waivers over the course of the auction will give bidders a sufficient number of waivers and flexibility, while also safeguarding the integrity of the auction.

107. Bidders may use an activity rule waiver in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum activity 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 applied proactively by the bidder (a "proactive waiver") or applied automatically by the FCC Auction System (an "automatic waiver") 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.

108. The FCC Auction System assumes that bidders with insufficient activity 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

<sup>138</sup> *See supra* Section IV.A.3. "Activity Rule Waivers."

<sup>139</sup> *Auction No. 68 Comment Public Notice* at 6.

minimum required unless: (1) there are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility. If a bidder has no waivers remaining and does not satisfy the activity requirement, the FCC Auction System will permanently reduce the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

109. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver 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 in "Eligibility and Activity Rules" (*see* Section IV.A.2 *above*). 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.

110. Finally, 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 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. However, 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.

111. 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. **Note: Applying a waiver is irreversible; once a proactive waiver is submitted that waiver cannot be unsubmitted, even if the round has not yet closed.**

#### 4. Auction Stopping Rules

112. For Auction No. 68, the Bureaus proposed to employ a simultaneous stopping rule approach.<sup>140</sup> The Bureaus also sought comment on a modified version of the simultaneous stopping rule ("modified stopping rule"). The modified stopping rule would close the auction for all construction permits after the first round in which no bidder applies a waiver or submits any new bids on any construction permit on which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule.

113. The Bureaus further proposed retaining the discretion to keep the auction open even if no new bids or proactive waivers are submitted in a round. In this event, the effect will be the same as if a bidder had applied a waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either use an activity rule waiver (if it has any left) or lose bidding eligibility.

114. In addition, we proposed that the Bureaus reserve the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the Bureaus invoke this special stopping rule, they will accept bids in the specified final round(s) and the auction will close.

115. We proposed to exercise these options only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time.<sup>141</sup> We noted that 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 amount of the minimum bid increments for the limited number of construction permits where there is still a high level of bidding activity.

116. We received no comments on the proposals about stopping rules. We find that the proposed stopping rules are appropriate for Auction No. 68, because our experience in prior auctions demonstrates that these stopping rules balance interests of administrative efficiency and maximum bidder participation.

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<sup>140</sup> *Auction No. 68 Comment Public Notice* at 3.

<sup>141</sup> *Id.* at 3.

Therefore we adopt the proposals made in the *Auction No. 68 Comment Public Notice*. Auction No. 68 will begin under the simultaneous stopping rule approach, and the Bureaus will retain the discretion to employ the other versions of the stopping rule. Moreover, the Bureaus will retain the discretion to use the modified stopping rule with or without prior announcement during the auction.

## 5. Auction Delay, Suspension, or Cancellation

117. In the *Auction No. 68 Comment Public Notice*, we proposed 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 conduct of competitive bidding.<sup>142</sup> We received no comment on this issue.

118. Because our approach to notification of delay during an auction has proven effective in resolving exigent circumstances in previous auctions, we adopt our proposed rules regarding auction delay, suspension, or cancellation. 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 competitive 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. We 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.

### B. Bidding Procedures

#### 1. Round Structure

119. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will also be included in the qualified bidders public notice.

120. 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.

#### 2. Reserve Price and Minimum Opening Bids

121. Section 309(j) of the Communications Act of 1934, as amended, calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when applications for FCC licenses or construction permits are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest.<sup>143</sup> Consistent with this mandate, the Commission directed the Bureaus to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.<sup>144</sup> Among other factors, the Bureaus must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference

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<sup>142</sup> *Id.* at 4.

<sup>143</sup> 47 U.S.C. § 309(j)(4)(F).

<sup>144</sup> See Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 375, 455-456 ¶ 141 (1997) (“*Part 1 Third Report and Order*”).

with other spectrum bands, and any other relevant factors that could have an impact on the spectrum being auctioned.<sup>145</sup> The Commission concluded that the Bureaus should have the discretion to employ either or both of these mechanisms for future auctions.<sup>146</sup> This is consistent with policy applied in earlier spectrum auctions, including Auction Nos. 25, 27, and 54 (Closed Broadcast); Auction No. 32 (AM Broadcast); and Auction Nos. 37 and 62 (FM Broadcast).

122. In the *Auction No. 68 Comment Public Notice*, the Bureaus proposed to establish minimum opening bids for Auction No. 68, reasoning that a minimum opening bid, successfully used in other broadcast auctions, is a valuable tool, effectively regulating the pace of the auction.<sup>147</sup> Specifically, a minimum opening bid was proposed for each construction permit listed in Attachment A. The minimum opening bid was determined by taking into account various factors relating 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. Based on our experience in using minimum opening bids in other auctions, we believe that minimum opening bids speed the course of the auction and ensure that valuable assets are not sold for nominal prices, without unduly interfering with the efficient awarding of construction permits.<sup>148</sup>

123. In the alternative, the Bureaus sought comment on whether, consistent with the Section 309(j), the public interest would be served by having no minimum opening bid or reserve price.<sup>149</sup> Mullaney objects to the minimum opening bid amounts proposed in the *Auction No. 68 Comment Public Notice* and requests that the minimum opening bids be reduced to ten percent of the proposed amounts or a minimum of \$500.<sup>150</sup> Mullaney's objections, however, proceed from Mullaney's speculation that the permits being offered in Auction No. 68 were unsold in Auction Nos. 37 and 62 because "the public found the minimum opening bids to be much too high."<sup>151</sup> On the contrary, analysis of the Auction Nos. 37 and 62 bidding reveals that, in each case, multiple bidders placed bids on these nine permits that exceeded the minimum opening bid amount in that auction, and in most cases bids were substantially higher than the minimum opening bid. Moreover, the bidding history for these permits suggests that the minimum opening bid amounts continued to serve the intended purpose in those prior auctions, thereby promoting efficiency in the assignment of FM construction permits. We thus reject Mullaney's arguments that the specified minimum opening bid amounts are too high.<sup>152</sup>

124. Mullaney also states that we must adopt procedures on how to handle vacant allotments that receive no auction bids or when there is a payment default.<sup>153</sup> Mullaney suggests that, if a permit remains unsold at the end of the auction, that allotment should be deleted.<sup>154</sup> However, Mullaney mistakenly assumes that most of the nine permits being offered in Auction No. 68 received no bids in Auction Nos. 37 and/or 62.<sup>155</sup>

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<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Auction No. 68 Comment Public Notice* at 6.

<sup>148</sup> See 47 U.S.C. 309(j)(3)(C).

<sup>149</sup> *Auction No. 68 Comment Public Notice* at 6.

<sup>150</sup> Mullaney Comments at 1-2.

<sup>151</sup> Mullaney Comments at 1.

<sup>152</sup> We note also that the minimum opening bids for three of the permits (Kihei, Hawaii, Outlook, Montana, and Parowan, Utah) previously were reduced from their original Auction No. 37 minimum opening bid amounts.

<sup>153</sup> Mullaney Comments at 1-2.

<sup>154</sup> Mullaney Comments at 3.

<sup>155</sup> *Id.* at 2 ("However, this public notice indicates that 7 out of 9 of these channels **never received a single bid in up to two separate auctions.**") (emphasis in original).

To the contrary, all of these permits received multiple bids in prior FM auctions.<sup>156</sup> We find no basis reason to depart from the Commission's established procedures for the assignment of construction permits.

125. We conclude that the proposed minimum opening bid amounts are appropriate, and we adopt our proposed amounts. The minimum opening bid amounts we adopt for Auction No. 68 are reducible at the discretion of the Bureaus. We emphasize, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureaus will not entertain requests to reduce the minimum opening bid amount on specific construction permits.

126. The specific minimum opening bid amounts for each construction permit available in Auction No. 68 are set forth in Attachment A.<sup>157</sup>

### 3. Bid Amounts

127. In the *Auction No. 68 Comment Public Notice*, we proposed to use a minimum acceptable bid increment 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 minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount times one plus the minimum acceptable bid percentage – *i.e.*, (provisionally winning bid amount) \* (1.10). We will round the result using our standard rounding procedures.<sup>158</sup> We further proposed to retain the discretion to change the minimum acceptable bid amounts and bid increments amounts if we determine that circumstances so dictate. Mullaney asserts that our proposed bid increments are too low. We reject Mullaney's suggestion that bid increments be increased to two, three, four, and five times the current bid.<sup>159</sup> Our experience in the previous FM auctions assures us that the bid increments in use are sufficient to ensure active bidding. Thus, we will begin the auction with a minimum acceptable bid percentage of 10 percent.

128. In each round, each eligible bidder will be able to place a bid on a particular construction permit for which it applied in any of nine different amounts.<sup>160</sup> The FCC Auction System will list the nine bid amounts for each construction permit.<sup>161</sup> The nine bid amounts for each construction permit consist of the minimum acceptable bid amount calculated using a bid increment percentage.

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<sup>156</sup> Four of these nine construction permits received bids in both Auction Nos. 37 and 62, while two of these nine construction permits received bids only in Auction No. 37 and three of them received bids only in Auction No. 62. The Covelo construction permit (MM-FM366-A) received 50 bids in Auction No. 62. The Tecopa construction permit (MM-FM040-A) received 112 bids in Auction No. 37 and 63 bids in Auction No. 62. The Cedar Key construction permit (MM-FM063-A) received 311 bids in Auction No. 37. The Perry construction permit (MM-FM068-A) received 186 bids in Auction No. 37. The Kihei construction permit (MM-FM079-C2) received 68 bids in Auction No. 37 and 34 bids in Auction No. 62. The Outlook construction permit (MM-FM179-C) received 12 bids in Auction No. 37 and 11 bids in Auction No. 62. The Ocracoke construction permit (MM-FM414-C1) received 16 bids in Auction No. 62. The Meyersdale construction permit (MM-FM445-A) received 25 bids in Auction No. 62. The Parowan construction permit (MM-FM318-C2) received 137 bids in Auction No. 37 and 29 bids in Auction No. 62.

<sup>157</sup> Results are rounded using our standard rounding procedure: results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10.

<sup>158</sup> *Id.*

<sup>159</sup> Mullaney Comments at 2.

<sup>160</sup> Bidders must have sufficient eligibility to place a bid on the particular construction permit. *See supra* Section III.D.3 "Upfront Payments and Bidding Eligibility."

<sup>161</sup> In the event of duplicate bid amounts due to rounding, the FCC Auction System will omit the duplicates and will list fewer than nine acceptable bid amounts for the construction permit.

129. The calculation of the minimum acceptable bid amounts for each construction permit for the next round is made at the end of each round. The acceptable bid amounts in addition to the minimum acceptable bid amount for each construction permit are calculated using a **bid increment** percentage. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded — *e.g.*, if the 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.

130. The Bureaus retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, and the bid increment percentage if they determine that circumstances so dictate. The Bureaus will do so by announcement in the FCC Auction System during the auction. The Bureaus may also use its discretion to adjust the minimum bid increment amount without prior notice if circumstances warrant.

#### 4. Provisionally Winning Bids

131. At the end of each bidding round, a “provisionally winning bid” will be determined based on the highest bid amount received for each construction permit. 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. Provisionally winning bids at the end of the auction become the winning bids. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.<sup>162</sup>

132. In the *Auction No. 68 Comment Public Notice*, the Bureaus proposed to use a random number generator to select a single provisionally winning bid in the event of identical high bid amounts being submitted on a construction permit in a given round (*i.e.*, tied bids).<sup>163</sup> No comments were received on this proposal. Therefore, the Bureaus adopt their proposal.

133. A pseudo-random number generator based on the L’Ecuyer algorithms will be used to assign a random number to each bid.<sup>164</sup> The tied bid with the highest random number wins the tiebreaker, and becomes the provisionally winning bid. The remaining eligible 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.

134. During a round, a bidder may submit bids for as many construction permits as it wishes (providing that it is eligible to bid), remove bids placed in the current bidding round, or permanently reduce eligibility. Bidders also have the option of submitting and removing multiple bids during a round. If a bidder submits multiple bids for a single construction permit in the same round, the system takes the last bid entered as that bidder’s bid for the round. Bidders should note that the bidding units associated with construction permits for which the bidder has removed its bid do not count towards the bidder’s current activity.

135. All bidding will take place remotely either through the FCC Auction System or by telephonic bidding. There will be no on-site bidding during Auction No. 68. Please note that telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to

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<sup>162</sup> See *supra* Section IV.A.2. “Eligibility and Activity Rules.”

<sup>163</sup> *Auction No. 68 Comment Public Notice* at 7 and 8.

<sup>164</sup> A description of the L’Ecuyer algorithms can be found in L’Ecuyer, P. (1999) “Good Parameters and Implementations for Combined Multiple Recursive Random Number Generators” *Operations Research* 47 (1), pp.159-164. A longer version of this paper and the C code for the algorithms can be found on the author’s website at <http://www.iro.umontreal.ca/~lecuyer/papers.html>.

allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, five to ten minutes are necessary to complete a telephonic bid submission.

136. A bidder's ability to bid on specific construction permits is determined by two factors: (1) the construction permits selected on the bidder's FCC Form 175 and (2) the bidder's eligibility. The bid submission screens will allow bidders to submit bids on only those construction permits the bidder selected on its FCC Form 175.

137. In order to access the bidding function of the FCC Auction System, bidders must be logged in during the bidding round using the passcode generated by the SecurID® card and a personal identification number (PIN) created by the bidder. Bidders are strongly encouraged to print a "round summary" for each round after they have completed all of their activity for that round.

138. In each round, eligible bidders will be able to place bids on a given construction permit in any of nine different amounts.<sup>165</sup> For each construction permit, the FCC Auction System will list the nine acceptable bid amounts in a drop-down box.<sup>166</sup> Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC Auction System also includes an "upload" function that allows bidders to upload text files containing bid information.

139. Until a bid has been placed on a construction permit, the minimum acceptable bid amount for that construction permit will be equal to its minimum opening bid amount. Once there are bids on a construction permit, minimum acceptable bids for a construction permit for the following round will be determined as described in Section IV.B.3.

## 5. Bid Removal and Bid Withdrawal

140. In the *Auction No. 68 Comment Public Notice*, we proposed bid removal and bid withdrawal procedures.<sup>167</sup> We received no comments on the issue of bid removals. Therefore, the Bureaus adopt their proposals concerning bid removals.

141. With respect to bid withdrawals, we proposed that bidders not be permitted to withdraw bids in any round. In substantially identical comments, Legacy Media Company, Inc. ("Legacy") and Concerned Citizens of Hawaii ("Citizens") argue that the Commission needs to eliminate a "loophole" in the Commission's withdrawal payment rule provisions.<sup>168</sup> Legacy and Citizens suggest that the Commission's rules governing bid withdrawal payments create an incentive for bidders to withdraw because of the time that may elapse before a withdrawing bidder's final withdrawal payment liability is determined.<sup>169</sup> Legacy and Citizens describe four instances of sequential withdrawals by the same bidders in FM Auction Nos. 37 and 62, resulting in delayed service to the public. Legacy and Citizens argue that a withdrawing bidder should be

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<sup>165</sup> Bidders must have sufficient eligibility to place a bid on the particular construction permit. *See supra* Section III.D.3. "Upfront Payments and Bidding Eligibility"

<sup>166</sup> In the event of duplicate bid amounts due to rounding, the FCC Auction System will omit the duplicates and will list fewer than nine acceptable bid amounts for the construction permit.

<sup>167</sup> *Auction No. 68 Comment Public Notice* at 8.

<sup>168</sup> Although in each set of comments, Legacy and Citizens make references to defaults and default payments, the examples provided by Legacy and Citizens concern withdrawals of provisionally winning bids before the close of competitive bidding in Auction Nos. 37 and 62, instead of payment defaults after the close of competitive bidding. For purposes of clarity (to distinguish bid withdrawals before the close of bidding from payment defaults after the close of bidding), we use the terms withdrawal and withdrawal payments in this discussion. In his reply comments, Bartholomew agrees that Legacy and Citizens more appropriately should use the term withdraw or withdrawal payments, instead of default or default payments. Bartholomew Reply Comments at 1-3.

<sup>169</sup> Legacy Comments at 1-5; Citizens Comments at 1-5.

barred from bidding on the same FM allotments in future auctions, such as Auction No. 68.<sup>170</sup> Further, Legacy and Citizens ask that the Commission “clarify” that a withdrawn bid is a failure to make payment on a provisionally winning bid and this: (1) is a default on a payment for a Commission license within the meaning of the current defaulter certification specified at 47 C.F.R. § 1.2105(a)(1)(x), (2) must be disclosed on a short-form application for subsequent auctions, and (3) bars participation by that withdrawing bidder in subsequent auctions, unless good cause is demonstrated.<sup>171</sup>

142. In contrast, Steven R. Bartholomew opposes the Commission’s proposal not to permit bid withdrawals in Auction No. 68, specifically characterizing as “idle speculation” the assertion by Legacy and Citizens that withdrawals by four bidders in FM Auction Nos. 37 and 62 delayed the submission of at least \$1,801,000 to the U.S. Treasury.<sup>172</sup> Bartholomew claims that withdrawals facilitate potential deals with auction non-participants to trade licenses and make it easier for financially constrained small bidders to engage in “parking” of bids on construction permits in which they are not interested in order to avoid bidding up the prices of the construction permits in which they are interested. In his reply comments, Bartholomew asserts that there were no “bona fide” applicants who were harmed by the withdrawals in the two earlier auctions.<sup>173</sup> We reject Bartholomew’s arguments and note that our auction procedures, including withdrawal and activity rules, are designed to encourage participation by all interested parties and straightforward bidding by auction participants, so that the auction mechanism will assign the permits directly to the parties that value them most highly.

143. In addition, Bartholomew argues against the suggestion of Legacy and Citizens that bidders that withdrew bids in Auction Nos. 37 or 62 not be permitted to participate in Auction No. 68,<sup>174</sup> and alternatively, suggests that the FCC privately offer those bidders the opportunity to reinstate their withdrawn bids.<sup>175</sup> Bartholomew also challenges the Commission’s withdrawal payment procedures from the previous auctions. In his reply comments, Bartholomew proposes several revisions to the Commission’s withdrawal payment rules, including a new flat 10 percent final withdrawal payment based on the amount of the withdrawn bid, to replace the current interim and final withdrawal payments based, in part, on the winning bid for the particular construction permit or license in the same or a subsequent auction.<sup>176</sup>

144. Generally, these proposals all seek to change various aspects of the Commission’s competitive bidding rules, which would require a rulemaking and is therefore outside of the scope of the issues upon which the Bureaus have invited comment. With respect to Bartholomew’s suggestion to impose an additional bid withdrawal payment, we note that the Commission’s rules on withdrawal payments were recently revised to allow for such additional payments, and we are making provision for such payments in this auction. (This subject is discussed further below.) Accordingly, the Bureaus adopt their proposal concerning bid withdrawals

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<sup>170</sup> “Further, to prevent the [withdrawing bidder] from simply forming a ‘new entity’ to serve as the nominal auction participant, the ban should also extend to entities in which the [withdrawing bidder’s] principals have attributable interests.” Legacy Comments at 4; Citizens Comments at 4.

<sup>171</sup> Legacy Comments 5; Citizens Comments at 5.

<sup>172</sup> Bartholomew Reply Comment at 3.

<sup>173</sup> Bartholomew Reply Comment at 5.

<sup>174</sup> Legacy Comments at 4; Citizens Comments at 4.

<sup>175</sup> In his reply comments, Bartholomew argues that the Commission should change its method of creating vacant FM allotments, and that the Commission on its own motion should reallocate these nine FM allotments in Auction No. 68 to new towns, as well as permitting winning bidders to petition to change the city of license for any construction permits won in the auction as soon as final payment is made. Bartholomew Reply Comments at 7-10. We decline to adopt his proposals to change our vacant FM allotment rules and procedures because this is not the appropriate forum and due to an insufficient record for such rule and procedural changes.

<sup>176</sup> Bartholomew Reply Comments at 5-7.

and will not permit bidders to withdraw bids in any round during the auction. Moreover, because there will be no bid withdrawals in Auction No. 68, the concerns raised by Legacy and Citizens regarding sequential withdrawals will not arise in this auction. We also decide that it is not necessary to take the extra precaution of barring bidders who withdrew high bids in the earlier FM auctions from participating in Auction No. 68.

145. Bidders are cautioned to select bid amounts carefully because no bid withdrawals will be allowed in Auction No. 68, even if a bid was mistakenly or erroneously made.

146. **Procedures.** Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the “remove bids” function 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 withdrawal payments. Removing a bid will affect a bidder’s activity for the round in which it is removed, *i.e.*, a bid that is removed does not count toward bidding activity. Once a round closes, a bidder may no longer remove a bid. No comments were received on this issue, therefore, we adopt these procedures for Auction No. 68.

## 6. Round Results

147. Bids placed during a round will not be made public until the conclusion of that round. After a round closes, the Bureaus will compile reports of all bids placed, current provisionally winning bids, new minimum acceptable bid amounts, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders’ identities for Auction No. 68 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

## 7. Auction Announcements

148. The Commission will use auction announcements to announce items such as schedule changes. All auction announcements will be available by clicking a link in the FCC Auction System.

# V. POST-AUCTION PROCEDURES

## A. Down Payments

149. After bidding has ended, the Commission will issue a public notice declaring the auction closed and identifying winning bidders, down payments and final payments due.

150. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction No. 68 to 20 percent of the net amount of its winning bids (gross bids less any applicable new entrant bidding credits).<sup>177</sup>

## B. Final Payments

151. Recognizing the public benefit of maintaining a consistent set of auction procedures across the various auctionable services, in the *CSEA/Part 1 Report and Order*, the Commission recently conformed the broadcast final payment procedures to the analogous Part 1 requirements.<sup>178</sup> Specifically, the Part 1 rules provide that, unless otherwise specified by public notice, auction winners are required to pay the balance of their winning bids in a lump sum within ten business days following the release of a public notice establishing the payment deadline.<sup>179</sup> In recent spectrum auctions, the Commission has required each winning bidder to submit the balance of the net amount of its winning bid(s) within ten business days after the deadline for

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<sup>177</sup> See 47 C.F.R. § 1.2107(b).

<sup>178</sup> See Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Bidding Rules and Procedures, WT Docket No. 05-211, *Report and Order*, 21 FCC Rcd 891 (2006). (“*CSEA/Part 1 Report and Order*”).

<sup>179</sup> 47 C.F.R. § 1.2109(a).

submitting down payments. Consistent with this approach, for Auction No. 68 each winning bidder will be required to submit the balance of the net amount of its winning bids within 10 business days after the deadline for submitting down payments.<sup>180</sup>

### C. Long-Form Application

152. Mullaney comments that, because final payment is now due within approximately 20 days after release of the auction closing public notice announcing winning auction bidders, the time period for filing a long-form application (FCC Form 301) should be extended from 30 to 90 days from release of that public notice.<sup>181</sup> However, the 30-day period for filing Form 301 is dictated by the Commission's Rules,<sup>182</sup> which may not be changed outside of a formal rulemaking proceeding. The Bureaus cannot implement Mullaney's proposed change of this filing deadline. Accordingly, within thirty days after the release of the auction closing notice, winning bidders must electronically submit a properly completed FCC Form 301, Application for FM Construction Permit, and required exhibits for each construction permit won through Auction No. 68. Winning bidders claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit.<sup>183</sup> Further filing instructions will be provided to auction winners at the close of the auction.

### D. Default and Disqualification

153. Any winning bidder that defaults or is disqualified after the close of the 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) will be subject to the payments described in 47 C.F.R. § 1.2104(g)(2). The payments include both 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. Pursuant to recent modifications to the rule governing default payments, the percentage of the applicable bid to be assessed as an additional payment for defaults in a particular auction is established in advance of the auction. Accordingly, in the *Auction No. 68 Comment Public Notice*, we proposed to set the additional default payment for the auction of the FM broadcast construction permits at ten percent (10%) of the applicable bid. We sought comment on our proposal. Legacy and Citizens support a 10 percent additional payment for each auction in which a bid is withdrawn.<sup>184</sup> In reply, Bartholomew contends that Legacy and Citizens misunderstand the default rules; instead Bartholomew seeks changes to the default payment rules.<sup>185</sup> As mentioned above, the proposed changes to default payment rules are outside of the scope of this proceeding. Based on our experience and the record before us, we will set the additional default payment for this auction of FM broadcast construction permits at ten percent (10%) of the applicable bid.

154. Finally, we note that in the event of a default, the Commission may re-auction the construction permit or offer it to the next highest bidder (in descending order) at its final bid amount.<sup>186</sup> In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any

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<sup>180</sup> See 47 C.F.R. § 1.2109(a).

<sup>181</sup> Mullaney Comments at 3-4.

<sup>182</sup> 47 C.F.R. § 73.5005(a).

<sup>183</sup> *Id.* §§ 1.2112(b) and 73.5005.

<sup>184</sup> Legacy Comments at 3; Citizens Comments at 3.

<sup>185</sup> Bartholomew Reply Comments at 1-4.

<sup>186</sup> See 47 C.F.R. § 1.2109(b) and (c).

other action that it deems necessary, including institution of proceedings to revoke any existing authorizations held by the applicant.<sup>187</sup>

#### E. Refund of Remaining Upfront Payment Balance

155. All applicants that submit upfront payments but after the close of the auction are not winning bidders for a construction permit in Auction No. 68 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

156. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers and have no remaining bidding eligibility may also be eligible for a refund of their upfront payment before the close of the auction. If an applicant has completed the refund instructions electronically, the refund will be sent automatically. If an applicant has not completed the refund instructions electronically, a written request must be submitted for the refund and include wire transfer instructions, Taxpayer Identification Number (TIN) and FCC Registration Number (FRN). Send refund requests to:

Federal Communications Commission  
Financial Operations Center  
Auctions Accounting Group  
Gail Glasser  
445 12th Street, SW, Room 1-C864  
Washington, DC 20554

157. Bidders are encouraged to file their refund information electronically using the **Refund Information** icon found on the *Auction Application Manager* page or through the **Wire Transfer for Refund Purposes** link available in various locations throughout the FCC Auction System, but bidders may also send their information by facsimile to the Auctions Accounting Group at (202) 418-2843. Once the information has been approved, a refund will be sent to the party identified in the refund information.

158. Following the close of the auction, the Commission may refund upfront monies on deposit that exceed the required final payment and/or default payment amounts. Such refunds will be made to the payer of record as identified on the FCC Form 159, provided the necessary refund request and wire transfer instructions have been received.

NOTE: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Gail Glasser at (202) 418-0578.

## VI. CONTACTS

### Media Contact:

For press inquiries: Chelsea Fallon (202) 418-7991

### Audio Division, Media Bureau:

For service rule questions: Lisa Scanlan or Thomas Nessinger at (202) 418-2700

### Auctions and Spectrum Access Division:

For legal questions: Lynne Milne at (202) 418-0660

For general auction questions: Debbie Smith or Lisa Stover at (717) 338-2868

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<sup>187</sup> 47 C.F.R. § 1.2109(d).

To request materials in accessible formats (Braille, large print, electronic files, audio format) for people with disabilities, send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

-- FCC --

**Auction No. 68 – FM Broadcast  
DA 06-1949  
Attachment A**

Construction Permit	Market			Channel	Class	Coordinates								Bidding Units	Upfront Payment	Minimum Opening Bid
	State	City				Latitude				Longitude						
MM-FM366-A	CA	Covelo	**	245	A	39	47	42	N	123	14	54	W	7,500	\$7,500	\$7,500
MM-FM040-A	CA	Tecopa	*	291	A	35	50	48	N	116	13	24	W	1,500	\$1,500	\$1,500
MM-FM063-A	FL	Cedar Key	***	261	A	29	8	12	N	83	2	6	W	1,500	\$1,500	\$1,500
MM-FM068-A	FL	Perry	***	228	A	30	7	0	N	83	34	26	W	15,000	\$15,000	\$15,000
MM-FM079-C2	HI	Kihei	*	298	C2	20	47	0	N	156	27	48	W	90,000	\$90,000	\$90,000
MM-FM179-C	MT	Outlook	*	289	C	48	53	18	N	104	46	42	W	10,000	\$10,000	\$10,000
MM-FM414-C1	NC	Ocracoke	**	224	C1	34	51	32	N	76	25	0	W	150,000	\$150,000	\$150,000
MM-FM445-A	PA	Meyersdale	**	253	A	39	48	42	N	79	1	36	W	90,000	\$90,000	\$90,000
MM-FM318-C2	UT	Parowan	*	300	C2	37	50	30	N	112	49	30	W	15,000	\$15,000	\$15,000

**Auction Total                    9                    Construction Permits**

- \* Construction permit offered but unsold in Auctions No. 37 & No. 62.
- \*\* Construction permit offered but unsold in Auction No. 62.
- \*\*\* Construction permit offered in Auction No. 37, but the winning bidder defaulted.

**ATTACHMENT B****ELECTRONIC FILING AND REVIEW  
OF THE SHORT-FORM APPLICATION (FCC FORM 175)****PAPERWORK REDUCTION ACT NOTICE**

The Federal Communications Commission uses information collected in FCC Form 175 in determining whether applicants are legally, technically, and financially qualified to participate in Commission auctions for licenses or permits. In addition, if an applicant applies for status as a particular type of auction participant pursuant to Commission rules, the Commission uses the information in determining whether the applicant is eligible for the status requested. The Commission's auctions, including the collection of information to determine applicants' qualifications to participate pursuant to Commission rules and requirements, are designed to limit the competitive bidding to qualified applicants, to deter possible abuse of the bidding and licensing process, and to enhance the use of competitive bidding to assign Commission licenses and permits in furtherance of the public interest.

The Commission estimates that each response to this collection of information will take on average of 1.5 hours. This estimate includes the time to read the instructions, look through existing records, gather and maintain required data, and actually complete and review the form or response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERM, Washington, DC 20554, Paperwork Reduction Project (3060-0600). PLEASE DO NOT SEND COMPLETED APPLICATION FORMS TO THIS ADDRESS.

The information collected in FCC Form 175 is required to be filed by all applicants to participate in a Commission auction, pursuant to Section 309(j)(5) of the Communications Act and Section 1.2105 of the Commission's rules. See 47 U.S.C. § 309(j)(5), 47 C.F.R. § 1.2105. Information collected in a submitted FCC Form 175 will be available for public inspection.

You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a current valid OMB control number with this notice. This collection has been assigned OMB control number 3060-0600.

**THE FOREGOING NOTICE IS REQUIRED BY THE PAPERWORK REDUCTION ACT OF 1995, PUBLIC LAW 104-13, OCTOBER 1, 1995, 44 U.S.C. SECTION 3507.**

**APPLICATION PREPARATION AND SUBMISSION**

An applicant must submit its short-form application (FCC Form 175) electronically, via the FCC Auction System. **The FCC Form 175 applications must be submitted and confirmed prior to 6:00 p.m. ET on Monday, November 13, 2006.** Late applications or unconfirmed submissions of electronic data will not be accepted.

Applicants are reminded that all information required in connection with applications to participate in spectrum license auctions is necessary to determine each applicant's qualifications, and as such will be available for public inspection. Accordingly, an applicant should not include any unnecessary sensitive information, such as Taxpayer Identification Numbers or Social Security Numbers, in its short-form application. Applicants may request that information

submitted not be made routinely available for public inspection following the procedures set forth in 47 C.F.R. § 0.459. Pursuant to Section 0.459(a), such requests must be included as an attachment to FCC Form 175 and identify the information to which the request applies. Because the required information bears on each applicant's qualifications, confidentiality requests will not be routinely granted.

Applicants may make multiple changes to their FCC Form 175 applications until the close of the filing window. However, applicants must press the **SUBMIT** button in the FCC Auction System for the changes to be submitted and considered by the Commission.

#### A. Software Requirements

Applicants must meet the following minimum software requirements:

- Web Browser:
  - Microsoft® Internet Explorer 6.0 or higher (recommended). Your browser must have either Microsoft VM or Java Plug-In Version 1.4.2\_05 installed.
  - or
  - Netscape® Communicator™ 6.0 or higher, with Java Plug-In Version 1.4.2\_05.

Java Plug-In Version 1.4.2\_05 is available for downloading at [http://java.sun.com/products/archive/j2se/1.4.2\\_05/index.html](http://java.sun.com/products/archive/j2se/1.4.2_05/index.html) (choose the JRE version).

Other browsers are not supported.

- PDF Viewer: Adobe Acrobat Reader 5.0 or higher (available at <http://www.adobe.com>)

Currently, the Apple® Mac OS® is not supported.

#### B. Logging On

To submit an FCC Form 175 application electronically via the Internet, start your web browser and point it to either <http://auctions.fcc.gov/> (primary location) or <http://auctions2.fcc.gov/> (secondary location). Once on the *FCC Integrated Spectrum Auction System* page, an applicant may log in to create an FCC Form 175 application using its FCC Registration Number (FRN) and password.

#### C. Application Filing Instructions

The on-line FCC Form 175 requests information needed to determine whether an applicant qualifies to participate in competitive bidding for Commission licenses or construction permits.<sup>188</sup> Pursuant to Section 1.2105(a), the FCC Form 175 must be submitted electronically. Applicants must submit required information as entries in the data fields of the electronic FCC Form 175 whenever a data field is available for that information. Attachments should not be used to provide information that can be supplied within the data fields of the electronic FCC Form 175.

The screens comprising FCC Form 175 consist of six series, each requesting six separate types of information: 1) *Applicant Information*; 2) *Permit Selection*; 3) *New Entrant Bidding Credit*

<sup>188</sup> See generally, 47 C.F.R. § 1.2105.

*Eligibility*; 4) *Agreements*; 5) *Ownership*; and 6) *Certify and Submit*. In addition, *Summary* screens, appear prior to the *Certify and Submit* screens. The *Summary* screens provide an overview of an applicant's FCC Form 175 that facilitates reviewing and revising specific information, as well as an automated check for certain inconsistencies and omissions in submitted information.

To simplify filling out FCC Form 175, certain initial information applicants provide is used to determine what additional information is needed, and what subsequent screens will appear to collect that information. For example, a corporate applicant, unlike an individual applicant, must identify a corporate officer or director responsible for the application (sometimes called a responsible party). If an applicant identifies itself as an individual, no additional information is needed regarding an additional responsible party, and screens requesting responsible party information will not appear. However, if the applicant identifies itself as a corporation, subsequent screens in the FCC Form 175 will ask for responsible party information.

Applicants should be able to fill out Form 175 by following the instructions below. Additional help in filling out FCC Form 175 can be accessed from the electronic FCC Form 175 in two ways: 1) by clicking on the **Help** link in the upper right of any screen, which will open Auction Application Online Filing Help; or 2) by clicking on the text of any **Common Question** link appearing on the right side of the screen. The common questions displayed relate to the current screen and vary from screen to screen. In the event the assistance provided by these sources is insufficient, filers should use the contact information provided in the *Procedures Public Notice* to obtain additional assistance.

## 1. Applicant Information

The *Applicant Information* screens are the first series of screens in FCC Form 175. In the *Applicant Information* screens, the applicant will provide basic information including

- the applicant's legal classification, *e.g.*, individual, corporation, etc.
- optional information regarding the applicant's status as a minority- or woman-owned business or a rural telephone company
- whether the applicant requests Noncommercial Educational election. This response (yes or no) is mandatory.<sup>189</sup>
- the applicant's name, which will be used as the bidder name during the auction
- citizenship (for individuals), or jurisdiction of formation for legal entities
- for applicants classified as legal entities, *e.g.*, corporations and partnerships, the name of and information regarding the entity's responsible individual
- the name, address, telephone and facsimile number of a contact person who will communicate with the Commission regarding the applicant's FCC Form 175
- the names of up to three persons authorized to bid for the applicant in the auction
- the applicant's preference for electronic or telephonic bidding
- whether the applicant claims a new entrant bidding credit and the percentage claimed.<sup>190</sup>

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<sup>189</sup> Any application for a noncommercial educational station that is mutually exclusive with any application for a commercial station will be returned as unacceptable for filing. *See NCE Second Report and Order*, 18 FCC Rcd at 6699-6700. Applicants specifying the same FM station construction permit are considered mutually exclusive.

<sup>190</sup> *See* 47 C.F.R. §§ 1.2105(a)(2)(ii)(A), 73.5007 and 73.5008.

Each screen will specify the information that the applicant must provide. Please note the following with respect to particular information requested:

- Applicants must indicate their legal classification before continuing to subsequent screens, because the legal classification will determine which subsequent screens will appear.
- P.O. Boxes may not be used for an applicant's address.
- To simplify filling out the FCC Form 175, an applicant that has the same address as its contact person can click on the **COPY APPLICANT ADDRESS** button to automatically fill in the contact person's address. P.O. Boxes may not be used for a contact person's address.
- Applicants must identify at least one authorized bidder. While applicants may change their authorized bidders at a later date, in Auction No. 68 only those bidders listed on the FCC Form 175 will be authorized to place bids for the applicant during the auction.
- Any qualified bidder may bid either via the Internet or by telephone during the auction. Specifying a preference for electronic or telephonic bidding assists the Commission in determining the staff required for telephonic bidding.
- Any application for a noncommercial educational station that is mutually exclusive with any application for a commercial station will be returned as unacceptable for filing.<sup>191</sup>

## 2. Permit Selection

The *Permit Selection* screens make up the second series of screens in FCC Form 175. In the *Permit Selection* screens, the applicant will identify the construction permits (identified in FCC Form 175 as items) on which the applicant may wish to bid during the auction. Applicants are not obligated to bid on all construction permits selected; however, applicants will not be able to bid on construction permits that they have not selected on the FCC Form 175.<sup>192</sup> Be advised that there is no opportunity to change this list once the short-form filing deadline passes on November 13, 2006.

To participate in an auction, applicants must select at least one construction permit. Until the applicant selects a construction permit, the applicant cannot submit the FCC Form 175. An applicant's permit selections cannot be changed after the initial filing window has closed. Therefore, during the initial filing window it is important to carefully review permit selections to make sure all the construction permits on which the applicant may wish to bid have been selected.

The Permit Selection screen contains a listing of all available construction permits in the auction. Construction permits can be selected by either: 1) clicking the check box next to the construction permit name, then selecting the "Save Selected Items" button; or by 2) clicking the "Save all

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<sup>191</sup> See *NCE Second Report and Order*, 18 FCC Rcd at 6699-6700. Applicants specifying the same FM station construction permit are considered mutually exclusive.

<sup>192</sup> See 47 C.F.R. § 1.2105(a)(2)(i).

Items” button to save all available construction permits. Once the applicant has successfully saved a construction permit, the word “Saved” will appear next to the construction permit name to confirm that it has been saved with the application.

NOTE: Construction Permits selected on the Permit Selection screen will be automatically saved when navigating to another screen within the Auction Application by using the links and buttons provided on the screen.

Construction Permits can be removed by either: 1) clicking the check box (to uncheck) next to a previously saved construction permit, then selecting the “Remove Selected Items” button; or by 2) clicking the “Remove all Items” button to remove all previously saved construction permits. Removed construction permits will not have the word “Saved” next to the construction permit name.

Applicants may view all saved construction permits by either clicking the **Edit Icon** next to “View Saved Items” at the top-right corner of the list, or by clicking the “CONTINUE” button at the bottom of the page.

Once construction permits have been saved, the View/Edit Permit Selections screen will be the first screen displayed when navigating to the Permit Selection step. This screen lists all construction permits the applicant has selected and saved for the auction. To select a new construction permit or remove a previously selected construction permit, click the **Edit Icon** next to “Return to Permit Selection” at the top-right corner of the list. This will take you to the original *Select Permits* screen, as described above.

**The reference coordinates are also displayed for each listed FM allotment. Once the applicant has selected and added an FM permit, the reference coordinates are followed by a “Edit” icon. Clicking this icon produces a page on which the applicant can change the reference coordinate values to preferred site coordinates.**<sup>193</sup> If the applicant previously has selected construction permits, the initial *Permit Selection* screen will be the *View/Edit Permit Selections* screen. This screen lists the construction permits previously selected for this auction. To select a new construction permit or remove a previously selected construction permit, click the **Edit** icon next to Change Selection at the top-right corner of the list. This will take you to the original *Select Permits* screen, described above.

### 3. New Entrant Bidding Credit Eligibility

The *New Entrant Eligibility* screens are the third series of screens in FCC Form 175. On the initial screen, applicants indicate whether they are claiming the New Entrant bidding credit and, if so, whether they are claiming a 25 percent or 35 percent New Entrant bidding credit. Applicants should ensure that this bidding credit information is consistent with the bidding credit eligibility information provided on the first *Applicant Information* screen.

Applicants claiming either no New Entrant bidding credit or a 35 percent New Entrant bidding credit will not need to provide additional information in FCC Form 175 regarding their claimed

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<sup>193</sup> See *Broadcast Competitive Bidding First Report and Order*, 13 FCC Rcd at 15974 and n.153.

New Entrant bidding credit. Such applicants will continue to the next series of screens.<sup>194</sup>

Applicants claiming a 25 percent New Entrant bidding credit must provide additional information regarding existing mass media facilities in which the applicant, or any individual or entity with an attributable interest in the applicant, has an attributable interest. Applicants must identify:

- the existing mass media facility or facilities;
- the individual or entity with an attributable interest in the existing mass media facility;
- the attributable interest in the facility; and whether any proposed broadcast facilities are in the ‘same area’ as existing mass media facilities, as defined by applicable Commission rules. *See* 47 C.F.R. §§ 73.5007, 5008.
- In the event that the applicant indicates that any of the broadcast facilities proposed in this auction are in the ‘same area’ as the identified existing mass media facility, the applicant must continue to an additional screen where the applicant must indicate which proposed broadcast facility in the auction is in the ‘same area’ as the identified existing mass media facility.

Once the applicant has identified all relevant existing mass media facilities, and all proposed broadcast facilities in the ‘same area’ as each relevant existing mass media facility, applicants will continue to the View/Edit All Facilities screen. This screen lists the applicant’s claimed New Entrant bidding credit of 25 percent, the relevant existing mass media facilities, and the proposed broadcast facilities in the ‘same area’ as each relevant existing mass media facility. From this screen, options include:

- Clicking the **Edit** icon or the **Modify bidding credit selection** link to return to the initial New Entrant bidding credit eligibility screen.
- Modifying information about relevant mass media facilities by clicking on them.
- Clicking the **Delete This Facility** link to delete a facility and identified proposed broadcast facilities in the ‘same area.’
- Modifying information regarding a proposed broadcast facility by clicking on its identifier.
- Clicking the **Remove** icon next to information about a particular proposed broadcast facility in the ‘same area’ to remove the corresponding facility.
- Clicking the **Add a proposed ‘Same Area’ Facility to [an existing mass media facility]** link to add a new proposed broadcast facility in the ‘same area.’
- Clicking the **CREATE NEW MASS MEDIA FACILITY** button to add additional mass media facilities.

When all relevant existing mass media facilities, and proposed broadcast facilities in the ‘same area’ as each relevant existing mass media facility, have been identified, click the **CONTINUE** button.

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<sup>194</sup> Full-service noncommercial educational stations, on both reserved and nonreserved channels, are included among “media of mass communications” as defined in Section 73.5008(b). *See Minnesota Christian Broadcasters, Inc.*, 18 FCC Rcd 614 (2003), *aff’d sub nom, Carol DeLaHunt v. FCC*, 411 F.3d 283 (D.C.Cir. 2005).

#### 4. Agreements

The *Agreements* screens are the fourth series of screens in FCC Form 175. In the *Agreements* screens, applicants will provide information regarding auction-related agreements subject to disclosure under the Commission’s rules.<sup>195</sup>

On the first screen, applicants must state whether the applicant has any agreements that are subject to disclosure under the Commission’s rules by responding yes or no to a question asking whether the applicant has entered into partnerships, joint ventures, consortia or other agreements or understandings of any kind relating to the construction permits being auctioned, including any such agreement relating to the post-auction market structure. If an applicant answers “No,” the applicant will continue with the Ownership series of screens, described below. If the applicant answers “Yes,” the applicant will continue with additional *Agreements* screens described here.

In the additional *Agreements* screens, applicants must provide an identifying name for the agreement and must identify the parties, other than the applicant, to the agreement. The agreement identifier can be a brief description of the agreement or a simple reference name; however, each agreement identifier must be unique.

In the event the other party to the agreement is an entity or an individual, different identifying information is required. For either entities or individuals, applicants may provide FCC Registration Numbers (“FRNs”), if available. Providing the FRN helps prevent identification errors resulting from parties having similar names or a single party using multiple names. Provision of an agreement party’s FRN is optional.

Up to three parties to the agreement (not including the applicant) can be identified on a single screen. Additional parties can be added by clicking the **ADD MORE PARTIES** button. In the event of an error, the name of a party and its associated FRN can be deleted from the form by clicking on the **RESET** button. After identifying all parties to a particular agreement, click the **FINISH THIS AGREEMENT** button.

The next *Agreements* screen is the *View/Edit Agreements* screen. This screen lists the agreements and parties to each agreement that already have been entered. From this screen, you have the following options:

- Clicking the **Edit** icon or the **Agreements** link to return to the initial *Agreements* screen regarding whether or not the applicant has any agreements.
- Modifying agreement identifiers by clicking on them.
- Clicking the **Delete This Agreement** link to delete an agreement and associated parties.
- Modifying information regarding a particular party to an agreement by clicking on the party’s name.
- Clicking the **Remove** icon next to information about a particular party to remove the corresponding party.

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<sup>195</sup> See 47 C.F.R. § 1.2105(a)(2)(viii).

- Clicking the **Add Party to This Agreement** link to add a new party to an agreement.
- Clicking the **CREATE NEW AGREEMENT** button to add additional agreements.

When you have identified all agreements and the parties to each agreement, click the **CONTINUE** button.

## 5. Ownership

The *Ownership* screens are the fifth series of screens in the FCC Form 175. In the *Ownership* screens, applicants will provide information regarding parties with ownership interests in the applicant that must be disclosed pursuant to Commission rules.<sup>196</sup> Commission rules also require the disclosure and description of FCC-regulated businesses that are owned by the applicant and parties with certain ownership interests in the applicant.<sup>197</sup>

### a. Information Already on File with the Commission

Some applicants may have previously filed FCC Form 602 disclosing ownership information in connection with wireless services. In addition, some applicants may have filed a short-form application (FCC Form 175) for a previous auction disclosing ownership information. To simplify filling out this FCC Form 175, an applicant's most current FCC Form 602 or FCC Form 175 ownership information on file with the Commission, if in an electronic format compatible with FCC Form 175, automatically will be entered into this FCC Form 175. Applicants with ownership information automatically entered into FCC Form 175 will proceed directly to the *View/Edit Ownership* screen described below.

Each applicant is responsible for information submitted in its FCC Form 175 being complete and accurate. Applicants should carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for submitting this FCC Form 175. Applicants can update the information directly in the FCC Form 175. After the deadline for filing this FCC Form 175, ownership information in a submitted FCC Form 175 will be considered to be the applicant's most current ownership information on file with the Commission.

### b. Disclosable Interest Holders and FCC-Regulated Businesses

- **Sections 1.2105 and 1.2112(a) of the Commission's rules lists the interest holders in the applicant that must be disclosed in FCC Form 175.**<sup>198</sup>
- **Section 1.2112(a)(7) lists the FCC-regulated business entities, or applicants for an FCC**

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<sup>196</sup> See 47 C.F.R. §§ 1.2105(a)(2)(ii)(B), 1.2110, 1.2112, and 73.5002.

<sup>197</sup> See 47 C.F.R. § 1.2112.

<sup>198</sup> 47 C.F.R. § 1.2112(a). Section 73.5002 specifies the bidding procedures, certification requirements and anti-collusion rules applicable to applications for commercial broadcast services that are subject to auction. Subsection (b) requires the timely submission of Form 175 applications along with all required certifications, information and exhibits pursuant to 47 C.F.R. § 1.2105(a) and any Commission public notices. Section 1.2105 requires the disclosure on the short-form application of applicant ownership information as set forth in Section 1.2112.

license, that must be disclosed in FCC Form 175.<sup>199</sup>

The initial *Ownership* screen enables the applicant to add information regarding either a disclosable interest holder or the FCC-regulated businesses in which the applicant has an interest. Each screen will specify the information that the applicant must provide. Please note the following with respect to particular information requested:

- If an application includes one or more disclosable interest holders with an indirect ownership in the applicant,<sup>200</sup> the application must include an attachment regarding the relationship between the indirect interest holder(s) and the applicant. The attachment should provide an overview of the ownership chain that links the indirect owners to the applicant, *e.g.*, indirect owner X owns 50% of holding company Y; indirect owner Z owns 50% of holding company Y; and holding company Y owns 100% of the applicant.<sup>201</sup> One attachment connecting all indirect owners to the applicant is sufficient; a separate attachment for each indirect owner is not required. An overview of the ownership connections is sufficient; the attachment does not need to duplicate all the detailed information already provided in the FCC Form 175.
- The “Percent of Interest Held in Applicant” should reflect the disclosable interest holder’s aggregate ownership interest in the applicant. In some cases, *e.g.*, circumstances where there is joint ownership or indirect ownership resulting in different owners sharing the same ownership interests, the sum of all the percentages held by disclosable interest holders may exceed 100%. In other cases, *e.g.*, directors and officers, a disclosable interest holder may have a 0% percent of interest held in the applicant.
- FCC-regulated businesses in which the applicant has an interest can be entered from the initial *Add Ownership Disclosure Information* screen. FCC-regulated businesses in which a disclosable interest holder has an interest can be entered from the *Add FCC Regulated Business* screen in the series of screens for entering information about a Disclosable Interest Holder.
- When adding an FCC-regulated business, “Percent of Interest Held” refers to the percent of interest held by the applicant or disclosable interest holder, as applicable, in the FCC-regulated business.
- To simplify filling out the FCC Form 175, applicants can click on the **select business(es) already submitted** link when entering an FCC-regulated business previously entered as an FCC-regulated business for the applicant or another Disclosable Interest Holder. When doing so, be certain to enter the “Percent of Interest Held” in the FCC regulated business by the current party, either the applicant or the disclosable interest holder, with respect to which the FCC-regulated business is being entered.

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<sup>199</sup> 47 C.F.R. § 1.2112(a)(7).

<sup>200</sup> See 47 C.F.R. § 1.2112(a)(6).

<sup>201</sup> *Id.*

### c. View/Edit Ownership Disclosure Information

The *View/Edit Ownership Disclosure Information* screen summarizes Ownership information already entered in FCC Form 175, either automatically from compatible ownership information on file with the Commission or directly by the applicant, and provides links enabling existing information to be revised and additional information to be added.

Existing ownership information is divided into two groups:

- Disclosable Interest Holders of this Applicant
- FCC Regulated Businesses of this Applicant

To view the detailed information submitted regarding the applicant, a disclosable interest holder, or FCC-regulated business, click on the relevant party's name. To delete existing information or add a new entry in one of the categories, click on the relevant link. This screen also provides a link enabling applicants to add an FCC-regulated business directly to an existing disclosable interest holder, without needing to reenter the disclosable interest holder's information.

## 6. Summary

The *Summary* screens summarize information applicants have provided in previous screens, offering an overview of an applicant's FCC Form 175 to help locate specific information. The *Summary* screens will appear prior to the *Certify and Submit* screens, in order to permit the applicant to review all the information entered in previous screens and to provide an opportunity to check for errors in the information submitted.

The first *Summary* screen, the *Summary Overview* screen, lists the first five series of screens in the application and provides a **VIEW/EDIT** button to access each one. Here is what happens if you click **VIEW/EDIT** for each series:

- Clicking **VIEW/EDIT** for Applicant Information produces a *Detail for Applicant Information* screen showing what you entered for each data entry field. To change any data item, click the **Edit** icon for the relevant data field.
- Clicking **VIEW/EDIT** for Permit Selection takes you to the *View/Edit Permit Selection* screen discussed above in the Permit Selection section.
- Clicking **VIEW/EDIT** for New Entrant Eligibility takes you to the *View/Edit New Entrant Eligibility* screen discussed above in the New Entrant Bidding Credit section.
- Clicking **VIEW/EDIT** for Agreements takes you to the *Agreements* screen discussed above in the Agreements section.
- Clicking **VIEW/EDIT** for Ownership takes you to the *View/Edit Ownership Disclosure Information* screen discussed above in the Ownership section.

Clicking on the **CHECK ERRORS** button initiates an automated check of the application. If the automated check encounters any errors that must be corrected before submitting the application, the error(s) will be listed in an Error box at the top of the screen. To correct one of these errors, click its corresponding **EDIT** button. In addition, if the automated check encounters any apparent errors that might render the application incomplete if the application is submitted with current information, the apparent error will be listed in a Warning box. To revise the information related to the apparent error, click its corresponding **EDIT** button.

Each applicant is solely responsible for providing complete and accurate information in its FCC Form 175. The automated check is provided to assist applicants in completing FCC Form 175. However, the automated check cannot be relied upon to determine whether the information provided in the FCC Form 175 is complete or accurate. The automated check may not catch all errors and applicants cannot rely on the automated check to determine the completeness or the accuracy of submitted information.

If the automated check does not encounter any errors, a box will appear displaying the message “**No Errors found - You may continue to Certify and Submit.**” Applicants may then click the **CONTINUE TO CERTIFY** button.

### 7. Attaching Additional Information

If an applicant needs to provide additional information not requested directly in the screens comprising the FCC Form 175, additional information can be provided in an attachment.

The screen for adding an attachment to FCC Form 175 can be accessed by clicking on the **Attachments** link in the upper right of any screen. The *Add Attachment* screen requests information regarding the type of attachment to be added, the name of the file to be attached, and a brief description of the attachment. If the attachment is a request for a waiver of any of the Commission’s rules or procedures, the applicant must identify the “Type” of attachment as a “Waiver” to facilitate prompt processing. Once the requested information is provided, applicants can add the attachment to the application by clicking on the **ADD ATTACHMENT** button.

A list of any attachments already uploaded along with the applicant’s FCC Form 175 appears at the bottom of the screen.

When uploading attachments, applicants may use a variety of file formats-- including (but not limited to) Word 2000 or earlier, WordPerfect 5.x or later, Adobe PDF, and ASCII text--and must verify that the files contain all exhibit information. Files may be no larger than 10 Mb. Graphics files (e.g., .bmp, .tiff, .jpg) and spreadsheets (e.g., Excel, Lotus) are supported but not recommended. Files must not be password-protected.

### 8. Certify and Submit

The *Certify and Submit* screens are the sixth and final series of screens in FCC Form 175. In the *Certify and Submit* screens, applicants will provide certifications required of all participants in the Commission’s competitive bidding processes.<sup>202</sup>

The first *Certify and Submit* screen requires each applicant to indicate whether the applicant, any affiliate, any controlling interest, and any affiliate of a controlling interest have ever been in default on any Commission construction permit or license or have ever been delinquent on any non-tax debt owed to any Federal agency.<sup>203</sup> Applicants associated with a relevant entity that has been in default or delinquent may participate in an auction, if otherwise qualified. However, such applicants must submit an upfront payment equal to 50 percent more than otherwise required.<sup>204</sup>

<sup>202</sup> See generally, 47 C.F.R. § 1.2105(a)(2) (iv)-(vii) and (ix)-(xi).

<sup>203</sup> See 47 C.F.R. § 1.2105(a)(2)(xi).

<sup>204</sup> See 47 C.F.R. § 1.2106(a).

The second *Certify and Submit* screen lists the certifications required of all applicants in the Commission's competitive bidding processes and requests that the applicant's certifying official be identified and sign the application. Any auction short-form application must be certified by: (1) the applicant, if the applicant is an individual, (2) one of the partners if the applicant is a partnership, (3) by an officer, director, or duly authorized employee, if the applicant is a corporation, (4) by a member who is an officer, if the applicant is an unincorporated association, (5) by the trustee if the applicant is an amateur radio service club, or (6) a duly elected or appointed official who is authorized to do so under the laws of the applicable jurisdiction, if the applicant is a governmental entity.<sup>205</sup>

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.<sup>206</sup> Applicants are reminded that submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application, its certifications and any attachments are true, complete and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

Once the two *Certify and Submit* screens have been filled out, the application may be submitted by clicking on the **SUBMIT** button.

After the application has been submitted, a confirmation screen will be displayed that states the submission time and date, along with a unique file number. It is recommended that you print a copy of the confirmation page for your records. You may then view and print a copy of your submitted application by clicking on Print Preview.

FCC Form 175 applications must be submitted and confirmed prior to 6:00 p.m. ET on Monday, November 13, 2006. Late applications or unconfirmed submissions of electronic data will not be accepted.

## **9. Withdrawing an Application Before the Short-Form Filing Deadline and Updating Existing Applications**

### **a. Withdrawing an Application**

If you wish to withdraw a submitted application before the short-form filing deadline, click on the **Withdraw Application** icon on the *Auction Application Manager Create or Review Auction Applications* page and confirm that you want to withdraw your application. If you subsequently decide to file an application, you will have to re-enter all previously-submitted data. Applications may not be withdrawn after the short-form application filing deadline.

### **b. Updating Existing Applications**

Once you have logged into the Auctions Application Manager, the *Create or Review Auction*

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<sup>205</sup> See 47 C.F.R. § 1.917.

<sup>206</sup> See 47 C.F.R. § 1.2105(a)(2)(v).

*Applications* page displays any application you have created or submitted within a filing window. **Note:** This page shows the application status, the date and time the application was last updated; and the date and time the application was last submitted. You may use this page as a reference to confirm the date and time of your most recent submission of the application.

To review or continue working on an existing application, click its auction number. This produces the application's *Summary* page and places you in a view/edit mode. Applicants must go to the *Certify and Submit* screens and click the **SUBMIT** button to submit any changes made to their FCC Form 175. After the revised application has been submitted, a confirmation page will be displayed that states the submission time and date, along with your unique file number. It is recommended that you print a copy of the confirmation page for your records. You may then view and print a copy of your submitted application by clicking on Print Preview.

After the short-form application filing deadline (6:00 p.m. ET November 13, 2006), applicants may make only minor changes to their applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their construction permit selections, change the certifying official, change control of the applicant, or increase its bidding credit).<sup>207</sup>

#### 10. Upfront Payment Calculator and Form 159

You may access the **Upfront Payment Calculator and Form 159** from the *Create or Review Auction Applications* page and from the *Auction Application Submit Confirmation* page. When you click the **Upfront Payment Calculator and Form 159** icon or link, a page will be displayed where you can determine the appropriate upfront payment amount to submit with the FCC Form 159. From the *Calculate Upfront Payment* page, you may click the **Form 159** button to obtain the FCC Form 159.

#### 11. Refund of Upfront Payment

On *My Auctions* page, click on the **See Wire Transfer for Refund Purposes** link to provide your wire transfer instructions for purposes of refunds of upfront payments. The Commission will use this information to refund excess funds on deposit upon receipt of a written refund request.

##### D. Application Review

Once the FCC has completed the short-form application review process, you can view FCC Form 175 applications electronically by searching for them in the FCC database. Start your web browser and point it to either <http://auctions.fcc.gov/> (primary location) or <http://auctions2.fcc.gov/> (secondary location). Click the **Auction Applications** link in the Public Access area on the *FCC Integrated Spectrum Auction System* page to start your search.

##### E. Technical Support

For technical assistance with using FCC software, contact the FCC Technical Support Hotline at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY). The FCC Technical Support Hotline is available Monday through Friday from 8 a.m. to 6 p.m. ET. All calls to the FCC Technical Support Hotline are recorded.

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<sup>207</sup> See 47 C.F.R. § 1.2105(b).

FCC Technical Support can also be contacted electronically by filling out a help request form at <https://esupport.fcc.gov/request.htm>. On the Submit Help Request page, select **Integrated Spectrum Auction System (ISAS)** from the "FCC System" drop-down.

## ATTACHMENT C

**AUCTION-SPECIFIC INSTRUCTIONS FOR  
FCC REMITTANCE ADVICE (FCC FORM 159-February 2003 Edition)**

**Upfront Payments**

The following information supplements the standard instructions for FCC Form 159 (Revised 2/03), and is provided to help ensure correct completion of FCC Form 159 for upfront payments for Auction No. 68. Applicants need to complete FCC Form 159 carefully, because:

- **Mistakes may affect bidding eligibility; and**
- **Lack of consistency between information provided in FCC Form 159 (Revised 2/03), FCC Form 175, long-form application, and correspondence about an application may cause processing delays.**

Therefore appropriate cross-references between the FCC Form 159 Remittance Advice and the Short Form Application (FCC Form 175) are described below:

Block Number	Required Information
1	LOCKBOX # - Enter "358420"
2	Payer Name - Enter the name of the person or company making the payment. If the applicant itself is the payer, this entry would be the same as FCC Form 175.
3	Total Amount Paid - Enter the amount of the upfront payment associated with the FCC Form 159 (Revised 2/03).
4-8	Street Address, City, State, ZIP Code - Enter the street mailing address ( <b>not Post Office box number</b> ) where mail should be sent to the payer. If the applicant is the payer, these entries would be the same as FCC Form 175 from the Applicant Information section.
9	Daytime Telephone Number - Enter the telephone number of a person knowledgeable about this upfront payment.
10	Country Code - For addresses outside the United States, enter the appropriate postal country code (available from the Mailing Requirements Department of the U.S. Postal Service).
11	Payer FRN - Enter the payer's ten-digit FCC Registration Number (FRN) registered in the Commission Registration System (CORES).
21	Applicant FRN (Complete only if applicant is different than payer.) – Enter the applicant's ten-digit FCC Registration Number (FRN) registered in the

Commission Registration System (CORES).

- 24A Payment Type Code - Enter "A68U"
- 25A Quantity - Enter the number "1"
- 26A Fee Due - Amount of Upfront Payment
- 27A Total Fee - Will be the same amount as 26A.
- 28A FCC Code 1 - Enter the number "68" (indicating Auction No. 68).

NOTES:

- Do not use Remittance Advice (Continuation Sheet), FCC Form 159-C, for upfront payments.
- If applicant is different from the payer, complete blocks 13 through 21 for the applicant, using the same information shown on FCC Form 175. Otherwise leave them blank.
- Since credit card payments will not be accepted for this auction, leave Section E blank.

**Winning Bidder Requirements, Down Payments and Final Payments**

Specific information regarding down payments and final payments will be included in a post-auction public notice announcing the winning bidders.

## ATTACHMENT D

SUMMARY LISTING OF DOCUMENTS ADDRESSING  
APPLICATION OF THE ANTI-COLLUSION RULE**Commission Decisions**

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348, 2386-2388 ¶¶ 221-226 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Fifth Report and Order*, PP Docket No. 93-253, 9 FCC Rcd 5532, 5570-5571 ¶¶ 91-92 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Fourth Memorandum Opinion and Order*, PP Docket No. 93-253, 9 FCC Rcd 6858, 6866-6869 ¶¶ 47-60 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Second Memorandum Opinion and Order*, PP Docket No. 93-253, 9 FCC Rcd 7245, 7253-7255 ¶¶ 48-55 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Memorandum Opinion and Order*, PP Docket No. 93-253, 9 FCC Rcd 7684, 7687-7689 ¶¶ 8-12 (1994).

Commercial Realty St. Pete, *Notice of Apparent Liability for Forfeiture*, 10 FCC Rcd 4277 (1995), *Memorandum Opinion and Order*, 11 FCC Rcd 15374 (1996).

Applications of Mercury PCS II, LLC, *Notice of Apparent Liability for Forfeiture*, 12 FCC Rcd 17970 (1997), *Memorandum Opinion and Order*, 13 FCC Rcd 23755 (1998).

Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 463-469 ¶¶ 155-166 (1997).

Application of US West Communications, Inc., *Notice of Apparent Liability for Forfeiture*, 13 FCC Rcd 8286 (1998); *Notice of Apparent Liability for Forfeiture of US West Communications, Inc., Order*, 14 FCC Rcd 8816 (1999).

Application of Western PCS BTA I Corp., *Notice of Apparent Liability for Forfeiture*, 13 FCC Rcd 8305 (1998); *Notice of Apparent Liability for Forfeiture of Western PCS BTA I Corp., Memorandum Opinion and Order*, 14 FCC Rcd 21571, 21577-78 ¶ 20 (1999).

Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Seventh Report and Order*, 16 FCC Rcd 17546 (2001).

**Wireless Telecommunications Bureau Decisions**

Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, MM Docket No. 94-13, *Order*, 11 FCC Rcd 9655 (Wireless Telecom. Bur. 1995).

Applications of GWI PCS, Inc., *Memorandum Opinion and Order*, 12 FCC Rcd 6441 (Wireless Telecom. Bur. 1997).

Applications of Mercury PCS II, LLC, *Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 18093 (Wireless Telecom. Bur. 1997).

Applications of High Plains Wireless, L.P., *Memorandum Opinion and Order*, 12 FCC Rcd 19627 (Wireless Telecom. Bur. 1997).

Applications of Mercury PCS II, LLC, *Memorandum Opinion and Order*, 13 FCC Rcd 5756 (Wireless Telecom. Bur. 1997).

### **Public Notices**

Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, 11 FCC Rcd 9645 (Wireless Telecom. Bur. 1995).

FCC Staff Clarifies Application of Anti-Collusion Rule to Broadband PCS "C" Block Reauction, *Public Notice*, 11 FCC Rcd 7031 (Auc. Div. 1996).

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).

Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction, *Public Notice*, 13 FCC Rcd 341 (Wireless Telecom. Bur. 1998).

### **Letters from the Office of General Counsel, the Wireless Telecommunications Bureau and the Media Bureau**

Letter to Gary M. Epstein and James H. Barker from William E. Kennard, General Counsel, Federal Communications Commission (released October 25, 1994).

Letter to Alan F. Ciamporcero from William E Kennard, General Counsel, Federal Communications Commission (released October 25, 1996).

Letter to R. Michael Senkowski from Rosalind K. Allen, Acting Chief, Commercial Radio Division, Wireless Telecommunications Bureau (released December 1, 1994).

Letter to Leonard J. Kennedy from Rosalind K. Allen, Acting Chief, Commercial Radio Division, Wireless Telecommunications Bureau (released December 14, 1994).

Letter to Jonathan D. Blake from Kathleen O'Brien Ham, 10 FCC Rcd 13783 (Auc. Div. 1995).

Letter to Mark Grady from Kathleen O'Brien Ham, 11 FCC Rcd 10895 (Auc. Div. 1996).

Letter to David L. Nace from Kathleen O'Brien Ham, 11 FCC Rcd 11363 (Auc. Div. 1996).

Letter to Elliott J. Greenwald from Christopher J. Wright, 13 FCC Rcd 7132 (Gen. Counsel 1998).

Letter to Robert Pettit from Margaret W. Wiener, 16 FCC Rcd 10080 (Auc. Div. 2000).

Letter to Colby M. May from Barbara A. Kreisman and Margaret W. Wiener, 20 FCC Rcd 14648 (Video and Auc. Divs. 2005).

Letter to John Cooper, Aurora Communications, Inc., from Margaret W. Wiener, 21 FCC Rcd 523 (Auc. Div. 2006).

Letter to Howard A. Kalmenson, Lotus Communications Corp., from Margaret W. Wiener, 21 FCC Rcd 520 (Auc. Div. 2006).

### **Enforcement Bureau Decisions**

Application of Star Wireless, LLC, *Forfeiture Order*, 19 FCC Rcd 18626 (Enf. Bur. 2004).

Application of Northeast Communications of Wisconsin, Inc., *Forfeiture Order*, 19 FCC Rcd 18635 (Enf. Bur. 2004).

### **Civil Actions Initiated by U.S. Department of Justice**

*U.S. v. Omnipoint Corp.*, Proposed Final Judgments and Competitive Impact Statements, Department of Justice, 63 FR 65,228 (November 25, 1998).

“Justice Department Sues Three Firms Over FCC Auction Practices,” *Press Release*, U.S. Department of Justice (November 10, 1998).

Complaint, *U.S. v. Omnipoint Corp.*, No. 1:98CV02750 (D.D.C. November 10, 1998).

Complaint, *U.S. v. Mercury PCS II, L.L.C.*, No. 1:98CV02751 (D.D.C. November 10, 1998).

Complaint, *U.S. v. 21st Century Bidding Corp.*, No. 1:98CV02752 (D.D.C. November 10, 1998).

### **How to Obtain Copies of the Anti-Collusion Decisions**

Many of the documents listed in this attachment can be retrieved from the following Commission web site: <http://wireless.fcc.gov/auctions/anticollusion>.

The documents may be located by using our search engine (select the link “search”). Documents retrieved from the web site are available in various formats including Word, WordPerfect, Acrobat Reader, Excel, and ASCII Text. To review a document in its entirety, including footnotes, it is necessary to access the document in WordPerfect, MS Word, or Acrobat Reader.

Additionally, all of the documents can be ordered in hard copy for a fee from the Commission’s duplicating contractor, Best Copy and Printing, Inc., 445 12<sup>th</sup> Street, SW, Room CY-B402, Washington, DC 20554, (800) 378-3160 (telephone) or <http://www.bcpiweb.com>.