



# PUBLIC NOTICE

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## AUCTION OF FM BROADCAST CONSTRUCTION PERMITS

### Status of Short-Form Applications to Participate in Auction No. 68

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

The Media Bureau and the Wireless Telecommunications Bureau (collectively the “Bureaus”) of the Federal Communications Commission (“Commission”) have received 51 short-form applications (FCC Forms 175) to participate in the upcoming auction of 9 FM broadcast construction permits (Auction No. 68) scheduled to begin on Wednesday, January 10, 2007.<sup>1</sup> The applications have been reviewed for completeness and compliance with the Commission’s rules, and have been classified into the categories listed below.

**Application Categories:**

ACCEPTED FOR FILING .....	32 applications
INCOMPLETE .....	19 applications
REJECTED .....	0 applications

**Accepted:** Applications accepted for filing are listed alphabetically in Attachment A.<sup>2</sup> **These applicants will become qualified bidders upon receipt of the required upfront payment due before 6:00 p.m.**

<sup>1</sup> See “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,” *Public Notice*, DA 06-2248, 2006 WL 3200042 (F.C.C.) (WTB/MB Nov. 2, 2006) (“*Auction No. 68 Procedures Public Notice*”).

<sup>2</sup> Designation of an application as accepted for filing indicates that the applicant has provided the certifications and information concerning its qualifications as required by our competitive bidding rules for participation in the auction. We note that under the Commission’s two-phased auction application process, a winning bidder must submit a long-form application after the close of the auction to demonstrate its qualifications to hold a Commission license and, if a bidding credit is requested, its eligibility for the bidding credit requested. See 47 C.F.R. § 1.2107 – 1.2109, 73.5002 – 73.5009; see also Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures, *Second Report and Order*, 9 FCC Rcd 2348, 2376-77 ¶¶ 163-168 (1994). Thus a determination that a short-form application is complete and complies with the Commission’s competitive

**Eastern Time (ET) on Monday, December 11, 2006.**<sup>3</sup> With respect to the FCC Form 175 application, these applicants need take no further action except as may be necessary to maintain the accuracy of their applications.<sup>4</sup> Attachment A also indicates the construction permits selected by each applicant on its short-form application. If the accepted applicant selected a New Entrant Bidding Credit, the applicant's selection for each construction permit is indicated as 35 percent or 25 percent.<sup>5</sup>

**Incomplete:** Applications found to be incomplete or deficient are listed alphabetically in Attachment B. Those applicants will receive overnight correspondence indicating what information is required to make their applications acceptable for filing. These applicants may become qualified bidders only if they complete the following actions: (1) make the required upfront payments before **6:00 p.m. ET on Monday, December 11, 2006**; and (2) resubmit their applications before **6:00 p.m. ET on Monday, December 11, 2006**, having corrected the deficiencies indicated.<sup>6</sup> Applicants also must maintain the accuracy of their short-form applications as required by the Commission's rules.<sup>7</sup>

The filing window for resubmitting short-form applications is now open. Corrected applications must be filed before **6:00 p.m. ET on Monday, December 11, 2006**. This will be the only opportunity to cure specified FCC Form 175 defects; late resubmissions will not be accepted. In addition, if an application remains incomplete or otherwise deficient after the resubmission deadline has passed, the application will not be accepted and the applicant will not be permitted to participate in the bidding.

**Rejected:** The Bureaus rejected no short-form applications for this auction.

## 1. UPFRONT PAYMENT DEADLINE

Upfront payments and accompanying FCC Remittance Advice forms (FCC Form 159) for Auction No. 68 are due in the proper account at Mellon Bank, Pittsburgh, Pennsylvania, before **6:00 p.m. ET on Monday, December 11, 2006**. In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account by the deadline.<sup>8</sup> Payments must be made by wire transfer in accordance with the instructions provided in the *Auction No. 68 Procedures Public Notice*.<sup>9</sup> No other payment method is acceptable for this auction. Applicants are reminded to provide their FCC Registration Number ("FRN") on the FCC Form 159. At least one hour before placing

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bidding rules and policies is not determinative of an applicant's qualifications to hold a license or entitlement to a bidding credit. In the event that an applicant is found unqualified to be a Commission licensee or ineligible for claimed designated entity benefits, it will be liable for any obligations incurred as a result of its participation in the auction. *See generally* 47 C.F.R. § 1.2109.

<sup>3</sup> *See* 47 C.F.R. § 1.2106.

<sup>4</sup> *See* 47 C.F.R. § 1.65 (an applicant must maintain the accuracy and completeness of information furnished in its pending application and notify the Commission within 30 days of any substantial change that may be of decisional significance to that application), 47 C.F.R. § 1.2105(c)(6) (any applicant that makes or receives a prohibited communication must report such communication in writing to the Commission no later than five business days after the communication occurs).

<sup>5</sup> The new entrant bidding credit is not available to an applicant if it, and/or any individual or entity with an attributable interest in the applicant, has an attributable interest in more than three media of mass communications, or in any existing media of mass communications in the "same area" as the broadcast facility proposed in this auction. 47 C.F.R. § 73.5007. *See* 47 C.F.R. § 73.5007(b)(1)-(3) for the specific service definitions of "same area."

<sup>6</sup> *See* 47 C.F.R. §§ 1.2105(b), 1.2106.

<sup>7</sup> *See* 47 C.F.R. §§ 1.65, 1.2105(c)(6).

<sup>8</sup> *See* Letter from Margaret W. Wiener, Chief, Auctions and Industry Analysis Div., to Patrick Shannon, Esq., Counsel for Lynch 3G Communications Corporation, 18 FCC Rcd 11552 (WTB 2003).

<sup>9</sup> *See Auction No. 68 Procedures Public Notice*.

the order for the wire transfer (but on the same business day), applicants must send by facsimile a completed FCC Form 159 (revised February 2003) to Mellon Bank at (412) 209-6045.

Applicants that have filed applications deemed to be incomplete or deficient, as noted in Attachment B to this public notice, must submit timely and sufficient upfront payments before the Commission will review their resubmitted applications. If no upfront payment is made, or the application remains incomplete or deficient following its resubmission, the applicant will not be eligible to bid. When the applicant has provided its FRN and wire transfer instructions from the payor of record, any upfront payment made will be refunded in a timely manner upon request.

**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.** We remind applicants that to avoid untimely upfront payments they should discuss arrangements (including transfer times and bank closing schedules) with their financial institution several days before making the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Detailed information regarding upfront payments, including additional requirements for “former defaulters,” can be found in the *Auction No. 68 Procedures Public Notice* under Section II.F and Section III.D.<sup>10</sup>

**Note:** Applicants are reminded to submit the same FRN with all future payments for Auction No. 68.

## 2. OTHER IMPORTANT INFORMATION

**Qualified Bidders:** Approximately two weeks after the upfront payment deadline, following Commission review of resubmitted short-form applications, and correlation of payments and applications, a public notice listing all applicants qualified to bid in the auction will be released (*Qualified Bidders Public Notice*). The same public notice will also include bidding schedules for both the mock auction and the first day of bidding in Auction No. 68.

**Due Diligence:** Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the broadcast construction permits being offered in this auction. The Commission makes no representations or warranties about the use of this spectrum for particular services. Potential bidders are strongly encouraged to conduct their own research prior to the beginning of bidding in Auction No. 68 in order to determine the existence of pending proceedings, pleadings, applications, or authorizations that might affect their decisions regarding participation in the auction. Potential bidders also should 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>11</sup> Participants in Auction No. 68 are strongly encouraged to continue such research during the auction. In addition, potential bidders should perform technical analyses sufficient to assure themselves that, should they prevail in competitive bidding for a specific construction permit, they will be able to build and operate facilities that will comply fully with the Commission's technical and legal requirements. For further details regarding due diligence, please refer to the *Auction No. 68 Procedures Public Notice* under Section I.B.3.<sup>12</sup>

**Prohibition of Collusion:** Applicants are reminded that Sections 1.2105(c) and 73.5002(d) of the Commission's rules prohibit applicants for any of the same geographic license areas from communicating with each other about bids, bidding strategies, or settlements, which may include communications regarding the post-auction market structure, unless they have identified each other on their short-form

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<sup>10</sup> See *id.*

<sup>11</sup> See 47 C.F.R. § 73.202.

<sup>12</sup> See *Auction No. 68 Procedures Public Notice*.

applications as parties with which they have entered into agreements under Section 1.2105(a)(2)(viii).<sup>13</sup> For Auction No. 68, this prohibition became effective at the short-form application filing deadline on November 13, 2006, and will end at the post-auction down payment deadline, which will be announced in a future public notice.<sup>14</sup> **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.**<sup>15</sup> 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>16</sup> We note that a violation of the anti-collusion rule could occur when an individual serves as an officer and/or director for two or more competing applicants.<sup>17</sup>

If parties had agreed in principle on all material terms of a bidding agreement(s), those parties must have been identified on the short-form application under Section 1.2105(c), even if the agreement had not been reduced to writing. If parties had not agreed in principle by the short-form application filing deadline on November 13, 2006, an applicant should not have included the names of those parties on its application, and must not have continued negotiations.<sup>18</sup>

Bidders competing for the same construction permits must not communicate indirectly about bids or bidding strategy.<sup>19</sup> The Bureaus have encouraged applicants competing for construction permits in any of the same designated markets 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 the bidders he or she is authorized to represent in the auction.<sup>20</sup> Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or consulting firm), a violation could likewise occur. In such a case, at a minimum, applicants should take precautionary steps to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.<sup>21</sup> However, the Bureaus caution that the mere existence of precautionary measures

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<sup>13</sup> 47 C.F.R. §§ 1.2105(a)(2)(viii), 1.2105(c)(1), 73.5002(d). *See also* 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) (“*Part 1 Seventh Report and Order*”); *id.*, *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, 15297-98 ¶¶ 7-8 (2000).

<sup>14</sup> 47 C.F.R. § 1.2105(c)(1).

<sup>15</sup> *See, e.g.*, Northeast Communications of Wisconsin, LLC, *Forfeiture Order*, 19 FCC Rcd 18635 (EB 2004) (imposing forfeiture in the amount of \$100,000 for violation of the anti-collusion rule, even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder); Letter to Robert Pettit, Esq., from Margaret W. Wiener, Chief, Auctions and Industry Analysis Div., 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>16</sup> 47 C.F.R. § 1.2105(c)(7)(i).

<sup>17</sup> *See* Letter to Colby M. May from Barbara A. Kreisman and Margaret W. Wiener, 20 FCC Rcd 14648 (MB/WTB 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 no bidding agreement).

<sup>18</sup> *See* Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, 11 FCC Rcd 9645 (WTB 1995).

<sup>19</sup> *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17540-50 ¶ 6.

<sup>20</sup> *See Auction No. 68 Procedures Public Notice*.

<sup>21</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).

will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted.<sup>22</sup>

In addition, Section 1.65 of the Commission's rules requires an applicant to **maintain** the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantive change that may be of decisional significance to that application.<sup>23</sup> Thus, Section 1.65 requires auction applicants that engage in communication of bids or bidding strategies that results in a bidding agreement, arrangement, or understanding not already identified on their short-form applications to promptly disclose any such agreement, arrangement, or understanding to the Commission by amending their pending applications. In addition, Section 1.2105(c)(6) requires all auction applicants to report prohibited discussions or disclosures regarding bids or bidding strategy to the Commission in writing immediately, but in no case later than five business days after the communication occurs, even if the communication does not result in an agreement or understanding regarding bids or bidding strategy that must be reported under Section 1.65.<sup>24</sup>

Applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in all bidding consortia, joint ventures, partnerships, or other agreements or arrangements entered into relating to the competitive bidding process.<sup>25</sup> Any applicant found to have violated the anti-collusion rule may be subject to sanctions.<sup>26</sup> In addition, applicants are reminded that they are subject to the antitrust laws, which are designed to prevent anti-competitive behavior in the marketplace. If an applicant is found to have violated the antitrust laws in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount, and may be prohibited from participating in future auctions.<sup>27</sup>

**Ex Parte Rule:** Applicants should also be aware that the Commission has generally exempted auction proceedings from the strict requirements of the ex parte rule found in Section 1.1208 of the Commission's rules.<sup>28</sup>

**Mock Auction:** All applicants found to be qualified bidders will be eligible to participate in a mock auction on Monday, January 8, 2007. We encourage all qualified bidders to take advantage of this opportunity to become familiar with the FCC's Integrated Spectrum Auction System ("FCC Auction System" or "ISAS").<sup>29</sup> In the public notice announcing the qualified bidders, the Bureaus will announce the bidding schedule for the mock auction. The mock auction will be conducted over the Internet, and telephonic bidding will be available as well.

**Electronic Bidding:** Applicants are reminded that qualified bidders are eligible to bid either electronically or telephonically. Applicants should specify their bidding preference on the FCC Form 175, if they have not already done so.

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<sup>22</sup> *Id.*, 13 FCC Rcd at 11978 ¶ 13.

<sup>23</sup> 47 C.F.R. § 1.65.

<sup>24</sup> 47 C.F.R. § 1.2105(c)(6); *see also Part 1 Seventh Report and Order*, 16 FCC Rcd at 17555 ¶ 17.

<sup>25</sup> 47 C.F.R. § 1.2107(d).

<sup>26</sup> *See* 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

<sup>27</sup> 47 C.F.R. § 1.2109(d).

<sup>28</sup> *See* 47 C.F.R. § 1.1208. *See also* "Commission Announces that Mutually Exclusive 'Short-Form' Applications (Form 175) to Participate in Competitive Bidding Process ('Auctions') Are Treated as Exempt for *Ex Parte* Purposes," *Public Notice*, 9 FCC Rcd 6760 (1994). *See also* 47 C.F.R. § 1.1202(d)(1) Note 1.

<sup>29</sup> For additional information regarding the FCC's Integrated Spectrum Auction System, 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).

Bidders can access the FCC Auction System over the Internet. Access to the system via the Internet requires, at a minimum, the following software:

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

**Other browsers are not supported.**

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).

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

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

**Long-Form Applications:** All applicants should be aware that at the long-form application stage, they will be subject to the more extensive reporting requirements contained in the Commission's Part 1 and Part 73 ownership disclosure rules.<sup>30</sup>

## CONTACT INFORMATION

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

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

For technical assistance with using the FCC Auction System, 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 generally available Monday through Friday from 8:00 a.m. to 6:00 p.m. ET. All calls to the FCC Technical Support Hotline are recorded.

For further information concerning this auction proceeding, contact:

Auctions and Spectrum Access Division, Wireless Telecommunications Bureau:

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

For bidding and auction procedures questions: Debbie Smith at (717) 338-2868

For bidding and general filing status questions: Lisa Stover at (717) 338-2868

Audio Division, Media Bureau:

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

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<sup>30</sup> See 47 C.F.R. §§ 1.2112(b)(2), 73.5005. See also Instructions for Form 301, Application for Construction Permit for Commercial Broadcast Station, Instructions for Section II: Legal Information, paragraph G: Item 10: Auction Authorization, for auction-related exhibit filing requirements.