



# PUBLIC NOTICE

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## AUCTION OF PHASE II 220 MHz SERVICE SPECTRUM LICENSES

### Five Bidders Qualified to Participate in Auction No. 72; Limited Information Disclosure Procedures to Be Used

#### Report No. AUC-07-72-D (Auction No. 72)

In this Public Notice, the Wireless Telecommunications Bureau (“WTB”) identifies five applicants found to be qualified to bid in the upcoming auction of Phase II 220 MHz Service licenses (Auction No. 72).<sup>1</sup> Bidding in Auction No. 72 is scheduled to begin on Wednesday, June 20, 2007. In addition, this Public Notice contains bidding instructions and other important information regarding Auction No. 72.

Auction No. 72 will be conducted using procedures that will limit disclosure of certain information on bidder interests and identities prior to the close of bidding. Specifically, during Auction No. 72, the Commission will disclose information on: (1) each bidder’s eligibility and upfront payment made prior to the start of the auction; and (2) after every round, the gross amount of each bid placed in the round, the number of bids placed in the round on each license, the minimum acceptable bid for each license in the following round, and whether each license has a provisionally winning bid. However, information on the licenses selected by each applicant and on the identities of the bidders placing bids on licenses will not be released by the Commission until after the close of bidding.

After comment was sought on the possibility of using limited information procedures in Auction No. 72 and no comment was received on this issue,<sup>2</sup> the *Auction No. 72 Procedures Public Notice* decided that the Bureau would use limited information procedures if it appeared likely that the competitiveness of the auction would be low and that limited information procedures would be effective in making anti-competitive behavior less likely to be successful. More specifically, the *Auction No. 72 Procedures Public Notice* concluded that, if the eligibility ratio were less than three, certain information on bidder

<sup>1</sup> “Auction of Phase II 220 MHz Service Spectrum Scheduled for June 20, 2007; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 72,” *Public Notice*, 22 FCC Rcd 3404 (2007) (“*Auction No. 72 Procedures Public Notice*”).

<sup>2</sup> “Auction of Phase II 220 MHz Spectrum Scheduled for June 20, 2007; Comment Sought on Competitive Bidding Procedures for Auction No. 72,” *Public Notice*, 21 FCC Rcd 14305, 14308 ¶ 9; see also *Auction No. 72 Procedures Public Notice*, 22 FCC Rcd at 3407 ¶¶ 3-6.

interests and bidder identities prior to and during this auction would be withheld,<sup>3</sup> unless circumstances indicated that such limited information procedures would not be effective.<sup>4</sup> The eligibility ratio for Auction No. 72 is 1.81, and there are no circumstances indicating that limited information disclosure procedures would not be an effective tool for deterring anti-competitive behavior.<sup>5</sup> Therefore, Auction No. 72 will be conducted with limited disclosure of information on bidder interests and identities before the close of bidding. After the close of Auction No. 72, the Commission will make publicly available complete reports for each round of the auction that will include the previously undisclosed information on bidder interests and identities.

**Attachment A** lists the name of each of the five qualified bidders, maximum eligibility in bidding units, and each bidder's claimed bidding credit revenue range. Attachment A also indicates whether a bidder has requested a waiver of Commission rules or policies.

**Attachment B** lists each applicant that submitted a short-form application, but did not qualify to bid in this auction. These applicants are reminded that they remain subject to the Commission's rules prohibiting collusion in Commission auctions.<sup>6</sup>

Designation of an applicant as qualified to bid in the auction indicates that the applicant has provided the certifications and information concerning its qualifications for participation in the auction as required by the Commission's competitive bidding rules. 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 requested bidding credit.<sup>7</sup> Thus, a determination that a short-form application is complete and complies with the Commission's competitive bidding rules and policies is not determinative of an applicant's qualifications to hold a license or entitlement to a bidding credit.<sup>8</sup>

In order to participate effectively in the auction, qualified bidders should again familiarize themselves with the auction rules, procedures, and other information described in the *Auction No. 72 Procedures Public Notice* and subsequent public notices.<sup>9</sup> These public notices and other documents related to

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<sup>3</sup> *Auction No. 72 Procedures Public Notice*, 22 FCC Rcd at 3407 ¶¶ 3-6, 3433-35 ¶¶ 112-117. The eligibility ratio is defined as the total number of bidding units of eligibility purchased by bidders through their upfront payments divided by the total number of bidding units for the licenses in the auction. *Id.* at 3407 ¶¶ 3-6, 3433-35 ¶¶ 112-117.

<sup>4</sup> For example, if only two applicants become qualified to participate in the bidding for an auction, limited information procedures would be ineffective in preventing bidders from knowing the identity of the competing bidder and, therefore, limited information procedures would not serve to deter attempts at signaling and retaliatory bidding behavior.

<sup>5</sup> We note that there are five qualified bidders, so that the circumstances described in the above footnote are not applicable in Auction No. 72.

<sup>6</sup> See 47 C.F.R. § 1.2105(c); see also *Auction No. 72 Procedures Public Notice*, 22 FCC Rcd at 3410 ¶ 13.

<sup>7</sup> See 47 C.F.R. §§ 1.2107 – 1.2109; 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).

<sup>8</sup> Requests concerning application qualifications and eligibility for a bidding credit are generally considered after the auction during the long-form application process. 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>9</sup> *Auction No. 72 Procedures Public Notice*; see also "Auction of Phase II 220 MHz Service Spectrum Licenses, Status of Short-Form Applications to Participate in Auction No. 72," *Public Notice*, DA 07-1966 (rel. May 11, 2007).

Auction No. 72 are available on the Commission's auctions website at <http://wireless.fcc.gov/auctions/>. The following information provides additional guidance.

**Registration.** Qualified bidders have been automatically registered for the auction. Registration materials will be sent to the bidder's contact person at the contact address identified in the bidder's short-form application. Upon receipt, each bidder should be in possession of the following:

- At least two RSA SecurID® tokens
- Integrated Spectrum Auction System (ISAS) Bidder's Guide
- FCC Auction Bidder Line phone number

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

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

Any qualified bidder listed in Attachment A of this public notice that has not received the registration mailing **by 12:00 p.m. Eastern Time (ET) on Thursday, June 14, 2007**, must contact the Auctions Hotline directly at (717) 338-2868. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Receipt of the registration mailing is critical to participating in both the mock auction and the actual auction, and it is the responsibility of each qualified bidder to ensure that all registration information has been received.

**Registration Material Replacement.** In the event that a bidder's SecurID® tokens 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 replacement of these items must call Technical Support at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY).

**Bidding.** The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. The Integrated Spectrum Auction System ("ISAS" or "FCC Auction System") can be accessed at <http://auctions.fcc.gov> or <http://auctions2.fcc.gov>. Bidders are reminded that Apple® Mac OS® is not currently supported.

Qualified bidders are permitted to bid telephonically or electronically. In either case, each authorized bidder must have his or her own SecurID® token. Applicants with only one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. For security purposes, the SecurID® tokens and the instructions for using them are only mailed to the contact person at the contact address listed on the applicant's short-form application. Please note that each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 72.

In their registration materials, all qualified bidders will be supplied with a telephone number for the Auction Bidder Line. Bidders choosing to bid telephonically are required to use this telephone number to place bids. Bidders choosing to bid electronically may use this telephone number as an alternate method of bidding. Telephonic bidders are reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round.<sup>10</sup>

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<sup>10</sup> The length of a call to place a telephonic bid may vary; please allow a minimum of 10 minutes.

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

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

**Bid Amounts.** There will be a minimum opening bid amount for each license in Auction No. 72, calculated in accordance with the factors previously announced.<sup>11</sup> The minimum opening bid amount is subject to reduction at the discretion of the Bureau. The Bureau will not entertain requests to lower minimum opening bid amounts. The Bureau will exercise this discretion, if at all, independent of any communications from bidders.

In the *Auction No. 72 Procedures Public Notice*, the Bureau adopted its proposal to allow eligible bidders to place a bid on a given license in any of up to nine different amounts in a given round. The first of the acceptable bid amounts is called the minimum acceptable bid amount. The Bureau retains the discretion to change the minimum acceptable bid amounts and additional bid amounts on a license-by-license basis if it determines that circumstances so dictate.<sup>12</sup>

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

**Bidding Schedule.** On Wednesday, June 20, 2007, there will be four rounds of bidding as follows:

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

The bidding schedule for Thursday, June 21, 2007, and continuing until further notice, will be:

Bidding Round	10:00 a.m.	-	10:30 a.m. ET
Bidding Round	11:15 a.m.	-	11:45 a.m. ET
Bidding Round	12:30 p.m.	-	1:00 p.m. ET
Bidding Round	2:00 p.m.	-	2:30 p.m. ET
Bidding Round	3:15 p.m.	-	3:45 p.m. ET
Bidding Round	4:30 p.m.	-	5:00 p.m. ET

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<sup>11</sup> *Auction No. 72 Procedures Public Notice*, 22 FCC Rcd at 3439-41 ¶¶ 144-150. Attachment A of the *Auction No. 72 Procedures Public Notice* sets forth the minimum opening bid amounts for each license offered in Auction No. 72.

<sup>12</sup> *Auction No. 72 Procedures Public Notice*, 22 FCC Rcd at 3441-42 ¶¶ 151-155.

The Bureau will set the pace of the auction based upon monitoring of the bidding and assessment of the auction's progress. All subsequent schedule changes will be made by announcement via the FCC Auction System during the course of the auction.

**Round Results.** Round results will be available approximately 10 minutes after the close of each round. As stated above, Auction No. 72 will be conducted using procedures that limit the disclosure of information on bidder interests and identities before the close of bidding.<sup>13</sup> Accordingly, round results will not disclose the identities of bidders.

Two types of reports will be available to bidders: (1) publicly-available information; and (2) bidder-specific information available only to that bidder when logged in to the FCC Auction System.

The public information will be available on the FCC Auction System results page and will include for each license the following information, which will be current as of the conclusion of the most recently completed round: its provisionally winning bid amount, the minimum acceptable bid amount for the following round, the gross amounts of all bids placed on the license during the round, and whether the license has a provisionally winning bid or is FCC-held. This information will also be available in downloadable files.

When a bidder is logged in to the FCC Auction System, it will have a selection of "My Bid Reports" available to it on the FCC Auction System's bidding page. Information in "My Bid Reports" allows only the respective bidder to view all of its actions in the current and previous rounds of the auction. Samples of the results page downloadable files were made available for the pre-auction seminar held April 11, 2007. These files are available on the web page for Auction No. 72, <http://wireless.fcc.gov/auctions/72/>, via the "Auction Seminar" link (scroll down to the bottom of the auction seminar page).<sup>14</sup>

Detailed instructions for reviewing and downloading round results are provided in the Integrated Spectrum Auction System (ISAS) Bidder's Guide. The bidder's guide is included with qualified bidders' registration materials and is available in electronic form through the "HELP" link in the FCC Auction System.

**Watchlists.** The FCC Auction System sets up for each qualified bidder a default watchlist, called All Licenses, that contains every license selected on the bidder's short-form application. Qualified bidders may create additional watchlists containing licenses of their own choosing, and licenses may appear in multiple watchlists. Bidders may access the FCC Auction System and begin creating their watchlists upon receipt of their SecurID® tokens. Instructions for creating watchlists will be provided in the Integrated Spectrum Auction System (ISAS) Bidder's Guide. Please note that watchlists created in the mock auction will not display in Auction No. 72.

**Bidder Questions during the Auction.** FCC auction staff and technical support staff will be available during the auction to answer questions from authorized bidders. When appropriate, a bidder should identify itself as a bidder with a time-sensitive auction question when calling. Help can be obtained through the following options:

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<sup>13</sup> *Auction No. 72 Procedures Public Notice*, 22 FCC Rcd at 3407 ¶¶ 3-6, 3433-35 ¶¶ 112-117.

<sup>14</sup> Please note that the sample Round Results file was recently replaced to correct an error in the sample file that was previously available.

FCC Auction Bidder Line (telephonic bidding, auction conduct questions)	Use Auction Bidder Line telephone number supplied in registration mailing
FCC Technical Support (all technical questions, software and hardware)	(877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY)
FCC Auctions and Spectrum Access Division (legal questions only)	(202) 418-0660

The FCC Auction System includes a function for bidders to submit suggestions to the FCC, but this is **not** an appropriate mechanism for asking time-sensitive questions that may need an immediate response, such as questions about auction procedures or other issues. Such questions should be directed to one of the telephone numbers listed above.

**Amendments to FCC Form 175.** Applicants are responsible for maintaining the accuracy and completeness of information furnished in their short-form applications, including their attachments.<sup>15</sup> Applicants should amend their short-form applications as promptly as possible, but no later than ten business days from the occurrence of a reportable change. Changes that cause a loss of or reduction in eligibility for a bidding credit must be reported immediately. Applicants must modify their short-form application electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: [auction72@fcc.gov](mailto:auction72@fcc.gov). Questions about changes should be directed to Howard Davenport at (202) 418-0660.

As described in the Commission's rules, applicants may make only minor corrections to their short-form applications (e.g., changing an authorized bidder or facsimile number).<sup>16</sup> Major modifications (e.g., license selection changes, newly claimed or increased bidding credit, or changing control of the applicant) will not be accepted.<sup>17</sup> Bidders are reminded that any change affecting eligibility for a bidding credit, insofar as it results in the diminishment or loss of a bidding credit claimed on the short-form application, must be clearly stated in the bidder's amendment and in the summary letter referenced above. In such cases, the Commission will make appropriate adjustments in the bidding credit prior to the computation of any down and final payment amounts due.

**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 Phase II 220 MHz licenses 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 competitive bidding in Auction No. 72, in order to determine the existence of pending proceedings, pleadings, applications, or authorizations that might affect their decisions regarding participation in the auction. In addition, potential bidders should perform technical analyses sufficient to assure themselves that, should they prevail in competitive bidding for a given license, they will be able to build and operate facilities that will comply fully with the Commission's technical and legal requirements. Participants in Auction No. 72 are strongly encouraged to continue such research during the auction.

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<sup>15</sup> See 47 C.F.R. § 1.65.

<sup>16</sup> See 47 C.F.R. § 1.2105(b).

<sup>17</sup> *Id.*



Each potential bidder is solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect the bidder's ability to bid on, otherwise acquire, or make use of licenses available in Auction No. 72. For further details regarding due diligence, qualified bidders should refer to the *Auction No. 72 Procedures Public Notice* under Section I.B.4.<sup>18</sup>

**Mock Auction.** On Monday, June 18, 2007, the Bureau will conduct a mock auction, which will allow qualified bidders to familiarize themselves with the FCC Auction System. Only qualified bidders will be permitted to participate in the mock auction. The Bureau will conduct this auction over the Internet, and telephonic bidding will also be available.

Qualified bidders can access the mock auction at <http://auctions.fcc.gov> or <http://auctions2.fcc.gov>. Bidders choosing to bid electronically are advised to review the Integrated Spectrum Auction System (ISAS) Bidder's Guide provided in the registration material. Qualified bidders that wish to place bids telephonically should use the telephone number supplied in the Auction No. 72 registration materials.

The mock auction will include only ten of the 94 licenses: QA-BEA002-D, QA-BEA005-E, QA-BEA011-B, QA-BEA014-C, QA-BEA017-B, QA-BEA019-D, QA-BEA021-C, QA-BEA022-A, QA-BEA050-A, and QA-EAG005-I, and will otherwise follow the rules governing Auction No. 72. The mock auction will be identified as Mock Auction No. 74. Bidders will be assumed to have selected these licenses for purposes of the mock auction. The FCC Auction System will also assume that each bidder submitted an upfront payment sufficient to give the bidder initial (maximum) eligibility of 78,500 bidding units. The mock auction will simulate the start of the auction, and each bidder will be required to be active on 80 percent of its current bidding eligibility. If a bidder does not meet this requirement, it will have a waiver automatically applied (if the bidder has any waivers available), or its current eligibility will be permanently reduced (if the bidder has no waivers remaining), possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

The mock auction bidding schedule for Monday, June 18, 2007, will be as follows:

Round 1	10:00 a.m.	-	11:00 a.m. ET
Round 2	12:00 p.m.	-	1:00 p.m. ET
Round 3	2:30 p.m.	-	3:00 p.m. ET
Round 4	3:30 p.m.	-	4:00 p.m. ET
Round 5	4:15 p.m.	-	4:30 p.m. ET

**Prohibition of Collusion.** Applicants are reminded that Section 1.2105(c) of the Commission's rules prohibits 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 applications as parties with which they have entered into agreements under Section 1.2105(a)(2)(viii).<sup>19</sup> In Auction No. 72, the rule applies to any applicants for licenses in the same BEA or EAG. The rule also applies to applicants for licenses in overlapping BEAs and/or EAG. For example, one applicant that applied to bid for a BEA license and a second applicant that applied for an EAG license covering any area within that BEA will

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<sup>18</sup> *Auction No. 72 Procedures Public Notice*, 22 FCC Rcd at 3414-15 ¶¶ 25-33.

<sup>19</sup> 47 C.F.R. §§ 1.2105(a)(2)(viii), 1.2105(c)(1). See also *Auction No. 72 Procedures Public Notice*, 22 FCC Rcd at 3410 ¶ 13, for a discussion of the anti-collusion rules for Auction No. 72. See 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*"); see also *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).

have applied for a license covering the same geographic area and is precluded from engaging in prohibited communications after the short-form application (FCC Form 175) deadline. In addition, the rule precludes applicants that applied to bid for all licenses from communicating with all other applicants. Thus, applicants that have applied for the same or overlapping markets (unless they have identified each other on their short-form applications as parties with whom they have entered into agreements under Section 1.2105(a)(2)(viii)), may not discuss with each other their bids or bidding strategies relating to any license on which either is eligible to bid. For Auction No. 72, this prohibition became effective at the short-form application filing deadline on Friday, April 20, 2007, and will end on the post-auction down payment deadline, which will be announced in a future public notice.<sup>20</sup> **This prohibition applies to all applicants regardless of whether such applicants became qualified bidders or actually bid.**<sup>21</sup> The prohibition continues for all applicants until the down payment deadline regardless of whether an applicant became a winning bidder and needs to make an additional payment by the down payment deadline.

For purposes of this prohibition, Section 1.2105(c)(7)(i) defines “applicant” to include 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>22</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 filing deadline, an applicant should not have included the names of those parties on its application and must not have continued negotiations or communications prohibited by the anti-collusion rule.<sup>23</sup>

Applicants competing for licenses for any of the same or overlapping geographic license areas must not communicate directly or indirectly about bids or bidding strategy.<sup>24</sup> Applicants competing for licenses in any of the same designated markets are encouraged not to use the same individual as an authorized bidder.<sup>25</sup> 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. A violation could similarly occur if the authorized bidders are different individuals employed by the same organization (e.g., law firm or consulting firm). In such a case, at a minimum, applicants should take

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<sup>20</sup> 47 C.F.R. § 1.2105(c)(1).

<sup>21</sup> See, e.g., *Star Wireless, LLC, Forfeiture Order*, 19 FCC Rcd 18626 (EB 2004) (imposing forfeiture in the amount of \$100,000 for violation of the anti-collusion rule, even though an applicant never made an upfront payment for the auction and was not listed as a qualified bidder); *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, 16 FCC Rcd 10080 (WTB Auc. Div. 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>22</sup> 47 C.F.R. § 1.2105(c)(7)(i).

<sup>23</sup> “Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules,” *Public Notice*, 11 FCC Rcd 9645 (1995).

<sup>24</sup> See *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17549-50 ¶ 6.

<sup>25</sup> *Auction No. 72 Procedures Public Notice*, 22 FCC Rcd at 3411 ¶ 15.



precautionary steps to prevent communication between authorized bidders.<sup>26</sup> However, the Bureau cautions that merely filing a certifying statement as part of the short-form application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted.<sup>27</sup>

We also expressly note for applicants that, in this limited information disclosure auction, public disclosure of information relating to bidder interests and bidder identities that is confidential in this auction at the time of disclosure may violate the anti-collusion rule. Thus, communication by an applicant to another applicant for geographically overlapping licenses, or of the fact that the applicant does or does not hold provisionally winning bids on particular licenses, may well violate the anti-collusion rule. Bidders also 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. For example, where limited information disclosure procedures are in place, as in this auction, a qualified bidder's statement to the press that it has lost bidding eligibility and stopped bidding in the auction could give rise to a finding of an anti-collusion rule violation.<sup>28</sup>

In addition, Section 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application.<sup>29</sup> Thus, Section 1.65 requires auction applicants that engage in a 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 any prohibited discussion or disclosure 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>30</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 relating to the competitive bidding process into which they have entered with any other party or parties.<sup>31</sup> Any applicant found to have violated the anti-collusion rule may be subject to sanctions.<sup>32</sup> In addition, applicants are reminded that they are subject to the antitrust laws,

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<sup>26</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).

<sup>27</sup> *Id.*, 13 FCC Rcd at 11978 ¶ 13.

<sup>28</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>29</sup> 47 C.F.R. § 1.65.

<sup>30</sup> 47 C.F.R. §§ 1.65, 1.2105(c)(6); see also *Part I Seventh Report and Order*, 16 FCC Rcd at 17555 ¶ 17.

<sup>31</sup> See 47 C.F.R. § 1.2107(d).

<sup>32</sup> See 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

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>33</sup>

**Submission of Auction-Related Filings.** As noted above, applicants seeking to amend their short-form applications during the auction must make modifications to their short-form applications electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: [auction72@fcc.gov](mailto:auction72@fcc.gov).

Parties wishing to submit requests, complaints, or other information concerning Auction No. 72 also should send a copy by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: [auction72@fcc.gov](mailto:auction72@fcc.gov), in addition to following other procedures prescribed by the Commission's rules. The Commission occasionally receives complaints regarding certain bidders and requests to suspend bidding during an auction. While the Commission reserves the right to take appropriate action during an auction to preserve the integrity of the auction process, it is generally our practice to address any such allegations only after the winning bidders have submitted their long-form applications, when there is greater opportunity for investigation of such allegations, if warranted. The Commission will not investigate any complaints or allegations that are not accompanied by full contact information, including name, address, and telephone number, for the complaining party or parties.

Finally, parties wishing to make suggestions concerning Auction No. 72 or future auctions are encouraged to present such ideas using the suggestion feature of the FCC Auction System. (As mentioned above, this feature is not an appropriate mechanism for posing time-sensitive questions that need an immediate response.) Commission staff considers all suggestions, but may not always provide an individualized response.

**Long-Form Applications.** Within ten days after release of the auction closing notice, each winning bidder must electronically submit a properly completed long-form application (FCC Form 601), for each license that it won in Auction No. 72.<sup>34</sup> Applicants that claim eligibility to receive a small business or very small business bidding credit should be aware that, following the auction, they will be subject to more extensive reporting requirements contained in the Commission's Part 1 ownership disclosure rule.<sup>35</sup> In addition, applicants with foreign ownership interests will be required to comply with 47 U.S.C. § 310(b) at the long-form application stage. Further filing instructions will be provided to auction winners at the close of the auction.<sup>36</sup>

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<sup>33</sup> See 47 C.F.R. § 1.2109(d).

<sup>34</sup> See 47 C.F.R. § 1.2107.

<sup>35</sup> See 47 C.F.R. § 1.2112(b).

<sup>36</sup> See 47 C.F.R. §§ 1.2107, 1.2109(a).

For additional information regarding this Public Notice, please contact:

Auctions and Spectrum Access Division, Wireless Telecommunications Bureau:

For auction procedure, bidding and general information questions:

Debbie Smith or Barbara Sibert at (717) 338-2868

For auction legal questions:

Howard Davenport at (202) 418-0660

Mobility Division, Wireless Telecommunications Bureau:

For legal and service rule questions:

Allen Barna (legal) at (202) 418-0620 or Gary Devlin (technical) at (717) 338-2618

For technical questions about software or hardware, please contact FCC Technical Support at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY).

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