



# PUBLIC NOTICE

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## AUCTION OF 700 MHz BAND LICENSES

### Upfront Payment Deadline Rescheduled for January 4, 2008; Mock Auction Rescheduled

### Status of Short-Form Applications to Participate in Auction 73

#### Report No. AUC-07-73-E (Auction 73)

1. By this Public Notice, the Wireless Telecommunications Bureau (“Bureau”) announces that the upfront payment deadline for the auction of 700 MHz Band licenses (“Auction 73”) has been rescheduled to January 4, 2008, 6:00 p.m. Eastern Time (ET). In addition to the revised upfront payment deadline, the mock auction is rescheduled to January 22, 2008. The Auction 73 start date remains unchanged. The Bureau also announces the status of applications received for Auction 73. Finally, the Bureau provides other important information and reminders relating to Auction 73.

#### I. REVISED SCHEDULE FOR AUCTION 73

2. The Bureau announces that the upfront payment deadline for Auction 73 has been extended to January 4, 2008, 6:00 p.m. ET.<sup>1</sup> The originally-scheduled upfront payment deadline was December 28, 2007, 6:00 p.m. ET. As a result of the extended upfront payment deadline, the mock auction has been rescheduled as well.<sup>2</sup> The remaining pre-auction dates and deadlines for Auction 73 are now as follows.

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| Auction 73 Upfront Payments                          | January 4, 2008; 6:00 p.m. ET          |
| Deadline for Resubmission of Short-Form Applications | January 4, 2008; prior to 6:00 p.m. ET |
| Mock Auction   | January 22, 2008                       |
| Auction 73 Start Date                                | January 24, 2008 (unchanged)           |

3. On November 19, 2007, Frontline Wireless, LLC (“Frontline”) submitted a request to the Bureau seeking, among other things, a one week extension of the deadline for upfront payments for

<sup>1</sup> See “Auction of 700 MHz Band Licenses Scheduled for January 24, 2008; Notice and Filing Requirements, Minimum Opening Bids, and other Procedures for Auctions 73 and 76,” *Public Notice*, 22 FCC Rcd 18,141, 18,159 ¶ 58 (“*Auction 73/76 Procedures Public Notice*”).

<sup>2</sup> Before issuance of this public notice, the mock auction was scheduled for January 18, 2008.

Auction 73.<sup>3</sup> In support of its request, Frontline mentions the potential difficulty that may be presented by an upfront payment deadline for this auction that falls during the holiday period.<sup>4</sup> In light of this concern, the Bureau extends the upfront payment deadline for Auction 73 to January 4, 2008, 6:00 p.m. ET and reschedules the mock auction to January 22, 2008. The information provided in previous public notices regarding Auction 73 remains unchanged, with the exception of these two dates.<sup>5</sup>

## II. STATUS OF APPLICATIONS

4. The Bureau has received 266 short-form applications (FCC Forms 175) to participate in the upcoming auction of 700 MHz Band licenses (Auction 73), scheduled to begin on Thursday, January 24, 2008.<sup>6</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 ..... 96 applications**

**INCOMPLETE ..... 170 applications**

5. **Accepted:** Applications for Auction 73 accepted for filing are listed alphabetically in Attachment A.<sup>7</sup> These applicants will become qualified bidders in Auction 73 upon receipt of the required upfront payment by 6:00 p.m. ET on Friday, January 4, 2008.<sup>8</sup> These applicants need take no further action with respect to their applications, except as may be necessary pursuant to their obligations under Section 1.65 of the rules to maintain the accuracy and acceptability of their applications.<sup>9</sup>

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<sup>3</sup> Request for One Week Extension of Short-Form Filing and Upfront Payment Deadlines, filed by Frontline Wireless, LLC, in AU Docket No. 07-157, on November 19, 2007 ("Frontline Request"). The Frontline Request also sought a one-week extension of the filing deadline for short-form applications. That portion of Frontline's request is moot.

<sup>4</sup> Frontline Request at 6.

<sup>5</sup> See, e.g., *Auction 73/76 Procedures Public Notice*, 22 FCC Rcd at 18,159 ¶ 58.

<sup>6</sup> See *Auction 73/76 Procedures Public Notice*.

<sup>7</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. The Bureau notes 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; 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 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>8</sup> See 47 C.F.R. § 1.2106.

<sup>9</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

6. **Incomplete:** Applications for Auction 73 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 Auction 73 upfront payments **by 6:00 p.m. ET on Friday, January 4, 2008**; and (2) resubmit their applications, having corrected the deficiencies indicated, **prior to 6:00 p.m. ET on Friday, January 4, 2008**.<sup>10</sup> Applicants also must maintain the accuracy of their short-form applications as required by Section 1.65 of the Commission's rules.<sup>11</sup>

7. The filing window for resubmitting Auction 73 short-form applications is now open. Corrected applications must be filed **prior to 6:00 p.m. ET on Friday, January 4, 2008**. This will be the only opportunity to cure application defects; late resubmissions will not be accepted. If an application is 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 Auction 73 bidding.<sup>12</sup> In addition, any applicant that timely filed an Auction 76 short-form application<sup>13</sup> will not be permitted to participate in Auction 76 bidding if its Auction 73 application is incomplete or otherwise deficient after the resubmission deadline.

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significance to that application); 47 C.F.R. § 1.2105 (setting forth bidding application and certification procedures). *See also*, 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>10</sup> *See* 47 C.F.R. §§ 1.2105(b), 1.2106.

<sup>11</sup> *See* 47 C.F.R. § 1.65. *See also* 47 C.F.R. § 1.2105.

<sup>12</sup> Consistent with the Commission's determination in the *700 MHz Second Report and Order*, only those applicants found qualified to bid in Auction 73 will be eligible to participate in Auction 76. *See Auction 73/76 Procedures Public Notice*, 22 FCC Rcd at 18,146 ¶ 8; *see also* Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03-264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules, WT Docket No. 06-169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, Declaratory Ruling on Reporting Requirement under Commission's Part 1 Anti-Collusion Rule, WT Docket No. 07-166, *Second Report and Order*, 22 FCC Rcd 15,289, 15,404-05 ¶ 316 (2007) ("*700 MHz Second Report and Order*"), recon. pending.

<sup>13</sup> *See Auction 73/76 Procedures Public Notice*, 22 FCC Rcd at 18,146, 18,159-61, 18,299 at ¶¶ 8, 58, 60, 65 & Attachment E (setting filing deadline for Auction 76 short-form applications at December 3, 2007, 6 p.m. ET). In addition, to be eligible to participate in Auction 76, an applicant must also have selected in its separate Auction 76 short-form application a license that is available in Auction 76. An applicant also must purchase sufficient bidding eligibility to bid on at least one of its selected licenses that is offered in Auction 76. *See Auction 73/76 Procedures Public Notice*, 22 FCC Rcd at 18,159-60 ¶ 60.

## A. AUCTION 73 UPFRONT PAYMENTS

8. Upfront payments and accompanying FCC Remittance Advice forms (FCC Form 159) for Auction 73 are due in the proper account at Mellon Bank, Pittsburgh, Pennsylvania, **by 6:00 p.m. ET on Friday, January 4, 2008.**<sup>14</sup> 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>15</sup> **Payments must be made by wire transfer only in accordance with the instructions provided in the *Auction 73/76 Procedures Public Notice*.**<sup>16</sup> **No other payment method is acceptable for this auction.**<sup>17</sup> Applicants are reminded to provide their FCC Registration Number ("FRN") on the FCC Form 159. 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 February 2003) to Mellon Bank at (412) 209-6045.

9. 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 is incomplete or deficient following its resubmission, the applicant will not be eligible to bid in either Auction 73 or 76.

10. 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. The Bureau reminds applicants that they should discuss arrangements (including transfer times and bank closing schedules) with their financial institution several days before making the wire transfer so as to avoid untimely upfront payments. Be sure to 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 73/76 Procedures Public Notice* under Section II.F. and Section III.D.<sup>18</sup>

**Note:** Applicants are reminded to submit the same FRN with all future payments for Auction 73.

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<sup>14</sup> As noted in the *Auction 73/76 Procedures Public Notice*, should Auction 76 become necessary, a deadline for submission of any additional upfront payment amounts will be announced following the end of bidding in Auction 73. See *Auction 73/76 Procedures Public Notice*, 22 FCC Rcd at 18,159-60 ¶ 60.

<sup>15</sup> See Letter from Margaret W. Wiener, Chief, Auctions and Industry Analysis Div., to Patrick Shannon, Esq., Counsel for Lynch 3G Communications Corp., 18 FCC Rcd 11,552 (WTB 2003) (finding that an applicant had failed to timely submit its upfront payment when the payment was received by the Commission's bank before the applicable deadline, but not credited to the Commission's account until after the deadline due to an error of the applicant's bank).

<sup>16</sup> See *Auction 73/76 Procedures Public Notice*, 22 FCC Rcd at 18,173-78 ¶¶ 115-129. A wire transfer is a transaction that you initiate through your bank. It authorizes your bank to wire funds from your account to our lockbox bank, the Mellon Bank in Pittsburgh, Pennsylvania. Additional information on wire transfers is available on the Commission's web site at <http://www.fcc.gov/fees/wiretran.html>.

<sup>17</sup> The Commission will not accept checks, credit cards, or automated clearing house ("ACH") payments.

<sup>18</sup> See *Auction 73/76 Procedures Public Notice*, 22 FCC Rcd at 18,168-70, 18,173-78 ¶¶ 92-97, 115-129.

## **B. AUCTION 73 SHORT-FORM APPLICATION CHANGES AND RESUBMISSION**

11. Applicants whose applications for Auction 73 have been identified as incomplete must address defects in their applications during the resubmission window (which is now open and closes at 6:00 p.m. ET on Friday, January 4, 2008).<sup>19</sup> The Bureau is sending a letter to each applicant whose application has been deemed incomplete identifying any deficiencies found during the staff's initial review of the application. These deficiency letters are being sent via overnight delivery to the contact person listed on each incomplete application. During this resubmission window, all applicants for Auction 73 may make other minor changes as described below in more detail. We remind applicants that Section 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending Auction 73 short-form application.<sup>20</sup>

12. The electronic Form 175 will not permit an applicant to make certain modifications to its application (e.g., changes to applicant's name, legal classification, license selections or certifying official, or changes in its bidding credit).<sup>21</sup> Administrative and minor changes can be made, including, for example, deletion and addition of authorized bidders (to a maximum of three), revision of addresses and telephone numbers of the applicants and their contact persons, and changes to responsible party. In addition, changes can be made to ownership and agreement information.<sup>22</sup> We remind applicants that any application changes must comply with the Commission's rules, which prohibit, among other things, changes in ownership that would constitute an assignment or transfer of control, as well as changes in ownership or disclosure of agreements that would constitute violations of the anti-collusion rule.<sup>23</sup> If any application is changed to effect a major amendment, such as a change in control, the applicant will be ineligible to bid in the auction(s).

13. We note that some applicants have submitted certain inconsistent information in their Auction 73 and Auction 76 short-form applications.<sup>24</sup> Such applicants are encouraged to review their

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<sup>19</sup> 47 C.F.R. § 1.2105(b)(2).

<sup>20</sup> 47 C.F.R. § 1.65. *See also* 47 C.F.R. § 1.2105.

<sup>21</sup> 47 C.F.R. § 1.2105(b). The Commission's electronic Form 175 is designed to prevent inadvertent major changes by applicants. Therefore, applicants are not permitted to make changes to the following data fields at this time: applicant name, legal classification, certifier, bidding credit, and license selection.

<sup>22</sup> For more information on making administrative changes to an existing application, see "Updating Existing Applications." *See Auction 73/76 Procedures Public Notice*, 22 FCC Rcd at 18,297-98, 18,305-06, Attachments D and E. During the resubmission phase, applicants will have electronic access to update the following application fields: jurisdiction of formation/country of citizenship, applicant address, responsible party information, responsible party address, contact information, contact address, authorized bidder information, bidding option, agreement information, and ownership information. During all phases of the application process, applicants have electronic access to make certain administrative changes including updates to: applicant address, responsible party address, contact information, contact address, and bidding option (telephonic or electronic).

<sup>23</sup> *See* 47 C.F.R. § 1.2105

<sup>24</sup> While Auction 76 short-form applications will not be viewable by the public until after the close of bidding in Auction 73, each applicant may review the information contained in its own Auction 76 application by navigating through the Auction 76 application link on the *Create or Review Auction Applications* page.

Auction 73 application and make any necessary revisions in that application to be certain that it is complete and correct.<sup>25</sup>

### III. OTHER IMPORTANT INFORMATION

14. **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 Auction 73 will be released. The same public notice will also include bidding schedules for both the mock auction and the first day of bidding in Auction 73.

15. **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 700 MHz Band licenses being offered in the 700 MHz Band auction(s). 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 73 (and Auction 76, should that auction become necessary) in order to determine the existence of pending proceedings, pleadings, applications, or authorizations that might affect their decisions regarding participation in the auction. Participants in Auction 73 (and Auction 76, should that auction become necessary) are strongly encouraged to continue such research throughout the auction. In addition, potential bidders should perform technical analyses sufficient to assure themselves that, should they prevail in competitive bidding for a specific license, 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 73/76 Procedures Public Notice* under Section I.B.3.<sup>26</sup>

16. **Prohibition of Collusion and Maintenance of Anonymous Bidding:** Applicants are reminded that Section 1.2105(c) of the Commission's rules prohibits applicants for licenses in any of the same or overlapping geographic 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>27</sup> The anti-collusion rule applies to any applicants that submitted short-form applications for Auctions 73 or 76 and selected licenses in the same or overlapping CMAs, EAs, REAGs or the nationwide license in the D Block. For example, assume that one applicant applies for a REAG license and a second applicant applies for an EA license covering any area within that REAG. The two entities will have applied for licenses covering an overlapping geographic area and would be precluded from communicating with each other under the rule. The rule also applies where one applicant has selected a license in Auction 73 and another applicant selects a license in Auction 76 that covers any of the same geographic area. As a result, the rule precludes applicants that apply to bid for all of the licenses in any block or the nationwide license in the D Block from communicating with all other

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<sup>25</sup> Applicants to participate in Auction 76 cannot make changes to their Auction 76 applications during the Auction 73 resubmission window, but this does not matter: if an applicant has filed an abbreviated short-form application to participate in Auction 76, all information in the applicant's Auction 73 application, except for license selections, will be carried over to, and will supersede the information contained in, the same field on the Auction 76 form.

<sup>26</sup> See *Auction 73/76 Procedures Public Notice*, 22 FCC Rcd at 18,155-57 ¶¶ 39-47.

<sup>27</sup> 47 C.F.R. §§ 1.2105(a)(2)(viii), 1.2105(c)(1). 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).

applicants. Thus, applicants that have applied for licenses covering the same or overlapping geographic areas (unless they have identified each other on their FCC Form 175 applications as parties with whom they have entered into agreements under Section 1.2105(a)(2)(viii)) must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy, which may include communications regarding the post-auction market structure.<sup>28</sup>

17. For Auctions 73 and 76, this prohibition became effective at the short-form application filing deadline on December 3, 2007, and will extend until the post-auction down payment deadline for Auction 76, if that auction becomes necessary, which will occur after the close of bidding on licenses offered in Auction 76 and will be announced in a future public notice.<sup>29</sup> **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.**<sup>30</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>31</sup> The Bureau notes 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>32</sup> As described in the *Auction 73/76 Procedures Public Notice*, due to the anonymous bidding procedures in this auction, each applicant is being informed by letter of the identity of all other applicants in either Auction 73 or Auction 76 that have applied for licenses in any of the same geographic areas that it has selected in its short-form application.<sup>33</sup> This letter will not specify the auction(s) in which the other identified applicants have applied to participate.

18. 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 December 3, 2007, an applicant should not have included the names of those parties on its application, and must not have continued negotiations.<sup>34</sup>

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<sup>28</sup> For a more detailed discussion of anti-collusion considerations in the context of Auctions 73 and 76, see *Auction 73/76 Procedures Public Notice*, 22 FCC Rcd at 18,148-54 ¶¶ 15-34.

<sup>29</sup> 47 C.F.R. § 1.2105(c)(1).

<sup>30</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>31</sup> 47 C.F.R. § 1.2105(c)(7)(i).

<sup>32</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>33</sup> See *Auction 73/76 Procedures Public Notice*, 22 FCC Rcd at 18,184-85 ¶ 155.

<sup>34</sup> See *Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, Public Notice*, 11 FCC Rcd 9645 (WTB 1995).

19. Applicants that have selected licenses for any of the same or overlapping geographic license areas must not communicate directly or indirectly about bids or bidding strategy.<sup>35</sup> The Bureau has encouraged applicants competing for licenses in any of the same or overlapping geographic license areas 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>36</sup> Also, if the authorized bidders are different individuals employed by the same organization (*e.g.*, law firm, engineering 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 to ensure that applicants and their bidding agents will comply with the anti-collusion rule.<sup>37</sup> However, the Bureau cautions that the mere existence of precautionary measures will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted.<sup>38</sup>

20. *Anonymous Bidding.* In addition, applicants are reminded that under the anonymous bidding procedures in effect for Auctions 73 and 76, the Commission is withholding from public release until after the close of the auction(s) any information that may indicate specific applicants' interests in the auction — including, among other things, license selections, upfront payments and eligibility information, and the identities of bidders making bids or taking other bidding-related actions. Accordingly, communication to other applicants or public disclosure of such non-public information would appear to violate the Commission's anonymous bidding procedures and the anti-collusion rule.<sup>39</sup> This would include communication of any such non-public information by an applicant to the public, financial analysts, or the press, as well as any such communication by an applicant to another applicant for one or more licenses covering geographic areas also covered by the applicant's license selections on its short-form application.<sup>40</sup> Examples of communications raising concern, given the anonymous bidding procedures in effect for Auctions 73 and 76, would include an applicant's statement to the press about its upfront payment or bidding eligibility, and an applicant's statement to the press that it is or is not interested in bidding in Auction 76.

21. *Disclosure Obligations & Possible Sanctions.* We note that Section 1.65 requires auction applicants that engage in communications of bids or bidding strategies that may themselves be prohibited that result in a bidding agreement, arrangement, or understanding not already identified on their short-

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<sup>35</sup> *Part I Seventh Report and Order*, 16 FCC Rcd at 17549-50 ¶ 6.

<sup>36</sup> *See Auction 73/76 Procedures Public Notice* at 11-12 ¶ 24.

<sup>37</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>38</sup> *Id.*, 13 FCC Rcd at 11978 ¶ 13.

<sup>39</sup> *See Auction 73/76 Procedures Public Notice*, 22 FCC Rcd at 18,149-55, 18,181-85 ¶¶ 15-34, 145-156.

<sup>40</sup> The Commission has long expressed the concern that applicants 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 non-public information relating to auctions, such as bids and bidding strategies. *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.”).



form applications to promptly disclose any such agreement, arrangement, or understanding to the Commission by amending their pending applications.<sup>41</sup> 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>42</sup>

22. 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>43</sup> Any applicant found to have violated the anti-collusion rule may be subject to sanctions.<sup>44</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>45</sup>

23. **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>46</sup>

24. **Mock Auction:** All applicants found to be qualified bidders will be eligible to participate in a mock auction on Tuesday, January 22, 2008. No separate mock auction will be held for Auction 76. Applicants that are interested in participating in Auction 76 should plan to participate in this mock auction. The Bureau encourages all qualified bidders to take advantage of this opportunity to become familiar with the FCC's Integrated Spectrum Auction System ("ISAS" or "FCC Auction System"). In the public notice announcing the qualified bidders, the Bureau 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.

25. **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>41</sup> See *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17550-51 ¶ 9. 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. 47 C.F.R. § 1.65.

<sup>42</sup> 47 C.F.R. § 1.2105(c)(6); see also *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17555 ¶ 17.

<sup>43</sup> See 47 C.F.R. § 1.2107(d).

<sup>44</sup> See 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

<sup>45</sup> 47 C.F.R. § 1.2109(d).

<sup>46</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.

26. 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 either Microsoft VM or Java Plug-In Version 1.5 installed.
  - ❖ Netscape® Communicator™ 6.0 or higher, with Java Plug-In Version 1.5.

To obtain Java Plug-In Version 1.5, point your browser at [http://java.sun.com/javase/downloads/index\\_jdk5.jsp](http://java.sun.com/javase/downloads/index_jdk5.jsp) and click the **Download** button for the *Java Runtime Environment (JRE) 5.0* option.

- PDF Viewer: Adobe Acrobat Reader 5.0 or higher (available at <http://www.adobe.com>)
- Minimum Screen Resolution: 1024 x 768

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

28. **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 ownership disclosure rules.<sup>47</sup>

## CONTACT INFORMATION

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

30. 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.

31. For technical assistance with accessing 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.

32. For further information concerning this auction proceeding, contact:

Auctions and Spectrum Access Division, Wireless Telecommunications Bureau:

For auction legal questions:

Scott Mackoul, Stephen Johnson, or Howard Davenport at (202) 418-0660

For auction procedure, bidding and general information questions:

Jeff Crooks at (202) 418-2074 or Lisa Stover at (717) 338-2868

Mobility Division, Wireless Telecommunications Bureau:

For licensing legal and service rule questions:

Erin McGrath (legal) or Keith Harper (technical) at (202) 418-0620

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<sup>47</sup> See 47 C.F.R. §§ 1.2107, 1.2112(b)(2).

33. 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).

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