



# PUBLIC NOTICE

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## Auction of LPTV and TV Translator Digital Companion Channels

### 27 Bidders Qualified to Participate in Auction 85

#### AU Docket No. 08-22

Report No. AUC-08-85-H (Auction 85)

1. In this Public Notice, the Wireless Telecommunications and Media Bureaus identify 27 applicants found to be qualified to bid in the upcoming auction of construction permits for Low Power Television (LPTV), including Class A Television (TV), and TV Translator digital companion channels (Auction 85). Bidding in Auction 85 is scheduled to begin on Wednesday, November 5, 2008.<sup>1</sup> This Public Notice contains bidding instructions, auction procedures, and other important information regarding Auction 85. It also addresses the continuing obligations for all Auction 85 applicants, including those that have not qualified to participate.<sup>2</sup>

#### I. QUALIFIED AND NON-QUALIFIED BIDDERS

##### A. Qualified Bidders

2. Attachment A to this Public Notice lists the name of each of the 27 qualified bidders, each bidder's upfront payment amount, and its maximum eligibility in bidding units. 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 and timely submitted a sufficient upfront payment as required by the Commission's competitive bidding rules.<sup>3</sup>

<sup>1</sup> See "Auction of LPTV and TV Translator Digital Companion Channels Scheduled for November 5, 2008; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 85," *Public Notice*, DA 08-1944, 23 FCC Rcd 14,530 (WTB/MB 2008) ("*Auction 85 Procedures Public Notice*").

<sup>2</sup> After the initial application filing deadline on June 30, 2006, three applicants reported name changes: WDLP Licensing, Inc., changed its name to WSBS Licensing, Inc.; Gary M. Cocola Family Trust, Gary M. Cocola, Trustee became Cocola Broadcasting Companies, LLC; and Broadcasting Systems, Inc., is now Latin America Broadcasting of Texas, Inc. The current name for each applicant is reported in the applicant's short-form application and in attachments to this Public Notice.

<sup>3</sup> Under the Commission's two-phased auction application process, a winning bidder must submit a long-form application after the close of Auction 85 to demonstrate its qualifications to hold a Commission license and, if a bidding credit is requested, its eligibility for the requested bidding credit. 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. See 47 C.F.R. §§ 1.2107 – 1.2109; see also Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, PP

3. 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 85 Procedures Public Notice* and subsequent public notices.<sup>4</sup> These public notices and other documents related to Auction 85 are available on the Commission’s auctions website at <http://wireless.fcc.gov/auctions/>. This Public Notice provides additional guidance.

4. Attachment B to this Public Notice lists each qualified bidder and indicates the mutually-exclusive (“MX”) groups for each qualified bidder. The new entrant bidding credit for qualified bidders for each MX group is indicated as 35 percent or 25 percent.

#### **B. Non-Qualified Bidders**

5. Attachment C to this Public Notice lists each applicant that submitted a short-form application, but did not qualify to bid in this auction. These applicants remain subject to the Commission’s rules prohibiting collusion in Commission auctions.<sup>5</sup>

### **II. AUCTION INVENTORY**

6. Several applicants did not become qualified bidders. There are 35 MX groups for which at least one applicant became a qualified bidder. In 21 MX groups, there is only one qualified bidder. In those MX groups a permit will be awarded only if the qualified bidder has sufficient bidding eligibility and places a bid for the permit being offered.<sup>6</sup> In eight MX groups, no applicant became a qualified bidder. No permits will be assigned based on the results of this auction for those eight MX groups. Attachment D to this Public Notice cross-references the MX groups in the auction inventory with the identities of the applicants for each and such applicants’ status.<sup>7</sup> The status of each applicant within each MX group is also indicated in Attachment D.

### **III. REGISTRATION AND BIDDING ACCESS**

#### **A. Registration Materials**

7. 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<sup>®</sup> tokens
- Integrated Spectrum Auction System (ISAS) Bidder’s Guide

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Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348, 2376-77 ¶¶ 163-168 (1994)(“*Competitive Bidding Second Report and Order*”). Requests concerning applicant 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 any claimed bidding credits, 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>4</sup> *Auction 85 Procedures Public Notice*, 23 FCC Rcd at 14,530; *see also* “Auction of LPTV and TV Translator Digital Companion Channels; Status of Short-Form Applications to Participate in Auction 85; Removal of MX Group from Auction Inventory,” *Public Notice*, DA 08-2150 (rel. September 30, 2008).

<sup>5</sup> *See* 47 C.F.R. § 1.2105(c); *see also Auction 85 Procedures Public Notice*, 23 FCC Rcd at 14,534-38 ¶¶ 8-18.

<sup>6</sup> *See Auction 85 Procedures Public Notice*, 23 FCC Rcd at 14,533 n. 7.

<sup>7</sup> Some applicants may not have purchased sufficient bidding eligibility to bid on all of the permits for which they have applied. Under the simultaneous multiple round auction format being used in Auction 85, in order to bid on a particular construction permit, a qualified bidder must have a current eligibility level that meets or exceeds the number of bidding units assigned to one or more of the construction permits listed for which it has submitted an engineering proposal. *See Auction 85 Procedures Public Notice*, 23 FCC Rcd at 14,545, 14,548-49 ¶¶ 55, 70-80.

- FCC Auction Bidder Line telephone number

8. 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 system will be prosecuted to the full extent of the law.

9. Any qualified bidder listed in Attachment A of this Public Notice that has not received the registration mailing **by 12:00 noon Eastern Time (ET) on Thursday, October 30, 2008**, must contact the Auctions Hotline directly at (717) 338-2868. Qualified bidders must have these registration materials 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.

### **B. Registration Material Replacement**

10. 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).

### **C. Bidding Access**

11. The Commission will conduct Auction 85 over the Internet. Qualified bidders can access the Integrated Spectrum Auction System ("ISAS" or "FCC Auction System") at <http://auctions.fcc.gov> or <http://auctions2.fcc.gov>. Bidders choosing to bid electronically should review the Integrated Spectrum Auction System (ISAS) Bidder's Guide provided in the registration materials. Bidders are reminded that Apple® Mac OS® is not currently supported.

12. In addition to bidding electronically over the Internet, qualified bidders will also have the option of bidding by telephone via the Auction Bidder Line. The Auction Bidder Line telephone number will be supplied in the registration materials sent to all qualified bidders. Bidders choosing to bid electronically may use the Auction Bidder Line as an alternate method of bidding. When submitting bids by telephone, bidders should allow sufficient time to bid by placing their calls well in advance of the close of a bidding round.<sup>8</sup>

13. Each authorized bidder must have his or her own SecurID® token, regardless of whether the bidder chooses to bid electronically or by telephone. 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 mailed only 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 85.

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

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<sup>8</sup> Because the length of a call to place bids may vary, bidders should allow a minimum of ten minutes.

**D. Bidding Contingency Plan**

15. 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 failures or other technical issues, 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, bidders will receive the Auction Bidder Line telephone number in their registration materials.

**IV. MOCK AUCTION**

16. The Bureaus strongly encourage all qualified bidders to participate in the mock auction that will be conducted Monday, November 3, 2008. The mock auction will allow qualified bidders to familiarize themselves with the FCC Auction System and to ask FCC auction staff and technical support staff questions about the system and about auction conduct. The Bureaus will conduct this auction over the Internet, and bidders will also have the option of bidding by telephone.

17. Qualified bidders can access the mock auction at <http://auctions.fcc.gov> or <http://auctions2.fcc.gov>. Bidders choosing to bid electronically should review the Integrated Spectrum Auction System (ISAS) Bidder’s Guide provided in the registration materials. Qualified bidders that wish to place bids by telephone should use the Auction Bidder Line telephone number supplied in the Auction 85 registration materials.

18. The mock auction will include six sample construction permits. Bidders that are qualified to bid on one construction permit in Auction 85 will be able to bid on one of the sample construction permits in the mock auction. Bidders that are qualified to bid on two or more construction permits in Auction 85 will be able to bid on two of the sample construction permits in the mock auction. Each sample construction permit in the mock auction will have 500 bidding units, and each bidder in the mock auction will have 500 or 1,000 bidding units of eligibility, based on whether they can bid on one or two of the sample construction permits. The mock auction will otherwise follow the rules governing Auction 85.

19. The mock auction, identified as Mock Auction 74, will simulate the auction, and each bidder will be required to be active on 100 percent of its current bidding eligibility. If a bidder does not meet this requirement, an activity rule waiver will be automatically applied (if the bidder has any waivers available) or the bidder’s 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. Bidders should take advantage of the mock auction to practice taking actions they might wish to take during Auction 85. In particular, bidders that are qualified to bid on two or more construction permits in Auction 85 and are able to bid on two of the sample construction permits in the mock auction may wish to take advantage of the mock auction to practice reducing eligibility.

20. The mock auction bidding schedule for Monday, November 3, 2008, will be as follows:

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

## V. AUCTION INFORMATION

### A. Auction Announcements

21. 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.

### B. Bidding Schedule

22. On Wednesday, November 5, 2008, Auction 85 will begin with four rounds of bidding as follows:

|               |            |   |               |
|---------------|------------|---|---------------|
| Bidding Round | 10:00 a.m. | - | 10:45 a.m. ET |
| Bidding Round | 12:00 p.m. | - | 12:45 p.m. ET |
| Bidding Round | 2:00 p.m.  | - | 2:45 p.m. ET  |
| Bidding Round | 4:00 p.m.  | - | 4:45 p.m. ET  |

The bidding schedule for Thursday, November 6, 2008, and continuing until further notice, will be as follows:

|               |            |   |               |
|---------------|------------|---|---------------|
| 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  |

23. The Bureaus 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.

### C. Bid Amounts

24. Each construction permit in Auction 85 will have a minimum opening bid amount, as previously announced.<sup>9</sup> In addition to the minimum opening bid, Auction 85 will begin with eight additional bid amounts (for a total of nine bid amounts) per construction permit.<sup>10</sup> Bidders are cautioned that they should enter their bid amounts carefully because bidders still assume a binding obligation to pay the full bid amount, even if mistakenly or erroneously made.<sup>11</sup> Moreover, bid withdrawals are not permitted in Auction 85.

25. The Bureaus retain the discretion to change the minimum acceptable bid amounts, the additional bid amounts, the dollar cap on bid increments, the number of acceptable bid amounts, and the parameters of the formulas used to calculate bid amounts if it determines that circumstances so dictate.

### D. Round Results

26. Round results will be available approximately ten minutes after the close of each round.

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<sup>9</sup> *Auction 85 Procedures Public Notice*, 23 FCC Rcd at 14,551 ¶¶ 89-90. Attachment A of the *Auction 85 Procedures Public Notice* sets forth the minimum opening bid amounts for each construction permit offered in Auction 85.

<sup>10</sup> *Auction 85 Procedures Public Notice*, 23 FCC Rcd at 14,551-52 ¶¶ 91-96.

<sup>11</sup> See 47 C.F.R. § 1.2104(g).

27. Two types of reports will be available to bidders during the auction: (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 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. The “My Bid Reports” allow each bidder to view all of its own actions in the current and previous rounds of the auction.

28. 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.

#### **E. Watchlists**

29. The FCC Auction System sets up for each qualified bidder a default watchlist, called “All Licenses,” which contains every construction permit designated on the bidder’s short-form application. Qualified bidders may create additional watchlists containing construction permits of their own choosing, and construction permits 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 85.

#### **F. Bidder Questions**

30. FCC auction staff and technical support staff will be available during the auction. 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 should call on behalf of a bidder. When calling, the person should state that he or she is calling on behalf of a bidder with a time-sensitive auction question. To place bids by telephone or to ask questions during the auction, bidders should use the FCC Auction Bidder Line telephone number supplied in the registration materials. Otherwise, bidders should refer to the contact information provided in Section VII “Contact Information” below.

#### **G. Bidder Suggestions**

31. 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. Those questions should be directed to the Auction Bidder Line or to the appropriate telephone number provided in Section VIII “Contact Information” below.

### **VI. MAINTAINING APPLICANT OBLIGATIONS**

#### **A. Prohibition of Collusion**

32. The Bureaus remind applicants that Sections 1.2105(c) and 73.5002(d) of the Commission’s rules prohibit applicants from communicating with each other about bids, bidding strategies, or settlements, which may include communications regarding 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>12</sup> The anti-collusion rule applies to applicants in this auction

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<sup>12</sup> 47 C.F.R. §§ 1.2105(a)(2)(viii), 1.2105(c)(1), and 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 17,546 (2001) (“*Part 1 Seventh Report and Order*”); Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Order on Reconsideration of the Third Report and Order*,

with engineering proposals within the same mutually-exclusive (MX) group. An applicant is prohibited from communicating not only about its own bid or bidding strategy, but also from communicating about another applicant's bid or bidding strategy. Moreover, if two applicants are mutually-exclusive in an MX group, these two applicants must not communicate about a bid, bidding strategy, or settlement for any MX group.<sup>13</sup>

33. The collusion prohibition is effective as of the short-form application filing deadline, which for Auction 85 was June 30, 2006 at 6:00 p.m. ET, and extends until the post-auction down payment deadline, which will be announced in a public notice released shortly following close of bidding.<sup>14</sup> **The prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.**<sup>15</sup> For further information on the collusion prohibition, applicants should refer to the *Auction 85 Procedures Public Notice*.<sup>16</sup>

## B. Disclosure Obligations and Possible Sanctions

34. Section 1.65 requires auction applicants that engage in communications of bids or bidding strategies that may themselves be prohibited, and that result in an 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.<sup>17</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>18</sup> The Commission has clarified that each applicant's obligation to report any such communication

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*Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd 15,293, 15,297-98 ¶¶ 7-8 (2000).

<sup>13</sup> For a more detailed discussion of anti-collusion considerations in the context of Auction 85, see *Auction 85 Procedures Public Notice*, 23 FCC Rcd at 14,534-38 ¶¶ 8-18. See also "Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules," *Public Notice*, 11 FCC Rcd 9645 (1995) ("*Anti-Collusion Public Notice*").

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

<sup>15</sup> For example, the Commission imposed a 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. See *Northeast Communications of Wisconsin, LLC, Forfeiture Order*, 19 FCC Rcd 18,635 (2004). The Commission subsequently reduced the amount of the forfeiture to \$75,000 due to the parties' history of compliance with Commission rules. See *Star Wireless, LLC and Northeast Communications of Wisconsin, Inc., Order on Review*, 22 FCC Rcd 8943 (2007), review denied, *Star Wireless, LLC v. FCC*, 522 F.3d 469 (D.C. Cir. 2008) (anti-collusion rule applies to auction applicants regardless of whether they are qualified to bid). The United States District Court for the Eastern District of Wisconsin recently granted summary judgment in favor of the United States pursuant to an effort by the Department of Justice to enforce the forfeiture. *United States v. Northeast Communications of Wisconsin, LLC*, Decision and Order, Case No. 07-C-715 (June 25, 2008). See also Letter to Robert Pettit, Esq., from Margaret W. Wiener, Chief, Auctions and Industry Analysis Div., 16 FCC Rcd 10,080 (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>16</sup> *Auction 85 Procedures Public Notice*, 23 FCC Rcd at 14,534-38 ¶¶ 8-18.

<sup>17</sup> See *Part I Seventh Report and Order*, 16 FCC Rcd at 17,550-51 ¶ 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>18</sup> 47 C.F.R. § 1.2105(c)(6); see also *Part I Seventh Report and Order*, 16 FCC Rcd at 17,555 ¶ 17.

continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.<sup>19</sup>

35. Parties reporting communications must take care to ensure that any such reports of prohibited communications do not themselves give rise to a violation of the anti-collusion rule. For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection. A party seeking to report such prohibited communications should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection.<sup>20</sup> Such parties are also encouraged to consult with the Auctions and Spectrum Access Division staff if they have any questions about the procedures for submitting such reports.<sup>21</sup> The *Auction 85 Procedures Public Notice* provides additional guidance on procedures for submitting application-related information.<sup>22</sup>

36. 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>23</sup> Any applicant found to have violated the anti-collusion rule may be subject to sanctions.<sup>24</sup> In addition, we remind applicants 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>25</sup>

### **C. Submission of Auction-Related Filings**

37. 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 e-mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: [auction85@fcc.gov](mailto:auction85@fcc.gov). The e-mail summarizing the changes must include a subject or caption referring to Auction 85 and the name of the applicant.

38. Parties wishing to submit requests, complaints, or other information concerning Auction 85 should, in addition to following other procedures prescribed by the Commission's rules, send a copy by e-mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: [auction85@fcc.gov](mailto:auction85@fcc.gov). As noted in paragraph 35 (above), the submission of Auction 85-related information could contain information which, if made public, could give rise to a violation of the

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<sup>19</sup> See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, *Second Report and Order*, FCC 07-132, 22 FCC Rcd 15,289, 15,403-04 ¶¶ 285-86 (2007), recon. pending.

<sup>20</sup> See 47 C.F.R. § 0.459 (procedures for requesting that materials or information submitted to the Commission be withheld from public inspection). If an applicant requests confidential treatment of a document, the cover page of the filing must prominently display that the applicant is seeking confidential treatment for that document. For example, a filing might include a cover page stamped with "Request for Confidential Treatment Attached" or "Not for Public Inspection." Any such request must cover all of the material to which the request applies. See 47 C.F.R. § 0.459(a).

<sup>21</sup> See "Contact Info" below.

<sup>22</sup> See *Auction 85 Procedures Public Notice*, 23 FCC Rcd at 14,542 ¶¶ 38-40.

<sup>23</sup> See 47 C.F.R. § 1.2107(d).

<sup>24</sup> See 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

<sup>25</sup> See 47 C.F.R. § 1.2109(d).



Commission's anti-collusion rule. We caution applicants to avoid any statements or disclosures that may violate the anti-collusion rule and urge applicants to consult with the Auctions and Spectrum Access Division staff if they have any questions about the procedures for any such submissions.<sup>26</sup>

39. 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.

40. Finally, parties wishing to make suggestions concerning Auction 85 or future auctions should present such ideas using the suggestion feature of the FCC Auction System. (As mentioned above, this feature is not an appropriate mechanism for asking time-sensitive questions that need an immediate response.) Commission staff considers all suggestions, but may not always provide an individualized response.

#### **D. Amendments to Short-Form Applications (FCC Form 175)**

41. Applicants must maintain the accuracy and completeness of information furnished in their short-form applications, including their attachments.<sup>27</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. Applicants must modify their short-form application electronically and submit a letter briefly summarizing the changes by e-mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: [auction85@fcc.gov](mailto:auction85@fcc.gov). Questions about changes should be directed to the Auctions and Spectrum Access Division at (202) 418-0660.

42. As described in the Commission's rules, applicants may make only minor corrections to their short-form applications (e.g., deletion and addition of authorized bidders or contact information).<sup>28</sup> Major modifications (e.g., construction permit selection changes, new entrant bidding credit, or changing control of the applicant) will not be accepted.<sup>29</sup> Bidders must immediately report any change affecting their eligibility for a new entrant bidding credit. Bidders should clearly state the nature of the change in an amendment to their short-form application and in the summary letter referenced above. In cases of diminished bidding credit eligibility, the Commission will make appropriate adjustments in the bidding credit prior to the computation of any down and final payment amounts due.

#### **E. Due Diligence**

43. We remind potential bidders 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 facilities being offered in Auction 85. The Commission makes no representations or warranties about the use of this spectrum for particular services. The inclusion of an engineering proposal in the Auction 85 inventory does not mean that the proposal can be implemented. The Commission has reviewed engineering proposals only for the limited purpose of determining mutual exclusivity and has not made any determinations as to their grantability. We strongly encourage potential bidders to conduct their own research prior to the beginning of bidding in Auction 85 in order to determine the existence of pending

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<sup>26</sup> See "Contact Info" below.

<sup>27</sup> See 47 C.F.R. § 1.65.

<sup>28</sup> See 47 C.F.R. § 1.2105(b).

<sup>29</sup> *Id.*

proceedings, pleadings, applications, or authorizations that might affect their decisions regarding participation in the auction. Applicants are also reminded to review the due diligence section of the *Auction 85 Procedures Public Notice* for additional information on matters that could impact the permits being offered in Auction 85.<sup>30</sup> Participants should continue research on any pending matters 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 construction permit, they will be able to build and operate facilities that will comply fully with the Commission's technical and legal requirements.

## VII. POST-AUCTION INFORMATION

### A. Post-Auction Procedures

44. Shortly after bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments and final payments.<sup>31</sup> Each winning bidder will have ten business days following that public notice to make down payments. Each winning bidder will also be required to submit any final payments within ten business days after the applicable deadline for submitting down payments.

45. Within thirty calendar days after release of the auction closing public notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 301-CA or FCC Form 346, as appropriate), including required exhibits, for each construction permit won through Auction No. 85.<sup>32</sup> Winning bidders claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit.<sup>33</sup> Further filing instructions will be provided to auction winners at the close of the auction.<sup>34</sup> Further instructions regarding these post-auction procedures are contained in the *Auction 85 Procedures Public Notice* and will be provided in the public notice announcing the winning bids.<sup>35</sup>

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<sup>30</sup> *Auction 85 Procedures Public Notice*, 23 FCC Rcd at 14,538-40 ¶¶ 19-25.

<sup>31</sup> For more detail, see *Auction 85 Procedures Public Notice*, 23 FCC Rcd at 14,554-55 ¶¶ 111-20.

<sup>32</sup> See 47 C.F.R. §§ 1.2107 and 73.5005. See also *Broadcast First Report and Order*, 13 FCC Rcd at 15984-85 ¶¶ 163-64.

<sup>33</sup> See 47 C.F.R. §§ 1.2112(b), 73.5005, 73.5007 and 73.5008.

<sup>34</sup> See 47 C.F.R. §§ 1.2107, 1.2109(a), 73.3572, 73.5003, 73.5005, and 73.5006(d).

<sup>35</sup> See 47 C.F.R. §§ 1.2107, 1.2109(a).

## VIII. CONTACT INFORMATION

46. For further information concerning Auction 85, please contact:

### **General Auction 85 Information**

General Auction Questions  
Auction Process and Procedures

### **FCC Auctions Hotline**

(888) 225-5322, option two; or  
(717) 338-2868  
Hours of service: 8:00 a.m. – 5:30 p.m. ET,  
Monday through Friday  
All calls to the FCC Auctions Hotline are recorded.

### **Auctions and Spectrum Access Division**

**(717) 338-2868 or (202) 418-0660**

Roy Knowles or Linda Sanderson

### **FCC Auction System Information**

### **FCC Technical Support Hotline**

(877) 480-3201, option nine; or  
(202) 414-1250 or (202) 414-1255 (TTY)  
Hours of service: 8:00 a.m. – 6:00 p.m. ET,  
Monday through Friday  
All calls to the FCC Technical Support Hotline are  
recorded.

### **Auction 85 Legal Information**

Auction Rules, Policies, Regulations

### **Auctions and Spectrum Access Division**

**(202) 418-0660**

Lynne Milne or Howard Davenport

### **Auction Payments**

Instructions for Wiring Upfront Payments

### **Auctions Accounting Group**

**(202) 418-0578**

Gail Glasser

### **Licensing Information**

Service Rules, Policies, Regulations  
Licensing Issues, Engineering Issues  
Due Diligence, Incumbency Issues

### **Video Division (202) 418-1600**

Shaun Maher or Hossein Hashemzadeh

47. 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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