



PUBLIC NOTICE

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AUCTION OF 700 MHz BAND LICENSES

214 Bidders Qualified to Participate in Auction 73

AU Docket No. 07-157

Report No. AUC-08-73-G (Auction 73)

1. In this Public Notice, the Wireless Telecommunications Bureau (“Bureau”) identifies 214 applicants found to be qualified to bid in the upcoming auction of 700 MHz Band licenses (Auction 73).¹ Bidding in Auction 73 is scheduled to begin on Thursday, January 24, 2008. In addition, this Public Notice reminds all Auction 73 applicants (including those that have not qualified to participate) of continuing obligations and auction procedures, and contains bidding instructions and other important information regarding Auction 73.

2. **Attachment A** lists the name of each of the 214 qualified bidders and each bidder’s claimed bidding credit revenue range.² Attachment A also notes whether a bidder has requested a waiver of Commission rules or policies with respect to Auction 73 that remains pending at this time.³

¹ See “Auction of 700 MHz Band Licenses Scheduled for January 24, 2008; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction 73 and 76,” *Public Notice*, 22 FCC Rcd 18,141 (“*Auction 73/76 Procedures Public Notice*”).

² Two applicants – Gold Radio Group, LLC and Western Iowa Telephone Association – qualified as bidders in Auction 73, but are not eligible for the bidding credit originally requested in their respective short-form applications. Specifically, Gold Radio Group, LLC amended its application and requested the 15% bidding credit instead of the 25% bidding credit. Western Iowa Telephone Association, originally requested the 15% bidding credit, but amended its application to withdraw its request for a bidding credit altogether. Therefore, these applicants are qualified, but only with the bidding credit level as shown in Attachment A. In addition, one qualified applicant changed its name from “world network” to “world network international services Inc.” This name change is reflected in Attachment A and within the Commission’s electronic bidding system database.

³ Certain requests for waiver or other relief with respect to Auction 73 have been previously addressed by the Bureau. Copies of those decisions may be found on the Commission’s Auction 73 web page: <http://wireless.fcc.gov/auctions/73/>. The Attachment does not note any such requests for waiver or other relief to the extent they may convey information that is non-public or confidential under the anonymous bidding procedures adopted for this auction. Under those procedures, the Commission will disclose such information related to Auction 73 at a later date. See *Auction 73/76 Procedures Public Notice*, 22 FCC Rcd at 18,183-84 ¶ 152.

3. **Attachment B** lists each applicant that submitted a short-form application, but did not qualify to bid in this auction.⁴ These applicants are reminded that they remain subject to the Commission’s rules prohibiting collusion in Commission auctions.⁵

4. 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.⁶ Under the Commission’s two-phased auction application process, a winning bidder must submit a long-form application after the close of Auction 73 and Auction 76 (if that subsequent auction is required) to demonstrate its qualifications to hold a Commission license and, if a bidding credit is requested, its eligibility for the requested bidding credit.⁷ 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.⁸

5. 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 73/76 Procedures Public Notice* and subsequent public notices.⁹ These public notices and other documents related to Auction 73 are available on the Commission’s auctions website at <http://wireless.fcc.gov/auctions/>. The following paragraphs provide additional guidance.

6. **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

⁴ During the resubmission period, one non-qualified applicant sought to change its name from Zephyr Holdings to Zephyr Spectrum Holdings, LLC. This request is now moot because the applicant has not qualified to participate in Auction 73.

⁵ See 47 C.F.R. § 1.2105(c); see also *Auction 73/76 Procedures Public Notice*, 22 FCC Rcd at 18,149-51 ¶¶ 15-20.

⁶ NatTel, LLC is listed as a qualified bidder only conditionally, until resolution of issues relating to its short-form application certification, which will determine NatTel’s compliance with Section 1.2105(a)(2)(v) of the Commission’s rules. 47 C.F.R. § 1.2105(a)(2)(v). Based on that determination, the Bureau reserves the right to find NatTel not qualified to bid with respect to any license in Auction 73, and therefore subject to Sections 1.2104(g) and 1.2109(c) of the Commission’s rules. 47 C.F.R. §§ 1.2104(g), 1.2109(c).

⁷ 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).

⁸ 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.

⁹ *Auction 73/76 Procedures Public Notice*; see also “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,” *Public Notice*, DA 07-5030 (rel. Dec. 18, 2007); “Wireless Telecommunications Bureau Reminds 700 MHz Auction Applicants of Confidential Nature of Upfront Payment and Other Bidding-Related Information,” *Public Notice*, DA 08-13 (rel. Jan. 2, 2008).

7. 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.

8. 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, January 17, 2008**, 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.

9. **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).

10. **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.

11. 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 73. In the event that it is necessary to conduct Auction 76, bidders will use the same SecurID® tokens in Auction 76 as they used for Auction 73.

12. 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.¹⁰

13. 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.

14. **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,

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

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.

15. **Bid Amounts.** There will be a minimum opening bid amount for each license and package in Auction 73, as previously announced.¹¹ 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.

16. In the *Auction 73/76 Procedures Public Notice*, the Bureau adopted its proposal to begin the auction with one acceptable bid amount for each non-C Block license and for each C Block package, and three acceptable bid amounts for each C Block license. The Bureau retains 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. Further, the Bureau retains the discretion to do so on a license-by-license and package-by-package basis.¹²

17. **Reserve Price.** As described in more detail in the *Auction 73/76 Procedures Public Notice*, the Commission directed the Bureau to adopt and publicly disclose block-specific aggregate reserve prices, pursuant to its existing delegated authority and the regular pre-auction process and consistent with the Commission's conclusions in the *700 MHz Second Report and Order*.¹³ Accordingly, the Bureau established the following block-specific aggregate reserve prices for Auction 73: Block A, \$1.807380 billion; Block B, \$1.374426 billion; Block C, \$4.637854 billion; Block D, \$1.330000 billion; Block E, \$0.903690 billion.¹⁴ If, at the close of bidding in Auction 73, the aggregate reserve price for the A, B, C and/or E Blocks has not been met, the Bureau will issue an announcement that bidding in Auction 73 has closed and set a date for commencement of Auction 76.¹⁵

18. **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.

¹¹ *Auction 73/76 Procedures Public Notice*, 22 FCC Rcd at 18,198-200 ¶¶ 208-214. Attachment A of the *Auction 73/76 Procedures Public Notice* sets forth the minimum opening bid amounts for each license offered in Auction 73.

¹² *Id.* at 18,200-04 ¶¶ 215-233.

¹³ 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 (2007) ("*700 MHz Second Report and Order*"), recon. pending.

¹⁴ *Auction 73/76 Procedures Public Notice*, 22 FCC Rcd at 18,195 ¶ 199.

¹⁵ *Id.* at 18,212-13 ¶ 274. If the reserve price established for the D Block of the 700 MHz Band is not satisfied by the results of Auction 73, the Commission may decide to re-offer that license subject to the same service rules or reconsider the rules applicable to that block. *See id.* at 18,146 ¶ 7. *See also 700 MHz Second Report and Order*, 22 FCC Rcd 15,401, 15,404 ¶¶ 306, 314.

19. **Bidding Schedule.** On Thursday, January 24, 2008, there will be two rounds of bidding as follows:

Bidding Round	10:00 a.m.	-	12:00 p.m. ET
Bidding Round	2:30 p.m.	-	4:30 p.m. ET

The bidding schedule for Friday, January 25, 2008, and continuing until further notice, will be:

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

20. 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.

21. **Round Results.** Round results will be available approximately 10 minutes after the close of each round. Auction 73 will be conducted using procedures that limit the disclosure of information on bidder interests and identities before the close of bidding.¹⁶

22. 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 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 November 20, 2007. These files are available on the web page for Auction 73, <http://wireless.fcc.gov/auctions/73/>, via the "Auction Seminar" link (scroll down to the bottom of the auction seminar page).

23. 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.

24. **Watchlists.** The FCC Auction System sets up for each qualified bidder a default watchlist, called All Licenses and Packages, that contains every license and packages of licenses selected on the bidder's short-form application. Qualified bidders may create additional watchlists containing licenses and packages of their own choosing, and licenses and packages 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 73.

25. **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:

¹⁶ *Auction 73/76 Procedures Public Notice*, 22 FCC Rcd at 18,181-85 ¶¶ 145-156.

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

26. 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 appropriate telephone number listed above.

27. 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.¹⁷ 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 following address: auCTION73@fcc.gov. Questions about changes should be directed to the Auctions and Spectrum Access Division at (202) 418-0660.

28. 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 fax number).¹⁸ Major modifications (e.g., license selection changes, newly claimed or increased bidding credit, or changing control of the applicant) will not be accepted.¹⁹ 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 reported immediately and 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.

29. In addition, when amending short-form applications, applicants should avoid any statements or disclosures that may violate the Commission's anti-collusion rule, particularly in light of the Commission's procedures for limited information.²⁰ Specifically, applicants should avoid including any information in their short-form applications that might convey information regarding their license selection, such as using applicant names that refer to licenses being offered, referring to certain licenses or markets in describing bidding agreements, or including any information in attachments that may otherwise disclose applicants' license selections.

30. 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).²¹ The Commission makes no

¹⁷ See 47 C.F.R. § 1.65.

¹⁸ See 47 C.F.R. § 1.2105(b).

¹⁹ *Id.*

²⁰ See *Auction 73/76 Procedures Public Notice*, 22 FCC Rcd at 18,152, 18,185 ¶¶ 25, 156.

²¹ *Id.* at 18,155-57 ¶¶ 39-47.

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 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 are strongly encouraged to continue such research throughout the auction. For example, the *Auction 73/76 Procedures Public Notice* reminded interested parties that Commission proceedings remain pending that may affect future 700 MHz licensees.²² 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.

31. 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 73. For further details regarding due diligence, qualified bidders should refer to the *Auction 73/76 Procedures Public Notice* under Section I.B.3.²³

32. **Mock Auction.** On Tuesday, January 22, 2008, 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. If bidders have questions that need a response prior to the Mock Auction, they should ask before Monday, January 21, 2008, as the Commission will be closed on January 21st in observance of the federal holiday.

33. 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 73 registration materials.

34. The mock auction will include 176 A Block licenses and 12 C Block licenses, a total of 188 of the 1,099 licenses included in Auction 73. Bidders in the mock auction will also have the option of bidding on three C Block packages of licenses. Bidders will be assumed to have selected all 188 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 282,062,000 bidding units. The mock auction will otherwise follow the rules governing Auction 73. It will be identified as Mock Auction 74. 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.

²² *Id.* at 18,156 ¶ 42 (partial listing of pending Commission proceedings). The Commission has also recently released the text of its decision concerning the DTV third periodic review which, among other things, reiterates interference protection policy with regard to the 698-704 MHz portion of the A Block license. *See Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television*, MB Docket No. 07-91, *Report and Order*, FCC 07-228, ¶ 169 (rel. Dec. 31, 2007).

²³ *Auction 73/76 Procedures Public Notice*, 22 FCC Rcd at 18,155-57 ¶¶ 39-47.

35. The mock auction bidding schedule for Tuesday, January 22, 2008, 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
Round 6	4:45 p.m.	-	5:00 p.m. ET

36. 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 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).²⁴ 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 applicants. Thus, applicants that have applied for licenses covering the same or overlapping geographic areas (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)) 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 post-auction market structure.²⁵

37. 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 either Auction 73 or, if necessary, Auction 76.²⁶ The specific down payment deadline will be announced in a future public notice shortly following the close of bidding in the relevant auction.²⁷ **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.**²⁸ For purposes of this prohibition, Section 1.2105(c)(7)(i) defines “applicant” as including all

²⁴ 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*”), *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).

²⁵ 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; see also Wireless Telecommunications Bureau Reminds 700 MHz Auction Applicants of Confidential Nature of Upfront Payment and Other Bidding-Related Information, *Public Notice*, DA 08-13 (rel. Jan. 2, 2008).

²⁶ See *700 MHz Second Report and Order*, 22 FCC Rcd at 15,404-05 ¶ 316; *Auction 73/76 Procedures Public Notice*, 22 FCC Rcd at 18150-51, 18216 ¶¶ 19-20, 288

²⁷ See 47 C.F.R. § 1.2107.

²⁸ 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

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.²⁹ 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.³⁰ As described in the *Auction 73/76 Procedures Public Notice*, due to the anonymous bidding procedures in this auction, each applicant was informed by letter of the identity of all other applicants in either Auction 73 or Auction 76 that applied for licenses in any of the same geographic areas that it has selected in its short-form application.³¹ This letter did not specify the auction(s) in which the other identified applicants have applied to participate.

38. 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.³²

39. 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.³³ 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.³⁴ 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.³⁵ 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.³⁶

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).

²⁹ 47 C.F.R. § 1.2105(c)(7)(i).

³⁰ 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).

³¹ See *Auction 73/76 Procedures Public Notice*, 22 FCC Rcd at 18,184-85 ¶ 155.

³² See Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, 11 FCC Rcd 9645 (WTB 1995).

³³ *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17549-50 ¶ 6.

³⁴ See *Auction 73/76 Procedures Public Notice* at 18,151-52 ¶ 24.

³⁵ 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).

³⁶ *Id.*, 13 FCC Rcd at 11978 ¶ 13.

40. *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.³⁷ 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.³⁸ 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 73 or 76.

41. *Disclosure Obligations & Possible Sanctions.* Applicants that engage in any communications regarding their or other applicants' bids or bidding strategies that result in a bidding agreement, arrangement, or understanding not already identified on their short-form applications, must promptly disclose any such agreement, arrangement, or understanding to the Commission by amending their pending applications.³⁹ 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 1.65.⁴⁰ The Commission has also recently clarified that applicants have a continuing obligation to make such reports extending beyond the five business days after the communication occurs, and that the Commission can and will enforce the obligation so long as it remains unfulfilled.⁴¹

42. 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

³⁷ See "Wireless Telecommunications Bureau Reminds 700 MHz Auction Applicants of Confidential Nature of Upfront Payment and Other Bidding-Related Information, *Public Notice*, DA 08-13 (rel. Jan. 2, 2008); see also *Auction 73/76 Procedures Public Notice*, 22 FCC Rcd at 18,149-55, 18,181-85 ¶¶ 15-34, 145-156.

³⁸ 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.").

³⁹ 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.

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

⁴¹ See *700 MHz Second Report and Order*, 22 FCC Rcd at 15,395 ¶ 286.

process.⁴² Any applicant found to have violated the anti-collusion rule may be subject to sanctions.⁴³ 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.⁴⁴

43. 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 e-mail at the following address: auCTION73@fcc.gov. The e-mail summarizing the changes must include a subject or caption referring to Auction 73 and the name of the applicant.

44. Parties wishing to submit requests, complaints, or other information concerning Auction 73 also should send a copy by e-mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at auCTION73@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.

45. Finally, parties wishing to make suggestions concerning Auction 73 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.

46. Upfront Payment Refunds. Qualified bidders are advised not to request refunds of any unused upfront payment balances until after the Bureau issues a public notice announcing the winning bidders in Auction 73 and/or Auction 76.

47. Post-Auction 73 Considerations. Shortly after bidding has ended in Auction 73, the Bureau will issue a public notice indicating whether the reserve price has been met on all blocks or not met for one or more of the blocks. If the reserve price is met for all blocks, the public notice will identify the winning bidders for all blocks. If, however, the reserve price is not met for any of the A, B, C or E blocks, the Bureau will withhold the identity of winning bidders on those blocks, regardless of whether a particular block has met its reserve price, until the close of Auction 76. If Auction 76 is necessary, the public notice released after Auction 73 closes will also indicate how qualified bidders can supplement their upfront payments to purchase additional bidding eligibility for Auction 76.⁴⁵

48. Regardless of whether the other blocks' reserves are met, if the D Block bidding satisfies the

⁴² See 47 C.F.R. § 1.2107(d).

⁴³ See 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

⁴⁴ 47 C.F.R. § 1.2109(d).

⁴⁵ See *Auction 73/76 Procedures Public Notice*, 22 FCC Rcd at 18,215-16 ¶¶ 286-87.

reserve price and there is a winning bidder for the D Block license in Auction 73, the Commission will issue a public notice after bidding ends in Auction 73 identifying the winning bidder for the D Block, and setting out the amounts of the down payment and final payment due as well as the specific deadlines for such payments.

49. **Long-Form Applications.** Once winning bids are announced (either after Auction 73 or Auction 76) and winning bidders are announced, winning bidders will have 10 business days to file a long-form application (FCC Form 601) and make down payments for all of the licenses it won through Auction 73 and/or Auction 76.⁴⁶ Further instructions regarding filing the long-form application and submitting down payments will be provided to auction winners in the public notice announcing the winning bids.⁴⁷

50. 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.⁴⁸ 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 Auction 73 (or Auction 76, if that auction is necessary).⁴⁹

51. 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:

Jeff Crooks at (202) 418-0660 or Lisa Stover at (717) 338-2868

For auction legal questions:

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

Mobility Division, Wireless Telecommunications Bureau:

For legal and service rule questions:

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

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).

52. 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 or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

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⁴⁶ See 47 C.F.R. § 1.2107.

⁴⁷ See 47 C.F.R. §§ 1.2107, 1.2109(a).

⁴⁸ See 47 C.F.R. § 1.2112(b).

⁴⁹ See 47 C.F.R. §§ 1.2107, 1.2109(a).