



PUBLIC NOTICE

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CLOSED AUCTION OF BROADCAST CONSTRUCTION PERMITS SCHEDULED FOR JULY 20, 2010

NOTICE AND FILING REQUIREMENTS, MINIMUM OPENING BIDS, UPFRONT PAYMENTS, AND OTHER PROCEDURES FOR AUCTION 88

AU Docket No. 10-31

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I. GENERAL INFORMATION

A. Introduction

1. By this Public Notice, the Wireless Telecommunications Bureau (“WTB”) and the Media Bureau (“MB”) (collectively, the “Bureaus”) announce the procedures and minimum opening bid amounts for the upcoming closed auction of certain broadcast AM, FM, and FM Translator construction permits. This auction, which is designated as Auction 88, is scheduled to commence on July 20, 2010. Auction 88 is a “closed” auction; only those entities listed in Attachment A to this Public Notice will be eligible to participate in this auction. On February 4, 2010, in accordance with Section 309(j)(3) of the Communications Act of 1934, as amended (the “Act”),¹ the Bureaus released a public notice seeking comment on competitive bidding procedures to be used in Auction 88.² This public notice also established a deadline for the submission to the Commission of an FCC Registration Number (“FRN”) by each applicant to permit access to the Commission’s electronic short-form application filing and auction bidding systems, and warned of dismissal of those application(s) where the applicant failed to provide its FRN by March 12, 2010. Interested parties submitted six comments and one reply comment in response to the *Auction 88 Comment Public Notice*.³

1. Background

2. Auction 88 will resolve pending closed groups of mutually exclusive applications for full-power FM and FM translator construction permits that have been the subject of various Commission and judicial decisions.⁴ Included in these groups are twelve applications that were recently amended⁵ to specify operation as commercial broadcast stations.⁶ Auction 88 will also resolve mutual exclusivity

¹ 47 U.S.C. § 309(j)(3)(E)(i) (requirement to seek comment on proposed auction procedures); *see also* 47 U.S.C. § 309(j)(4)(F) (authorization to prescribe reserve price or minimum bid); 47 C.F.R. §§ 1.2104(c) and (d).

² “Closed Auction of Broadcast Construction Permits Scheduled for July 20, 2010; Auction 88 Applicants Must Provide Supplemental Information by March 12, 2010; Comment Sought on Competitive Bidding Procedures For Auction 88,” *Public Notice*, DA 10-125 (rel. Feb. 4, 2010) (“*Auction 88 Comment Public Notice*”). A summary of this public notice was published at 75 Fed. Reg. 8070 (February 23, 2010).

³ Amor Radio Group, JEM Broadcasting Company, Inc., Metro North Communications, Inc., Peace Broadcasting, Romar Communications Inc., and SI Broadcasting filed comments. Metro North Communications, Inc. filed reply comments. These comments and reply comments are available at AU Docket No. 10-31 in the Commission’s Electronic Comment Filing System (ECFS).

⁴ The construction permits for the FM and FM translator stations in this auction are the subject of pending, closed groups of mutually exclusive applications. *See* Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, *First Report and Order*, FCC 98-194, 13 FCC Rcd 15920, 15950-52 ¶¶ 80-87, 15958-61 ¶¶ 105-111 (1998) (“*Broadcast First Report and Order*”), *on recon.*, *Memorandum Opinion and Order*, FCC 99-74, 14 FCC Rcd 8724 (1999), *on further recon.*, *Memorandum Opinion and Order*, 14 FCC Rcd 12541, FCC 99-201 (1999).

⁵ In 2009, applicants in those groups that had applied for noncommercial educational (“NCE”) stations and which were mutually exclusive with applications for commercial stations (“Mixed Groups”) were provided with a one-time opportunity to amend their applications. Window Opened to October 30, 2009, to Permit Amendment of Applications for Noncommercial Educational Stations in Pending, Closed Mixed Groups, *Public Notice*, DA 09-2148, 24 FCC Rcd 12188 (MB 2009) (“*October 2009 NCE Amendment Public Notice*”). Attachment A to the *October 2009 NCE Amendment Public Notice* identified the applications in each of the Mixed Groups. 24 FCC Rcd at 12190-91.

⁶ Twenty-five NCE applications in 17 Mixed Groups were identified in the *October 2009 NCE Amendment Public Notice*. Twelve NCE applications were amended. One Mixed Group (TV - Davenport, Iowa) that consisted of two applications (one NCE, one commercial) was removed from the Auction 88 inventory. *See* note 8, below. Two Mixed Groups that consisted of two applications each dissolved as a result of either withdrawal by the NCE applicant or failure to amend by the NCE applicant. (FM Mixed Group - Canadian, Texas, and FM Translator Mixed Group - Reading, Pennsylvania). As a result, 10 NCE applications were then dismissed for failure to amend.

between applications for a new AM station on 640 kHz in the Terre Haute, Indiana, area.⁷ The 13 FM application groups and one FM Translator application group (all of which are former Mixed Groups), and the one closed AM application group identified in Attachment A will now proceed to auction.⁸

2. Construction Permits in Auction 88

3. Auction 88 will offer construction permits for 13 commercial FM stations, one commercial FM translator station, and one commercial AM station as listed in Attachment A. Attachment A also sets forth minimum opening bids and upfront payments for permits being offered in this auction. We note that, due to a database error, the channel for the Rosendale, New York, FM allotment (construction permit MM-FM750-273A) was listed in Attachment A to the *Auction 88 Comment Public Notice* as Channel 273A, when in fact the correct channel (as reflected in Attachment A hereto) is Channel 255A at Rosendale.⁹ Accordingly, the construction permit will be referred to as MM-FM750-255A.

4. An applicant listed in Attachment A¹⁰ may become qualified to bid only if it meets the filing, qualification and payment requirements as described in this and future public notices. Each qualified bidder will be eligible to bid on only those construction permits specified for that qualified bidder in Attachment A to this Public Notice. All applicants within these groups of mutually exclusive applications ("MX groups") are directly mutually exclusive with one another; therefore no more than one construction permit will be awarded for each MX group.

5. Commenter/applicant S.I. Broadcasting ("SIB"), with the concurrence of commenters and applicants Peace Broadcasting Network and Amor Radio Group, argues that the Commission should postpone conducting any auction for a permit for the Channel 251A allotment at Santa Isabel, Puerto Rico, on the basis of uncertainties concerning technical issues that may pose difficulties in implementing broadcast operations on this channel. Earlier rulemaking proceedings have recognized that four FM stations must change channels before a station can begin broadcasting on Channel 251A at Santa Isabel,

⁷ The short-form applications (FCC Forms 175) for the three AM stations originally scheduled for this auction were filed during two filing windows announced by separate public notices. See Permanent and Interim Authority Procedures Announced for Applications for Stations Formerly Licensed to Entities Controlled by Michael Rice, *Public Notice*, DA 01-1441, 16 FCC Rcd 12832 (MB/WTB 2001) ("Supplemental Terre Haute Window Notice"); AM Auction Filing Window and Application Freeze, *Public Notice*, DA 99-2585, 14 FCC Rcd 19490 (MMB/WTB 1999) ("AM Auction 32 Window Notice"). All AM applicants listed in Attachment A of the *Auction 88 Comment Public Notice* previously filed short-form applications (FCC Form 175) in response to either the *AM Auction 32 Window Notice* or the *Supplemental Terre Haute Window Notice*.

⁸ The Davenport, Iowa, television Mixed Group identified in the *October 2009 NCE Amendment Public Notice* will be addressed separately and the Davenport television applications are not included in this auction.

⁹ See West Hurley, Rosendale, and Rhinebeck, New York, and North Canaan and Sharon, Connecticut, *Report and Order*, 16 FCC Rcd 14072, 14073 (MMB 2001), *recon. denied*, 17 FCC Rcd 5339 (MMB 2002) ("West Hurley"). Accordingly, the winning bidder for the Rosendale permit will be required to amend its application to specify operation on Channel 255. *West Hurley*, 16 FCC Rcd at 14074 n.2.

¹⁰ Four applicants have notified the Bureaus that changes to the applicant's name have occurred since the original construction permit application had been filed. Notwithstanding notification of such a change through paper-filed application amendments, the Commission databases were never updated to reflect the new applicant name. Consequently, these applicants were listed under the original applicant name in the *Auction 88 Comment Public Notice*. Attachment A to this public notice reflects the name changes for the following four applicants: (i) BBK Broadcasting, Inc. to Radio Plus, Inc. (ii) Directel Inc. to SCHC Lubbock Application, Inc. (iii) Music Express Broadcasting, Inc. to Music Express Broadcasting Corp. and (iv) Rosen Broadcasting, Inc. to CHET-5 Broadcasting, L.P.

with some of those channel changes being mutually contingent.¹¹ Nevertheless, the burden of due diligence is on the auction applicant and it is each applicant's responsibility to assure itself that if it wins it will be able to build and operate facilities in accordance with the Commission's rules. The Commission does not warrant that licenses or permits offered are suitable for any particular service. Accordingly, we will offer the permit for Channel 251A at Santa Isabel in Auction 88.

a. Dismissal of Applications for Failure to Submit FRN

6. Attachment B of this Public Notice lists applications that will no longer be included in Auction 88 as a result of the applicant's failure to submit the requested FCC Registration Number (FRN) by the specified deadline.¹² The *Auction 88 Comment Public Notice* warned all applicants that failure to provide the Commission with an FRN as prescribed in that public notice would result in the dismissal of their application(s) and disqualification from participation in the auction.¹³

7. The applications listed in Attachment B are hereby dismissed for failure to submit an FRN by the specified deadline.¹⁴ Due to these dismissals, some applications became singletons and are not listed in Attachment A. The applications that became singletons for this reason are included in Attachment C. Such singleton applicants will be notified at a later time and provided with an opportunity to submit a long-form application.¹⁵ The removal of applications in some cases has resulted in the removal of entire MX groups from the auction. Specifically, the failure by an applicant to submit its FRN by the specified deadline resulted in the removal from this auction of two MX groups: an MX group for an AM station at Lansing/South Hill, New York (construction permit MM-AM041-750) and an MX group for an FM translator at Manahawkin/Warren Grove, New Jersey (construction permit MM-FMT010-273).

b. Dismissal of Applications for Failure to Submit Required Section 307(b) Information

8. AM applications in each of the two Indiana MX groups originally scheduled for this auction proposed to serve different communities, and therefore an analysis under Section 307(b) of the Act was required.¹⁶ In order to evaluate Section 307(b) considerations, on January 13, 2010, the Media Bureau sent a letter to each applicant in closed MX group MM-AM039-640 and MX group MM-AM040-1230, directing that the applicants submit the Section 307(b) information on or before February 16, 2010. With respect to MX group MM-AM039-640, only Birach Broadcasting Corp. ("Birach"), Bott Broadcasting Co., Inc. ("Bott"), and Word Power, Inc. ("WPI") submitted Section 307(b) showings. The Media Bureau analyzed these applicants' Section 307(b) submissions and, by letter dated March 17, 2010, found no dispositive Section 307(b) preference for either of the communities specified. Applicants

¹¹ See generally *Canovanas, Culebra, Las Piedras, Mayaguez, Quebradillas, San Juan, and Vieques, Puerto Rico, and Christiansted and Fredriksted, Virgin Islands, Report and Order*, 10 FCC Rcd 6673 (MMB 1995), *recon. denied*, 11 FCC Rcd 16392 (MMB 1996), *review denied*, 12 FCC Rcd 10055 (1997) and 15 FCC Rcd 10449 (1999).

¹² See *Closed Auction of Broadcast Construction Permits Scheduled for July 20, 2010; Reminder: Auction 88 Applicants Must Provide FCC Registration Numbers by March 12, 2010, Public Notice*, DA 10-309 (rel. March 1, 2010) ("*Auction 88 FRN Reminder Public Notice*").

¹³ See *Auction 88 Comment Public Notice*, 75 Fed.Reg. at 8070; see also *Auction 88 FRN Reminder Public Notice*, DA 10-309. The latter public notice explained that "[f]ailure to submit an FRN pursuant to the instructions provided in the *Auction 88 Comment Public Notice* and this Public Notice will result in dismissal of the applicant's application(s) and will result in disqualification of the applicant from Auction 88." *Id.* (emphasis in original).

¹⁴ This dismissal action is taken pursuant to authority delegated in 47 C.F.R. §§ 0.283 and 0.331.

¹⁵ An application with an engineering proposal that is not mutually exclusive with any other application's engineering proposal is sometimes called a singleton.

¹⁶ 47 U.S.C. § 307(b) ("Section 307(b)").

Birach, Bott, and WPI will therefore be included in Auction 88 as MX group MM-AM039-640. With respect to MX group MM-AM040-1230, only Bott submitted a timely Section 307(b) showing. Accordingly, the Bott engineering proposal for this construction permit became a singleton and is listed in Attachment C. In a letter dated March 17, 2010, the Media Bureau directed Bott to continue in the licensing process by filing a complete FCC Form 301 application, dismissed the short-form applications (FCC Form 175) of the remaining five applicants in the MX group, and removed all six MX group MM-AM040-1230 applications from Auction 88. In light of these actions, MX group MM-AM040-1230 is not included in Attachment A to this Public Notice.¹⁷

9. Attachment B of this Public Notice lists applications that will no longer be included in Auction 88 as a result of the applicant's failure to submit information needed for determinations required by Section 307(b).¹⁸

B. Rules and Disclaimers

1. Relevant Authority

10. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules, including recent amendments and clarifications, as well as Commission decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees.¹⁹ Broadcasters should also familiarize themselves with the Commission's rules relating to the FM, AM, and FM Translator broadcast services contained in 47 C.F.R. §§ 73.201 – 73.333, 73.1001 – 73.5009, and 74.1201 – 74.1290. Prospective bidders must also be familiar with the rules relating to broadcast auctions and competitive bidding proceedings contained in 47 C.F.R. §§ 1.2101 – 1.2112 and 73.5000 – 73.5009. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions contained in this Public Notice, the *Auction 88 Comment Public Notice*, the *Broadcast First Report and Order*,²⁰ the *Broadcast First Reconsideration Order*,²¹ the

¹⁷ See *Broadcast First Report and Order*, 13 FCC Rcd at 15965.

¹⁸ 47 U.S.C. § 307(b).

¹⁹ See, e.g., 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, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, FCC 00-274, 15 FCC Rcd 15293 (2000) (“*Part 1 Fifth Report and Order*”)(modified by Erratum, DA 00-2475 (rel. Nov. 3, 2000)); *Seventh Report and Order*, FCC 01-270, 16 FCC Rcd 17546 (2001) (“*Part 1 Seventh Report and Order*”); *Eighth Report and Order*, FCC 02-34, 17 FCC Rcd 2962 (2002); *Second Order on Reconsideration of the Third Report and Order and Order on Reconsideration of the Fifth Report and Order*, FCC 03-98, 18 FCC Rcd 10180 (2003); *id.*, *Second Order on Reconsideration of the Fifth Report and Order*, FCC 04-295, 20 FCC Rcd 1942 (2005). See also Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, WT Docket No. 05-211, *Report and Order*, FCC 06-4, 21 FCC Rcd 891 (2006) (“*CSEA/Part 1 First Report and Order*”), petitions for recon. pending; *Second Report and Order and Second Further Notice of Proposed Rulemaking*, FCC 06-52, 21 FCC Rcd 4753 (2006) (modified by *Erratum and Notice of Office of Management and Budget Approval of Information Collections*, DA 06-1280, 21 FCC Rcd 6622 (WTB 2006)), petitions for recon. pending; *Order on Reconsideration of the Second Report and Order*, FCC 06-78, 21 FCC Rcd 6703 (2006) *petition for review dismissed sub nom. Council Tree Communications, Inc. v. FCC*, 503 F.3d 284 (3d Cir. 2007); *Second Order on Reconsideration of the Second Report and Order*, FCC 08-92, 23 FCC Rcd 5425 (2008), *petition for review pending, Council Tree Communications, Inc. v. FCC*, Case No. 08-2036 (3d Cir., filed April 8, 2008).

²⁰ *Broadcast First Report and Order*, FCC 98-194, 13 FCC Rcd at 15920.

²¹ *Broadcast First Reconsideration Order*, FCC 99-74, 14 FCC Rcd at 8724.

New Entrant Bidding Credit Reconsideration Order,²² the *NCE Second Report and Order*, and the *NCE Memorandum Opinion and Third Order on Reconsideration*.²³

11. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most auctions-related Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at <http://wireless.fcc.gov/auctions>. Additionally, documents are available for public inspection and copying between 8:00 a.m. and 4:30 p.m. Eastern Time (ET) Monday through Thursday or 8:00 a.m. to 11:30 a.m. ET Fridays at the FCC Reference Information Center, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. Documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. ("BCPI"), 445 12th Street, SW, Room CY-B402, Washington, DC 20554, 800-378-3160 or at <http://www.bcpiweb.com>.²⁴

2. Prohibited Communications and Compliance with Antitrust Laws

12. To ensure the competitiveness of the auction process, section 1.2105(c) of the Commission's rules prohibits auction applicants for construction permits in any of the same geographic license areas from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications (FCC Form 175) as parties with whom they have entered into agreements pursuant to section 1.2105(a)(2)(viii).²⁵

a. Entities Subject to Section 1.2105

13. Section 1.2105(c)'s prohibition on certain communications will apply to any applicants that submit short-form applications seeking to participate in a Commission auction for construction permits in the same geographic license area. Thus, 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), applicants for any of the same geographic license areas must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy.²⁶ In some instances, this prohibition extends to communications regarding the post-auction market structure. **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.**²⁷ The "geographic license area" is the market designation of

²² Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, *Memorandum Opinion and Order*, FCC 99-201, 14 FCC Rcd 12541 (1999) ("*New Entrant Bidding Credit Reconsideration Order*").

²³ Reexamination of the Comparative Standards for Noncommercial Educational Applicants, MM Docket No. 95-31, *Second Report and Order*, FCC 03-44, 18 FCC Rcd 6691 (2003) ("*NCE Second Report and Order*"), *Memorandum Opinion and Third Order on Reconsideration*, FCC 08-219, 23 FCC Rcd 17423 (2008) ("MOTOR").

²⁴ When ordering documents from BCPI, please provide the appropriate FCC document number (for example, DA 10-125 for the *Auction 88 Comment Public Notice*, or DA 10-524 for this Public Notice).

²⁵ See 47 C.F.R. §§ 1.2105(a)(2)(viii), 1.2105(c)(1) and 47 C.F.R. § 73.5002; see also *Part I Seventh Report and Order*, 16 FCC Rcd at 17546; *Part I Fifth Report and Order*, 15 FCC Rcd at 15297-98 ¶¶ 7-8.

²⁶ See, e.g., Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E and F Block Bidders, *Public Notice*, DA 96-1460, 11 FCC Rcd 10134 (WTB 1996).

²⁷ See, e.g., *Star Wireless, LLC, Forfeiture Order*, DA 04-3026, 19 FCC Rcd 18626, 18628 ¶ 4 n.19 (EB 2004), *order granted in part, Order on Review*, FCC 07-80, 22 FCC Rcd 8943 (2007), *petition for review denied, Star Wireless, LLC v. FCC*, 522 F.3d 469 (D.C. Cir. 2008) (section 1.2105(c) applies to applicants regardless of whether they are qualified to bid); *Letter to Robert Pettit, Esquire, from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division*, DA 00-2905, 16 FCC Rcd 10080 (WTB 2000) (declining to exempt an applicant's controlling (continued....))

the particular service.²⁸ For the FM service, the market designation is the particular vacant FM allotment (e.g., Greenwood, Arkansas, Channel 268A, MM-FM744-268A). In Auction 88, the rule would apply to applicants designated in Attachment A for any of the same allotments or permits.

14. Applicants are also reminded that, for purposes of this prohibition on certain communications, 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.²⁹ For example, where an individual served as an officer for two or more applicants, the Bureaus have found that the bids and bidding strategies of one applicant are necessarily conveyed to the other applicant, and, absent a disclosed bidding agreement, an apparent violation of section 1.2105(c) occurs.³⁰

15. Individuals and entities subject to section 1.2105(c) should take special care in circumstances where their employees may receive information directly or indirectly from a competing applicant relating to any competing applicant’s bids or bidding strategies. The Bureaus have not addressed situations where non-principals (i.e., those who are not officers or directors and thus not considered to be the applicant) receive information regarding a competing applicant’s bids or bidding strategies and whether that information might be deemed to necessarily convey to the applicant. An exception to the prohibition on certain communications allows non-controlling interest holders to obtain interests in more than one competing applicant without violating section 1.2105(c) provided specified conditions are met (including a certification that no prohibited communications have occurred or will occur), but that exception does not extend to controlling interest holders.³¹

16. Moreover, Auction 88 applicants are encouraged not to use the same individual as an authorized bidder. A violation of section 1.2105(c) 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 such applicants. Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or engineering firm or consulting firm), a violation similarly could occur.³² In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with section 1.2105(c).³³

(Continued from previous page) _____
interest from coverage by the communication prohibitions of Section 1.2105(c), even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder).

²⁸ *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17549 n.12.

²⁹ 47 C.F.R. § 1.2105(c)(7)(i).

³⁰ See, e.g., Letter to Colby M. May, TCCSA, Inc., d/b/a Trinity Broadcasting Network, from Barbara A. Kreisman, Chief, Video Division, Media Bureau, and Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, DA 05-2445, 20 FCC Rcd 14648 (WTB/MB 2005) (finding apparent violation of communication prohibitions of Section 1.2105(c) where applicants with mutually exclusive applications reported sharing same individual as an officer and director and reported having no bidding agreement).

³¹ 47 C.F.R. § 1.2105(c)(4).

³² 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*, DA 98-1137, 13 FCC Rcd 11973, 11977 ¶ 11 (1998) (“*Nevada Wireless Order*”).

³³ *Id.*

b. Prohibition Applies Until Down Payment Deadline

17. The section 1.2105(c) prohibition on certain communications begins at the short-form application filing deadline and ends at the down payment deadline after the auction, which will be announced in a future public notice.³⁴

c. Prohibited Communications

18. Applicants should note that they must not communicate directly or indirectly about bids or bidding strategy to other applicants in this auction (as described above).³⁵ Section 1.2105(c) prohibits not only a communication about an applicant's own bids or bidding strategy, but also a communication of another applicant's bids or bidding strategy.³⁶ While section 1.2105(c) does not prohibit business negotiations among auction applicants, applicants must remain vigilant so as not to communicate directly or indirectly information that affects, or could affect, bids or bidding strategy, or the negotiation of settlement agreements.

19. Applicants are cautioned that the Commission remains vigilant about prohibited communications taking place in other situations. For example, the Commission has warned that prohibited "communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly."³⁷ Moreover, the Commission has found a violation of section 1.2105(c) where an applicant used the Commission's bidding system to disclose "its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets,"³⁸ and has placed auction participants on notice that the use of its bidding system "to disclose market information to competitors will not be tolerated and will subject bidders to sanctions."³⁹ Applicants also should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become conduits for the communication of prohibited bidding information. For example, an applicant's statement to the press that it intends to stop bidding in the auction could give rise to a finding of a section 1.2105(c) violation.⁴⁰ Similarly, an applicant's public statement of intent not to participate in Auction 88 bidding could also violate the rule. Applicants are hereby placed on notice that public disclosure of information relating to bids, or bidding strategies, or to post auction market structures may violate section 1.2105(c).

d. Disclosure of Bidding Agreements and Arrangements

20. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of

³⁴ 47 C.F.R. § 1.2105(c)(1).

³⁵ *Part I Seventh Report and Order*, 16 FCC Rcd at 17549-50 ¶ 6. For a discussion of the term "applicant" within the meaning of section 1.2105(c), see Section I.B.2.a. above.

³⁶ See Notice of Apparent Liability for Forfeiture of Western PCS BTA 1 Corp., *Memorandum Opinion and Order*, FCC 99-385, 14 FCC Rcd 21571 (1999).

³⁷ Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, FCC 94-295, 9 FCC Rcd 7684, 7689 ¶ 12 (1994).

³⁸ Mercury PCS II, LLC, *Notice of Apparent Liability for Forfeiture*, FCC 97-388, 12 FCC Rcd 17970, 17976 ¶ 12 (1997).

³⁹ Mercury PCS II, LLC, *Memorandum Opinion and Order*, FCC 98-203, 13 FCC Rcd 23755, 23760 ¶ 11 (1998).

⁴⁰ Compare Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction, *Public Notice*, DA 98-37, 13 FCC Rcd 341, 347-48 (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.").

the agreement(s) in their short-form applications.⁴¹ If parties agree in principle on all material terms prior to the short-form application filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under section 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the short-form filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiations, discussions or communications with any other applicants after the short-form application filing deadline.⁴²

e. Section 1.2105(c) Certification

21. By electronically submitting a short-form application, each applicant in Auction 88 certifies its compliance with sections 1.2105(c) and 73.5002. However, the Bureaus caution that merely filing a certifying statement as part of an application will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted.⁴³ The Commission has stated that it “intend[s] to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring.”⁴⁴ Any applicant found to have violated section 1.2105(c) may be subject to sanctions.⁴⁵

f. Duty to Report Prohibited Communications: Reporting Procedure

22. Section 1.2105(c)(6) provides that any applicant that makes or receives a communication that appears to violate section 1.2105(c) must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs.⁴⁶ The Commission has clarified that each applicant’s obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.⁴⁷

23. In addition, section 1.65 of the Commission’s rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission of any substantial change that may be of decisional significance to that application.⁴⁸ Thus, section 1.65 requires an auction applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. An applicant is therefore required by section 1.65 to report to the Commission any communication the applicant has made to or received from another applicant after the short-form application filing deadline that affects or has the potential to affect bids or bidding strategy, unless such communication is made to or received from a party to an agreement identified under section 1.2105(a)(2)(viii).⁴⁹

⁴¹ 47 C.F.R. § 1.2105(c)(7)(i).

⁴² See Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, DA 95-2244, 11 FCC Rcd 9645 (1995) (“*Anti-Collusion Public Notice*”).

⁴³ *Nevada Wireless Order*, 13 FCC Rcd at 11978 ¶ 13.

⁴⁴ Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, 9 FCC Rcd 7684, 7689 ¶ 12 (1994).

⁴⁵ See 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

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

⁴⁷ 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).

⁴⁸ 47 C.F.R. § 1.65; see also *Part I Seventh Report and Order*, 16 FCC Rcd at 17555 ¶ 17.

⁴⁹ See *Part I Seventh Report and Order*, 16 FCC Rcd at 17552 ¶ 12.

24. The Commission recently amended sections 1.65(a) and 1.2105(c) of its rules to require applicants in competitive bidding proceedings to furnish additional or corrected information within five days of a significant occurrence, or to amend their short-form applications no more than five days after the applicant becomes aware of the need for amendment.⁵⁰ The Commission made this change to facilitate the auction process by making the information available promptly to all participants and enabling the Bureaus to act expeditiously on those changes when such action is necessary.⁵¹

25. A party reporting any communication pursuant to sections 1.65, 1.2105(a)(2), or 1.2105(c)(6) must take care to ensure that any reports of prohibited communications do not themselves give rise to a violation of section 1.2105(c). 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.

26. The Commission recently amended section 1.2105(c) to minimize the risk of inadvertent dissemination of information in such reports by requiring parties to file only a single report and to file that report with Commission personnel expressly charged with administering the Commission's auctions.⁵² Pursuant to the amended rule, any reports required by section 1.2105(c) must be filed consistent with the instructions set forth in this Public Notice.⁵³ For Auction 88, such reports should be filed with the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available. Specifically, any such report should be submitted by e-mail at the following address: auction88@fcc.gov, or delivered to the following address: Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Room 6423, Washington, DC 20554.

27. 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.⁵⁴ Such parties also are encouraged to coordinate with the Auctions and Spectrum Access Division staff if they have any questions about the procedures for submitting such reports.⁵⁵ This Public Notice provides additional guidance on procedures for submitting application-related information below.⁵⁶

g. Winning Bidders Must Disclose Terms of Agreements

28. Applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in any bidding consortia, joint venture, partnership; or agreement, understanding, or other arrangement entered into relating to the competitive bidding process, including any agreement relating to the post-auction market structure.⁵⁷ Applicants must be aware that failure to comply with the Commission's rules can result in enforcement action.

⁵⁰ Procedural Amendments to Commission Part 1 Competitive Bidding Rules, WT Docket No. 10-18, *Order*, 25 FCC Rcd 521, 523 ¶ 8 (2010) ("*Part 1 Procedural Amendments Order*").

⁵¹ *Id.*

⁵² *Id.* at ¶ 4.

⁵³ *Id.*

⁵⁴ See 47 C.F.R. § 0.459 (requests that materials or information submitted to the Commission be withheld from public inspection). Filers requesting confidential treatment of documents must be sure that the cover page of the filing prominently displays that the documents seek confidential treatment. 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).

⁵⁵ See Section VI. "Contact Information," below.

⁵⁶ See Section II. J. "Maintaining Current Information in Short-Form Applications," below.

⁵⁷ 47 C.F.R. § 1.2107(d).

h. Additional Information Concerning Rule Prohibiting Certain Communications

29. A summary listing of documents issued by the Commission and the Bureaus addressing the application of section 1.2105(c) may be found in Attachment F. These documents are available on the Commission's auction web page at http://wireless.fcc.gov/auctions/prohibited_communications.

i. Antitrust Laws

30. Applicants are also reminded that, regardless of compliance with the Commission's rules, they remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace.⁵⁸ Compliance with the disclosure requirements of section 1.2105(c) will not insulate a party from enforcement of the antitrust laws.⁵⁹ For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submitted a short-form application.⁶⁰ Similarly, the Wireless Telecommunications Bureau previously reminded potential applicants and others that "[e]ven where the applicant discloses parties with whom it has reached an agreement on the short-form application, thereby permitting discussions with those parties, the applicant is nevertheless subject to existing antitrust laws."⁶¹

31. To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation.⁶² If an applicant is found to have violated the antitrust laws or the Commission's rules 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, among other sanctions.⁶³

3. Due Diligence

32. Potential applicants 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 construction permits for broadcast facilities they are seeking in this auction. Bidders are responsible for assuring themselves that, if they win a construction permit, they will be able to build and operate facilities in accordance with the Commission's rules. **The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC construction permittee in a broadcast service, subject**

⁵⁸ See Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Further Notice of Proposed Rule Making*, FCC 99-384, 14 FCC Rcd 21558, 21560 ¶ 4 and n. 4 (1999) *citing* Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, 9 FCC Rcd 7684, 7689 ¶ 12 (1994) (“[W]e wish to emphasize that all applicants and their owners continue to be subject to existing antitrust laws. Applicants should note that conduct that is permissible under the Commission's Rules may be prohibited by the antitrust laws.”); Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Fourth Memorandum Opinion & Order*, FCC 94-264, 9 FCC Rcd 6858, 6869 n. 134 (1994) (“[A]pplicants will also be subject to existing antitrust laws.”) (“*Fourth Memorandum Opinion and Order*”).

⁵⁹ See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226. See also “Justice Department Sues Three Firms Over FCC Auction Practices,” *Press Release* 98-536 (DOJ Nov. 10, 1998).

⁶⁰ See, e.g., *Fourth Memorandum Opinion & Order*, 9 FCC Rcd at 6869 n.134. The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws: for example, actual or potential competitors may not agree to divide territories in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another market for the other. *Id.*

⁶¹ *Anti-Collusion Public Notice*, 11 FCC Rcd at 9646.

⁶² See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226.

⁶³ See 47 C.F.R. § 1.2109(d); see also *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226.

to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success.

33. Applicants should perform their individual due diligence before proceeding as they would with any new business venture. In particular, potential applicants are strongly encouraged to review all underlying Commission orders, such as the specific *Report and Order* amending the FM Table of Allotments and allotting the FM channel(s) on which they plan to bid.⁶⁴ *Reports and Orders* adopted in FM allotment rulemaking proceedings often include anomalies such as site restrictions or expense reimbursement requirements.⁶⁵ Additionally, potential bidders should perform technical analyses and/or refresh their previous analyses to assure themselves that, should they be a winning bidder for any Auction 88 construction permit, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements. Applicants are strongly encouraged to inspect any prospective transmitter sites located in, or near, the service area for which they plan to bid, confirm the availability of such sites, and also to familiarize themselves with the Commission's rules regarding the National Environmental Policy Act.⁶⁶

34. Applicants are strongly encouraged to conduct their own research prior to Auction 88 in order to determine the existence of any pending administrative or judicial proceedings, including pending allocations rulemaking proceedings that might affect their decision to participate in the auction. Participants in Auction 88 are strongly encouraged to continue such research throughout the auction.

35. Applicants should also be aware that certain pending and future proceedings — including applications, applications for modification, petitions for rulemaking, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal objections, and applications for review — before the Commission may relate to particular applicants, incumbent permittees, incumbent licensees, or the construction permits available in Auction 88. In addition, pending and future judicial proceedings may relate to particular applicants, incumbent permittees, incumbent licensees, or the construction permits available in Auction 88. Prospective applicants are responsible for assessing the likelihood of the various possible outcomes and for considering their potential impact on construction permits available in this auction.

36. Applicants should perform due diligence to identify and consider all proceedings that may affect the construction permits being auctioned and that could have an impact on the availability of spectrum for Auction 88. In addition, although the Commission may continue to act on various pending applications, informal objections, petitions, and other requests for Commission relief, some of these matters may not be resolved by the beginning of bidding in the auction. **Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the construction permits available in Auction 88.**

37. Applicants may research the licensing database for the Media Bureau on the Internet in order to determine which channels are already licensed to incumbent licensees or previously authorized to construction permittees. Licensing records for the Media Bureau are contained in the Media Bureau's Consolidated Data Base System (CDBS) and may be researched on the Internet at <http://www.fcc.gov/mb>. Potential bidders may query the database online and download a copy of their search results if desired. Detailed instructions on using Search for Station Information, Search for Ownership Report Information, and Search for Application Information and downloading query results

⁶⁴ See 47 C.F.R. § 73.202.

⁶⁵ See, e.g., Charlotte Amalie, Frederiksted, and Christiansted, U.S. Virgin Islands, *Report and Order*, DA 03-4120, 19 FCC Rcd 30 (MB 2004); Cheyenne, Wyoming and Gering, Nebraska, *Report and Order*, DA 00-865, 15 FCC Rcd 7528 (MMB 2000); Circleville, Ohio, *Second Report and Order*, 8 F.C.C.2d 159 (1967).

⁶⁶ 47 C.F.R. Chapter 1, Part 1, Subpart I.

are available online via the Electronic Filing and Public Access link on the left-hand side of the Media Bureau web site. The database searches return either station or application data. The application search provides an application link that displays the complete electronically filed application in application format. An AL/TC search under the application search link permits searching for Assignment of License/Transfer of Control groups using the AL/TC group lead application. For further details, click on the Help file. Potential bidders should direct questions regarding the search capabilities of CDBS to the Media Bureau help line at (202) 418-2662, or via e-mail at mbinfo@fcc.gov.

38. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, applicants may obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

4. Use of Integrated Spectrum Auction System

39. The Commission will make available a browser-based bidding system to allow bidders to participate in Auction 88 over the Internet using the Commission's Integrated Spectrum Auction System ("ISAS" or "FCC Auction System"). The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees, or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning, or use of the FCC Auction System that is accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming, or other advice or service provided in connection with the FCC Auction System.

5. Fraud Alert

40. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction 88 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a "cold call" from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of investment is less than \$25,000.
- The sales representative makes verbal representations that: (a) the Internal Revenue Service, Federal Trade Commission ("FTC"), Securities and Exchange Commission ("SEC"), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

41. Information about deceptive telemarketing investment schemes is available from the FCC as well as the FTC and SEC. Additional sources of information for potential bidders and investors may be obtained from the following sources:

- the FCC's Consumer Call Center at (888) 225-5322 or visiting <http://wireless.fcc.gov/csinfo#fraud>

- the FTC at (877) FTC-HELP ((877) 382-4357) or visiting <http://ftc.gov/bcp/edu/pubs/consumer/invest/inv03.shtm>
- the SEC at (202) 942-7040 or by visiting <http://sec.gov/cgi-bin/txt-srch-sec?text=fraud§ion=Investor+Information&x=8&y=5>.

Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876-7060.

6. Environmental Review Requirements

42. Permittees or licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other federal environmental statutes.⁶⁷ The construction of a broadcast facility is a federal action and the permittee or licensee must comply with the Commission's environmental rules for each such facility.⁶⁸ The Commission's environmental rules require, among other things, that the permittee or licensee consult with expert agencies having environmental responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corps of Engineers, and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). In assessing the effect of facilities construction on historic properties, the permittee or licensee must follow the provisions of the FCC's Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process.⁶⁹ The permittee or licensee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species, or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The permittee or licensee also must prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

1. Auction Start Date

43. Bidding in Auction 88 will begin on Tuesday, July 20, 2010, as announced in the *Auction 88 Comment Public Notice*.⁷⁰ The initial schedule for bidding will be announced by public notice at least one week before the start of the auction.

44. Unless otherwise announced, bidding on all construction permits will be conducted on each business day until bidding has stopped on all construction permits.

2. Auction Title

45. Auction 88 – Closed Broadcast

3. Bidding Methodology

46. As discussed in more detail below, the bidding methodology for Auction 88 will be simultaneous multiple round ("SMR") bidding.⁷¹ The Commission will conduct this auction over the Internet using the FCC Auction System, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically via the Internet or by telephone. All telephone calls are recorded.

⁶⁷ 47 C.F.R. Ch. 1, Subpart I.

⁶⁸ 47 C.F.R. §§ 1.1301-1.1319.

⁶⁹ 47 C.F.R. Part 1, Appendix C.

⁷⁰ *Auction 88 Comment Public Notice* at ¶ 1.

⁷¹ See Section IV.A.1. "Simultaneous Multiple Round Auction," below.

4. Pre-Auction Dates and Deadlines

47. The following dates and deadlines apply:

Auction Tutorial Available (via Internet)..... May 4, 2010
 Short-Form Application (FCC Form 175)
 Filing Window Opens..... May 4, 2010; 12:00 noon ET
 Short-Form Application (FCC Form 175)
 Filing Window Deadline May 13, 2010; prior to 6:00 p.m. ET
 Upfront Payments (via wire transfer)..... June 17, 2010; 6:00 p.m. ET
 Mock Auction..... July 16, 2010
 Auction Begins July 20, 2010

5. Requirements for Participation

48. Those wishing to participate in this auction must:

- Submit a short-form application (FCC Form 175) electronically prior to 6:00 p.m. ET, on May 13, 2010, following the electronic filing procedures set forth in Attachment D to this Public Notice;
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, on June 17, 2010, following the procedures and instructions set forth in Attachment E to this Public Notice; and
- Comply with all provisions outlined in this Public Notice and applicable Commission rules.

II. SHORT-FORM APPLICATION (FCC FORM 175) REQUIREMENTS

A. General Information Regarding Short-Form Applications

49. An application to participate in an FCC auction, referred to as a short-form application or FCC Form 175, provides information used in determining whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or permits.⁷² The short-form application is the first part of the Commission's two-phased auction application process. In the first phase of this process, parties desiring to participate in the auction must file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications.⁷³ Each applicant must take seriously its duties and responsibilities and carefully determine before filing an application that the applicant has the legal, technical and financial resources to participate in Auction 88, as well as construct and operate a broadcast station if the auction applicant becomes a licensee as a result of its participation in this auction. Eligibility to participate in bidding is based on the applicants' short-form applications and certifications as well as their upfront payments, as explained below.⁷⁴ In the second phase of the process, winning bidders must file more comprehensive long-form applications.⁷⁵

50. All applicants for AM stations listed in Attachment A of this Public Notice previously filed short-form applications in response to the *Supplemental Terre Haute Window Notice*.⁷⁶ All

⁷² 47 C.F.R. §§ 1.2105, 73-5002.

⁷³ *Id.*; see also *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2376 ¶ 163.

⁷⁴ Section III.D. "Upfront Payments – Due June 17, 2010," below.

⁷⁵ 47 C.F.R. §§ 1.2107, 73.5005.

⁷⁶ See note 7, above.

applicants for FM stations listed in Attachment A previously filed long-form applications. At the time of those application filings, the Commission used the FCC's Automated Auction System (AAS). Auction 88 will use the FCC's Integrated Spectrum Auction System (ISAS), an extensive redesign of the previous auction application and bidding systems. The redesign includes electronic FCC Form 175 enhancements, such as discrete data elements in place of free-form exhibits and improved data accuracy through application auto-checks. Enhancements also were made to the application search function. The auction bidding system was updated for easier navigation, customizable results, and improved functionality.

51. Moreover, since the initial applications in this auction were filed, the Commission has revised rules applicable to auction applicants. Pursuant to current Commission rules, for example, each auction applicant now must submit a statement, under penalty of perjury, regarding whether the applicant, the applicant's affiliates, the applicant's controlling interests, or any affiliates of controlling interests have ever been in default on any Commission construction permit or license or have ever been delinquent on any non-tax debt owed to any Federal agency.⁷⁷ All Auction 88 applicants will need to provide some additional information in an electronic short-form application to comply with current Commission rules.

52. To accommodate the redesigned ISAS and information submission requirements, all entities and individuals seeking construction permits in Auction 88 are required to file a new short-form application electronically via the FCC Auction System prior to 6:00 p.m. ET on May 13, 2010, following the procedures prescribed in Attachment D to this Public Notice, even if the applicant had previously filed a short-form application in response to the *Supplemental Terre Haute Window Notice* or a long-form application.⁷⁸

53. Applicants bear full responsibility for submitting accurate, complete and timely short-form applications. All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically, financially, and otherwise qualified to hold a license.⁷⁹ Applicants should read the instructions set forth in Attachment D to this Public Notice carefully and should consult the Commission's rules to ensure that, in addition to the materials described below, all the information that is required under the Commission's rules is included with their short-form applications. **Auction 88 applicants are reminded that they are not permitted to make major modifications to their applications as initially filed (whether long-form applications by applicants for FM stations or short-form applications by applicants for the AM station), including any change of their construction permit(s), any change of control of the applicant, or any change to claim eligibility for a higher percentage of bidding credit).**

54. Applicants also should note that submission of a short-form application (and any amendments thereto) constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Applicants are not permitted to make major modifications to their applications; such impermissible changes include a change of the certifying official to the application.⁸⁰ Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

B. Construction Permits in Short-Form Application

55. Auction 88 will resolve pending closed groups of mutually exclusive applications. Participation in this auction is limited to those applicants and applications identified in Attachment A to this Public Notice. Qualifying applicants will be eligible to bid only on those construction permits for

⁷⁷ See Section II.G. "Provisions Regarding Former and Current Defaulters," below.

⁷⁸ See *Supplemental Terre Haute Window Notice*, 16 FCC Rcd at 12832.

⁷⁹ 47 C.F.R. § 1.2105(a)(2)(v).

⁸⁰ See 47 C.F.R. § 1.2105(b).

which the applicant's application is designated in the particular MX group specified in Attachment A to this Public Notice. Therefore, applicants will not select permits when filing the FCC Form 175; the permits on which the applicant is eligible to bid will automatically display on the FCC Form 175 application.

C. New Entrant Bidding Credit

56. To promote the objectives of section 309(j) and further its long-standing commitment to the diversification of broadcast facility ownership, the Commission adopted a tiered New Entrant Bidding Credit for broadcast auction applicants with no, or very few, other media interests.

57. The interests of the applicant, and of any individuals or entities with an attributable interest in the applicant, in other media of mass communications are considered when determining an applicant's eligibility for the New Entrant Bidding Credit.⁸¹ In Auction 88, the bidder's attributable interests are determined as of the short-form application filing deadline.⁸² Thus, the applicant's maximum new entrant bidding credit eligibility will be determined as of the short-form application filing deadline. Applicants intending to divest a media interest or make any other ownership changes, such as resignation of positional interests, in order to avoid attribution for purposes of qualifying for the New Entrant Bidding Credit must have consummated such divestment transactions or have completed such ownership changes by no later than the short-form filing deadline.⁸³ Prospective bidders are reminded, however, that events occurring after the short-form filing deadline, such as the acquisition of attributable interests in media of mass communications, may cause diminishment or loss of the bidding credit, and must be reported immediately.

58. Under traditional broadcast attribution rules, those entities or individuals with an attributable interest in a bidder include:

- all officers and directors of a corporate bidder;
- any owner of 5 percent or more of the voting stock of a corporate bidder;
- all partners and limited partners of a partnership bidder, unless the limited partners are sufficiently insulated; and
- all members of a limited liability company, unless sufficiently insulated.⁸⁴

59. In cases where an applicant's spouse or close family member holds other media interests, such interests are not automatically attributable to the bidder. The Commission decides attribution issues

⁸¹ "Media of mass communication" include both commercial and NCE full-power broadcast stations.

⁸² Although the AM applicants listed in Attachment A previously filed short-form applications in response to the *Supplemental Terre Haute Window Notice* (see *Supplemental Terre Haute Window Notice*, 16 FCC Rcd at 12832), the Bureaus will nonetheless review their attributable interests as of the Auction 88 short-form application filing deadline. None of the applicants for the Terre Haute AM station claimed eligibility for a New Entrant Bidding Credit in their initially-filed short-form applications. As discussed previously, section 1.2105(b) forbids major amendments to short-form applications including any claim by these AM applicants of eligibility for a New Entrant Bidding Credit. 47 C.F.R. § 1.2105(b).

⁸³ If, for example, on May 13, 2010, an FM applicant has a pending or granted application to assign or transfer control of a media interest, the applicant will not avoid attribution with respect to that interest. To avoid attribution, an applicant must have consummated the transaction by the short-form application deadline. Thus, an applicant could not qualify for a bidding credit, nor upgrade a previously claimed bidding credit, based upon ownership or positional changes occurring after the short-form filing deadline. See *Liberty Productions, a Limited Partnership, Memorandum Opinion and Order*, FCC 01-129, 16 FCC Rcd 12061, *stay denied*, 16 FCC Rcd 18966 (2001), *aff'd sub nom, Biltmore Forest Broadcasting FM, Inc. v. F.C.C.*, 321 F.3d 155 (D.C. Cir.), *cert. denied*, 540 U.S. 981 (2003) ("*Liberty Productions*").

⁸⁴ See 47 C.F.R. § 73.3555 Note 2.

in this context based on certain factors traditionally considered relevant.⁸⁵ Applicants should note that the mass media attribution rules were revised in 1999.⁸⁶

60. Bidders are also reminded that, by the *New Entrant Bidding Credit Reconsideration Order*, the Commission further refined the eligibility standards for the New Entrant Bidding Credit, judging it appropriate to attribute the media interests held by very substantial investors in, or creditors of, an applicant claiming new entrant status. Specifically, the attributable mass media interests held by an individual or entity with an equity and/or debt interest in an applicant shall be attributed to that bidder for purposes of determining its eligibility for the New Entrant Bidding Credit, if the equity and debt interests, in the aggregate, exceed 33 percent of the total asset value of the applicant, even if such an interest is non-voting.⁸⁷

61. In the *Diversity Order*, the Commission relaxed the equity/debt plus (“EDP”) attribution standard, to allow for higher investment opportunities in entities meeting the definition of “eligible entities.”⁸⁸ An “eligible entity” is defined in Note 2(i) of section 73.3555.⁸⁹ Pursuant to the *Diversity Order*, the Commission will now allow the holder of an equity or debt interest in the applicant to exceed the above-noted 33 percent threshold without triggering attribution provided (1) the combined equity and debt in the “eligible entity” is less than 50 percent; or (2) the total debt in the “eligible entity” does not exceed 80 percent of the asset value, and the interest holder does not hold any equity interest, option, or promise to acquire an equity interest in the “eligible entity” or any related entity.⁹⁰

62. Generally, media interests will be attributable for purposes of the New Entrant Bidding Credit to the same extent that such other media interests are considered attributable for purposes of the broadcast multiple ownership rules.⁹¹ However, attributable interests held by a winning bidder in existing low power television, television translator or FM translator facilities will not be counted among the bidder’s other mass media interests in determining its eligibility for a New Entrant Bidding Credit.⁹² A medium of mass communications is defined in section 73.5008(b).⁹³ **Full service noncommercial**

⁸⁵ See Clarification of Commission Policies Regarding Spousal Attribution, *Memorandum Opinion and Order*, FCC 92-60, 7 FCC Rcd 1920 (1992).

⁸⁶ See Review of the Commission’s Regulations Governing Attribution of Broadcast and Cable/MDS Interests, MM Docket No. 94-150, *Report and Order*, FCC 99-207, 14 FCC Rcd 12559 (1999) (prior history omitted).

⁸⁷ See 47 C.F.R. § 73.5008(c).

⁸⁸ Promoting Diversification of Ownership in the Broadcasting Services, *Report and Order and Third Further Notice of Proposed Rulemaking*, FCC 07-217, 23 FCC Rcd 5922 (2008) (“*Diversity Order*”).

⁸⁹ 47 C.F.R. § 73.3555, Note 2(i). An “eligible entity” shall include any entity that qualifies as a small business under the Small Business Administration’s size standards for its industry grouping, as set forth in 13 C.F.R. § 121.201, and holds (i) 30 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will own the media outlet; or (ii) 15 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will own the media outlet, provided that no other person or entity owns or controls more than 25 percent of the outstanding stock or partnership interests; or (iii) more than 50 percent of the voting power of the corporation that will own the media outlet if such corporation is a publicly traded company.

⁹⁰ See 47 C.F.R. § 73.5008(c).

⁹¹ Further, any bidder asserting new entrant status must have *de facto* as well as *de jure* control of the entity claiming the bidding credit. 47 C.F.R. § 73.5007. Typically, *de jure* control is evidenced by ownership of at least 50.1 percent of an entity’s voting stock or equivalent level of interest in cases where the bidder is not a corporate entity. *De facto* control is determined on a case-by-case basis.

⁹² *Broadcast Reconsideration Order*, 14 FCC Rcd at 8764 ¶ 75; 47 C.F.R. § 73.5007.

⁹³ See 47 C.F.R. § 73.5008(b).

educational stations, on both reserved and nonreserved channels, are included among “media of mass communications” as defined in section 73.5008(b).⁹⁴

63. In its comments,⁹⁵ JEM Broadcasting Company, Incorporated (JEM) asks that the Bureaus allow a bidding credit for this auction for any applicant with no other broadcast facilities. The Commission’s rules already provide that broadcast auction applicants with no attributable interests in media of mass communications may seek a 35 percent bidding credit.⁹⁶ To the extent JEM is suggesting that the criteria for the new entrant bidding credits be modified for Auction 88, the Bureaus are unable to adopt any such revision or to adopt new bidding credits based on other criteria. Implementation of JEM’s proposal would require amendment of the Commission’s competitive bidding and broadcast service rules, which can only be accomplished through a rulemaking proceeding.⁹⁷ Thus, the Bureaus will implement for this auction the broadcast bidding credit criteria as adopted by the Commission in sections 73.5007 – 73.5008.⁹⁸ Accordingly, a 35 percent or 25 percent New Entrant Bidding Credit will be available in this auction for applicants who qualify.

D. Application Requirements

64. In addition to the ownership information required pursuant to section 1.2112, applicants seeking a New Entrant Bidding Credit are required to establish on their short-form applications that they satisfy the eligibility requirements to qualify for the bidding credit.⁹⁹ In those cases, a certification under penalty of perjury must be provided in completing the applicant’s short-form application. An applicant claiming that it qualifies for a 35 percent New Entrant Bidding Credit must certify that neither it nor any of its attributable interest holders have any attributable interests in any other media of mass communications. An applicant claiming that it qualifies for a 25 percent New Entrant Bidding Credit must certify that neither it nor any of its attributable interest holders has any attributable interests in more than three media of mass communications, and must identify and describe such media of mass communications.¹⁰⁰

1. Bidding Credits

65. Applicants that qualify for the New Entrant Bidding Credit, as specified in the applicable rule,¹⁰¹ are eligible for a bidding credit that represents the amount by which a bidder’s winning bid is discounted. The size of a New Entrant Bidding Credit depends on the number of ownership interests in other media of mass communications that are attributable to the bidder-entity and its attributable interest-holders:

- A 35 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has no attributable interest in any other media of mass communications, as defined in section 73.5008;

⁹⁴ *Id.* See Minnesota Christian Broadcasters, Inc., *Memorandum Opinion and Order*, FCC 03-5, 18 FCC Rcd 614 (2003), *aff’d sub nom. Carol DeLaHunt v. FCC*, No. 03-1029 (D.C. Cir. Feb. 4, 2004) and *Minnesota Christian Broadcasters, Inc. v. FCC*, 411 F.3d 283 (D.C. Cir. 2005).

⁹⁵ Comments of JEM Broadcasting Company, Incorporated at 2 (filed Feb. 25, 2010).

⁹⁶ 47 C.F.R. § 73.5007(a). The 35 percent credit is extended to bidders with no attributable interests in media of mass communications, and whose attributable interest holders themselves hold no such interests in media of mass communications.

⁹⁷ See, e.g., 47 C.F.R. §§ 73.5007, 73.5008.

⁹⁸ 47 C.F.R. §§ 73.5007 – 73.5008. See also 47 C.F.R. §§ 73.3555.

⁹⁹ See 47 C.F.R. § 1.2105(a), 73.3555 and Note 2, 73.5007, 73.5008.

¹⁰⁰ See 47 C.F.R. §§ 73.5007, 73.5008.

¹⁰¹ See 47 C.F.R. § 73.5007.

- A 25 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has an attributable interest in no more than three mass media facilities, as defined in section 73.5008;
- No bidding credit will be given if any of the commonly owned mass media facilities serve the same area as the broadcast station proposed in the auction, as defined in section 73.5007(b), or if the winning bidder, and/or any individual or entity with an attributable interest in the winning bidder, has attributable interests in more than three mass media facilities.

66. Bidding credits are not cumulative; qualifying applicants receive either the 25 percent or the 35 percent bidding credit, but not both. Attributable interests are defined in section 73.3555 and note 2 of that section.¹⁰² Applicants should note that unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license or construction permit to an entity not qualifying for the same level of bidding credit.¹⁰³

2. Installment Payments

67. Installment payment plans will not be available in Auction 88.

E. Disclosure of Bidding Arrangements

68. Applicants will be required to identify in their short-form application all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the construction permits being auctioned, including any agreements relating to post-auction market structure.¹⁰⁴

69. Applicants also will be required to certify under penalty of perjury in their short-form applications that they have not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application, regarding the amount of their bids, bidding strategies, or the particular construction permits on which they will or will not bid.¹⁰⁵ If an applicant has had discussions, but has not reached an agreement by the short-form application filing deadline, it should not include the names of parties to the discussions on its application and may not continue such discussions with any applicants after the deadline.¹⁰⁶

70. After the filing of short-form applications, the Commission's rules do not prohibit a party holding a non-controlling, attributable interest in one applicant from acquiring an ownership interest in or entering into a joint bidding arrangement with other applicants, provided that: (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants.¹⁰⁷ While section 1.2105(c) of the rules does not prohibit non-auction-related business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.¹⁰⁸ Such subject areas include, but are not limited to, issues such as management

¹⁰² See 47 C.F.R. § 73.5008.

¹⁰³ See 47 C.F.R. § 73.5007(c).

¹⁰⁴ 47 C.F.R. §§ 1.2105(a)(2)(viii), (c)(1).

¹⁰⁵ 47 C.F.R. § 1.2105(a)(2)(ix).

¹⁰⁶ Section I.B.2. "Prohibited Communications and Compliance with Antitrust Laws," above.

¹⁰⁷ 47 C.F.R. §§ 1.2105(c)(4)(i), (ii).

¹⁰⁸ Section I.B.2. "Prohibited Communications and Compliance with Antitrust Laws," above.

sales, local marketing agreements, rebroadcast agreements, and other transactional agreements.¹⁰⁹ Further, as discussed above, compliance with the disclosure requirements of section 1.2105(c) of the Commission's rules will not insulate a party from enforcement of the antitrust laws.¹¹⁰

F. Ownership Disclosure Requirements

71. The Commission specified in the *Broadcast First Report and Order* that, for purposes of determining eligibility to participate in a broadcast auction, all applicants must comply with the uniform Part 1 ownership disclosure standards and provide information required by sections 1.2105 and 1.2112 of the Commission's rules.¹¹¹ Specifically, in completing the short-form application, applicants will be required to fully disclose information on the real party- or parties-in-interest and ownership structure of the applicant, including both direct and indirect ownership interests of 10 percent or more. The ownership disclosure standards for the short-form application are prescribed in sections 1.2105 and 1.2112 of the Commission's rules.¹¹² Each applicant is responsible for information submitted in its short-form application being complete and accurate. For Auction 88, the ownership information must conform, in all material respects, to the ownership information appearing on the applicant's previously filed long-form application (FM and FM translator applicants) or short-form application (AM applicants). Applicants are cautioned that the long-form application will be considered newly filed if the information submitted on the electronic short-form application reflects that there has been a change of control. In such a case, the applicant will be ineligible to participate in the auction.¹¹³

72. In certain circumstances, an applicant's most current ownership information on file with the Commission, if in an electronic format compatible with the short-form application (FCC Form 175) (such as information submitted in an on-line FCC Form 602 or in an FCC Form 175 filed for a previous auction using ISAS) will automatically be entered into the applicant's short-form application. Applicants are responsible for ensuring that the information submitted in their short-form application for Auction 88 is complete and accurate. Accordingly, applicants should carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for filing the short-form application. Applicants can update directly in the short-form application any information that was entered automatically and needs to be changed.

G. Provisions Regarding Former and Current Defaulters

73. Current defaulters or delinquents are not eligible to participate in Auction 88, but former defaulters or delinquents can participate so long as they are otherwise qualified and, as discussed in Section III.D.3. below, make upfront payments that are fifty percent more than the normal upfront payment amounts.¹¹⁴ An applicant is considered a "current defaulter" or a "current delinquent" when it,

¹⁰⁹ See, e.g., Todd Stuart Noordyk, *Memorandum Opinion and Order*, FCC 01-275, 16 FCC Rcd 18113, 18117 (2001); see also Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, FCC 97-413, 13 FCC Rcd 374, 467 (1997) ("Part 1 Third Report and Order").

¹¹⁰ *Id.*

¹¹¹ 47 C.F.R. § 1.2105 requires the disclosure on the short-form application of the applicant's ownership information as set forth in 47 C.F.R. §§ 1.2105 and 1.2112.

¹¹² Section 73.5002 of the Commission's rules specifies the bidding procedures, certification requirements and the communication prohibition rules applicable to mutually exclusive applications for commercial broadcast services subject to auction. Subsection (b) of that rule requires the timely submission of short form applications, along with the required certifications, information and exhibits, pursuant to the provisions of 47 C.F.R. § 1.2105(a) and any Commission public notices. 47 C.F.R. § 1.2105 requires the disclosure on the short-form application of the applicant's ownership information as set forth in 47 C.F.R. § 1.2112.

¹¹³ See 47 C.F.R. §§ 1.2105(b)(2), 73.3573(a)(1).

¹¹⁴ 47 C.F.R. §§ 1.2105(a)(2)(x), 1.2105(b)(1), and 1.2106(a); see *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317 ¶ 42 and 142 ("If any one of an applicant's controlling interests or their affiliates...is in default on any (continued....)

any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, are in default on any payment for any Commission construction permits or licenses (including down payments) or are delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for short-form applications. An applicant is considered a “former defaulter” or a “former delinquent” when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, have defaulted on any Commission construction permit or license or been delinquent on any non-tax debt owed to any Federal agency, but have since remedied all such defaults and cured all of the outstanding non-tax delinquencies.

74. On the short-form application, an applicant must certify under penalty of perjury that it, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by section 1.2110 of the Commission’s rules,¹¹⁵ are not in default on any payment for a Commission construction permit or license (including down payments) and that it is not delinquent on any non-tax debt owed to any Federal agency.¹¹⁶ Each applicant must also state under penalty of perjury whether it, its affiliates, its controlling interests, and the affiliates of its controlling interests, have ever been in default on any Commission construction permit or license or have ever been delinquent on any non-tax debt owed to any Federal agency.¹¹⁷ Prospective applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution. These statements and certifications are prerequisites to submitting an application to participate in an FCC auction.

75. Applicants are encouraged to review the Bureaus’ previous guidance on default and delinquency disclosure requirements in the context of the short-form application process.¹¹⁸ For example, it has been determined that, to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for purposes of sections 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline.¹¹⁹ Therefore, with respect to regulatory or application fees, the provisions of sections 1.2105(a) and 1.2106(a) regarding default and delinquency in connection with competitive bidding are limited to circumstances in which the relevant party has not complied with a final Commission payment deadline.¹²⁰ Parties are also encouraged to consult with the Commission’s Office of Managing Director or the Wireless Telecommunications Bureau’s Auctions and Spectrum Access Division staff if they have any questions about default and delinquency disclosure requirements.

(Continued from previous page)

Commission licenses or is delinquent on any non-tax debt owed to any Federal agency at the time the applicant files its FCC Form 175, the applicant will not be able to make the certification required by Section 1.2105(a)(2)(x) and will not be eligible to participate in Commission auctions.”).

¹¹⁵ 47 C.F.R. § 1.2110.

¹¹⁶ 47 C.F.R. § 1.2105(a)(2)(x); *see also Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317 ¶ 42 and n.142.

¹¹⁷ 47 C.F.R. § 1.2105(a)(2)(xi); *see also Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317 ¶ 42.

¹¹⁸ “WTB Reminds Prospective Broadband PCS Spectrum Auction Applicants of Default and Delinquency Disclosure Requirements,” *Public Notice*, DA 04-3491, 19 FCC Rcd 21920 (2004) (“*Auction Default Disclosure Public Notice*”). This public notice (Report No. AUC-04-58-E) may be found at <http://wireless.fcc.gov/auctions/58/>.

¹¹⁹ Letter to Cheryl A. Tritt, Esq., Morrison and Foerster, LLP, from Margaret Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, DA 04-3685, 19 FCC Rcd 22907 (WTB 2004) (clarifying the term “debt” or “non-tax debt” as referenced in 47 C.F.R. §§ 1.2105(a) and 1.2106(a)). This letter may be found at <http://wireless.fcc.gov/auctions/58/>.

¹²⁰ Even where Commission rules expressly permit late payment, subject to payment of an additional late fee, and do not impose a final payment deadline, the Commission may in some cases issue a demand for payment by a date certain. *See* 47 C.F.R. § 1.1164(a). Failure to comply with the terms of a particular demand letter in the time period specified may render the subject debt delinquent, notwithstanding rules generally permitting late payment.

76. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the “red light rule,” that implement the Commission’s obligations under the Debt Collection Improvement Act of 1996, which governs the collection of claims owed to the United States.¹²¹ Under the red light rule, the Commission will not process applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission. In the same rulemaking order, the Commission explicitly declared, however, that the Commission’s competitive bidding rules “are not affected” by the red light rule.¹²² As a consequence, the Commission’s adoption of the red light rule does not alter the applicability of any of the Commission’s competitive bidding rules, including the provisions and certifications of sections 1.2105 and 1.2106, with regard to current and former defaults or delinquencies.

77. Applicants are reminded, however, that the Commission’s Red Light Display System, which provides information regarding debts currently owed to the Commission, may not be determinative of an auction applicant’s ability to comply with the default and delinquency disclosure requirements of section 1.2105.¹²³ Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant’s lack of current “red light” status is not necessarily determinative of its eligibility to participate in an auction or of its upfront payment obligation.

78. Moreover, prospective applicants in Auction 88 should note that any long-form applications filed after the close of bidding will be reviewed for compliance with the Commission’s red light rule,¹²⁴ and such review may result in the dismissal of a winning bidder’s long-form application.¹²⁵

H. Optional Applicant Status Identification

79. Applicants owned by members of minority groups and/or women, as defined in section 1.2110(c)(3),¹²⁶ and rural telephone companies, as defined in section 1.2110(c)(4),¹²⁷ may identify themselves regarding this status in filling out their short-form applications. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of “designated entities” in its auctions.¹²⁸

I. Minor Modifications to Short-Form Applications

80. After the deadline for filing initial applications, an Auction 88 applicant is permitted to make only minor changes to its application. Permissible minor changes include, among other things, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons. An applicant is not permitted to make a

¹²¹ Amendment of Parts 0 and 1 of the Commission’s Rules; Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors, MD Docket No. 02-339, *Report and Order*, FCC 04-72, 19 FCC Rcd 6540 (2004) (implementing Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996)) (“*Debt Collection Report and Order*”).

¹²² *Debt Collection Report and Order*, 19 FCC Rcd at 6541 n.11 (specifically mentions 47 C.F.R. §§ 1.2105(a)(2)(x) and (xi)).

¹²³ *Auction Default Disclosure Public Notice*, DA 04-3491, 19 FCC Rcd at 21920 (addressing relationship between Commission’s Red Light Display System and short-form application default and delinquency disclosure requirements for auction applicants).

¹²⁴ *Debt Collection Report and Order*, 19 FCC Rcd at 6540. See 47 C.F.R. § 1.1112.

¹²⁵ Applicants that have their long-form application dismissed will be deemed to have defaulted and will be subject to default payments under 47 C.F.R. §§ 1.2104(g) and 1.2109(c).

¹²⁶ 47 C.F.R. § 1.2110(c)(3).

¹²⁷ 47 C.F.R. § 1.2110(c)(4).

¹²⁸ Designated entities are defined as small businesses, businesses owned by members of minority groups and/or women, and rural telephone companies. See 47 C.F.R. § 1.2110(a).

major modification to its application (e.g., change control of the applicant, change the certifying official, or claim eligibility for a higher percentage of bidding credit) after the initial application filing deadline.¹²⁹ Thus, any change in control of an applicant, resulting from a merger for example, will be considered a major modification to the applicant's application, which will consequently be dismissed.¹³⁰

81. Moreover, after the filing window has closed, ISAS will not permit applicants to make certain changes, such as the applicant's legal classification. Applicants also may not change the community of license prior to auction. In its comments, Metro North Communications, Inc. ("Metro") seeks to change the community of license for FM Channel 225A at New Holstein, Wisconsin, to Chilton, Wisconsin, due to the recent opening of a new airport and prospects for construction of 33 new wind turbines in the vicinity.¹³¹ While a request for a change in the community of license is not procedurally proper at this time, the winning bidder will have the opportunity, when it files its post-auction FCC Form 301 application, to propose a new community of license, as long as the proposed change is mutually exclusive with the allotment and would represent a preferential arrangement of allotments.¹³²

82. If an applicant wishes to make permissible minor changes to its short-form application, such changes should be made electronically to its short-form application using the FCC Auction System whenever possible. Applicants are reminded to click on the SUBMIT button in the FCC Auction System for the changes to be submitted and considered by the Commission. After the revised application has been submitted, a confirmation page will be displayed that states the submission time, submission date, and a unique file number.¹³³

83. An applicant cannot use the FCC Auction System outside of the initial and resubmission filing windows to make changes to its short-form application other than administrative changes (e.g. changing certain contact information or the name of an authorized bidder). If these or other permissible minor changes need to be made outside of these windows, the applicant must submit a letter briefly summarizing the changes and subsequently update its short-form application in ISAS once the system is available.

84. Any letter describing changes to an applicant's short-form application should be submitted by e-mail to the following address: auction88@fcc.gov. The e-mail summarizing the changes must include a subject or caption referring to Auction 88 and the name of the applicant, for example, "RE: Changes to Auction 88 Short-Form Application of ABC Corp." The Bureaus request that parties format any attachments to e-mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Questions about short-form application amendments should be directed to the Auctions and Spectrum Access Division at (202) 418-0660.

85. Any application amendment and related statements of fact must be certified by (1) the applicant, if the applicant is an individual; (2) one of the partners if the applicant is a partnership; (3) an officer, director, or duly authorized employee, if the applicant is a corporation; (4) a member who is an officer, if the applicant is an unincorporated association; (5) the trustee, if the applicant is an amateur

¹²⁹ 47 C.F.R. § 1.2105(b); *see also* NCE Second Report and Order, 18 FCC Rcd at 6700.

¹³⁰ We reiterate that, even if an applicant's short-form application is dismissed, the applicant would remain subject to the communication prohibitions of 47 C.F.R. § 1.2105(c) until the down-payment deadline, which will be established after the auction closes.

¹³¹ Comments of Metro North Communications, Inc. at 3 (filed Feb. 25, 2010) ("Metro Comments").

¹³² *See* Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services, *Report and Order*, 21 FCC Rcd 14212, 14218-19 (2006), *recon. pending*.

¹³³ The Bureaus advise applicants to print and retain a copy of this confirmation page.

radio service club; or (6) a duly elected or appointed official who is authorized to make such certifications under the laws of the applicable jurisdiction, if the applicant is a governmental entity.¹³⁴

86. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System ("ECFS"), which was used for submitting comments regarding Auction 88.

J. Maintaining Current Information in Short-Form Applications

87. Section 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application.¹³⁵ Changes that cause a loss of or reduction in the percentage of bidding credit specified on the originally submitted application must be reported immediately.¹³⁶ If an amendment reporting substantial changes is a "major amendment," as defined by section 1.2105, the major amendment will not be accepted and may result in the dismissal of the application.¹³⁷

88. As noted above, after the application filing deadline, applicants may make only minor changes to their applications. Applicants must click on the SUBMIT button in the FCC Auction System for the changes to be submitted and considered by the Commission. In addition, an applicant cannot update its short-form application using the FCC Auction System after the initial and resubmission filing windows close. If section 1.65 submissions are needed after these windows close, applicants must submit a letter, briefly summarizing the changes, by e-mail at the following address: auktion88@fcc.gov. The e-mail summarizing the changes must include a subject or caption referring to Auction 88 and the name of the applicant. The Bureaus request that parties format any attachments to e-mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

III. PRE-AUCTION PROCEDURES

A. Online Auction Tutorial – Available May 4, 2010

89. On Tuesday, May 4, 2010, the Commission will post an educational auction tutorial on the Auction 88 web page for prospective bidders to familiarize themselves with the auction process. This online tutorial will provide information about pre-auction procedures, completing short-form applications, auction conduct, the FCC Auction Bidding System, auction rules, and broadcast services rules. The tutorial will also provide an avenue to ask FCC staff questions about the auction, auction procedures, filing requirements, and other matters related to this auction.

90. The Auction 88 online tutorial replaces the live bidder seminars that have been offered for most previous auctions. The Bureaus believe parties interested in participating in Auction 88 will find this interactive, online tutorial a more efficient and effective way to further their understanding of the auction process. The Auction 88 online tutorial will allow viewers to navigate the presentation outline, review written notes, listen to audio of the notes, and search for topics using a text search function. Additional features of this web-based tool include links to auction-specific Commission releases, e-mail links for contacting Commission licensing and auctions staff, a timeline with deadlines for auction preparation, and screen shots of the Commission's online application and bidding system. The online

¹³⁴ See 47 C.F.R. § 1.917; see also 47 C.F.R. § 73.3513.

¹³⁵ 47 C.F.R. § 1.65.

¹³⁶ For example, if ownership changes result in the attribution of new interest holders that affect the applicant's qualifications for a new entrant bidding credit, such information must be clearly stated in the bidder's amendment. See *Liberty Productions*, 16 FCC Rcd at 12078. Events occurring after the application filing deadline, such as the acquisition of attributable interests in media of mass communications, may also cause diminishment or loss of the bidding credit, and must be reported immediately.

¹³⁷ 47 C.F.R. § 1.2105(b)(2).

tutorial will be accessible through a web browser with Adobe Flash Player.¹³⁸ As always, Commission staff will be available to promptly answer questions posed by telephone and e-mail throughout the auction process.¹³⁹

91. The auction tutorial will be accessible from the FCC's Auction 88 web page at <http://wireless.fcc.gov/auctions/88/> through an "Auction Tutorial" link. Once posted, this tutorial will remain available for reference in connection with the procedures outlined in this Public Notice and accessible anytime.

B. Short-Form Applications – Due Prior to 6:00 p.m. ET on May 13, 2010

92. In order to be eligible to bid in this auction, applicants must first follow the procedures set forth in Attachment D to this Public Notice to submit a short-form application (FCC Form 175) electronically via the FCC Auction System.¹⁴⁰ An electronic short-form application must be filed by each applicant listed in Attachment A of this Public Notice even if the applicant previously filed a hard copy (paper) short-form application in response to the *Supplemental Terre Haute Window Notice*.¹⁴¹ This short-form application must be submitted through the FCC Auction System prior to 6:00 p.m. ET on May 13, 2010. **Late applications will not be accepted.** There is no application fee required when filing an FCC Form 175, but an applicant must submit a timely upfront payment to be eligible to bid.¹⁴²

93. Applications may generally be filed at any time beginning at noon ET on May 4, 2010, until the filing window closes at 6:00 p.m. ET on May 13, 2010. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their applications multiple times until the filing deadline on May 13, 2010.

94. An applicant must always click on the SUBMIT button on the "Certify & Submit" screen to successfully submit its FCC Form 175 and any modifications; otherwise the application or changes to the application will not be received or reviewed. Additional information about accessing, completing, and viewing the FCC Form 175 is included in Attachment D. FCC Auctions Technical Support is available at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET. In order to provide better service to the public, all calls to Technical Support are recorded.

C. Application Processing and Minor Corrections

95. After the deadline for filing FCC Form 175 applications, the Commission will process all timely submitted applications to determine which are complete, and subsequently will issue a public notice identifying (1) those applications that are complete; (2) those applications that are rejected; and (3) those applications that are incomplete because of minor defects that may be corrected. The public notice will include the deadline for resubmitting corrected applications.

96. As described above, after the application filing deadline on May 13, 2010, applicants continue to be able to make only minor corrections to their applications.¹⁴³ Applicants will not be

¹³⁸ Most users will already have the Flash Player browser plug-in, which can be downloaded from <http://get.adobe.com/flashplayer/>.

¹³⁹ Contact information for subject matter experts may be found in Section VI. of this Public Notice, below.

¹⁴⁰ 47 C.F.R. § 1.2105(a).

¹⁴¹ See *Supplemental Terre Haute Window Notice*, 16 FCC Rcd at 12832.

¹⁴² See Section III.D. "Upfront Payments – Due June 17, 2010," below.

¹⁴³ See Section II.I. "Minor Modifications to Short-Form Applications," above.

permitted to make major modifications to their applications¹⁴⁴ (e.g., change control of the applicant, change the certifying official, or claim eligibility for a higher percentage of bidding credit).

97. Applicants should be aware the Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the applicant's short-form application, unless the applicant's certifying official or contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on its behalf.¹⁴⁵ Authorizations may be sent by e-mail to auction88@fcc.gov.

D. Upfront Payments – Due June 17, 2010

98. In order to be eligible to bid in this auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). We note that all applicants for permits must make an upfront payment in order to qualify as a bidder and obtain a permit, whether or not any other applicant in their MX groups becomes a qualified bidder. After completing its short-form application, an applicant will have access to an electronic version of the FCC Form 159 that can be printed and sent by fax to U.S. Bank in St. Louis, Missouri. **All upfront payments must be made as instructed in this Public Notice and must be received in the proper account at U.S. Bank before 6:00 p.m. ET on June 17, 2010.**

1. Making Upfront Payments by Wire Transfer

99. Wire transfer payments must be received before 6:00 p.m. ET on June 17, 2010.¹⁴⁶ No other payment method is acceptable.¹⁴⁷ To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their bankers several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 081000210

Receiving Bank: U.S. Bank
1005 Convention Plaza
St. Louis, MO 63101

BENEFICIARY: FCC/Account # 152307774819

Originating Bank Information (OBI Field): (Skip one space between each information item)
"AUCTIONPAY"

APPLICANT FCC REGISTRATION NUMBER (FRN): (same as FCC Form 159, block 21)

PAYMENT TYPE CODE: (same as FCC Form 159, block 24A: "A88U")

FCC CODE 1: (same as FCC Form 159, block 28A: "88")

PAYER NAME: (same as FCC Form 159, block 2)

LOCKBOX NO: # 979085

NOTE: The BNF and Lockbox number are specific to the upfront payments for this auction. Do not use BNF or Lockbox numbers from previous auctions.

¹⁴⁴ 47 C.F.R. § 1.2105(b); *see also* Two Way Radio of Carolina, Inc., *Memorandum Opinion and Order*, FCC 99-189, 14 FCC Rcd 12035 (1999).

¹⁴⁵ In no event, however, will the FCC send registration materials to anyone other than the contact person listed on the applicant's FCC Form 175 or respond to a request for replacement registration materials from anyone other than the authorized bidder, contact person, or certifying official listed on the applicant's FCC Form 175. *See* Section III.F. "Auction Registration," below.

¹⁴⁶ An applicant must initiate the wire transfer through its bank, authorizing the bank to wire funds from the applicant's account to the Commission's auction payment lockbox bank, the U.S. Bank in St. Louis, Missouri.

¹⁴⁷ The Commission will not accept checks, credit cards, or automated clearing house (ACH) payments.

100. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must fax a completed FCC Form 159 (Revised 2/03) to U.S. Bank at (314) 418-4232. On the fax cover sheet, applicants should write “Wire Transfer – Auction Payment for Auction 88.” In order to meet the Commission’s upfront payment deadline, an applicant’s payment must be credited to the Commission’s account for Auction 88 before the deadline.¹⁴⁸ **The applicant is responsible for obtaining confirmation from its financial institution that U.S. Bank has timely received its upfront payment and deposited it in the proper account.**

101. Please note the following information regarding upfront payments:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction 88 go to a lockbox number different from the lockboxes used in previous FCC auctions.
- Failure to deliver a sufficient upfront payment as instructed by the June 17, 2010, deadline will result in dismissal of the short-form application and disqualification from participation in the auction.

2. FCC Form 159

102. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be faxed to U.S. Bank to accompany each upfront payment. Proper completion of FCC Form 159 is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment E to this Public Notice. An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payers using the pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed electronically, but must be filed with U.S. Bank by fax.

3. Upfront Payments and Bidding Eligibility

103. The Commission has delegated to the Bureaus the authority and discretion to determine appropriate upfront payments for each auction.¹⁴⁹ Upfront payments help deter frivolous or insincere bidding, and provide the Commission with a source of funds in the event that the bidder incurs liability during the auction.

104. Applicants that are former defaulters, as described above, must pay upfront payments 50 percent greater than non-former defaulters.¹⁵⁰ For purposes of this calculation, the “applicant” includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by section 1.2110 of the Commission’s rules.¹⁵¹

105. Applicants must make upfront payments sufficient to obtain bidding eligibility on the construction permits on which they will bid. The Bureaus proposed, in the *Auction 88 Comment Public*

¹⁴⁸ Letter to Patrick Shannon, Counsel for Lynch 3G Communications Corp., from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, DA 03-1944, 18 FCC Rcd 11552 (WTB 2003).

¹⁴⁹ Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Proceeding, *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, FCC 97-60, 12 FCC Rcd 5686, 5697-98 ¶ 16 (1997) (“Part 1 Order”).

¹⁵⁰ *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15316-17 ¶¶ 40-42; see also 47 C.F.R. § 1.2106(a); Section II.G. “Provisions Regarding Former and Current Defaulters,” above.

¹⁵¹ 47 C.F.R. § 1.2110(c).

Notice, that the amount of the upfront payment would determine a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids.¹⁵² Under the Bureaus' proposal, in order to bid on a particular construction permit, a qualified bidder must be identified as an applicant for the construction permit in Attachment A and must have a current eligibility level that meets or exceeds the number of bidding units assigned to that construction permit. **At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits for which it is identified as an applicant in Attachment A, or else the applicant will not be eligible to participate in the auction.** An applicant does not have to make an upfront payment to cover all construction permits for which it is identified as an applicant in Attachment A, but only enough to cover the maximum number of bidding units that are associated with construction permits on which the bidder wishes to place bids and hold provisionally winning bids at any given time.¹⁵³

106. In the *Auction 88 Comment Public Notice*, the Bureaus proposed upfront payments for each construction permit taking into account various factors related to the efficiency of the auction process and the potential value of similar spectrum and sought comment on this proposal. The Bureaus received no comments on the proposal that the upfront payment amount would determine a bidder's initial bidding eligibility or in response to the specific upfront payments proposed in the *Auction 88 Comment Public Notice*. As discussed below, however, some commenters requested reductions of minimum opening bids for specific construction permits. To the extent that the Bureaus reduce minimum opening bid amounts, the corresponding upfront payment amount for that construction permit also will be reduced. With these exceptions, the Bureaus adopt the upfront payments and bidding units proposed for each construction permit in Auction 88. Upfront payment amounts and bidding units are set forth in Attachment A of this Public Notice.

107. In calculating its upfront payment amount, an applicant should determine the **maximum** number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units.¹⁵⁴ In order to make this calculation, an applicant should add together the bidding units for all construction permits on which it seeks to be active in any given round. **Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline.**

¹⁵² *Auction 88 Comment Public Notice* at ¶ 24.

¹⁵³ Provisionally winning bids are bids that would become final winning bids if the auction were to close after the given round. See Section IV.B.4. "Provisionally Winning Bids," below.

¹⁵⁴ A qualified bidder's maximum eligibility will not exceed the sum of the bidding units associated with the total number of construction permits identified for that applicant in Attachment A. In some cases a qualified bidder's maximum eligibility may be less than the amount of its upfront payment because the qualified bidder has either previously been in default on a Commission construction permit or license or delinquent on non-tax debt owed to a Federal agency (see 47 C.F.R. § 1.2106(a)), or has submitted an upfront payment that exceeds the total amount of bidding units associated with the construction permits identified for that applicant in Attachment A.

Example: Upfront Payments and Bidding Flexibility			
Construction Permit	Market Name	Bidding Units	Upfront Payment
MM-FM744-268A	Greenwood, AR	60,000	\$60,000
MM-FM745-287A	Durango, CO	20,000	\$20,000

If a bidder wishes to bid on both construction permits in a round, it must be identified in Attachment A as an applicant for both and have purchased at least 80,000 bidding units (60,000 + 20,000). If a bidder only wishes to bid on one, but not both, purchasing 60,000 bidding units would meet the eligibility requirement for either construction permit. The bidder would be able to bid on either construction permit, but not both at the same time. If the bidder purchased only 20,000 bidding units, it would have enough eligibility for the Durango, CO construction permit but not for the Greenwood, AR construction permit.

108. If an applicant is a former defaulter, it must calculate its upfront payment for all of its identified construction permits by multiplying the number of bidding units on which it wishes to be active by 1.5.¹⁵⁵ In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.¹⁵⁶

E. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

109. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information listed below be supplied. Applicants can provide the information electronically during the initial short-form application filing window after the form has been submitted. (Applicants are reminded that information submitted as part of an FCC Form 175 will be available to the public; for that reason, wire transfer information should not be included in an FCC Form 175.) Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations, Auctions Accounting Group, Attn: Gail Glasser, at (202) 418-2843 (fax). Eligibility for refunds is discussed in Section V.G., below. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call Gail Glasser at (202) 418-0578.

Name of Bank
 ABA Number
 Address of Bank
 Contact and Phone Number
 Account Number to Credit
 Name of Account Holder
 FCC Registration Number (FRN)
 Correspondent Bank (if applicable)
 ABA Number
 Account Number

¹⁵⁵ 47 C.F.R. § 1.2106(a).

¹⁵⁶ If a former defaulter fails to submit a sufficient upfront payment to establish eligibility to bid on at least one of the construction permits designated for that applicant in Attachment A of this public notice, the applicant will not be eligible to participate in the auction.

F. Auction Registration

110. Approximately ten days before the auction, the Bureaus will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants with submitted FCC Form 175 applications that are deemed timely-filed, accurate, and complete, provided that such applicants have timely submitted an upfront payment that is sufficient to qualify them to bid.

111. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID® tokens that will be required to place bids, the “Integrated Spectrum Auction System (ISAS) Bidder’s Guide,” and the Auction Bidder Line phone number.

112. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder that has not received this mailing by noon on Wednesday, July 14, 2010, should call (717) 338-2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

113. In the event that 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 replacements. Qualified bidders requiring the replacement of these items must call Technical Support at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY).

G. Remote Electronic Bidding

114. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Only qualified bidders are permitted to bid. Each applicant should indicate its bidding preference — electronic or telephonic — on its FCC Form 175. In either case, each authorized bidder must have its own SecurID® token, which the Commission will provide at no charge. Each applicant with 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, the telephonic bidding telephone number, and the “Integrated Spectrum Auction System (ISAS) Bidder’s Guide” are only mailed to the contact person at the contact address listed on the FCC Form 175.** 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 88.

115. Please note that the SecurID® tokens can be recycled, and the Bureaus encourage bidders to return the tokens to the FCC. The Bureaus will provide pre-addressed envelopes that bidders may use to return the tokens once the auction has ended.

H. Mock Auction – July 16, 2010

116. All qualified bidders will be eligible to participate in a mock auction on Friday, July 16, 2010. The mock auction will enable qualified bidders to become familiar with the FCC Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. AUCTION EVENT

117. The first round of bidding for Auction 88 will begin on Tuesday, July 20, 2010. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is to be released approximately 10 days before the start of the auction.

A. Auction Structure

1. Simultaneous Multiple Round Auction

118. In the *Auction 88 Comment Public Notice*, the Bureaus proposed to auction all construction permits in Auction 88 in a single auction using the Commission’s standard simultaneous

multiple-round (“SMR”) auction format.¹⁵⁷ This type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual construction permits. A bidder may bid on, and potentially win, any number of construction permits. The Bureaus received no comment on this proposal; this proposal is adopted. Unless otherwise announced, bids will be accepted on all construction permits in each round of the auction until bidding stops on every construction permit.

2. Eligibility and Activity Rules

119. As discussed above, the Bureaus will use upfront payments to determine initial (maximum) eligibility (as measured in bidding units) for Auction 88.¹⁵⁸ The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. As noted earlier, each construction permit is assigned a specific number of bidding units listed in Attachment A. Bidding units for a given construction permit do not change as prices rise during the auction. A bidder’s upfront payment is not attributed to specific construction permits. Rather, a bidder may place bids on any of the construction permits for which it is designated an applicant in Attachment A of this Public Notice as long as the total number of bidding units associated with those construction permits does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. At a minimum, an applicant’s upfront payment must cover the bidding units for at least one of the construction permits for which it is designated an applicant in Attachment A of this Public Notice. The total upfront payment does not affect the total dollar amount a bidder may bid on any given construction permit.

120. In order to ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction.

121. A bidder’s activity level in a round is the sum of the bidding units associated with any construction permits covered by new and provisionally winning bids. A bidder is considered active on a construction permit in the current round if it is either the provisionally winning bidder at the end of the previous bidding round or if it submits a bid in the current round (*see* “Bid Amounts” in Section IV.B.3., below).

122. The Bureaus received no comments on the proposed eligibility and activity rules. Therefore, in order to ensure that the auction closes within a reasonable period of time, the Bureaus adopt the proposal with the following activity requirement: a bidder is required to be active on 100 percent of its current eligibility during each round of the auction. That is, a bidder must either place a bid or be a provisionally winning bidder during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder’s eligibility, possibly curtailing or eliminating the bidder’s ability to place additional bids in the auction.¹⁵⁹

3. Activity Rule Waivers

123. In the *Auction 88 Comment Public Notice*, the Bureaus proposed that each bidder in the auction be provided with three activity rule waivers.¹⁶⁰ The Bureaus received no comments on this issue.

¹⁵⁷ *Auction 88 Comment Public Notice* at ¶ 15.

¹⁵⁸ *See* Section III.D.3. “Upfront Payments and Bidding Eligibility,” above.

¹⁵⁹ *See* Section IV.A.3. “Activity Rule Waivers,” below.

¹⁶⁰ *Auction 88 Comment Public Notice* at ¶ 31.

124. Therefore, the Bureaus adopt this proposal to provide bidders with three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum activity level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit. Activity rule waivers can be either applied proactively by the bidder (a "proactive waiver") or applied automatically by the FCC Auction System (an "automatic waiver") and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

125. The FCC Auction System assumes that bidders with insufficient activity would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round where a bidder's activity level is below the minimum required unless (1) there are no activity rule waivers available or (2) the bidder overrides the automatic application of a waiver by reducing eligibility. If a bidder has no waivers remaining and does not satisfy the activity requirement, the FCC Auction System will permanently reduce the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

126. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the bidding round by using the "reduce eligibility" function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in "Eligibility and Activity Rules" (see Section IV.A.2. above). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility even if the round has not yet ended.

127. Finally, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity waiver (using the "apply waiver" function in the FCC Auction System) during a bidding round in which no bids are placed the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver applied by the FCC Auction System in a round in which there are no new bids or proactive waivers will not keep the auction open. A bidder cannot submit a proactive waiver after submitting a bid in a round, and submitting a proactive waiver will preclude a bidder from placing any bids in that round. **It is important for bidders to understand that applying a waiver is irreversible. Once a bidder submits a proactive waiver, the bidder cannot unsubmit the waiver even if the round has not yet ended.**

4. Auction Stopping Rules

128. For Auction 88, the Bureaus proposed to employ a simultaneous stopping rule approach.¹⁶¹ A simultaneous stopping rule means that all construction permits remain available for bidding until bidding closes simultaneously on all construction permits. More specifically, bidding will close simultaneously on all construction permits after the first round in which no bidder submits any new bids or applies a proactive waiver.

129. The Bureaus also sought comment on alternative versions of the simultaneous stopping rule for Auction 88:

Option 1. The auction would close for all construction permits after the first round in which no bidder applies a waiver or places any new bids on any construction permit on which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule.

¹⁶¹ Auction 88 Comment Public Notice at ¶¶ 19-21.

Option 2. The auction would end after a specified number of additional rounds. If the Bureaus invoke this special stopping rule, it will accept bids in the specified final round(s) and the auction will close.

Option 3. The auction would remain open even if no bidder places any new bids or applies a waiver. In this event, the effect will be the same as if a bidder had applied a waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

130. The Bureaus proposed to exercise these options only in circumstances such as where the auction is proceeding unusually slowly or quickly, where there is minimal overall bidding activity, or where it appears likely that the auction will not close within a reasonable period of time or will close prematurely.¹⁶² The Bureaus noted that before exercising these options, they are likely to attempt to change the pace of the auction by, for example, changing the number of bidding rounds per day and/or changing minimum acceptable bids.¹⁶³ The Bureaus proposed to retain the discretion to exercise any of these options with or without prior announcement during the auction.¹⁶⁴ The Bureaus received no comment on these proposals and adopt them for Auction 88.

5. Auction Delay, Suspension, or Cancellation

131. In the *Auction 88 Comment Public Notice*, the Bureaus proposed that, by public notice or by announcement during the auction, they may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding.¹⁶⁵ The Bureaus received no comment on this issue.

132. Because this approach to notification of delay during an auction has proven effective in resolving exigent circumstances in previous auctions, the Bureaus adopt these proposed rules regarding auction delay, suspension, or cancellation. By public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. The Bureaus emphasize that exercise of this authority is solely within the discretion of the Bureaus, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

1. Round Structure

133. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted in a given day.

134. The Bureaus have the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureaus may increase or decrease the amount of time for the bidding rounds, the

¹⁶² *Id.* at ¶ 21.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at ¶ 22.

amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors.

2. Reserve Price and Minimum Opening Bids

135. Section 309(j) of the Communications Act of 1934, as amended, calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when applications for FCC licenses or construction permits are subject to auction (i.e., because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest.¹⁶⁶ Consistent with this mandate, the Commission directed the Bureaus to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.¹⁶⁷ Among other factors, the Bureaus must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on the spectrum being auctioned.¹⁶⁸ The Commission concluded that the Bureaus should have the discretion to employ either or both of these mechanisms for future auctions.¹⁶⁹

136. In the *Auction 88 Comment Public Notice*, the Bureaus did not propose to establish a reserve price for the construction permits to be offered in Auction 88. This is consistent with policy applied in earlier broadcast spectrum auctions. The Bureaus, however, did propose to establish minimum opening bids for each construction permit, reasoning that a minimum opening bid, which has been used in other auctions, is an effective bidding tool for accelerating the competitive bidding process.¹⁷⁰ Specifically, a minimum opening bid was proposed for each construction permit by taking into account various factors relating to the efficiency of the auction and the potential value of the spectrum, including the type of service and class of facility offered, market size, population covered by the proposed broadcast facility, industry cash flow data, and recent broadcast transactions. The Bureaus sought comment on the proposed minimum opening bids. The Commission received several comments requesting a reduction of the proposed minimum opening bids for specific construction permits in this auction.

137. Metro requests a reduction from \$25,000 to \$7,500 of the minimum opening bid for the FM station construction permit for New Holstein, Wisconsin, alleging difficulty in finding transmitter sites due to a new airport approximately nine miles northwest of New Holstein and “imminent windmill projects” to be constructed in Chilton, Wisconsin, six miles northwest of New Holstein.¹⁷¹ Metro’s comments lack specificity as to the availability of transmitter sites in the area, the amount of protection needed for the new airport, and the exact location of the proposed windmills and their effect on proposed radio towers. We also observe that Metro’s concerns were not noted by any other applicants in the MX group. The Bureaus do not believe that the minimum opening bid amount Metro proposes is justified. We nonetheless recognize that the allotment site is restricted 10.8 kilometers northwest of New Holstein,¹⁷² and the existence of Flying Feathers Airport may present at least some difficulties with regard

¹⁶⁶ 47 U.S.C. § 309(j)(4)(F).

¹⁶⁷ *Part I Third Report and Order*, FCC 97-413, 13 FCC Rcd at 455-56 ¶ 141.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Auction 88 Comment Public Notice* at ¶ 34.

¹⁷¹ Metro Comments at 3-4 (filed Feb. 25, 2010); Reply Comments of Metro North Communications, Incorporated at 4-5 (filed March 4, 2010).

¹⁷² See Waupun, Mayville, and New Holstein, Wisconsin, *Report and Order*, 3 FCC Rcd 5732, 5732 (MMB 1988) (allotting Channel 226A at New Holstein). Channel 225A was substituted for Channel 226A in Clintonville, New Holstein, and Wautoma, Wisconsin, *Memorandum Opinion and Order*, 6 FCC Rcd 5783, 5784 (MMB 1991).

to antenna siting. We therefore agree that some reduction in the minimum opening bid is warranted. Accordingly, we reduce the minimum opening bid for MM-FM755-225A to \$15,000.

138. As noted above, commenter/applicant S.I. Broadcasting (“SIB”) had sought to postpone any auction of the permit for Channel 251A at Santa Isabel, Puerto Rico.¹⁷³ SIB, with the concurrence of commenters and applicants Peace Broadcasting Network and Amor Radio Group, contends that four other radio stations must change frequencies before a station on the Channel 251A allotment may commence operations. SIB correctly states that, pursuant to earlier rulemaking proceedings, four FM stations must change channels before a station can begin broadcasting on Channel 251A at Santa Isabel, with some of those channel changes being mutually contingent. Recognizing the technical challenges that may be involved in implementing a broadcast operation with this permit, on our own motion we reduce the minimum opening bid for Channel 251A at Santa Isabel to \$25,000.

139. Romar Communications, Inc. asks that the minimum opening bid be reduced from \$75,000 to \$50,000 or \$40,000 for the AM station construction permit at Lansing/South Hill, New York.¹⁷⁴ As KM Communications, Inc. did not submit an FRN and its application was dismissed, MX group MM-AM041-750 has been removed from the auction. Romar’s request is therefore moot.

140. For the construction permits listed in Attachment A, the Bureaus adopt the minimum opening bid amounts proposed in the *Auction 88 Comment Public Notice*, with the exception of the reduced minimum opening bid amounts for the New Holstein and Santa Isabel construction permits. The specific minimum opening bid amounts for the construction permits available in Auction 88 are set forth in Attachment A.

3. Bid Amounts

141. In the *Auction 88 Comment Public Notice*, the Bureaus proposed that in each round, eligible bidders be able to place a bid on a given construction permit in any of up to nine different amounts.¹⁷⁵ Under the proposal, the FCC Auction System interface will list the nine acceptable bid amounts for each construction permit.¹⁷⁶ The Bureaus received no comments on this proposal; therefore, this proposal is adopted.

142. The first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid on the construction permit. After there is a provisionally winning bid for a permit, the minimum acceptable bid amount will be a percentage higher. That is, the minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount times one plus the minimum acceptable bid percentage. For example, if the minimum acceptable bid percentage is 10 percent, the minimum acceptable bid amount will equal (provisionally winning bid amount) * (1.10), rounded.¹⁷⁷

143. In the *Auction 88 Comment Public Notice*, the Bureaus proposed to use a minimum acceptable bid percentage of 10 percent. The Bureaus did not receive any comments on this proposal. Our experience in previous broadcast auctions assures us that a minimum acceptable bid percentage of 10

¹⁷³ SIB Comments at 1-2.

¹⁷⁴ Applicant’s Narrative in support of the Formal Comment by Romar Communications Inc. at 1-14 (filed Feb. 25, 2010).

¹⁷⁵ Bidders must have sufficient eligibility to place a bid on the particular construction permit. See Section III.D.3 “Upfront Payments and Bidding Eligibility,” above.

¹⁷⁶ In the event of duplicate bid amounts due to rounding, the FCC Auction System will omit the duplicates and will list fewer acceptable bid amounts for the license.

¹⁷⁷ Results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$100 are rounded to the nearest \$10.

percent is sufficient to ensure active bidding. Therefore, the Bureaus will begin the auction with a minimum acceptable bid percentage of 10 percent.

144. The eight additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded. If, for example, the bid increment percentage is 5 percent, the calculation is (minimum acceptable bid amount) * (1 + 0.05), rounded, or (minimum acceptable bid amount) * 1.05, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.10, rounded; the third additional acceptable bid amount equals the minimum acceptable bid amount times one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.15, rounded; etc. The Bureaus will round the results of these calculations using the standard rounding procedures for auctions.¹⁷⁸ Note that the bid increment percentage need not be the same as the minimum acceptable bid percentage.

145. In the *Auction 88 Comment Public Notice*, the Bureaus proposed to use a bid increment percentage of 5 percent, and received no comment on this issue. The Bureaus believe that a bid increment percentage of 5 percent will give bidders the flexibility to speed up the pace of the auction, if appropriate. The Bureaus therefore adopt this proposal, and will begin the auction with a bid increment percentage of 5 percent.

146. The Bureaus proposed to retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the bid increment percentage, and the number of acceptable bid amounts if the Bureaus determine that circumstances so dictate. Further, the Bureaus proposed to retain the discretion to do so on a construction permit-by-construction permit basis. The Bureaus also proposed to retain the discretion to limit (a) the amount by which a minimum acceptable bid for a construction permit may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, the Bureaus could set a \$10,000 limit on increases in minimum acceptable bid amounts over provisionally winning bids. Thus, if calculating a minimum acceptable bid using the minimum acceptable bid percentage results in a minimum acceptable bid amount that is \$12,000 higher than the provisionally winning bid on a construction permit, the minimum acceptable bid amount would instead be capped at \$10,000 above the provisionally winning bid.

147. The Bureaus did not receive any comments on their proposal to retain the discretion to change bid amounts as described above if they determine that circumstances so dictate. The Bureaus adopt this proposal. If the Bureaus exercise this discretion, they will alert bidders by announcement in the FCC Auction System during the auction.

4. Provisionally Winning Bids

148. At the end of each bidding round, a “provisionally winning bid” will be determined based on the highest bid amount received for each construction permit. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.¹⁷⁹

149. In the *Auction 88 Comment Public Notice*, the Bureaus proposed to use a random number generator to select a single provisionally winning bid in the event of identical high bid amounts being

¹⁷⁸ *Id.*

¹⁷⁹ Section IV.A.2. “Eligibility and Activity Rules,” above.

submitted on a construction permit in a given round (i.e., tied bids).¹⁸⁰ No comments were received on this proposal.

150. Hence, the Bureaus adopt the proposal described above. The FCC Auction System will assign a random number to each bid upon submission. The tied bid with the highest random number wins the tiebreaker, and becomes the provisionally winning bid. Bidders, regardless of whether they hold a provisionally winning bid, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid.

5. Bidding

151. All bidding will take place remotely either through the FCC Auction System or by telephonic bidding. There will be no on-site bidding during Auction 88. Please note that telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of ten minutes.

152. A bidder's ability to bid on specific construction permits is determined by two factors: (1) the construction permits for which it is designated an applicant in Attachment A of this Public Notice and (2) the bidder's eligibility. The bid submission screens will allow bidders to submit bids on only those construction permits designated for that applicant in Attachment A of this Public Notice.

153. In order to access the bidding function of the FCC Auction System, bidders must be logged in during the bidding round using the passcode generated by the SecurID[®] token and a personal identification number ("PIN") created by the bidder. Bidders are strongly encouraged to print a "round summary" for each round after they have completed all of their activity for that round.

154. In each round, eligible bidders will be able to place bids on a given construction permit in any of up to nine pre-defined bid amounts.¹⁸¹ For each construction permit, the FCC Auction System will list the acceptable bid amounts in a drop-down box.¹⁸² Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC Auction System also includes an "upload" function that allows bidders to upload text files containing bid information.

155. Until a bid has been placed on a construction permit, the minimum acceptable bid amount for that construction permit will be equal to its minimum opening bid amount. Once there are bids on a construction permit, minimum acceptable bids for a construction permit for the following round will be determined as described in Section IV.B.3, above.

156. During a round, an eligible bidder may submit bids for as many construction permits as it wishes (providing that it is eligible to bid), remove bids placed in the current bidding round, or permanently reduce eligibility. If a bidder submits multiple bids for the same construction permit in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with construction permits for which the bidder has removed bids do not count towards the bidder's current activity.

6. Bid Removal and Bid Withdrawal

157. In the *Auction 88 Comment Public Notice*, the Bureaus proposed bid removal procedures.¹⁸³ We proposed to provide each bidder with the option of removing any bids placed in a

¹⁸⁰ *Auction 88 Comment Public Notice* at ¶ 42.

¹⁸¹ Bidders must have sufficient eligibility to place a bid on the particular construction permit. See Section III.D.3. "Upfront Payments and Bidding Eligibility," above.

¹⁸² See Section IV.B.3. "Bid Amounts," above.

¹⁸³ *Auction 88 Comment Public Notice* at ¶ 44.

round provided that such bids are removed before the close of that bidding round. By using the “remove bids” function in the FCC Auction System, a bidder may effectively “unsubmit” any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder’s activity for the round in which it is removed, i.e., a bid that is removed does not count toward bidding activity. The Bureaus received no comments on this issue of bid removals. These removal procedures will enhance bidder flexibility during the auction. Therefore, the Bureaus adopt their proposed procedures to permit bid removals for Auction 88.

158. Once a round closes, a bidder may no longer remove a bid. In the *Auction 88 Comment Public Notice*, the Bureaus proposed to prohibit bidders from withdrawing any bids after the round in which bids were placed has closed.¹⁸⁴ This proposal was made in recognition of the site-specific nature and wide geographic dispersion of the permits available in this auction. The Bureaus received no comments on the issue of bid withdrawal. Accordingly, the Bureaus will prohibit bid withdrawals in Auction 88. Bidders are cautioned to select bid amounts carefully because no bid withdrawals will be allowed in Auction 88, even if a bid was mistakenly or erroneously made.

7. Round Results

159. Reports reflecting bidders’ identities for Auction 88 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

160. Bids placed during a round will not be made public until the conclusion of that round. After a round closes, the Bureaus will compile reports of all bids placed, current provisionally winning bids, new minimum acceptable bid amounts for the following round, whether the construction permit is FCC held, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access.

8. Auction Announcements

161. The Commission will use auction announcements to announce items such as schedule changes. All auction announcements will be available by clicking a link in the FCC Auction System.

V. POST-AUCTION PROCEDURES

162. 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, final payments, and the long-form applications (FCC Forms 301 or 349).

A. Down Payments

163. Within ten business days after release of the auction closing public notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 88 to 20 percent of the net amount of its winning bids (gross bids less any applicable new entrant bidding credits).¹⁸⁵

B. Final Payments

164. Each winning bidder will be required to submit the balance of the net amount of its winning bids within ten business days after the applicable deadline for submitting down payments.¹⁸⁶ In its comments,¹⁸⁷ JEM suggests that any winning bidder with no other broadcast facilities be allowed to delay payment of “the balance of its bid” until its long-form application for a license is submitted.

¹⁸⁴ *Id.*

¹⁸⁵ 47 C.F.R. § 1.2107(b).

¹⁸⁶ 47 C.F.R. § 1.2109(a).

¹⁸⁷ Comments of JEM Broadcasting Company, Incorporated at 2 (filed Feb. 25, 2010).

According to JEM, a winning bidder with no other broadcast facilities is disadvantaged due to the massive consolidation in the broadcast industry during the thirteen years since it filed its application for this auction, and in light of the current unwillingness of banks to lend money for start up facilities. JEM proposed final payment procedures for this auction would depart from the final payment rule revision adopted for broadcast auctions in the *CSEA/Part 1 Report and Order*.¹⁸⁸ In considering JEM's proposal, the Bureaus observe first that similar arguments were considered and rejected by the Commission in the rulemaking proceeding, where it was noted that this procedural change was necessary to limit the potential for post-auction bankruptcies to affect the payment obligations of winning bidders, as well as serving the goal of ensuring that only serious, financially qualified applicants receive licenses and construction permits so that the provision of service to the public is expedited.¹⁸⁹ Second, implementation of the JEM proposal would require amendment of the Commission's competitive bidding and broadcast service rules, which can only be accomplished through a rulemaking proceeding.¹⁹⁰ The Bureaus' process for seeking comment on auction procedures is not the appropriate forum in which to raise such rule changes. Accordingly, the Bureaus adopt the final payment deadline as specified in the *Auction 88 Comment Public Notice*. The balance of the net amount of each winning bid will be due within ten business days after the deadline for submitting down payments for this auction.

C. Long-Form Application (FCC Forms 301 or 349)

165. The Commission's rules currently provide that within thirty days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 301, Application for Construction Permit for Commercial Broadcast Station, or FCC Form 349, Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station), and required exhibits for each construction permit won through Auction 88. Winning bidders claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit.¹⁹¹ Further instructions on these and other filing requirements will be provided to winning bidders in the auction closing public notice.

D. Default and Disqualification

166. Any winning bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in section 1.2104(g)(2).¹⁹² The payments include both a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

167. The percentage of the applicable bid to be assessed as an additional payment for defaults in a particular auction is established in advance of the auction. Accordingly, in the *Auction 88 Comment Public Notice*, the Bureaus proposed to set the additional default payment for this auction at twenty percent of the applicable bid. The Bureaus received no comments on this proposal, and therefore, adopt the proposal.

168. Finally, in the event of a default, the Commission has the discretion to re-auction the construction permit or offer it to the next highest bidder (in descending order) at its final bid amount.¹⁹³

¹⁸⁸ *CSEA/Part 1 First Report and Order*, 21 FCC Rcd at 891.

¹⁸⁹ *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 907-09.

¹⁹⁰ See, e.g., 47 C.F.R. §§ 73.5007, 73.5008.

¹⁹¹ 47 C.F.R. §§ 1.2112(b) and 73.5005.

¹⁹² 47 C.F.R. § 1.2104(g)(2).

¹⁹³ 47 C.F.R. §§ 1.2109(b) and (c).

In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing authorizations held by the applicant.¹⁹⁴

E. Refund of Remaining Upfront Payment Balance

169. After the auction, applicants that are not winning bidders or are winning bidders whose upfront payment exceeded the total net amount of their winning bids may be entitled to a refund of some or all of their upfront payment. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise. Bidders that drop out of the auction completely (have exhausted all of their activity rule waivers and have no remaining bidding eligibility) may request a refund of their upfront payments before the close of the auction.

170. Bidders are encouraged to file their refund information electronically using the **Refund Information** icon found on the *Auction Application Manager* page or through the **Wire Transfer for Refund Purposes** link available in various locations throughout the FCC Auction System. If an applicant has completed the refund instructions electronically, the refund will be sent automatically. If an applicant has not completed the refund instructions electronically, the applicant must send a written request to include the following information:

Name, address, contact and phone number of Bank
ABA Number
Account Number to Credit
Name of Account Holder
FCC Registration Number (FRN)

The refund request can be submitted by fax to the Auctions Accounting Group at (202) 418-2843 or by mail to:

Federal Communications Commission
Financial Operations
Auctions Accounting Group
Gail Glasser
445 12th Street, SW, Room 1-C864
Washington, DC 20554

NOTE: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Gail Glasser at (202) 418-0578.

VI. CONTACT INFORMATION

171. Contact Information Table:

General Auction Information

General Auction Questions
Auction Process and Procedures
Seminar Registration

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

Auction 88 Process and Procedures

Auctions and Spectrum Access Division

(202) 418-0660
Jeff Crooks (Analyst)
Linda Sanderson (Project Manager)

¹⁹⁴ 47 C.F.R. § 1.2109(d).

Auction 88 Legal Information

Auction Rules, Policies, Regulations, including
Reports of Section 1.2105(c) Violations

Licensing Information

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

Technical Support

Electronic Filing
FCC Auction System (Hardware/Software
Issues)

Payment Information

Wire Transfers
Refunds

Auction Bidder Line**FCC Copy Contractor**

Additional Copies of
Commission Documents

Press Information**FCC Forms****Accessible Formats**

Braille, large print, electronic files, or
audio format for people with disabilities

Small Businesses

Additional information for small and
disadvantaged businesses

FCC Internet Sites**Auctions and Spectrum Access Division
(202) 418-0660**

Lynne Milne (Attorney)
Howard Davenport (Attorney)

Audio Division (202) 418-2700

Lisa Scanlan (Attorney)
Tom Nessinger (Attorney)

FCC Auctions Technical Support Hotline

(877) 480-3201, option nine; or (202) 414-1250
(202) 414-1255 (TTY)
Hours of service: 8:00 a.m. – 6:00 p.m. ET,
Monday through Friday

FCC Auctions Accounting Branch

Gail Glasser
(202) 418-0578
(202) 418-2843 (fax)

Will be furnished only to qualified bidders

Best Copy and Printing, Inc

445 12th Street, SW, Room CY-B402
Washington, DC 20554
(800) 378-3160
<http://www.bcpweb.com>

Matt Nodine (202) 418-1646

(800) 418-3676 (outside Washington, DC)
(202) 418-3676 (in the Washington area)
<http://www.fcc.gov/formpage.html>

Consumer and Governmental Affairs Bureau

(202) 418-0530 or (202) 418-0432 (TTY)
fcc504@fcc.gov

**Office of Communications Business
Opportunities**

(202) 418-0990
<http://www.fcc.gov/ocbo/>

<http://www.fcc.gov>
<http://wireless.fcc.gov/auctions>
<http://www.fcc.gov/mb>

Auction 88 — Closed Broadcast
DA 10-524
Attachment A

FM Applications

Construction Permit	Market Name		Channel	Class	Facility ID	Applicants	File Numbers	Bidding Units	Upfront Payment	Minimum Opening Bid
	State	City								
MM-FM744-268A	AR	Greenwood	268	A	88377	George S. Flinn, Jr.	BPH-19970910MM	60,000	\$60,000	\$60,000
					88359	Ramsey Leasing Inc.	BPH-19970911MW			
					88358	JEM Broadcasting Co., Inc.	BPH-19970912MF			
MM-FM745-287A	CO	Durango	287	A	88425	EB Needles LLC	BPH-19970922MD	20,000	\$20,000	\$20,000
					88456	Four Corners Broadcasting LLC	BPH-19970925MJ			
					88462	Arkansas Valley Broadcasting, LLC	BPH-19970925MO			
					88463	KRJ Company	BPH-19970925MP			
MM-FM746-255A	CO	Steamboat Springs	255	A	88343	George S. Flinn, Jr.	BPH-19970910MF	7,500	\$7,500	\$7,500
					88323	EB Needles LLC	BPH-19970910MK			
					88330	Boat Of Steam Broadcasting	BPH-19970911ML			
					88360	Ramsey Leasing Inc.	BPH-19970911MV			
MM-FM747-266A	IN	Bloomfield	266	A	87627	Sarkes Tarzian Inc.	BPH-19970723ML	20,000	\$20,000	\$20,000
					87626	Mid-America Radio Group Inc.	BPH-19970723MM			
					87582	Music Ministries, Inc.	BPH-19970724MC			
					87632	Willtronics Broadcasting Co.	BPH-19970724MN			
					87938	William S. Poorman	BPH-19970724NF			
MM-FM748-283A	MI	Traverse City	283	A	9924	Central Michigan University	BPH-19941019MA	45,000	\$45,000	\$45,000
					24608	Good News Media Inc.	BPH-19941020MB			
					65931	The MacDonald Broadcasting Company	BPH-19941020MH			
					74084	WTCM Radio, Inc.	BPH-19941020MI			
MM-FM749-286A	MS	Oxford	286	A	84198	Southern Cultural Foundation	BPH-19961107MA	20,000	\$20,000	\$20,000
					84091	George S. Flinn, Jr.	BPH-19961107ME			
					78956	Chet-5 Broadcasting L.P.	BPH-19960111AT			
MM-FM750-255A	NY	Rosendale	255	A	78995	Sacred Heart University, Inc.	BPH-19960111AZ	100,000	\$100,000	\$100,000
					79000	Marist College	BPH-19960111BA			
					78920	Radio Rosendale	BPH-19960111ML			
					78943	Hawkeye Communications, Inc.	BPH-19960111MN			
					47093	Music Express Broadcasting Corp.	BPH-19930121MB			
MM-FM751-229A	OH	North Madison	229	A	61162	South Shore Broadcasting, Inc.	BPH-19930121MF	75,000	\$75,000	\$75,000
					77830	S.I. Broadcasting	BPH-19950901MB			
					77828	Peace Broadcasting Network	BPH-19950907MC			
MM-FM752-251A	PR	Santa Isabel	251	A	77881	Amor Radio Group Corp.	BPH-19950907MD	25,000	\$25,000	\$25,000
					88740	Albert Benavides	BPH-19971014MD			
					88807	George S. Flinn, Jr.	BPH-19971015MF			
MM-FM753-299A	TX	Idalou	299	A	88794	SCHC Lubbock Applications, Inc.	BPH-19971016MI	75,000	\$75,000	\$75,000
					88795	Ramar Communications Inc.	BPH-19971016MJ			
					88796	Big Sky Company	BPH-19971016MK			
					88806	Metro Broadcasters-Texas Inc.	BPH-19971016MO			
					88809	Ramsey Leasing Inc.	BPH-19971016MP			
					89132	Positive Alternative Radio, Inc.	BPH-19971021MF			
MM-FM754-273A	VA	Shawsville	273	A	89133	George S. Flinn, Jr.	BPH-19971022MC	75,000	\$75,000	\$75,000
					89041	Poor Mountain Broadcasting	BPH-19971023MC			
					89039	Grace Communications L.C.	BPH-19971023ME			
MM-FM755-225A	WI	New Holstein	225	A	81772	Evangel Ministries Inc.	BPH-19960507MA	15,000	\$15,000	\$15,000
					81813	Metro North Communications Inc.	BPH-19960507MW			
MM-FM756-255A	WI	Two Rivers	255	A	85300	Tri-County Radio, Incorporated	BPH-19970127MB	35,000	\$35,000	\$35,000
					85301	Evangel Ministries Inc.	BPH-19970130MB			
					85340	Radio Plus, Inc.	BPH-19970130MD			

FM Translator Applications

Construction Permit	Market Name		Channel	Class	Facility ID	Applicants	File Numbers	Bidding Units	Upfront Payment	Minimum Opening Bid
	State	City								
MM-FMT008-281	CA	Coyote	281		87357	Educational Media Foundation	BPFT-19970616TH	15,000	\$15,000	\$15,000
					89012	Coyote Communications, Inc.	BPFT-19971015TF			

AM Applications

Construction Permit	Market Name		Frequency (kHz)	Class	Facility ID	Applicants	File Numbers	Bidding Units	Upfront Payment	Minimum Opening Bid
	State	City								
MM-AM039-640	IN	Terre Haute/ West Terre Haute/ Shelburn	640		136106	Bott Broadcasting Company	BNP-20010724ADI	50,000	\$50,000	\$50,000
					136101	Word Power, Inc.	BNP-20010724ADF			
					136069	Birach Broadcasting Corporation	BNP-20010716ABB			

Auction 88 — Closed Broadcast

DA 10-524

Attachment B

Applications Dismissed for Failure to Submit an FRN or 307(b) Information

FM Applications

Construction Permit	Market Name		Channel	Class	Facility ID	Applicants	File Numbers
	State	City					
MM-FM745-287A	CO	Durango	287	A	88478	Steven Dinetz	BPH-19970925MS
					88490	Rocky Mountain Radio Company LLC	BPH-19970925MX
					88570	Lancer Media	BPH-19970925NA
					88538	Robert Durango LLC	BPH-19970925NF
MM-FM746-255A	CO	Steamboat Springs	255	A	88284	Yampa Valley Broadcasting Inc.	BPH-19970909MG
					88307	Harry Media	BPH-19970911MC
					88322	Colorado Alpine Broadcasting Company	BPH-19970911MJ
					88328	Rocky Mountain Radio Company LLC	BPH-19970911MN
MM-FM747-266A	IN	Bloomfield	266	A	87599	Robert M. McDaniel	BPH-19970723MK
MM-FM748-283A	MI	Traverse City	283	A	58642	Salija Bokram/Michael J. St. Cyr	BPH-19941020MF
MM-FM749-286A	MS	Oxford	286	A	84095	Darby Radio Enterprises	BPH-19961105MC
					84083	Oxford Radio Inc.	BPH-19961107MD
MM-FM750-255A	NY	Rosendale	255	A	78922	Eric P. Straus	BPH-19960111MK
					78941	David Fleisher & Melissa Krantz	BPH-19960111MM
					78948	Aritaur Communications, Inc.	BPH-19960111MR
MM-FM752-251A	PR	Santa Isabel	251	A	77840	La Capra Corporation	BPH-19950907MB
MM-FM753-299A	TX	Idalou	299	A	88800	MTD, Inc.	BPH-19971016MG
MM-FM755-225A	WI	New Holstein	225	A	81805	Michael R. Walton Jr.	BPH-19960507ML
					81796	KM Communications, Inc.	BPH-19960507MU
MM-FM756-255A	WI	Two Rivers	255	A	85422	Michael R Walton Jr.	BPH-19970129MH

FM Translator Applications

Construction Permit	Market Name		Channel	Class	Facility ID	Applicants	File Numbers
	State	City					
MM-FMT010-273	NJ	Manahawkin/ Warren Grove	273		77509	CTS Communications Development Corp.	BPFT-19950807TG

AM Applications

Construction Permit	Market Name		Frequency (kHz)	Class	Facility ID	Applicants	File Numbers
	State	City					
MM-AM039-640	IN	Terre Haute/ West Terre Haute/ Shelburn	640		136113	Contemporary Media Inc.	BNP-20010724ADP
					136111	Fort Bend Broadcasting Company Inc.	BNP-20010724ADO
					136109	Powell Meredith Communications Company	BNP-20010724ADM
					136107	KM Communications, Inc.	BNP-20010724ADK
MM-AM040-1230	IN	Terre Haute/ West Terre Haute/ Shelburn	1230		136123	Fort Bend Broadcasting Company Inc.	BNP-20010724ADV
					136114	Contemporary Media Inc.	BNP-20010724ADQ
					136110	Powell Meredith Communications Company	BNP-20010724ADN
					136108	KM Communications, Inc.	BNP-20010724ADL
					136102	Word Power, Inc.	BNP-20010724ADG
MM-AM041-750	NY	Lansing/ South Hill	750		122482	KM Communications, Inc.	BNP-20000201AEY

Auction 88 — Closed Broadcast
DA 10-524
Attachment C
Singletons

FM Translator Applications

Construction Permit	Market Name		Channel	Class	Facility ID	Applicants	File Numbers
	State	City					
MM-FMT010-273	NJ	Manahawkin/ Warren Grove	273		81237	Penn-Jersey Educational Radio Corp.	BPFT-19960222TA

AM Applications

Construction Permit	Market Name		Channel	Class	Facility ID	Applicants	File Numbers
	State	City					
MM-AM040-1230	IN	Terre Haute/ West Terre Haute/ Shelburn	1230		136105	Bott Broadcasting Company	BNP-20010724ADH
MM-AM041-750	NY	Lansing/ South Hill	750		89232	Romar Communications, Inc.	BNP-19971126AH

ATTACHMENT D

Short-Form Application Filing Instructions

This attachment provides instructions on submitting a short-form application and an upfront payment to participate in Auction 88. It also includes instructions for interested parties wishing to view the short-form applications filed for Auction 88.

I. Application Preparation and Submission

Among other requirements, each applicant specified in Attachment A of this public notice must submit its short-form application (FCC Form 175) electronically, via the FCC Auction System, even if that applicant submitted a short-form application in response to the *Supplemental Terre Haute Window Notice*.¹⁹⁵ **Short-form applications for Auction 88 must be submitted and confirmed prior to 6:00 p.m. ET on Thursday, May 13, 2010.** Late applications or unconfirmed submissions of electronic data will not be accepted.

Applicants are reminded that all information required in connection with applications to participate in spectrum license auctions is necessary to determine each applicant's qualifications, and as such will be available for public inspection. Accordingly, an applicant should not include any unnecessary sensitive information, such as Taxpayer Identification Numbers or Social Security Numbers, in its short-form application. Applicants may request that information submitted not be made routinely available for public inspection following the procedures set forth in section 0.459.¹⁹⁶ Such requests must be included as an attachment to the applicant's FCC Form 175 and identify the specific information to which the request applies. Because the required information bears on each applicant's qualifications, confidentiality requests will not be routinely granted.¹⁹⁷

Applicants may make multiple changes to their short-form applications until the close of the filing window. However, applicants must press the **SUBMIT** button in the FCC Auction System for the changes to be submitted and considered by the Commission.

A. Minimum Software Requirements

The following software, at a minimum, is required to use the FCC Integrated Spectrum Auction System:

- Web Browser, either of the following is recommended:
 - Microsoft® Internet Explorer 7.0. Your browser must have either Microsoft VM or Java Plug-In Version 1.6 installed.
 - Mozilla® Firefox® 3.5, with Sun Microsystems' Java Plug-In Version 1.6.

To obtain Java Plug-In Version 1.6, point your browser at <http://java.sun.com/javase/downloads/index.jsp#jre> and click the Download button for the Java SE Runtime Environment (JRE) option.

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

¹⁹⁵ See *Supplemental Terre Haute Window Notice*, 16 FCC Rcd at 12832.

¹⁹⁶ 47 C.F.R. § 0.459.

¹⁹⁷ 47 C.F.R. § 0.459(a).

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

B. Logging On

To submit a short-form application (FCC Form 175) electronically via the Internet, an applicant should start its web browser and point it to either <http://auctions.fcc.gov/> (primary location) or <http://auctions2.fcc.gov/> (secondary location). Once on the *FCC Integrated Spectrum Auction System* page, the applicant may log in to create a short-form application using its FCC Registration Number (“FRN”) and password.

C. Application Filing Instructions

The short-form application (FCC Form 175) requests information needed to determine whether an applicant qualifies to participate in competitive bidding for Commission licenses or construction permits.¹⁹⁸ Pursuant to section 1.2105(a), the FCC Form 175 must be submitted electronically. Applicants must submit required information as entries in the data fields of the FCC Form 175 whenever a data field is available for that information. Attachments should not be used to provide information that can be supplied within the data fields of the FCC Form 175.

The screens comprising FCC Form 175 consist of six series, each requesting six separate types of information: 1) *Applicant Information*; 2) *Permit Selection*; 3) *New Entrant Bidding Credit Eligibility*; 4) *Agreements*; 5) *Ownership*; and 6) *Certify and Submit*. In addition, *Summary* screens, a seventh series, appear prior to the *Certify and Submit* screens. The *Summary* screens provide an overview of an applicant’s FCC Form 175 that facilitates reviewing and revising specific information, as well as an automated check for certain inconsistencies and omissions in submitted information.

To simplify filling out FCC Form 175, certain initial information applicants provide is used to determine what additional information is needed, and what subsequent screens will appear to collect that information. For example, a corporate applicant, unlike an individual applicant, must identify a corporate officer or director responsible for the application (sometimes called a responsible party). If an applicant identifies itself as an individual, no additional information is needed regarding an additional responsible party, and screens requesting responsible party information will not appear. However, if the applicant identifies itself as a corporation, subsequent screens in the FCC Form 175 will ask for responsible party information.

Applicants should be able to fill out FCC Form 175 by following the instructions below. Additional help in filling out FCC Form 175 can be accessed in two ways: 1) by clicking on the **Help** link in the upper right of any screen, which will open Auction Application Online Filing Help; or 2) by clicking on the text of any **Common Question** link appearing on the right side of the screen. The common questions displayed relate to the current screen and vary from screen to screen. In the event the assistance provided by these sources is insufficient, applicants should use the contact information provided in this Public Notice to obtain additional assistance.¹⁹⁹

1. Applicant Information

The *Applicant Information* screens are the first series of screens in FCC Form 175. In the *Applicant Information* screens, the applicant will provide basic information including:

- the applicant’s legal classification (e.g., individual, corporation, rural telephone cooperative, etc.)

¹⁹⁸ See generally, 47 C.F.R. § 1.2105.

¹⁹⁹ See Section VI. “Contact Information,” above.

- optional information regarding the applicant's status as a minority- or woman-owned business or a rural telephone company
- the applicant's name, which will be used as the bidder name during the auction
- citizenship for individuals, or jurisdiction of formation for legal entities
- for applicants classified as legal entities (e.g., corporations and partnerships), the name of and information regarding the entity's responsible individual
- the name, address, telephone and fax number of a contact person who will communicate with the Commission regarding the applicant's FCC Form 175²⁰⁰
- the names of up to three persons authorized to bid for the applicant in the auction
- the applicant's preference for electronic or telephonic bidding
- whether the applicant claims a new entrant bidding credit and the percentage claimed²⁰¹

Each screen will specify the information that the applicant must provide. Please note the following with respect to particular information requested:

- Applicants must indicate their legal classification before continuing to subsequent screens, because the legal classification will determine which subsequent screens will appear.
- P.O. Boxes may **not** be used for an applicant's address.
- To simplify filling out the FCC Form 175, an applicant that has the same address as its contact person can click on the **COPY APPLICANT ADDRESS** button to automatically fill in the contact person's address. P.O. Boxes may **not** be used for a contact person's address.
- Applicants must identify at least one authorized bidder. While applicants may change their authorized bidders at a later date, only those bidders listed on the FCC Form 175 will be authorized to place bids for the applicant during the auction.
- Any qualified bidder may bid either via the Internet or by telephone during the auction. Specifying a preference for electronic or telephonic bidding assists the Commission in determining the staff required for telephonic bidding.

2. Permit Selection

The *Permit Selection* screens make up the second series of screens in FCC Form 175. The *Permit Selection* screens display a list of the construction permits on which the applicant will be allowed to bid during the auction. Be advised that this list cannot be changed by the applicant.

Applicants can navigate within the *Permit Selection* screen by selecting the individual page links or the "Previous" and "Next" buttons above and below the list of available permits. Applicants may stop viewing permits and advance to the next series of screens by clicking the "Continue" button at the bottom of the page.

²⁰⁰ FCC personnel will communicate only with an applicant's contact person or certifying official, as designated on the applicant's FCC Form 175, unless the applicant's certifying official or contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on its behalf. Authorizations may be sent by e-mail to auction88@fcc.gov.

²⁰¹ See 47 C.F.R. §§ 1.2105(a)(2)(ii)(A), (iii), and (iv), 73.5002(b), 73.5007 and 73.5008.

3. New Entrant Bidding Credit Eligibility

The *New Entrant Eligibility* screens are the third series of screens in FCC Form 175. On the initial screen, applicants indicate whether they are claiming the New Entrant Bidding Credit and, if so, whether they are claiming a 25 percent or 35 percent New Entrant Bidding Credit. Applicants should ensure that this bidding credit information is consistent with the bidding credit eligibility information provided on the first *Applicant Information* screen.

Applicants not seeking a New Entrant Bidding Credit will continue to the next series of screens.

Applicants seeking either a 35 percent or a 25 percent New Entrant Bidding Credit will continue to the New Entrant Eligibility – “Eligible Entity” Election screen. The “Eligible Entity” Election screen asks if the applicant claims to be an “Eligible Entity” as defined in section 73.5008(c), for purposes of claiming eligibility for the New Entrant Bidding Credit.²⁰² Applicants seeking either a 35 percent or a 25 percent New Entrant Bidding Credit must respond to the “Eligible Entity” Election question.

Applicants seeking a 35 percent New Entrant Bidding Credit, and claiming either “yes” or “no” to the “Eligible Entity” question, do not need to provide additional information in the Form 175 regarding their claimed New Entrant Bidding Credit. Such applicants will continue to the next series of screens.

Applicants claiming a 25 percent New Entrant Bidding Credit, and claiming either “yes” or “no” to the “Eligible Entity” question, must provide additional information regarding existing mass media facilities in which the applicant, or any individual or entity with an attributable interest in the applicant, has an attributable interest.²⁰³ Applicants must identify:

- the existing mass media facility or facilities;
- the individual or entity with an attributable interest in the existing mass media facility;
- the attributable interest in the facility; and
- whether any broadcast facilities proposed by the applicant in this auction are in the ‘same area’ as existing mass media facilities, as defined by applicable Commission rules. *See* 47 C.F.R. §§ 73.5007, 5008.
- In the event that the applicant indicates that any of the broadcast facilities proposed in its application for this auction are in the ‘same area’ as the identified existing mass media facility, the applicant must continue to an additional screen where the applicant must indicate which broadcast facility it proposed in the auction is in the ‘same area’ as the identified existing mass media facility.

²⁰² 47 C.F.R. § 73.5008(c). An “eligible entity” includes any entity that qualifies as a small business under the Small Business Administration’s size standards for its industry grouping, as set forth in 13 C.F.R. § 121.201, and holds (i) 30 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will own the media outlet; or (ii) 15 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will own the media outlet, provided that no other person or entity owns or controls more than 25 percent of the outstanding stock or partnership interests; or (iii) more than 50 percent of the voting power of the corporation that will own the media outlet if such corporation is a publicly traded company. *See also* 47 C.F.R. § 73.3555, Note 2(i); *Diversity Order*, 23 FCC Rcd at 5931-37 ¶¶ 17-34.

²⁰³ Full-service noncommercial educational stations, on both reserved and nonreserved channels, are included among “media of mass communications” as defined in Section 73.5008(b). *See* Minnesota Christian Broadcasters, Inc., *Memorandum Opinion And Order*, FCC 03-5, 18 FCC Rcd 614 (2003), *aff’d sub nom*, *Carol DeLaHunt v. FCC*, 411 F.3d 283 (D.C. Cir. 2005).

Once the applicant has identified all relevant existing mass media facilities, and all broadcast facilities proposed in its application that are located in the ‘same area’ as each relevant existing mass media facility, the applicant will continue to the View/Edit All Facilities screen. This screen lists the applicant’s claimed New Entrant Bidding Credit of 25 percent, the relevant existing mass media facilities, and the broadcast facilities proposed by the applicant in the ‘same area’ as each relevant existing mass media facility. From this screen, options include:

- Clicking the **Edit** icon or the **Modify bidding credit selection** link to return to the initial New Entrant bidding credit eligibility screen.
- Modifying information about relevant mass media facilities by clicking on them.
- Clicking the **Delete This Facility** link to delete a facility and identified proposed broadcast facilities in the ‘same area.’
- Modifying information regarding a proposed broadcast facility by clicking on its identifier.
- Clicking the **Remove** icon next to information about a particular proposed broadcast facility in the ‘same area’ to remove the corresponding facility.
- Clicking the **Add a proposed ‘Same Area’ Facility to [an existing mass media facility]** link to add a new broadcast facility proposed in the application that is located in the ‘same area.’
- Clicking the **CREATE NEW MASS MEDIA FACILITY** button to add additional mass media facilities.

When all relevant existing mass media facilities, and proposed broadcast facilities in the ‘same area’ as each relevant existing mass media facility, have been identified, click the **CONTINUE** button.

4. Agreements

The *Agreements* screens are the fourth series of screens in FCC Form 175. In the *Agreements* screens, applicants will provide information regarding auction-related agreements subject to disclosure under the Commission’s rules.²⁰⁴

On the first screen, applicants must state whether the applicant has any agreements that are subject to disclosure under the Commission’s rules by responding “Yes” or “No” to a question asking whether the applicant has entered into partnerships, joint ventures, consortia, or other agreements, arrangements or understandings of any kind relating to the construction permits being auctioned, including any such agreement relating to the post-auction market structure. When two applicants in this auction share one officer, or one director, or one individual with specified ownership interests,²⁰⁵ it is at this point in each application that the two applicants can indicate that there is a sharing of this one individual (officer, director, or owner) by responding to this “agreement” question with a “Yes.”²⁰⁶

²⁰⁴ 47 C.F.R. § 1.2105(a)(2)(viii).

²⁰⁵ Applicants are reminded that, for purposes of the communication prohibitions of 47 C.F.R. § 1.2105(c), 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.

²⁰⁶ As explained in the discussion above about the communication prohibitions of Section 1.2105(c), the failure to report an agreement in both short-form applications when specified individuals are involved with two applicants in the same auction can result in a violation of Section 1.2105(c). Where an individual served as an officer for two or more applicants, the Bureaus have found that the bids and bidding strategies of one applicant are necessarily conveyed to the other applicant, and, absent a disclosed bidding agreement, an apparent violation of Section 1.2105(c) occurs. See, e.g., Letter to Colby M. May, TCCSA, Inc., d/b/a Trinity Broadcasting Network, from Barbara A. Kreisman, Chief, Video Division, Media Bureau, and Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, DA 05-2445, 20 FCC Rcd 14648 (WTB/MB (continued....))

If an applicant answers “No,” the applicant will continue with the *Ownership* series of screens, described below. If the applicant answers “Yes,” the applicant will continue with additional *Agreements* screens.

In the additional *Agreements* screens, applicants must provide an identifying name for the agreement and must identify the parties, other than the applicant, to the agreement. The agreement identifier can be a brief description of the agreement or a simple reference name; however, each agreement identifier must be unique. Neither the name of the agreement or its description should indicate construction permit designations for this auction.

The information required for the other parties to an agreement differs if the party is an individual or entity. Applicants may provide FRNs for the other parties to the agreement, if available. While providing the FRN is optional, it helps prevent identification errors resulting from parties having similar names or a single party using multiple names.

Up to three parties to the agreement (not including the applicant) can be identified on a single screen. Additional parties can be added by clicking the **ADD MORE PARTIES** button. In the event of an error, the name of a party and its associated FRN can be deleted from the form by clicking on the **RESET** button. After identifying all parties to a particular agreement, click the **FINISH THIS AGREEMENT** button.

The next screen, the *View/Edit Agreements* screen, lists the agreements and parties to each agreement that already have been entered. From this screen, the following options are available:

- Clicking the **Edit** icon or the **Agreements** link to return to the initial *Agreements* screen regarding whether or not the applicant has any agreements.
- Modifying agreement identifiers by clicking on them.
- Clicking the **Delete This Agreement** link to delete an agreement and associated parties.
- Modifying information regarding a particular party to an agreement by clicking on the party’s name.
- Clicking the **Remove** icon next to information about a particular party to remove that corresponding party.
- Clicking the **Add Party to This Agreement** link to add a new party to an agreement.
- Clicking the **CREATE NEW AGREEMENT** button to add additional agreements.

When all agreements and the parties to each agreement have been identified, the applicant should click the **CONTINUE** button.

5. Ownership

The *Ownership* screens are the fifth series of screens in the FCC Form 175. In the *Ownership* screens, applicants will provide information regarding parties with ownership interests in the applicant that must

(Continued from previous page) _____

2005) (finding apparent violation of communication prohibitions of Section 1.2105(c) where applicants with mutually exclusive applications reported sharing same individual as an officer and director and reported having no bidding agreement).

be disclosed pursuant to Commission rules.²⁰⁷ Commission rules also require the disclosure and description of FCC-regulated businesses that are owned by the applicant and by parties with certain ownership interests in the applicant.²⁰⁸

a. Information Already on File with the Commission

Some applicants may have previously filed FCC Form 602 disclosing ownership information in connection with wireless services. In addition, some applicants may have filed a short-form application (FCC Form 175) for a previous auction disclosing ownership information. To simplify filling out FCC Form 175, an applicant's most current ownership information on file with the Commission, if in an electronic format compatible with the short-form application (FCC Form 175) (such as information submitted in an on-line FCC Form 602 or in an FCC Form 175 filed for a previous auction using ISAS), will automatically be entered into the applicant's short-form application. Applicants with ownership information automatically entered into FCC Form 175 will proceed directly to the *View/Edit Ownership* screen described below.

Each applicant is responsible for information submitted in its FCC Form 175 being complete and accurate. Applicants should carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for submitting their short-form applications in this auction. Applicants can update the information directly in the FCC Form 175. After the deadline for filing this FCC Form 175, ownership information in a submitted FCC Form 175 will be considered to be the applicant's most current ownership information on file with the Commission for this auction.

b. Disclosable Interest Holders and FCC-Regulated Businesses

- Sections 1.2105 and 1.2112(a) of the Commission's rules list the interest holders in the applicant that must be disclosed in FCC Form 175.²⁰⁹ Applicants should note that holders of both direct and indirect interests must be reported.
- Section 1.2112(a)(7) lists the FCC-regulated business entities, or applicants for an FCC license, that must be disclosed in FCC Form 175.²¹⁰

The initial *Ownership* screen enables the applicant to add information regarding either a disclosable interest holder or the FCC-regulated businesses in which the applicant has an interest. Each screen will specify the information that the applicant must provide. Please note the following with respect to particular information requested:

- **If an application includes one or more disclosable interest holders with an indirect ownership in the applicant,²¹¹ the application must include an attachment regarding the relationship between the indirect interest holder(s) and the applicant.** The attachment should

²⁰⁷ 47 C.F.R. §§ 1.2105(a)(2)(ii)(B), 1.2110, 1.2112 and 73.5002.

²⁰⁸ 47 C.F.R. § 1.2112.

²⁰⁹ 47 C.F.R. §§ 1.2105, 1.2112(a). Section 73.5002 specifies the bidding procedures, certification requirements and communication prohibition rules applicable to applications for commercial broadcast services that are subject to auction. Subsection (b) requires the timely submission of Form 175 applications along with all required certifications, information and exhibits pursuant to 47 C.F.R. § 1.2105(a) and any Commission public notices. Section 1.2105 requires the disclosure on the short-form application of applicant ownership information as set forth in Section 1.2112.

²¹⁰ 47 C.F.R. § 1.2112(a)(7).

²¹¹ 47 C.F.R. § 1.2112(a)(6).

provide an overview of the ownership chain that links the indirect owners to the applicant, e.g., indirect owner X owns 50% of holding company Y; indirect owner Z owns 50% of holding company Y; and holding company Y owns 100% of the applicant.²¹² One attachment connecting all indirect owners to the applicant is sufficient. Applicants should not provide separate attachments for each indirect owner. An overview of the ownership connections is sufficient. The attachment should not duplicate all the detailed information already provided in the data fields of the FCC Form 175.

- The “Percent of Interest Held in Applicant” should reflect the disclosable interest holder’s aggregate ownership interest in the applicant (both direct and indirect). In some cases, e.g., circumstances where there is joint ownership or indirect ownership resulting in different owners sharing the same ownership interests, the sum of all the percentages held by disclosable interest holders may exceed 100%. In other cases, a disclosable interest holder may have a 0% ownership interest in the applicant.
- FCC-regulated businesses in which the applicant has a direct interest can be entered from the initial *Add Ownership Disclosure Information* screen. FCC-regulated businesses in which a disclosable interest holder has a direct interest can be entered from the *Add FCC Regulated Business* screen in the series of screens for entering information about a disclosable interest holder.
- When adding an FCC-regulated business, “Percent of Interest Held” refers to the percent of interest held directly by the applicant or disclosable interest holder, as applicable, in the FCC-regulated business. FCC-regulated businesses in which the applicant or disclosable interest holder has an indirect interest need not be reported in the FCC Form 175.
- To simplify filling out the FCC Form 175, applicants can click on the **Select Business(es) Already Submitted** link when entering an FCC-regulated business previously entered as an FCC-regulated business for the applicant or another disclosable interest holder. When doing so, be certain to enter the “Percent of Interest Held” in the FCC-regulated business by the current party, either the applicant or the disclosable interest holder, with respect to which the FCC-regulated business is being entered.

c. View/Edit Ownership Disclosure Information

The *View/Edit Ownership Disclosure Information* screen summarizes ownership information already entered in the FCC Form 175, either automatically from compatible ownership information on file with the Commission or directly by the applicant, and provides links enabling existing information to be revised and additional information to be added.

Existing ownership information is divided into two groups:

- Disclosable Interest Holders of this Applicant
- FCC-Regulated Businesses of this Applicant

To view the detailed information submitted regarding the applicant, a disclosable interest holder or FCC-regulated business, click on the relevant party’s name. To delete existing information or add a new entry in one of the categories, click on the relevant link. This screen also provides a link enabling applicants to

²¹² *Id.*

add an FCC-regulated business directly to an existing disclosable interest holder, without needing to reenter the disclosable interest holder's information.

6. Summary

The *Summary* screens summarize information applicants have provided in previous screens, offering an overview of an applicant's FCC Form 175 to help locate specific information. The *Summary* screens will appear prior to the *Certify and Submit* screens, in order to permit the applicant to review all the information entered in previous screens and to provide an opportunity to check for certain inconsistencies or omissions in the information within the FCC Form 175.

The first *Summary* screen, the *Summary Overview* screen, lists the first five series of screens in the application and provides a **VIEW/EDIT** button to access each one.

- Clicking **VIEW/EDIT** for Applicant Information produces a *Detail for Applicant Information* screen showing the information entered for each data entry field. To change any data item, the applicant should click the **Edit** icon for the relevant data field.
- Clicking **VIEW/EDIT** for Permit Selection takes the applicant to the *View/Edit Permit Selection* screen discussed above in the Permit Selection section. Applicants will be allowed to view, but not edit or change, permits designated for the applicant in this auction.
- Clicking **VIEW/EDIT** for New Entrant Eligibility takes you to the *View/Edit New Entrant Eligibility* screen discussed above in the New Entrant Bidding Credit section.
- Clicking **VIEW/EDIT** for Agreements takes the applicant to the *Agreements* screen discussed above in the Agreements section.
- Clicking **VIEW/EDIT** for Ownership takes the applicant to the *View/Edit Ownership Disclosure Information* screen discussed above in the Ownership section.

Clicking on the **CHECK ERRORS** button initiates an automated check of the application. If the automated check encounters certain inconsistencies or omissions in information within the FCC Form 175 that must be corrected before submitting the application, the inconsistency or omission will be listed in an Error box at the top of the screen. To correct one of these errors, click its corresponding **EDIT** button. In addition, if the automated check encounters certain apparent inconsistencies or omissions that might render the application incomplete if the application is submitted with current information, the apparent error will be listed in a Warning box. To revise the information related to the apparent inconsistency or omission, click its corresponding **EDIT** button.

Each applicant is solely responsible for providing complete and accurate information in its FCC Form 175. The automated check is provided to assist applicants in completing FCC Form 175. However, the automated check cannot be relied upon to determine whether the information provided in the FCC Form 175 is complete or accurate. The automated check may not catch all errors and applicants cannot rely on the automated check to determine the completeness or the accuracy of submitted information.

If the automated check does not encounter certain inconsistencies or omissions, a box will appear displaying the message "**No Errors found - You may continue to Certify and Submit.**" Applicants may then click the **CONTINUE TO CERTIFY** button.

7. Attaching Additional Information

If an applicant needs to provide additional information not requested directly in the screens comprising the FCC Form 175, that information can be provided in an attachment.

The screen for adding an attachment to FCC Form 175 can be accessed by clicking on the **Attachments** link in the upper right of any screen. The *Add Attachment* screen requests information regarding the type of attachment to be added, the name of the file to be attached, and a brief description of the attachment.

NOTE: If the attachment is a request for a waiver or exemption of any of the Commission's rules or procedures, the applicant must identify the "Type" of attachment as a "Waiver" to facilitate prompt processing.

Once the requested information is provided, applicants can add the attachment to the application by clicking on the **ADD ATTACHMENT** button. A list of any attachments already uploaded along with the applicant's FCC Form 175 will appear at the bottom of the screen.

When uploading attachments, applicants may use a variety of file formats, including Word 2000 or earlier, WordPerfect 5.x or later, Adobe PDF, and ASCII text. Applicants must, however, verify that the files contain all attachment information, and files may be no larger than 10 Mb and must not be password-protected. Graphics files (e.g., .bmp, .tiff, .jpg) and spreadsheets (e.g., Excel, Lotus) are supported but not recommended.

8. Certify and Submit

The *Certify and Submit* screens are the sixth and final series of screens in FCC Form 175. In the *Certify and Submit* screens, applicants provide certifications required of all participants in the Commission's competitive bidding processes.²¹³

The first *Certify and Submit* screen requires each applicant to indicate whether the applicant, any affiliate of the applicant, any controlling interest of the applicant, or any affiliate of a controlling interest has ever been in default on any Commission construction permit or license or have ever been delinquent on any non-tax debt owed to any Federal agency.²¹⁴ An applicant associated with a relevant entity that currently is not in default or delinquent, but previously has been in default or delinquent and since has remedied all such defaults and cured all of the outstanding non-tax delinquencies, may participate in an auction, if otherwise qualified. However, such applicants must submit an upfront payment equal to 50 percent more than otherwise required.²¹⁵

The second *Certify and Submit* screen lists the certifications required of all applicants in the Commission's competitive bidding processes and requests that the applicant's certifying official be identified and sign the application.

Who Can Certify. A short-form application can be certified by: (1) the applicant, if the applicant is an individual; (2) one of the partners, if the applicant is a partnership; (3) an officer, director, or duly-authorized employee, if the applicant is a corporation; (4) a member who is an officer, if the applicant is an unincorporated association; (5) the trustee, if the applicant is an amateur radio service club; or (6) a

²¹³ See generally, 47 C.F.R. §§ 1.2105(a)(2) (iv)-(vii) and (ix)-(xi).

²¹⁴ 47 C.F.R. § 1.2105(a)(2)(xi).

²¹⁵ 47 C.F.R. §§ 1.2105(a)(2)(xi), 1.2106(a).

duly elected or appointed official who is authorized to make such certifications under the laws of the applicable jurisdiction, if the applicant is a governmental entity.²¹⁶

All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license.²¹⁷ Applicants are reminded that submission of an FCC Form 175 constitutes a representation by the certifying official that he or she is an authorized representative of the applicant and has read the form's instructions and certifications, and that the contents of the application, its certifications and any attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution. As noted above, a change of certifying official is considered a major change of the short-form application and will not be permitted after the short-form application deadline.

Once the two *Certify and Submit* screens have been filled out, the application may be submitted by clicking on the **SUBMIT** button.

After the application has been submitted, a confirmation screen will be displayed that states the submission time and date, along with a unique file number. Applicants should print a copy of the confirmation page for their records. Applicants may then view and print copies of their submitted applications by clicking on the **PRINT PREVIEW** button.

FCC Form 175 applications for Auction 88 must be submitted and confirmed prior to 6:00 p.m. ET on Thursday, May 13, 2010. Late applications or unconfirmed submissions of electronic data will not be accepted.

D. Withdrawing a Short-Form Application Before the Filing Deadline and Updating Existing Short-Form Applications

1. Withdrawing an Application

To withdraw a submitted application before the short-form application filing deadline, applicants should click on the **Withdraw Application** icon on the Auction Application Manager *Create or Review Auction Applications* page. All previously-submitted data will be deleted.

After the short-form application filing deadline, short-form applications may not be withdrawn.

Applicants may choose to not submit an upfront payment, and therefore, will not be qualified to bid in the auction. However, an applicant remains subject to the prohibition on certain communications under section 1.2105(c), until the down payment deadline following the close of the auction.

2. Updating Existing Applications

The *Create or Review Auction Applications* page displays any application created or submitted within a filing window. This page shows the application status, the date and time the application was last updated, and the date and time the application was last submitted. This page may be used as a reference to confirm the date and time of the most recent submission of the application.

To review or continue working on an existing short-form application, an applicant should click the application auction number, which will produce the application's *Summary* page in a view/edit mode. Applicants must go to the *Certify and Submit* screens and click the **SUBMIT** button to submit any changes made to their FCC Form 175 applications. After the revised application has been submitted, a

²¹⁶ See 47 C.F.R. § 1.917; see also 47 C.F.R. § 73.3513.

²¹⁷ 47 C.F.R. § 1.2105(a)(2)(v).

confirmation page will display the application's file number and submission time and date. Applicants should print a copy of the confirmation page for their records. Applicants may then view and print copies of their submitted applications by clicking on the **PRINT PREVIEW** button.

After the filing deadline, an applicant may make only minor changes to its application. An applicant will not be permitted to make major modifications to its application (e.g., changes to its certifying official, changes in ownership of the applicant that would constitute an assignment or transfer of control, change its identification of the application's proposed facilities as commercial, or claim eligibility for a higher percentage of bidding credit).²¹⁸

II. Upfront Payment Submission

A. Upfront Payment Calculator and Form 159

Applicants may access the **Upfront Payment Calculator and Form 159** from the *Create or Review Auction Applications* page and from the *Auction Application Submit Confirmation* page. Clicking the **Upfront Payment Calculator and Form 159** icon or link will provide an applicant with a calculator to determine the appropriate upfront payment amount to submit with the FCC Form 159. From the *Calculate Upfront Payment* page, the applicant may click the **Form 159** button to obtain the FCC Form 159. For further instructions on how to submit the FCC Form 159, see Attachment E to this Public Notice.

B. Refund of Upfront Payment

On *My Auctions* page, applicants can click on the **See Wire Transfer for Refund Purposes** link to provide wire transfer instructions for purposes of refunds of upfront payments. The Commission will use this information to refund excess funds on deposit.

III. Miscellaneous

A. Access to View Short-Form Applications

After the deadline for filing short-form applications, the Commission will process all timely-submitted applications to determine which are complete, and subsequently will issue a public notice identifying: (1) those applications that are complete; (2) those applications rejected; and (3) those applications that are incomplete because of minor defects that may be corrected. Once that public notice is released, any interested parties may be able to view the short-form applications by searching for them in the FCC database.

To start a search, go to either <http://auctions.fcc.gov/> (primary location) or <http://auctions2.fcc.gov> (secondary location) and click the **Auction Applications** link in the Public Access area on the *FCC Integrated Spectrum Auction System* page.

B. Technical Support

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

Paperwork Reduction Act Approval: The FCC Form 175 was assigned control number 3060-0600 and was approved, as revised, by the Office of Management and Budget on November 1, 2006.

²¹⁸ 47 C.F.R. § 1.2105(b).

ATTACHMENT E

**Auction-Specific Instructions for
FCC Remittance Advice (FCC Form 159-February 2003 Edition)**

Upfront Payments

The following information supplements the standard instructions for FCC Form 159 (Revised 2/03), and is provided to help ensure correct completion of FCC Form 159 for upfront payments for Auction 88. Applicants need to complete FCC Form 159 carefully, because:

- **Mistakes may affect bidding eligibility; and**
- **Lack of consistency between information provided in FCC Form 159 (Revised 2/03), FCC Form 175, long-form application, and correspondence about an application may cause processing delays.**

Therefore appropriate cross-references between the FCC Form 159 Remittance Advice and the short-form application (FCC Form 175) are described below:

Block Number	Required Information
1	LOCKBOX # - Enter "979085"
2	Payer Name - Enter the name of the person or company making the payment. If the applicant itself is the payer, this entry would be the same as FCC Form 175.
3	Total Amount Paid - Enter the amount of the upfront payment associated with the FCC Form 159 (Revised 2/03).
4-8	Street Address, City, State, ZIP Code - Enter the street mailing address (not Post Office box number) where mail should be sent to the payer. If the applicant is the payer, these entries would be the same as FCC Form 175 from the Applicant Information section.
9	Daytime Telephone Number - Enter the telephone number of a person knowledgeable about this upfront payment.
10	Country Code - For addresses outside the United States, enter the appropriate postal country code (available from the Mailing Requirements Department of the U.S. Postal Service).
11	Payer FRN - Enter the payer's ten-digit FCC Registration Number ("FRN") registered in the Commission Registration System ("CORES").
21	Applicant FRN (Complete only if applicant is different than payer.) - Enter the applicant's ten-digit FRN registered in CORES.
24A	Payment Type Code - Enter "A88"
25A	Quantity - Enter the number "1"
26A	Fee Due - Amount of Upfront Payment
27A	Total Fee - Will be the same amount as 26A.
28A	FCC Code 1 - Enter the number "88" (indicating Auction 88).

NOTES:

- Do not use Remittance Advice (Continuation Sheet), FCC Form 159-C, for upfront payments.
- If applicant is different from the payer, complete blocks 13 through 21 for the applicant, using the same information shown on FCC Form 175. Otherwise leave them blank.
- Since credit card payments will not be accepted for upfront payments for an auction, leave Section E blank.

Winning Bidder Requirements, Down Payments and Final Payments

Specific information regarding down payments and final payments will be included in a post-auction public notice announcing the winning bidders.

ATTACHMENT F

**Summary Listing of Judicial, Commission and Bureau Documents Addressing
Application of the Rule Prohibiting Certain Communications,
47 C.F.R. § 1.2105(c)**

A. Judicial Decisions

Star Wireless, LLC v. FCC, 522 F.3d 469 (D.C. Cir. 2008).

High Plains Wireless, L.P. v. FCC, 276 F.3d 599 (D.C. Cir. 2002).

B. Commission Decisions

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 15289, 15395 ¶¶ 285-86, 15489 (2007).

Star Wireless, LLC and Northeast Communications of Wisconsin, Inc., *Order on Review*, FCC 07-80, 22 FCC Rcd 8943 (2007).

Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Seventh Report and Order*, FCC 01-270, 16 FCC Rcd 17546 (2001).

Notice of Apparent Liability for Forfeiture of Western PCS BTA 1 Corp., *Memorandum Opinion and Order*, FCC 99-385, 14 FCC Rcd 21571 (1999); Application of Western PCS BTA I Corp., *Notice of Apparent Liability for Forfeiture*, FCC 98-42, 13 FCC Rcd 8305 (1998).

Notice of Apparent Liability for Forfeiture of US West Communications, Inc., *Order*, FCC 99-90, 14 FCC Rcd 8816 (1999); Application of US West Communications, Inc., *Notice of Apparent Liability for Forfeiture*, FCC 98-41, 13 FCC Rcd 8286 (1998).

Application of Mercury PCS II, LLC, *Memorandum Opinion and Order*, FCC 98-203, 13 FCC Rcd 23755 (1998); Applications of: Mercury PCS II, LLC, *Notice of Apparent Liability for Forfeiture*, FCC 97-388, 12 FCC Rcd 17970 (1997).

Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, FCC 97-413, 13 FCC Rcd 374, 463-469 ¶¶ 155-166 (1997).

Commercial Realty St. Pete, Inc., *Memorandum Opinion and Order*, FCC 96-400, 11 FCC Rcd 15374 (1996); Commercial Realty St. Pete, Inc., *Notice of Apparent Liability for Forfeiture*, FCC 95-58, 10 FCC Rcd 4277 (1995).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, FCC 94-295, 9 FCC Rcd 7684, 7687-7689 ¶¶ 8-12 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Fourth Memorandum Opinion and Order*, FCC 94-264, 9 FCC Rcd 6858, 6866-6869 ¶¶ 47-60 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Second Memorandum Opinion and Order*, FCC 94-215, 9 FCC Rcd 7245, 7253-7254 ¶¶ 48-53 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order*, FCC 94-178, 9 FCC Rcd 5532, 5570-5571 ¶¶ 91-92 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, FCC 94-61, 9 FCC Rcd 2348, 2386-2388 ¶¶ 221-226 (1994).

C. Wireless Telecommunications Bureau Decisions

Lotus Communications Corp., *Order*, DA 08-1364, 23 FCC Rcd 9107 (Wireless Telecom. Bur. 2008).

Application of Nevada Wireless, *Memorandum Opinion and Order*, DA 98-1137, 13 FCC Rcd 11973 (Wireless Telecom. Bur. 1998).

Applications of High Plains Wireless, L.P., *Memorandum Opinion and Order*, DA 97-2451, 12 FCC Rcd 19627 (Wireless Telecom. Bur. 1997).

Applications of Mercury PCS II, LLC, *Memorandum Opinion and Order on Reconsideration*, DA 97-2324, 12 FCC Rcd 18093 (Wireless Telecom. Bur. 1997); Applications of Mercury PCS II, LLC, *Memorandum Opinion and Order*, DA 97-1782, 13 FCC Rcd 5756 (Wireless Telecom. Bur. 1997).

Applications of GWI PCS, Inc., *Memorandum Opinion and Order*, DA 97-674, 12 FCC Rcd 6441 (Wireless Telecom. Bur. 1997).

Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, MM Docket No. 94-131, *Order*, DA 95-2292, 11 FCC Rcd 9655 (Wireless Telecom. Bur. 1995).

1. Public Notices

Wireless Telecommunications Bureau Reminder of Anti-Collusion Rule Obligations, *Public Notice*, DA 04-3677, 19 FCC Rcd 22880 (Wireless Telecom. Bur. 2004).

Wireless Telecommunications Bureau Staff Provides Guidance on Completing the Short-Form Application (FCC Form 175) for Auction No. 40, Auction of Licenses for Lower and Upper Paging Bands, *Public Notice*, DA 01-2122, 16 FCC Rcd 16391 (Wireless Telecom. Bur. 2001).

Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction, *Public Notice*, DA 98-37, 13 FCC Rcd 341 (Wireless Telecom. Bur. 1998).

Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E and F Block Bidders, *Public Notice*, DA 96-1460, 11 FCC Rcd 10134 (Wireless Telecom. Bur. 1996).

FCC Staff Clarifies Application of Anti-Collusion Rule to Broadband PCS "C" Block Reauction, *Public Notice*, DA 96-929, 11 FCC Rcd 7031 (Auc. Div. 1996).

Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, DA 95-2244, 11 FCC Rcd 9645 (Wireless Telecom. Bur. 1995).

2. Letters from the Office of General Counsel, the Wireless Telecommunications Bureau and the Media Bureau

Letter to John Cooper, Aurora Communications, Inc., from Margaret W. Wiener, DA 06-157, 21 FCC Rcd 523 (Auc. Div. 2006).

Letter to Howard A. Kalmenson, Lotus Communications Corp., from Margaret W. Wiener, DA 06-156, 21 FCC Rcd 520 (Auc. Div. 2006).

Letter to Colby M. May from Barbara A. Kreisman and Margaret W. Wiener, DA 05-2445, 20 FCC Rcd 14648 (Video and Auc. Divs. 2005).

Letter to Robert Pettit from Margaret W. Wiener, DA 00-2905, 16 FCC Rcd 10080 (Auc. Div. 2000).

Letter to John Reardon, Mobex Communications, Inc., from Amy J. Zoslov, DA 98-1861, 13 FCC Rcd 17877 (Auc. Div. 1998).

Letter to Elliott J. Greenwald from Christopher J. Wright, DA 98-644, 13 FCC Rcd 7132 (Gen. Counsel 1998).

Letter to David L. Nace from Kathleen O'Brien Ham, DA 96-1566, 11 FCC Rcd 11363 (Auc. Div. 1996).

Letter to Mark Grady from Kathleen O'Brien Ham, DA 96-587, 11 FCC Rcd 10895 (Auc. Div. 1996).

Letter to Jonathan D. Blake from Kathleen O'Brien Ham, DA 95-2404, 10 FCC Rcd 13783 (Auc. Div. 1995).

Letter to Leonard J. Kennedy from Rosalind K. Allen, Acting Chief, Commercial Radio Division, Wireless Telecommunications Bureau (released December 14, 1994).

Letter to R. Michael Senkowski from Rosalind K. Allen, Acting Chief, Commercial Radio Division, Wireless Telecommunications Bureau (released December 1, 1994).

Letter to Gary M. Epstein and James H. Barker from William E. Kennard, General Counsel, Federal Communications Commission (released October 25, 1994).

Letter to Alan F. Ciamporocero from William E. Kennard, General Counsel, Federal Communications Commission (released October 25, 1994).

D. Enforcement Bureau Decisions

Cascade Access, L.L.C., *Notice of Apparent Liability for Forfeiture*, DA 09-207, 24 FCC Rcd 1350 (Enf. Bur. 2009).

Application of Star Wireless, LLC, *Forfeiture Order*, DA 04-3026, 19 FCC Rcd 18626 (Enf. Bur. 2004); Application of Star Wireless, LLC, *Notice of Apparent Liability for Forfeiture*, DA 03-2722, 18 FCC Rcd 17648 (Enf. Bur. 2003).

Application of Northeast Communications of Wisconsin, Inc., *Forfeiture Order*, DA 04-3027, 19 FCC Rcd 18635 (Enf. Bur. 2004); Application of Northeast Communications of Wisconsin, Inc., *Notice of Apparent Liability for Forfeiture*, DA 03-2723, 18 FCC Rcd 17672 (Enf. Bur. 2003).

E. Civil Actions Initiated by U.S. Department of Justice

USA v. Northeast Communications of Wisconsin, Inc., No. 07-C-715, 608 F.Supp.2d 1049 (E.D.Wis. June 25, 2008).

U.S. v. Omnipoint Corp., Proposed Final Judgments and Competitive Impact Statements, Department of Justice, 63 Fed. Reg. 65,228 (Nov. 25, 1998).

“Justice Department Sues Three Firms Over FCC Auction Practices,” *Press Release*, U.S. Department of Justice (Nov. 10, 1998).

Complaint, *U.S. v. Omnipoint Corp.*, No. 1:98CV02750 (D.D.C. Nov. 10, 1998).

Complaint, *U.S. v. Mercury PCS II, L.L.C.*, No. 1:98CV02751 (D.D.C. Nov. 10, 1998).

Complaint, *U.S. v. 21st Century Bidding Corp.*, No. 1:98CV02752 (D.D.C. Nov. 10, 1998).

How to Obtain Copies of Decisions Relating to Section 1.2105(c)

Many of the documents listed in this attachment can be retrieved from the following Commission web site: http://wireless.fcc.gov/auctions/prohibited_communications.

The documents may be located by using our search engine (select the link “search”). Documents retrieved from the web site are available in various formats including Word, WordPerfect, Acrobat Reader, Excel, and ASCII Text. To review a document in its entirety, including footnotes, it is necessary to access the document in WordPerfect, MS Word, or Acrobat Reader.

Additionally, all of the documents can be ordered in hard copy for a fee from the Commission’s duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554, (800) 378-3160 (telephone) or <http://www.bcpweb.com>.