



PUBLIC NOTICE

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DA 11-136
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AUCTION OF VHF COMMERCIAL TELEVISION STATION CONSTRUCTION PERMITS

THREE BIDDERS QUALIFIED TO PARTICIPATE IN AUCTION 90

AU Docket No. 10-147

1. In this Public Notice, the Wireless Telecommunications and Media Bureaus (the “Bureaus”) identify three applicants found to be qualified to bid in the upcoming auction of construction permits for two digital very high frequency (“VHF”) commercial television stations (Auction 90). Bidding in Auction 90 is scheduled to begin on Tuesday, February 15, 2011.¹ This Public Notice contains bidding instructions and other important information regarding Auction 90. It also addresses the continuing obligations and auction procedures for all Auction 90 applicants, including those that have not qualified to participate in bidding.

I. QUALIFIED AND NON-QUALIFIED BIDDERS

A. Qualified Bidders

2. Attachment A to this Public Notice lists the name of each of the three qualified bidders, each qualified bidder’s upfront payment amount, and its maximum eligibility in bidding units. Designation of an applicant as qualified to bid in the auction indicates that the applicant has provided the certifications and information concerning its qualifications for participation in the auction and timely submitted a sufficient upfront payment as required by the Commission’s competitive bidding rules.²

¹ See “Auction of VHF Commercial Television Station Construction Permits Scheduled for February 15, 2011; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 90,” *Public Notice*, DA 10-2008, (WTB/MB rel. November 1, 2010) (“*Auction 90 Procedures Public Notice*”). See also “Auction of VHF Commercial Television Station Construction Permits; Status of Short-Form Applications to Participate in Auction 90,” *Public Notice*, DA 11-7 (WTB/MB rel. January 12, 2011) (“*Auction 90 Status Public Notice*”).

² Under the Commission’s two-phased auction application process, a winning bidder must submit a long-form application after the close of Auction 90 to demonstrate its qualifications to hold a Commission license or construction permit and, if a bidding credit is requested, its eligibility for the requested bidding credit. Thus, a determination that a short-form application is complete and complies with the Commission’s competitive bidding rules and policies is not determinative of an applicant’s qualifications to hold a license or construction permit, or entitlement to a bidding credit. See 47 C.F.R. §§ 1.2107 – 1.2109; see also 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

3. In order to participate effectively in the auction, each qualified bidder should again familiarize itself with the auction rules, procedures, and other information described in the *Auction 90 Procedures Public Notice* and subsequent public notices.³ These public notices and other documents related to Auction 90 are available on the Commission's auctions website at <http://wireless.fcc.gov/auctions/90/>. This Public Notice provides additional guidance.

4. Attachment B to this Public Notice lists the construction permits specified on each qualified bidder's short-form application (FCC Form 175). For qualified bidders claiming a new entrant bidding credit, the applicant's bidding credit percentage for each construction permit is indicated as 35 percent or 25 percent.⁴

B. Non-Qualified Bidders

5. Attachment C to this Public Notice lists each applicant that submitted a short-form application but did not qualify to bid in this auction. These applicants remain subject to the Commission's rules prohibiting certain communications in connection with Commission auctions.⁵

II. REGISTRATION AND BIDDING ACCESS

A. Registration Materials

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

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

7. Each qualified bidder is solely responsible for ensuring the security of its computer systems and its registration materials and for ensuring that only authorized bidders place bids on its behalf. The Commission assumes no responsibility or liability for these matters.

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

8. Any qualified bidder listed in Attachment A of this Public Notice that has not received the registration mailing **by 12:00 noon Eastern Time (ET) on Wednesday, February 9, 2011**, must contact the Auctions Hotline directly at (717) 338-2868. A qualified bidder must have these registration materials to submit bids. Receipt of the registration mailing is critical to participating in both the mock auction and

Rcd 2348, 2376-77 ¶¶ 163-168 (1994) ("*Competitive Bidding Second Report and Order*"). Any request concerning an applicant's qualifications and eligibility for a bidding credit is generally considered after the auction during the long-form application process. In the event that an applicant is found unqualified to be a Commission licensee or ineligible for any claimed bidding credits, it will be liable for any obligations incurred as a result of its participation in the auction. *See generally* 47 C.F.R. § 1.2109.

³ *Auction 90 Procedures Public Notice*, DA 10-2008; *see also Auction 90 Status Public Notice*, DA 11-7.

⁴ The new entrant bidding credit is not available to an applicant if it, and/or any individual or entity with an attributable interest in the applicant, has an attributable interest in more than three media of mass communications or any existing media of mass communications in the "same area" as the broadcast facility proposed by the applicant. 47 C.F.R. § 73.5007. *See* 47 C.F.R. § 73.5007(b)(1)-(3) for the specific service definitions of "same area."

⁵ *See* 47 C.F.R. § 1.2105(c); *see also Auction 90 Procedures Public Notice*, DA 10-2008 at ¶¶ 8-25.

the actual auction, and it is the responsibility of each qualified bidder to ensure that all registration information has been received.

B. Registration Material Replacement

9. In the event that a bidder's SecurID[®] tokens are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacements. Any qualified bidder requiring replacement of these items must call Technical Support at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY).

C. Bidding Access

10. The Commission will conduct Auction 90 over the Internet. Each qualified bidder can access the Integrated Spectrum Auction System ("ISAS" or "FCC Auction System") at <http://auctions.fcc.gov> or <http://auctions2.fcc.gov>. A bidder choosing to bid electronically should review the Integrated Spectrum Auction System (ISAS) Bidder's Guide provided in the registration materials. Bidders are reminded that Apple[®] Mac OS[®] is not currently supported.

11. In addition to bidding electronically over the Internet, a qualified bidder will also have the option of bidding by telephone via the Auction Bidder Line. The Auction Bidder Line telephone number will be supplied in the registration materials sent to each qualified bidder. Any bidder choosing to bid electronically may use the Auction Bidder Line as an alternate method of bidding. When submitting bids by telephone, each bidder must allow sufficient time to bid by placing its calls well in advance of the close of a bidding round.⁶

12. Each authorized bidder must have his or her own SecurID[®] token, regardless of whether the bidder chooses to bid electronically or by telephone. Each applicant with only one authorized bidder will be issued two SecurID[®] tokens, while an applicant with two or three authorized bidders will be issued three tokens. For security purposes, the SecurID[®] tokens and the instructions for using them are mailed only to the contact person at the contact address listed on the applicant's short-form application. Please note that each SecurID[®] token is tailored to a specific auction. SecurID[®] tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 90.

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

D. Bidding Contingency Plan

14. Each bidder should develop comprehensive contingency plans that can be quickly implemented if a bidder experiences difficulty participating in the auction. While the FCC will correct any problems within Commission-controlled facilities, each bidder is solely responsible for anticipating and overcoming problems such as bidder computer failures or other technical issues, loss of or problems with data connections, telephone service interruptions, adverse local weather conditions, unavailability of its authorized bidders, or the loss or breach of confidential security codes. As referenced above, bidders will receive the Auction Bidder Line telephone number in their registration materials.

III. BIDDING TOOLS

A. Mock Auction

15. The Bureaus strongly encourage each qualified bidder to participate in the mock auction that will be conducted on Friday, February 11, 2011. The mock auction will allow a qualified bidder to

⁶ Because the length of a call to place bids may vary, the bidder should allow a minimum of ten minutes.

familiarize itself with the FCC Auction System and to ask FCC auction staff and technical support staff questions about the system and about auction conduct. The Bureaus will conduct this auction over the Internet, and a bidder will also have the option of bidding by telephone.

16. A qualified bidder can access the mock auction at <http://auctions.fcc.gov> or <http://auctions2.fcc.gov>. A bidder choosing to bid electronically should review the Integrated Spectrum Auction System (ISAS) Bidder's Guide provided in the registration materials. Any qualified bidder that wishes to place bids by telephone should use the Auction Bidder Line telephone number supplied in the Auction 90 registration materials.

17. The mock auction will include four sample construction permits. Each qualified bidder will be able to bid on two of the construction permits in the mock auction. Each sample construction permit in the mock auction will have 200,000 bidding units, and each bidder in the mock auction will have 400,000 bidding units of eligibility. The mock auction will otherwise follow the rules governing Auction 90.

18. The mock auction, identified as Mock Auction 74, will simulate the auction, and each bidder will be required to be active on 100 percent of its current bidding eligibility. If a bidder does not meet this requirement, an activity rule waiver will be automatically applied (if the bidder has any waivers available) or the bidder's current eligibility will be permanently reduced (if the bidder has no waivers remaining), possibly curtailing or eliminating the bidder's ability to place additional bids in the mock auction. A bidder should take advantage of the mock auction to practice taking actions the bidder might wish to take during Auction 90.

19. The mock auction bidding schedule for Friday, February 11, 2011, will be as follows:

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

B. Bidder Questions during the Mock Auction and Auction 90

20. FCC auction staff and technical support staff will be available during the auction. Only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application should call on behalf of a bidder. When calling, the person should state that he or she is calling on behalf of a bidder with a time-sensitive auction question. To place bids by telephone or to ask questions during the auction, a bidder must use the FCC Auction Bidder Line telephone number supplied in the registration materials. Otherwise, a bidder should refer to the contact information provided in Section VII "Contact Information" below.

C. Bidder Suggestions

21. The FCC Auction System includes a function for any bidder to submit suggestions to the FCC, but this is not an appropriate mechanism for asking time-sensitive questions that may need an immediate response, such as questions about auction procedures or other issues. Those time-sensitive questions should be directed to the Auction Bidder Line or to the appropriate telephone number provided in Section VII "Contact Information" below.

IV. AUCTION INFORMATION

A. Auction Announcements

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

B. Bidding Schedule

23. On Tuesday, February 15, 2011, and continuing until further notice, Auction 90 will begin with five rounds of bidding as follows:

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

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

C. Bid Amounts

25. Each construction permit in Auction 90 will have a minimum opening bid amount, as previously announced.⁷ In addition to the minimum opening bid, Auction 90 will begin with eight additional bid amounts (for a total of nine bid amounts) per construction permit.⁸ Each bidder is cautioned that the bidder must enter its bid amounts carefully because each bidder still assumes a binding obligation to pay the full bid amount, even if mistakenly or erroneously made.⁹ Moreover, bid withdrawals are not permitted in Auction 90.

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

D. Round Results

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

28. Two types of reports will be available to qualified bidders during the auction: (1) publicly available information, and (2) bidder-specific information available only to that bidder when logged in to the FCC Auction System. The public information will be available on the FCC Auction System results page and in downloadable files. When a bidder is logged in to the FCC Auction system, it will have a selection of “My Bid Reports” available to it on the FCC Auction System’s bidding page. Information in “My Bid Reports” allows only the respective bidder to view all of its actions in the current and previous rounds of the auction.

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

⁷ *Auction 90 Procedures Public Notice*, DA 10-2008 at ¶¶ 131-133. Attachment A of the *Auction 90 Procedures Public Notice* sets forth the minimum opening bid amounts for each construction permit offered in Auction 90.

⁸ *Auction 90 Procedures Public Notice*, DA 10-2008 at ¶¶ 134-140.

⁹ See 47 C.F.R. § 1.2104(g).

V. MAINTAINING APPLICANT OBLIGATIONS

A. Prohibited Communications

30. The Bureaus remind applicants that sections 1.2105(c) and 73.5002(d) of the Commission's rules prohibit applicants for any of the same geographic license areas from communicating with each other about bids, bidding strategies, or settlements, which may include communications regarding post-auction market structure, unless each applicant has identified the other applicant on its short-form application as a party with which the applicant has entered into an agreement under section 1.2105(a)(2)(viii).¹⁰ The "geographic license area" is the market designation of the particular service.¹¹ For the VHF service, the market designation is the particular vacant VHF allotment (e.g., Atlantic City, Channel DTV 4, Construction Permit MM-DTV012-4). In Auction 90, the prohibition on certain communications would apply to any applicants designated in Attachment A for any of the same allotments or construction permits. Therefore, applicants that have applied to bid for a VHF Commercial Television Station construction permit for the same allotment shall not engage in any prohibited communication after the short-form application filing deadline. In addition, even if an auction applicant is eligible to bid on only one common VHF allotment with another Auction 90 applicant, the two applicants may not communicate with each other anything about bids or bidding strategy relating to any VHF allotment on which either applicant is eligible to bid.¹² An applicant is prohibited from communicating not only about its own bids or bidding strategy, but also from communicating about another applicant's bid or bidding strategy.

31. The prohibition on certain communications in sections 1.2105(c) and 73.5002(d) is effective as of the short-form application filing deadline, which for Auction 90 was December 15, 2010, at 6:00 p.m. ET, and extends until the post-auction down payment deadline, which will be announced in a public notice released shortly following close of bidding.¹³ **The prohibition applies to each applicant regardless of whether such applicant becomes a qualified bidder or actually bids.**¹⁴ For further information on the prohibition, applicants should refer to the *Auction 90 Procedures Public Notice*.¹⁵

¹⁰ 47 C.F.R. §§ 1.2105(a)(2)(viii), 1.2105(c)(1), 73.5002(d). *See also* Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Seventh Report and Order*, FCC 01-270, 16 FCC Rcd 17546 (2001) ("*Part 1 Seventh Report and Order*"); Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, FCC 00-274, 15 FCC Rcd 15293, 15297-98 ¶¶ 7-8 (2000).

¹¹ *See generally Part 1 Seventh Report and Order*, 16 FCC Rcd at 17549 n.12.

¹² *Id.*, 16 FCC Rcd at 17548-48 ¶¶ 4-5.

¹³ 47 C.F.R. § 1.2105(c)(1).

¹⁴ For example, the Commission imposed a forfeiture in the amount of \$100,000 for violation 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. *See* Northeast Communications of Wisconsin, Inc., *Forfeiture Order*, DA 04-3027, 19 FCC Rcd 18635 (Enf. Bur. 2004). The Commission subsequently reduced the amount of the forfeiture to \$75,000 due to the parties' history of compliance with Commission rules. *See* Star Wireless, LLC and Northeast Communications of Wisconsin, Inc., *Order on Review*, FCC 07-80, 22 FCC Rcd 8943 (2007), review denied, *Star Wireless, LLC v. FCC*, 522 F.3d 469 (D.C. Cir. 2008) (Section 1.2105(c) applies to auction applicant regardless of whether the applicant is qualified to bid). The United States District Court for the Eastern District of Wisconsin granted summary judgment in favor of the United States pursuant to an effort by the Department of Justice to enforce the forfeiture. *United States v. Northeast Communications of Wisconsin, Inc.*, Decision and Order, Case No. 07-C-715 (D. Wisc. June 25, 2008). *See also* Letter to Robert Pettit, from Margaret W. Wiener, Chief, Auctions and Industry Analysis Div., DA 00-2905, 16 FCC Rcd 10080 (Auc. Div. 2000) (declining to exempt an applicant's controlling interest from coverage by Section 1.2105(c), even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder).

¹⁵ *Auction 90 Procedures Public Notice*, DA 10-2008 at ¶¶ 8-25.

B. Disclosure Obligations and Possible Sanctions

32. 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.¹⁶ 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.¹⁷

33. 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.¹⁸ 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. Each applicant is therefore required by section 1.65 to report to the Commission any communication of a bid or bidding strategy that results in a bidding arrangement, agreement, or understanding after the short-form filing application deadline.¹⁹

34. The Commission amended sections 1.65(a) and 1.2105(c) of its rules to require an applicant in a competitive bidding proceeding to furnish additional or corrected information within five days of a significant occurrence, or to amend its short-form application no more than five days after the applicant becomes aware of the need for amendment.²⁰ 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.²¹

35. Any party reporting a prohibited communication must take care to ensure that any such report does not itself 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. The Commission amended section 1.2105(c) to minimize the risk of inadvertent dissemination by requiring a party to file only a single report and to file that report with Commission personnel expressly charged with administering the Commission's auctions.²² Pursuant to the amended rule, any report required by section 1.2105(c) must be filed consistent with the instructions set forth in this Public Notice.²³ For Auction 90, any such report must 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 must be submitted by e-mail to auction90@fcc.gov or delivered to the following address: Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless

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

¹⁷ *See Declaratory Ruling on Reporting Requirement under Commission's Part 1 Anti-Collusion Rule*, WT Docket No. 07-166, *Second Report and Order*, FCC 07-132, 22 FCC Rcd 15,289, 15,395 ¶¶ 285-86 (2007).

¹⁸ 47 C.F.R. § 1.65.

¹⁹ *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17550-51 ¶ 9; *see also id.*, 16 FCC Rcd at 17552 ¶ 12 (“[T]he Section 1.2105(c) reporting requirement we adopt today applies even if the communication of bids or bidding strategies does not result in a bidding arrangement, agreement or understanding that must be reported to the Commission under Section 1.65(a).”).

²⁰ *Procedural Amendments to Commission Part 1 Competitive Bidding Rules*, WT Docket No. 10-18, *Order*, FCC 10-4, 25 FCC Rcd 521, 523 ¶ 8 (2010) (“*Part 1 Procedural Amendments Order*”).

²¹ *Id.*

²² *Part 1 Procedural Amendments Order*, 25 FCC Rcd at 522 ¶ 4.

²³ *Id.*

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36. A party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection.²⁴ A party also must include a cover sheet to avoid the inadvertent dissemination of information contained in the report. Such a party is also encouraged to consult with the Auctions and Spectrum Access Division staff if the party has any questions about the procedures for submitting such a report.²⁵ The *Auction 90 Procedures Public Notice* provides additional guidance on procedures for submitting application-related information.²⁶

37. Any applicant that is a winning bidder will be required to disclose in its long-form application the specific terms, conditions, and parties involved in all bidding consortia, joint ventures, partnerships, or other agreements or arrangements entered into relating to the competitive bidding process.²⁷ Any applicant found to have violated section 1.2105(c) of the Commission's rules may be subject to sanctions.²⁸ In addition, we remind each applicant that it is subject to the antitrust laws, which are designed to prevent anti-competitive behavior in the marketplace. If an applicant is found to have violated the antitrust laws in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount, and it may be prohibited from participating in future auctions.²⁹

C. Submission of Auction-Related Filings

38. As noted above, an applicant seeking to amend its short-form application during the auction must make modifications to its short-form applications electronically and submit a letter, briefly summarizing the changes, by e-mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: auktion90@fcc.gov. The e-mail summarizing the changes must include a subject or caption referring to Auction 90 and the name of the applicant.

39. A party wishing to submit a request, a complaint, or other information concerning Auction 90 should, in addition to following other procedures prescribed by the Commission's rules, send a copy by e-mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: auktion90@fcc.gov. The Commission occasionally receives complaints regarding specific bidders and requests to suspend bidding during an auction. While the Commission reserves the right to take appropriate action during an auction to preserve the integrity of the auction process, it is generally our practice to address any such allegations only after a winning bidder has submitted its long-form application, when there is greater opportunity for investigation of such allegations, if warranted. The Commission will not investigate any complaints or allegations that are not accompanied by full contact information, including name, address, and telephone number, for the complaining party or parties.

²⁴ See 47 C.F.R. § 0.459 (procedures for requesting that materials or information submitted to the Commission be withheld from public inspection). If an applicant requests confidential treatment of a document, the cover page of the filing must prominently display that the applicant is seeking confidential treatment for that document. For example, a filing might include a cover page stamped with "Request for Confidential Treatment Attached" or "Not for Public Inspection." Any such request must cover all of the material to which the request applies. See 47 C.F.R. § 0.459(a).

²⁵ See Section VII. "Contact Information." below.

²⁶ See *Auction 90 Procedures Public Notice*, DA 10-2008 at ¶¶ 82-83.

²⁷ See 47 C.F.R. § 1.2107(d).

²⁸ See 47 C.F.R. §§ 1.2105(c), 1.2109(d).

²⁹ See 47 C.F.R. § 1.2109(d).

40. Finally, parties wishing to make suggestions concerning Auction 90 or future auctions should present such ideas using the suggestion feature of the FCC Auction System. (As mentioned above, this feature is not an appropriate mechanism for asking time-sensitive questions that need an immediate response.) Commission staff considers all suggestions, but may not always provide an individualized response.

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

41. Each applicant must maintain the accuracy and completeness of information furnished in its short-form application, including any attachments.³⁰ An applicant must amend its short-form application to furnish additional or corrected information as promptly as possible, and in no case more than five business days after the applicant becomes aware of the need for amendment or five business days after the reportable event occurs, whichever is later.³¹ An applicant must modify its short-form application electronically and submit a letter briefly summarizing the change by e-mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: auktion90@fcc.gov. The e-mail summarizing the change must include a subject or caption referring to Auction 90 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. An applicant must not submit application-specific material through the Commission's Electronic Comment Filing System ("ECFS"). Questions about changes should be directed to the Auctions and Spectrum Access Division at (202) 418-0660.

42. As described in the Commission's rules, an applicant may make only minor corrections to its short-form application (e.g., deletion and addition of authorized bidders or contact information).³² A major modification (e.g., changing control of the applicant, or claiming eligibility for a higher percentage bidding credit) will not be accepted.³³ Any change affecting a bidder's eligibility for a new entrant bidding credit, insofar as it results in the reduction or loss of the credit originally claimed on the Form 175 application, must be reported immediately, and no later than five business days after the change occurs. Each applicant must clearly state the nature of the change in an amendment to its short-form application and in the summary letter referenced above. In cases of diminished bidding credit eligibility, the Commission will make appropriate adjustments in the bidding credit prior to the computation of any down and final payment amounts due.

E. Ex Parte Rule

43. Applicants should also be aware that the Commission has generally treated mutually exclusive short-form applications as exempt proceedings and, therefore, not subject to the *ex parte* prohibitions that pertain to restricted proceedings.³⁴

F. Due Diligence

44. We remind each potential bidder that the bidder is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the broadcast facilities being offered in Auction 90. The Commission makes no representations or warranties about the

³⁰ See 47 C.F.R. § 1.65.

³¹ See 47 C.F.R. § 1.2105(b)(4); see also *Part 1 Procedural Amendments Order*, 25 FCC Rcd at 521.

³² See 47 C.F.R. § 1.2105(b).

³³ *Id.*

³⁴ See "Commission Announces that Mutually Exclusive 'Short Form' Applications (Form 175) to Participate in Competitive Bidding Process ('Auctions') Are Treated as Exempt for Ex Parte Purposes," *Public Notice*, FCC 94-283, 9 FCC Rcd 6760 (1994). See also 47 C.F.R. § 1.1202(d)(1) Note 1.

use of this spectrum for particular services. We strongly encourage each potential bidder to conduct its own research prior to the beginning of bidding in Auction 90 in order to determine the existence of pending proceedings, pleadings, applications, or authorizations that might affect the bidder's decisions regarding participation in the auction. Each potential bidder also should review all underlying Commission orders, including the *New Jersey Allotment Order* and the *Delaware Allotment Order*, both of which amended the Post-Transition Table of DTV Allotments.³⁵ We note that both of the permits being offered in this auction are available pursuant to allocations made pursuant to section 331(a) of the Communications Act of 1934, as amended.³⁶ Therefore, each station must remain on a VHF channel as long as the station is the only commercial VHF station in its state. Each potential bidder is solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect the bidder's ability to bid on, otherwise acquire, or make use of any specific construction permit available in Auction 90. In addition, each potential bidder should perform sufficient technical analyses, and/or sufficiently refresh any previous analyses, to assure itself that, should it be a winning bidder for any Auction 90 construction permit, the bidder will be able to build and operate facilities that will comply fully with the Commission's technical and legal requirements.

45. Each participant must continue such research throughout the auction. For further details regarding due diligence, please refer to the *Auction 90 Procedures Public Notice* under Section I.B.3.³⁷

VI. POST-AUCTION PROCEDURES

46. Shortly after bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments and final payments.³⁸ Each winning bidder will have ten business days following that public notice to make down payments. Each winning bidder will also be required to submit any final payments within ten business days after the applicable deadline for submitting down payments.

47. Within thirty business days after release of the auction closing public notice, each winning bidder must electronically submit a properly completed long-form application (FCC Form 301), including required exhibits, for each construction permit won through Auction 90.³⁹ Any winning bidder claiming new entrant status must include an exhibit demonstrating its eligibility for the bidding credit.⁴⁰ Further filing instructions will be provided to auction winners at the close of the auction.⁴¹ Further instructions regarding these post-auction procedures are contained in the *Auction 90 Procedures Public Notice* and will be provided in the public notice announcing the winning bids.⁴²

³⁵ See Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Atlantic City, New Jersey), MB Docket No. 09-231, *Report and Order*, DA 10-447, 25 FCC Rcd 2606 (MB Vid. Div. 2010) ("*New Jersey Allotment Order*"); Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Seaford, Delaware), MB Docket No. 09-230, *Report and Order*, DA 10-698, 25 FCC Rcd 4466 (MB Vid. Div. 2010) ("*Delaware Allotment Order*"), recon. pending.

³⁶ See 47 U.S.C. § 331(a).

³⁷ See *Auction 90 Procedures Public Notice*, DA 10-2008 at ¶¶ 28-35.

³⁸ For more detail, see *Auction 90 Procedures Public Notice*, DA 10-2008 at ¶¶ 155-163.

³⁹ See 47 C.F.R. §§ 1.2107, 73.5005. See also 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, 15984-85 ¶¶ 163-64 (1998).

⁴⁰ See 47 C.F.R. §§ 1.2112(b), 73.5005, 73.5007, 73.5008.

⁴¹ See 47 C.F.R. §§ 1.2107, 1.2109(a), 73.3571, 73.3573, 73.5003, 73.5005, 73.5006(d).

⁴² See 47 C.F.R. §§ 1.2107, 1.2109(a).

VII. CONTACT INFORMATION

48. For further information concerning Auction 90, please contact:

General Auction Information

General Auction Questions
Auction Process and Procedures

FCC Auctions Hotline

(888) 225-5322, option two; or
(717) 338-2868

Auction 90 Process and Procedures

Auctions and Spectrum Access Division

(202) 418-0660
Jeff Crooks (Analyst)
Barbara Sibert (Project Manager)

Auction 90 Legal Information

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

Auctions and Spectrum Access Division

(202) 418-0660
Lynne Milne (Attorney)

Licensing Information

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

Video Division

(202) 418-1600
Shaun Maher (Attorney)
Adrienne Denysyk (Attorney)

Technical Support

Electronic Filing
FCC Auction System (Hardware/Software
Issues)

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

Auction Payments

Instructions for Wiring Payments

Auctions Accounting Group

(202) 418-0578
Gail Glasser

49. To request materials in accessible formats (Braille, large print, electronic files, audio format) for people with disabilities, send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

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