



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

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AUCTION OF FM BROADCAST CONSTRUCTION PERMITS RESCHEDULED FOR APRIL 23, 2013

NOTICE AND FILING REQUIREMENTS, MINIMUM OPENING BIDS, UPFRONT PAYMENTS, AND OTHER PROCEDURES FOR AUCTION 94

AU Docket No. 12-239

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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”) establish the procedures and minimum opening bid amounts for the upcoming auction of certain FM broadcast construction permits and announce a revised auction schedule. This auction, which is designated as Auction 94, is now scheduled to start on April 23, 2013. This Public Notice provides an overview of the procedures, terms and conditions governing Auction 94 and the post-auction application and payment processes.

2. On September 11, 2012, 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 94.² Six parties submitted seven comments in response to the *Auction 94 Comment Public Notice*.³

1. Construction Permits in Auction 94

3. Auction 94 will offer 112 construction permits in the FM broadcast service. The construction permits to be auctioned, which are listed in Attachment A, are for 112 new FM allotments, including 25 construction permits that were offered but not sold or were defaulted upon in prior auctions. These construction permits are for vacant FM allotments, reflecting FM channels assigned to the Table of FM Allotments (“Table”)⁴ pursuant to the Commission’s established rulemaking procedures, and are designated for use in the indicated communities.

4. Attachment A to this Public Notice reflects changes to the list of construction permits that were proposed for this auction in the *Auction 94 Comment Public Notice*. As discussed below, we remove from this auction five construction permits that were listed in the *Auction 94 Comment Public Notice*: (1) MM-FM1005-A on Channel 235A at Newark, Maryland; (2) MM-FM1022-C2 on Channel 295C2 at Arlington, Oregon; (3) MM-FM1050-A on Channel 291A at Rocksprings, Texas; (4) MM-FM1056-A on Channel 233A at Chincoteague, Virginia; and (5) MM-FM477-A on Channel 277A at Baggs, Wyoming.

5. Two commenters seek removal of certain permits from the list of permits to be offered in Auction 94. Mullaney Engineering, Inc. (“MEI”) and Ted W. Austin, Jr. state that certain allotments are not in the Table of FM Allotments and thus should be removed.⁵ Their arguments are based on allotment policies established in the 2006 *Community of License R&O* which streamlined the process for broadcast stations changing their communities of license.⁶ In that order, the Commission announced that the FM

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 “Auction of FM Broadcast Construction Permits Scheduled for March 26, 2013; Comment Sought on Competitive Bidding Procedures For Auction 94,” AU Docket No. 12-239, *Public Notice*, DA 12-1411 (rel. Sept. 11, 2012) (“*Auction 94 Comment Public Notice*”). A summary of this public notice was published at 77 Fed. Reg. 60690-95 (Oct. 4, 2012).

³ Radio Pacific, Inc., Hatfield & Dawson Consulting Engineers, LLC., Mark Jones, Ted W. Austin, Jr., Mullaney Engineering, Inc., and Fletcher, Heald & Hildreth, P.L.C. filed comments. Mullaney Engineering, Inc., and Bay View Broadcasting, Inc. filed reply comments. These comments and reply comments are available under proceeding 12-239 in the Commission’s Electronic Comment Filing System (“ECFS”).

⁴ 47 C.F.R. § 73.202(b).

⁵ MEI Comments at 2; Austin Comments at 3.

⁶ 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 Red 14212 (2006), *recon. pending* (“*Community of License R&O*”).

Table of Allotments would contain only vacant allotments and that authorized full-power non-reserved band FM facilities already occupying allotments would be listed only in the Media Bureau's Consolidated Data Base System ("CDBS").⁷ The Commission reasoned that, while vacant allotments serve as placeholders to prevent interference to future facilities, existing facilities would be adequately protected by their authorizations so such "occupied" allotments had no need to be protected by inclusion in the FM Table of Allotments.⁸ However, the *Community of License R&O* inadvertently omitted from the revised FM Table of Allotments a few vacant allotments. Media Bureau's Audio Division previously reinstated two of these allotments -- MM-FM957-C2 (Rule, Texas) and MM-FM1034-C3 (Crowell, Texas) -- into the Table and a summary of that order has been published in the Federal Register.⁹ Because these allotments have been reinstated in the revised Table, they will therefore remain in Auction 94. Five others -- MM-FM1005-A (Newark, Maryland); MM-FM1022-C2 (Arlington, Oregon); MM-FM1050-A (Rocksprings, Texas); MM-FM1056-A (Chincoteague, Virginia); and MM-FM477-A (Baggs, Wyoming) -- were allotted and included in the Table of FM Allotments prior to the *Community of License R&O*,¹⁰ but were inadvertently omitted from the revised Table of FM Allotments as described in an appendix to that order. Thus, permits for these five allotments will be removed from Auction 94, and will be offered in an auction after the Media Bureau reinstates these allotments in the Table.¹¹

6. MEI also insists that nine additional permits for allotments should be removed from Auction 94.¹² In this category are nine allotments that were removed by the *Community of License R&O* but which subsequently became vacant and were reinstated in the Table: MM-FM869-C0 (Port Lions, Alaska); MM-FM874-C3 (Lake Village, Arkansas); MM-FM911-C3 (Bunker, Missouri); MM-FM914-A (Drew, Mississippi); MM-FM915-A (Mound Bayou, Mississippi); MM-FM916-A (Vardaman, Mississippi); MM-FM921-C1 (Cloudcroft, New Mexico); MM-FM946-C3 (Cisco, Texas); and MM-FM960-C2 (Shamrock, Texas). The Media Bureau reinstated these allotments in October 2011, and there are no pending petitions for reconsideration or applications for review of this action.¹³ The reinstatement of these nine allotments is therefore final, and they will be offered in Auction 94.

7. Finally, MEI states that six allotments -- MM-FM975-C1 (McNary, Arizona); MM-FM982-A (Amboy, California); MM-FM1006-A (Ewart, Michigan); MM-FM1007-A (Ludington, Michigan); MM-FM1036-A (Early, Texas); and MM-FM1043-A (Markham, Texas) -- are being offered

⁷ *Id.*

⁸ *Id.* at 14221-22.

⁹ See Crowell, Knox City, Rule, and Quanah, Texas, *Report and Order*, 25 FCC Rcd 996 (2010), 77 FR 66743 (Nov. 7, 2012).

¹⁰ *Community of License R&O*, 21 FCC Rcd at 14222.

¹¹ Because the Baggs, WY permit is being removed from the list of permits to be offered in Auction 94, we need not reach the merits of Mr. Austin's separate contention that the Baggs permit should be removed pending the outcome of his Application for Review of the denial of his request for waiver of the down payment deadline for winning bidders in Auction 62. See Austin Comments at 1-3. We note, however, that the Commission and courts have consistently rejected requests to stay Commission auctions based on matters pending before the Commission. See, e.g., Alpine Request for Stay of Auction 78 for the Broadband PCS C Block Licenses in the San Luis Obispo, CA and the Santa Barbara-Santa Maria, CA Basic Trading Areas, *Order*, 23 FCC Rcd 10,485, 10,488 ¶ 18 (WTB/ASAD 2008) ("*Alpine*") (denying request to stay auction or remove from auction licenses on which requester was formerly authorized to operate during pendency of petition for reconsideration seeking reinstatement of licenses).

¹² MEI Comments at 5.

¹³ FM Table of Allotments, (Various Locations), *Order*, 26 FCC Rcd 14276, 14278 (MB 2011).

“despite the fact that each was subject to a long form 301 following an auction.”¹⁴ The FCC Form 301 applications filed in connection with each of these six allotments were not filed by the winning bidder “following an auction,” contrary to MEI’s assertion. Rather, FCC Form 301 applications for these permits were appropriately filed in the rulemaking proceeding by either the original allotment proponent, or by the party submitting a prevailing counterproposal pursuant to the procedures established by the *Community of License R&O*.¹⁵ Thus, MEI is incorrect in its assertion that these six allotments had been “automatically removed” from the Table. These six construction permits will therefore be offered for the first time in Auction 94.

8. MEI, in its Comments, also requests that the staff supplement Attachment A to disclose “any instance where the high bidder of the allotment is required to reimburse another licensee for the reasonable costs associated with a channel change(s) required in order to create a (sic) the allotment which is being offered at auction herein.”¹⁶ We decline this request as unnecessary. We have consistently advised potential applicants in prior Public Notices announcing broadcast auction procedures, as we do in this Public Notice, of the need to perform due diligence before applying to bid at auction. We stress that in conducting their due diligence applicants should review all Commission orders underlying permits of interest, as these orders may describe information unique to the allotment such as site restrictions or expense reimbursement requirements.¹⁷ We believe that potential applicants are best positioned to assess the relevance and importance of information gathered as part of their due diligence efforts. Moreover, we have consistently stated that the Commission makes no representations or warranties about the use of this spectrum for particular services.

¹⁴ MEI Comments at 4-5. MEI goes on to state that “[t]he fact that CDBS shows that a file number with the prefix ‘BNPH’ is proof of the long form being filed and thus, by definition the channel-city combination was automatically removed from the table per [the *Community of License R&O*].” *Id.*

¹⁵ All proponents filing a petition for rulemaking to add a new allotment to the Table, whether as an original proposal or as a counterproposal, must simultaneously file an FCC Form 301 application specifying the proposed facility. *Community of License R&O*, 21 FCC Rcd at 14223 ¶ 18 (requiring allocations proponent simultaneously to file a Form 301 application with its petition for rule making and the appropriate fee). Therefore, the pendency of a long-form in connection with an allotment does not necessarily mean that a construction permit has been won at auction. See McNary, Arizona, *Notice of Proposed Rule Making*, 24 FCC Rcd 2229, 2229 nn.1-2 (MB 2009) (allotment MM-FM975-C1, McNary, Arizona); Amboy, California, *Notice of Proposed Rule Making*, 25 FCC Rcd 2774, 2774 nn.1-2 (MB 2010) (allotment MM-FM982-A, Amboy, California); Ewart, Ludington, Pentwater, and Manistee, Michigan, *Notice of Proposed Rule Making*, 23 FCC Rcd 4055, 4055 nn.1-2, 4 (MB 2008) (allotments MM-FM1006-A, Ewart, Michigan and MM-FM1007-A, Ludington, Michigan); Lake Brownwood and Early, Texas, *Report and Order*, 26 FCC Rcd 2437, 2437 n.2 (MB 2011) (allotment MM-FM1036-A, Early, Texas); and Markham, Ganado, and Victoria, Texas, *Report and Order*, 25 FCC Rcd 836, 837 (MB 2008) (allotment MM-FM1043-A, Markham, Texas; while not cited in the Report and Order, counter-proponent Fort Bend Media Broadcasting Company (“Fort Bend”) noted in its Comments and Counterproposal that it had simultaneously filed an FCC Form 301 application, File No. BNPH-20070928ABI. Comments and Counterproposal of Fort Bend in MB Docket No. 07-163 at 3 (Sept. 28, 2007)).

¹⁶ MEI Comments at 1.

¹⁷ See *infra* paragraph 35. See also Auction of FM Broadcast Construction Permits Scheduled for September 1, 2009; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 79, *Public Notice*, 24 FCC Rcd 4445, 4454 (MB/WTB 2009); Auction of FM Broadcast Construction Permits Rescheduled for April 27, 2011; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 91, *Public Notice*, 25 FCC Rcd 16787, 16797-98 (MB/WTB 2010); Auction of FM Broadcast Construction Permits Scheduled for March 27, 2012; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 93, *Public Notice*, 26 FCC Rcd 15484, 15494-95 (MB/WTB 2011).

9. Pursuant to the policies established in the *Broadcast First Report and Order*, applicants may apply for any vacant FM allotment listed in Attachment A.¹⁸ When two or more short-form applications (FCC Form 175) specifying the same FM allotment are accepted for filing, mutual exclusivity exists for auction purposes¹⁹ and that construction permit must be awarded by competitive bidding procedures.²⁰ Once mutual exclusivity exists for auction purposes, even if only one applicant for a particular construction permit submits an upfront payment, that applicant is required to submit a bid in order to obtain the permit.²¹

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.²² Broadcasters should also familiarize themselves with the Commission's FM broadcast service rules contained in 47 C.F.R. §§ 73.201 – 73.333 and 73.1001 – 73.5009. Prospective bidders must also be familiar with the broadcast auctions and competitive bidding rules contained in 47 C.F.R. §§ 1.2101 – 1.2112 and 73.5000 – 73.5009. All bidders must also be thoroughly familiar with the procedures, terms and conditions contained in this Public Notice, the *Auction 94 Comment Public Notice*, the *Broadcast First Report and Order*,²³ the *Broadcast First Reconsideration*

¹⁸ 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, 15923-25 ¶¶ 7-12, 15974 ¶ 142 (1998) (“*Broadcast First Report and Order*”), *Memorandum Opinion and Order*, FCC 99-74, 14 FCC Rcd 8724 (1999) (“*Broadcast First Reconsideration Order*”), *Memorandum Opinion and Order*, FCC 99-201, 14 FCC Rcd 12541 (1999), *aff'd*, *Orion Communications Ltd. v. FCC*, 221 F.3d 196, No. 98-1424, slip op. (D.C. Cir. June 13, 2000) (unpublished opinion available at 2000 WL 816046) (D.C. Cir.), *aff'd*, *Orion Communications Ltd. v. FCC*, 213 F.3d 761 (D.C. Cir. 2000). Attachment A also lists the reference coordinates for each vacant FM allotment. With regard to the FM service, the Commission gave applicants the opportunity to submit a set of preferred site coordinates as an alternative to the reference coordinates for the vacant FM allotment upon which they intend to bid. Further information regarding preferred site coordinates may be found in Attachment B to this public notice. See *Broadcast First Report and Order*, 13 FCC Rcd at 15974-75 ¶ 142 & n.153.

¹⁹ *Broadcast First Report and Order*, 13 FCC Rcd at 15978-80 ¶¶ 149-154. 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 Rcd 2348, 2376 ¶ 165 (1994) (“*Competitive Bidding Second Report and Order*”).

²⁰ *Broadcast First Report and Order*, 13 FCC Rcd at 15923-25 ¶¶ 7-12.

²¹ Any applicant that submits a short-form application but fails to timely submit an upfront payment will retain its status as an applicant in Auction 94 and will remain subject to the Commission's rules prohibiting certain communications, 47 C.F.R. §§ 1.2105(c) and 73.5002(d), but, having purchased no bidding eligibility, will not be eligible to bid. See *Broadcast First Report and Order*, 13 FCC Rcd at 15979-80 ¶ 153.

²² 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); *Second Order on Reconsideration of the Fifth Report and Order*, FCC 04-295, 20 FCC Rcd 1942 (2005).

²³ *Broadcast First Report and Order*, 13 FCC Rcd at 15920.

Order,²⁴ the *New Entrant Bidding Credit Reconsideration Order*,²⁵ the *NCE Second Report and Order*, and the *NCE Memorandum Opinion and Third Order on Reconsideration*.²⁶

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.bcpweb.com>.²⁷

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).²⁸

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.²⁹ 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.**³⁰ In broadcast services, the "geographic license area" is the

²⁴ *Broadcast First Reconsideration Order*, 14 FCC Rcd at 8724.

²⁵ 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).

²⁶ Reexamination of the Comparative Standard 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).

²⁷ When ordering documents from BCPI, please provide the appropriate FCC document number (for example, DA 12-1411 for the *Auction 94 Comment Public Notice*, or DA 12-1865 for this Public Notice).

²⁸ See 47 C.F.R. §§ 1.2105(a)(2)(viii), 1.2105(c)(1) and 73.5002; see also *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17546.

²⁹ 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).

³⁰ 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 sub nom*, *Star Wireless, LLC and Northeast Communications of Wisconsin, Inc., Order on* (continued...)

market designation of the particular service.³¹ For the FM service, the market designation is the particular vacant FM allotment (e.g., Harrison, Michigan, Channel 280A, MM-FM664A). In Auction 94, this rule would apply to applicants designating any of the same FM allotments on the short-form application.

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.³² 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 conveyed to the other applicant, and, absent a disclosed bidding agreement, an apparent violation of section 1.2105(c) occurs.³³

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 relating to any competing applicant’s bids or bidding strategies. The Bureaus have not addressed a situation 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 should be presumed to be communicated to the applicant.

16. 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.³⁴

17. Moreover, Auction 94 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. Similarly, if the authorized bidders are different individuals employed by the same organization (e.g., law firm, engineering firm or consulting firm), a

(Continued from previous page) _____
Review, FCC 07-80, 22 FCC Rcd 8943 (2007)(“*Star and Northeast Review Order*”), *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 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).

³¹ *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17549 n.12.

³² 47 C.F.R. § 1.2105(c)(7)(i).

³³ *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) (“*Trinity*”) (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).

³⁴ 47 C.F.R. § 1.2105(c)(4). Specifically, the Commission’s rules permit a party holding a non-controlling, attributable interest in one applicant to acquire an ownership interest in or entering into a joint bidding arrangement with other applicants after the short-form application filing deadline, 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. 47 C.F.R. §§ 1.2105(c)(4)(i), (ii).

violation similarly could occur.³⁵ 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 the applicant and its bidders will comply with section 1.2105(c).³⁶

b. Prohibition Applies Until Down Payment Deadline

18. Section 1.2105(c)'s prohibition on certain communications begins at the short-form application filing deadline and ends at the down payment deadline after the auction closes, which will be announced in a future public notice.³⁷

c. Prohibited Communications

19. Applicants must not communicate directly or indirectly about bids or bidding strategy to other applicants in this auction (as described above).³⁸ Section 1.2105(c) prohibits not only communication about an applicant's own bids or bidding strategy, it also prohibits communication of another applicant's bids or bidding strategy.³⁹ While section 1.2105(c) does not prohibit non-auction-related business negotiations among auction applicants, each applicant must remain vigilant so as not to directly or indirectly communicate information that affects, or could affect, bids, bidding strategy, or the negotiation of settlement agreements.

20. 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."⁴⁰ 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,"⁴¹ 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."⁴² 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.⁴³ Similarly, an applicant's public statement of intent not to participate in Auction 94 bidding

³⁵ See Application of Nevada Wireless, *Memorandum Opinion and Order*, DA 98-1137, 13 FCC Rcd 11973, 11977-78 ¶¶ 11-12 (WTB 1998) ("Nevada Wireless Order").

³⁶ *Id.*

³⁷ 47 C.F.R. § 1.2105(c)(1).

³⁸ *Part I Seventh Report and Order*, 16 FCC Rcd at 17553-54 ¶ 12. For a discussion of the term "applicant" within the meaning of section 1.2105(c), see Section I.B.2.a. above.

³⁹ See Notice of Apparent [L]iability for Forfeiture of Western PCS BTA 1 Corp., *Memorandum Opinion and Order*, FCC 99-385, 14 FCC Rcd 21571, 21574 ¶ 8 (1999).

⁴⁰ 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) ("*Competitive Bidding Memorandum Opinion and Order*").

⁴¹ Mercury PCS II, LLC, *Notice of Apparent Liability for Forfeiture*, FCC 97-388, 12 FCC Rcd 17970, 17974 ¶ 12, 17976 ¶ 17 (1997).

⁴² Mercury PCS II, LLC, *Memorandum Opinion and Order*, FCC 98-203, 13 FCC Rcd 23755, 23760 ¶ 11 (1998).

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

21. 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 the agreement(s) in their short-form applications.⁴⁴ Applicants must identify in their short-form applications 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.⁴⁵

22. 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 negotiation, discussion or communication with any other applicants after the short-form application filing deadline.⁴⁶

23. Section 1.2105(c) does not prohibit non-auction-related business negotiations among auction applicants.⁴⁷ However, certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies. Such subject areas include, but are not limited to, issues such as management, sales, local marketing agreements, rebroadcast agreements, and other transactional agreements.⁴⁸

e. Section 1.2105(c) Certification

24. By electronically submitting a short-form application, each applicant in Auction 94 certifies its compliance with sections 1.2105(c) and 73.5002. In particular, an applicant must certify under penalty of perjury it has 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 the applicant's bids, bidding strategies, or the particular construction permits on which it will or will not bid.⁴⁹ 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.⁵⁰ The Commission has stated that it "intend[s] to scrutinize carefully any instances in which bidding patterns suggest that (Continued from previous page) _____"

⁴³ 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.").

⁴⁴ 47 C.F.R. § 1.2105(c)(1).

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

⁴⁶ See Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, DA 95-2244, 11 FCC Rcd 9645, 9646 (WTB 1995) ("*Anti-Collusion Public Notice*").

⁴⁷ See, e.g., Todd Stuart Noordyk, *Memorandum Opinion and Order*, FCC 01-275, 16 FCC Rcd 18113, 18116-17 ¶ 12 (2001).

⁴⁸ See 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, 467-68 ¶ 163 (1997) ("*Part 1 Third Report and Order*").

⁴⁹ 47 C.F.R. § 1.2105(a)(2)(ix).

⁵⁰ *Nevada Wireless Order*, 13 FCC Rcd at 11978 ¶ 13.

collusion may be occurring.⁵¹ Any applicant found to have violated section 1.2105(c) may be subject to sanctions.⁵²

f. Duty to Report Prohibited Communications

25. 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.⁵³ 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.⁵⁴

26. 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.⁵⁵ 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).⁵⁶

27. Sections 1.65(a) and 1.2105(c) require each applicant in competitive bidding proceedings 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 become aware of the need for amendment.⁵⁷ These rules are intended to facilitate the auction process by making the information available promptly to all participants and to enable the Bureaus to act expeditiously on those changes when such action is necessary.⁵⁸

g. Procedure for Reporting Prohibited Communications

28. 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 report of a prohibited communication 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.

29. Section 1.2105(c) requires parties to file only a single report concerning a prohibited communication and to file that report with Commission personnel expressly charged with administering

⁵¹ *Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689 ¶ 12.

⁵² See 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

⁵³ 47 C.F.R. § 1.2105(c)(6); see also *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17553-55 ¶¶ 13-17.

⁵⁴ 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, 15,395 ¶¶ 285-86 (2007).

⁵⁵ 47 C.F.R. § 1.65; see also *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17550-51 ¶ 9.

⁵⁶ See *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17550-51 ¶ 9.

⁵⁷ 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*").

⁵⁸ *Id.*

the Commission's auctions.⁵⁹ This rule is designed to minimize the risk of inadvertent dissemination of information in such reports. Any reports required by section 1.2105(c) must be filed consistent with the instructions set forth in this Public Notice.⁶⁰ For Auction 94, such reports must be filed with the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available. Any such report should be submitted by e-mail to Ms. Wiener at the following e-mail address: auction94@fcc.gov. If you choose instead to submit a report in hard copy, any such report must be delivered only to: Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Room 6423, Washington, DC 20554.

30. 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 by following the procedures specified in section 0.459 of the Commission's rules.⁶¹ Such parties also are encouraged to coordinate with the Auctions and Spectrum Access Division staff about the procedures for submitting such reports.⁶² This Public Notice provides additional guidance on procedures for submitting application-related information below.⁶³

h. Winning Bidders Must Disclose Terms of Agreements

31. Each applicant that is a winning bidder will be required to disclose in its long-form applications the specific terms, conditions, and parties involved in any agreement it has entered into. This applies to 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.⁶⁴ Failure to comply with the Commission's rules can result in enforcement action.

i. Additional Information Concerning Rule Prohibiting Certain Communications

32. 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 D. These documents are available on the Commission's auction web page at http://wireless.fcc.gov/auctions/prohibited_communications.

⁵⁹ *Part 1 Procedural Amendments Order*, 25 FCC Rcd at 522 ¶ 4. This process differs from filing procedures used in connection with other Commission rules and processes which may call for submission of filings to the Commission's Office of the Secretary or ECFS. Filing through the Office of Secretary or ECFS could allow the report to become publicly available and might result in the communication of prohibited information to other auction applicants.

⁶⁰ *Id.*

⁶¹ 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).

⁶² See Section VI. "Contact Information," below.

⁶³ See Section II. J. "Maintaining Current Information in Short-Form Applications," below.

⁶⁴ 47 C.F.R. § 1.2107(d).

j. Antitrust Laws

33. Regardless of compliance with the Commission's rules, applicants remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace.⁶⁵ Compliance with the disclosure requirements of section 1.2105(c) will not insulate a party from enforcement of the antitrust laws.⁶⁶ For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submitted a short-form application.⁶⁷ 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."⁶⁸

34. 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.⁶⁹ 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.⁷⁰

3. Due Diligence

35. We remind each potential bidder that it is 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. Each bidder is responsible for assuring that, if it wins a construction permit, it 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 permittee in a broadcast service, subject 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.**

36. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. In particular, the Bureaus strongly encourage each potential

⁶⁵ See Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Further Notice of Proposed Rulemaking*, FCC 99-384, 14 FCC Rcd 21558, 21560-61 ¶ 4 & n.17 (1999) quoting *Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689 ¶ 12 (“[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 and 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*”).

⁶⁶ See *Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689 ¶ 12. See also “Justice Department Sues Three Firms Over FCC Auction Practices,” *Press Release* 98-536 (DOJ Nov. 10, 1998).

⁶⁷ See, e.g., *Fourth Memorandum Opinion and 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.*

⁶⁸ *Anti-Collusion Public Notice*, 11 FCC Rcd at 9646.

⁶⁹ See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226.

⁷⁰ See 47 C.F.R. § 1.2109(d); see also *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226.

bidder 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 it plans to bid.⁷¹ A *Report and Order* adopted in an FM allotment rulemaking proceeding⁷² may include information unique to the allotment such as site restrictions or expense reimbursement requirements.⁷³ Additionally, each potential bidder should perform technical analyses or refresh their previous analyses to assure itself that, should it become a winning bidder for any Auction 94 construction permit, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements. The Bureaus strongly encourage each applicant to inspect any prospective transmitter sites located in, or near, the service area for which it plans to bid, confirm the availability of such sites, and to familiarize itself with the Commission's rules regarding the National Environmental Policy Act.⁷⁴

37. The Bureaus strongly encourage each applicant to conduct its own research prior to Auction 94 in order to determine the existence of pending administrative or judicial proceedings, including pending allocation rulemaking proceedings that might affect its decision to participate in the auction. The Bureaus strongly encourage each participant in Auction 94 to continue such research throughout the auction. The due diligence considerations mentioned in this Public Notice do not comprise an exhaustive list of steps that should be undertaken prior to participating in this auction. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon specific facts and circumstances related to its interests.

38. The Bureaus also remind each applicant that pending and future judicial proceedings, as well as certain pending and future proceedings before the Commission — 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 — may relate to particular applicants, incumbent permittees, incumbent licensees, or the construction permits available in Auction 94. Each prospective applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on construction permits available in this auction.

39. **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 94.** Each potential bidder is responsible for undertaking research to ensure that any permits won in this auction will be suitable for its business plans and needs. Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

40. Applicants may research the licensing database for the Media Bureau in order to determine which channels are already licensed to incumbent licensees or previously authorized to construction permittees. Licensing records are contained in the Consolidated Data Base System (CDBS)

⁷¹ See 47 C.F.R. § 73.202.

⁷² See, e.g., Circleville, Ohio, *Second Report and Order*, FCC 67-578, 8 FCC 2d 159 (1967); Charlotte Amalie, Frederiksted, and Christiansted, Virgin Islands, MM Docket No. 00-102, *Report and Order*, DA 03-4120, 19 FCC Rcd 30 (MB 2004); Cheyenne, Wyoming and Gering, Nebraska, MM Docket No. 97-106, *Report and Order*, DA 00-865, 15 FCC Rcd 7528 (MMB 2000).

⁷³ For example, in its Reply Comments, Bay View Broadcasting, Inc. emphasizes that, as part of Docket 08-06, in which the Commission amended the Table to allot Channel 274A at Evart, Michigan, in order to accommodate the allotment the Commission ordered that “the ultimate permittee of Channel 274A, Evart, Michigan, shall reimburse Bay View Broadcasting, Inc., for its reasonable costs of changing the frequency of its Station WMOM (FM), Pentwater, Michigan, from Channel 274A to Channel 242A.” Evart and Ludington, Michigan, *Report and Order*, DA 09-412, 24 FCC Rcd 2584, 2586 (MB 2009).

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

and may be researched on the Internet from <http://www.fcc.gov/encyclopedia/media-bureau-filing-systems-and-databases>. Potential bidders may query the database online and download a copy of their search results if desired. Instructions on using Station Search, Ownership Search, and Application Search and downloading query results are also available online via the above link. 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. 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.

41. 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, it must 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

42. Bidders will be able to participate in Auction 94 over the Internet using the Commission's web-based 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

43. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction 94 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.

44. 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 by visiting <http://wireless.fcc.gov/csinfo#fraud>
- the FTC at (877) FTC-HELP ((877) 382-4357) or by 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>.

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

45. Permittees or licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other federal environmental statutes.⁷⁵ 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.⁷⁶ These 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 U.S. Army Corps of Engineers, and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). In assessing the effect of facility 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.⁷⁷ The permittee or licensee must prepare environmental assessments for any facility 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. In addition, the permittee or licensee 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

46. Bidding in Auction 94 has been rescheduled and will begin on Tuesday, April 23, 2013. Pre-auction dates and deadlines are listed below.

47. Fletcher and MEI each request that we postpone the start of bidding in Auction 94.⁷⁸ Fletcher points out that a substantial number of the permits to be offered in Auction 94 cover areas of Texas and that a March auction start date will directly conflict with the April 1, 2013 license renewal deadline applicable to licenses in Texas and some other states.⁷⁹ Fletcher also notes that April 1 is the deadline for telecommunications service providers to file the annual Universal Service reporting worksheet (Form 499-A),⁸⁰ though it does not explain how that deadline might be relevant to broadcast interests. Fletcher and MEI each claim that postponing the start of Auction 94 until after religious observances will give bidders more opportunities to work with their financial institutions and otherwise

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

⁷⁶ 47 C.F.R. §§ 1.1301-1.1319.

⁷⁷ 47 C.F.R. Part 1, Appendix C.

⁷⁸ Fletcher Comments at 2; MEI Comments at 5-6; MEI Reply at 1-3.

⁷⁹ Fletcher Comment at 2.

⁸⁰ Fletcher Comment at 2.

foster greater participation in the auction.⁸¹ MEI suggests that the auction start date be pushed back until after the conclusion of the National Association of Broadcasters Convention.⁸² The Bureaus do not believe that the existence of deadlines for unrelated Commission programs justify delaying the auction. Nevertheless, in view of the foregoing, we conclude that rescheduling the starting date for Auction 94 to April 23, 2013, will avoid conflicts with this widely-attended industry convention and widely-observed religious holidays and may thus foster auction participation and an efficient auction process, as well as provide prospective applicants with additional time for auction preparation.

48. The initial schedule for bidding rounds will be announced by public notice at least one week before the auction starts. Moreover, 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

49. Auction 94 – FM Broadcast

3. Bidding Methodology

50. As discussed in more detail below, the bidding methodology for Auction 94 will be a simultaneous multiple round format.⁸³ The Commission will conduct this auction over the Internet using the FCC Auction System. Qualified bidders are permitted to bid electronically via the Internet or by telephone using the telephonic bidding option. All telephone calls are recorded.

4. Pre-Auction Dates and Deadlines

51. The following dates and deadlines apply:

| | |
|---|---|
| Auction Tutorial Available (via Internet) | January 28, 2013 |
| Short-Form Application (FCC Form 175) | |
| Filing Window Opens | January 28, 2013; 12:00 noon ET |
| Short-Form Application (FCC Form 175) | |
| Filing Window Deadline | February 6, 2013; prior to 6:00 p.m. ET |
| Upfront Payments (via wire transfer)..... | March 18, 2013; 6:00 p.m. ET |
| Mock Auction | April 19, 2013 |
| Auction Begins..... | April 23, 2013 |

5. Requirements for Participation

52. 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 February 6, 2013, following the electronic filing procedures set forth in Attachment B 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 March 18, 2013, following the procedures and instructions set forth in Attachment C to this Public Notice; and
- Comply with all provisions outlined in this Public Notice and applicable Commission rules.

⁸¹ *Id.*

⁸² MEI Comments at 5-6.

⁸³ See Section IV.A.1. “Simultaneous Multiple Round Auction,” below.

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

A. General Information Regarding Short-Form Applications

53. An application to participate in an FCC auction, referred to as a short-form application or FCC Form 175, provides information used to determine whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or permits.⁸⁴ The short-form application is the first part of the Commission's two-phased auction application process. In the first phase, parties desiring to participate in the auction must file a streamlined, short-form application in which they certify under penalty of perjury as to their qualifications.⁸⁵ Each applicant must take seriously its duties and responsibilities and carefully determine before filing an application that it has the legal, technical and financial resources to participate in the auction and to construct and operate an FM station if it becomes a licensee as a result of its participation in this auction. Eligibility to participate in bidding is based on the applicant's short-form application and certifications, and on its upfront payment, as explained below.⁸⁶ In the second phase of the process, each winning bidder must file a more comprehensive long-form application.⁸⁷

54. Every entity and individual seeking a construction permit available in Auction 94 must file a short-form application electronically via the FCC Auction System prior to 6:00 p.m. ET on February 6, 2013, following the procedures prescribed in Attachment B to this Public Notice. If an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 will be used to determine whether the applicant is eligible for the claimed bidding credit. Applicants filing a short-form application are subject to the Commission's anti-collusion rules beginning at the deadline for filing, as described above.

55. 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.⁸⁸ Applicants should read carefully the instructions set forth in Attachment B to this Public Notice and should consult the Commission's rules to ensure that, in addition to the materials described below, all the information required is included within their short-form application.⁸⁹

56. An individual or entity may not submit more than one short-form application for a single auction. If a party submits multiple short-form applications, only one application may be accepted for filing.

57. Applicants 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

⁸⁴ 47 C.F.R. §§ 1.2105, 73.5002.

⁸⁵ *Id.*; see also *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2376 ¶ 165.

⁸⁶ Section III.D. "Upfront Payments – Due March 18, 2013," below.

⁸⁷ 47 C.F.R. §§ 1.2107, 73.5005.

⁸⁸ 47 C.F.R. § 1.2105(a)(2)(v).

⁸⁹ As discussed generally in the *NCE Second Report and Order*, 18 FCC Rcd at 6691, the opening of a window for nonreserved vacant FM allotments provides a filing opportunity for both NCE and commercial applicants. However, as discussed in Section III.C, *below*, while non-mutually exclusive NCE applications will not be resolved through competitive bidding, any applications specifying NCE facilities that are mutually exclusive with any applications specifying commercial facilities will be returned as unacceptable for filing. 47 C.F.R. § 73.5002(b).

to make major modifications to their applications; such impermissible changes include a change of the certifying official to the application.⁹⁰ 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. Permit Selection

58. An applicant must select the construction permits on which it wants to bid from the “Eligible Permits” list on its short-form application. To assist in identifying construction permits of interest that will be available in Auction 94, the FCC Auction System includes a filtering mechanism that allows an applicant to filter the “Eligible Permits” list. Selections for one or more of the filter criteria can be made and the system will produce a list of construction permits satisfying the specified criteria. Any or all of the construction permits in the filtered results may be selected. Applicants will also be able to select construction permits from one set of filtered results and then filter on different criteria to select additional construction permits.

59. Applicants interested in participating in Auction 94 must have selected construction permit(s) available in this auction by the short-form application filing deadline. Applicants must review and verify their construction permit selections before the deadline for submitting short-form applications. Construction permit selections cannot be changed after the short-form application filing deadline.⁹¹ The FCC Auction System will not accept bids on construction permits that were not selected on the applicant’s short-form application.

C. New Entrant Bidding Credit

60. 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.⁹²

61. 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.⁹³ In Auction 94, the bidder’s attributable interests and, thus, its maximum new entrant bidding credit eligibility are determined as of the short-form application filing deadline.⁹⁴ An applicant 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.⁹⁵ Each

⁹⁰ See 47 C.F.R. § 1.2105(b).

⁹¹ 47 C.F.R. § 1.2105(b)(2).

⁹² *Broadcast First Report and Order*, 13 FCC Rcd at 15994-95 ¶ 189 (adopting new entrant bidding credit to implement statutory provisions regarding opportunities for small, minority-owned and women-owned businesses).

⁹³ “Media of mass communications” include both commercial and noncommercial educational (NCE) full-power broadcast stations. See 47 C.F.R. § 73.5008.

⁹⁴ See 47 C.F.R. § 73.5007(a).

⁹⁵ If, for example, on February 6, 2013, 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 before 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*, MM Docket No. 88-577, *Memorandum Opinion and Order*, FCC 01-129, 16 FCC Rcd 12061, 12077-79 ¶¶ 34-37, *stay denied*, *Order*, FCC 01-276, 16 FCC Rcd 18966 (2001), *aff’d sub nom*, *Biltmore Forest Broadcasting FM, Inc. v. FCC*, 321 F.3d 155 (D.C. Cir.), *cert. denied*, 540 U.S. 981 (2003) (“*Liberty Productions*”).

prospective bidder is 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.⁹⁶

62. 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.⁹⁷

63. 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 in this context based on certain factors traditionally considered relevant.⁹⁸ Applicants should note that the mass media attribution rules were revised in 1999.⁹⁹

64. Applicants 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 applicant 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.¹⁰⁰

65. 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."¹⁰¹ An "eligible entity" is defined in Note 2(i) of section 73.3555.¹⁰² On July 7, 2011, the United

⁹⁶ 47 C.F.R. § 73.5007(a). We remind each applicant of its duty to continuously maintain the accuracy of information submitted in its auction application. 47 C.F.R. § 1.65. See *Vermont Telephone Company, Inc.*, DA 11-1536, *Notice of Apparent Liability for Forfeiture* (EB rel. Oct. 14, 2011) ("*Vermont Telephone Company*") (finding Vermont Telephone Company apparently liable for forfeiture in the amount of \$34,000 for failing to submit accurate bidding credit information and failing to maintain the continuing accuracy of bidding credit information in its application for Auction 86 (Broadband Radio Service)).

⁹⁷ See 47 C.F.R. § 73.3555 Note 2.

⁹⁸ See Clarification of Commission Policies Regarding Spousal Attribution, *Policy Statement*, FCC 92-60, 7 FCC Rcd 1920 (1992).

⁹⁹ 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).

¹⁰⁰ See 47 C.F.R. § 73.5008(c).

¹⁰¹ Promoting Diversification of Ownership In the Broadcasting Services, MB Docket No. 07-294, *Report and Order and Third Further Notice of Proposed Rule Making*, FCC 07-217, 23 FCC Rcd 5922 (2008) ("*Diversity Order*"). 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.

¹⁰² 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. § (continued....)

States Court of Appeals for the Third Circuit issued a decision¹⁰³ vacating the Commission's "eligible entity" definition, and remanding those provisions of the *Diversity Order*¹⁰⁴ that rely on the "eligible entity" definition. Consistent with the *Court Decision*, actions required on remand will be addressed within the Commission's 2010 Quadrennial Review of the media ownership rules.¹⁰⁵ Pending such review, the Media Bureau has suspended application of the eligible entity rule provisions and policies in all contexts, including broadcast auctions.¹⁰⁶ Accordingly, the relaxed EDP rule for eligible entities as the basis for the New Entrant Bidding Credit will be unavailable in Auction 94.

66. 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.¹⁰⁷ 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 applicant's other mass media interests in determining its eligibility for a New Entrant Bidding Credit.¹⁰⁸ A medium of mass communications is defined in section 73.5008(b).¹⁰⁹ **Full service noncommercial educational stations, on both reserved and non-reserved channels, are included among "media of mass communications" as defined in section 73.5008(b).**¹¹⁰

(Continued from previous page)

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.

¹⁰³ *Prometheus Radio Project v. FCC*, No. 08-3078, 652 F.3d 431 (3d Cir. July 7, 2011) ("*Court Decision*").

¹⁰⁴ *Diversity Order*, 23 FCC Rcd at 5922. To delineate the group receiving the benefits of the measures adopted in the *Diversity Order*, the Commission used the term "eligible entity" as defined in the Commission's 2002 Biennial Review Order. See 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 02-277, Report and Order and Notice of Proposed Rulemaking, FCC 03-127, 18 FCC Rcd 13620, 13810-12 (2003). Generally, "eligible entities" are defined to include all entities that qualify as small businesses under the standards of the Small Business Administration for industry groupings based on revenue.

¹⁰⁵ See 2010 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 09-182, Notice of Inquiry, FCC 10-92, 25 FCC Rcd 6086 (2010).

¹⁰⁶ See Media Bureau Provides Notice of Suspension of Eligible Entity Rule Changes and Guidance on the Assignment of Broadcast Station Construction Permits to Eligible Entities, DA 11-1232, Public Notice, 26 FCC Rcd 10370 (MB 2011).

¹⁰⁷ 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.

¹⁰⁸ *Broadcast First Reconsideration Order*, 14 FCC Rcd at 8764 ¶ 75; 47 C.F.R. § 73.5007.

¹⁰⁹ See 47 C.F.R. § 73.5008(b).

¹¹⁰ *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, slip op. (D.C. Cir. Feb. 4, 2004) (unpublished opinion available at 2004 WL 288606 (D.C. Cir.) and *Minnesota Christian Broadcasters, Inc. v. FCC*, 411 F.3d 283 (D.C. Cir. 2005) ("*Minnesota Christian Broadcasters*").

D. Application Requirements

67. In addition to the ownership information required pursuant to sections 1.2105 and 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.¹¹¹ In those cases, a certification under penalty of perjury must be provided in completing the 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.¹¹²

1. Bidding Credits

68. Applicants that qualify for the New Entrant Bidding Credit, as specified in the applicable rule,¹¹³ 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;
- 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 permit 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. For purposes of determining whether a broadcast permit offered in this auction is in the "same area" as an applicant's existing mass media facilities, the coverage area of the to-be-auctioned facility is calculated using maximum class facilities at the allotment reference coordinates, **not** any applicant-specified preferred site coordinates.¹¹⁴

69. 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.¹¹⁵ 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.¹¹⁶

¹¹¹ See 47 C.F.R. §§ 1.2105(a), 73.3555 and Note 2, 73.5007, 73.5008.

¹¹² See 47 C.F.R. §§ 73.5007, 73.5008.

¹¹³ See 47 C.F.R. § 73.5007.

¹¹⁴ Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures, MB Docket No. 09-52, *First Report and Order and Further Notice of Proposed Rule Making*, FCC 10-24, 25 FCC Rcd 1583, 1609 ¶ 52 (2010) ("*Rural First Report and Order*"). See 47 C.F.R. § 73.5007 & Note 1.

¹¹⁵ See 47 C.F.R. § 73.5008.

¹¹⁶ See 47 C.F.R. § 73.5007(c).

2. Installment Payments

70. Installment payments will not be available in Auction 94.

E. 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.¹¹⁷ 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.¹¹⁸ Each applicant is responsible for ensuring that information submitted in its short-form application is complete and accurate.

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 the FCC Auction System), will automatically be entered into their short-form application. Each applicant must carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for filing the short-form application. Any information that needs to be corrected or updated must be changed directly in the short-form application.

F. Provisions Regarding Former and Current Defaulters

73. Current defaulters or delinquents are not eligible to participate in Auction 94, 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 would otherwise be necessary.¹¹⁹ An applicant is considered a "current defaulter" or a "current delinquent" when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, is in default on any payment for any Commission construction permit or license (including a down payment) or is 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

¹¹⁷ 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.

¹¹⁸ 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. §§ 1.2105 and 1.2112.

¹¹⁹ 47 C.F.R. §§ 1.2105(a)(2)(x), (xi), 1.2105(b)(1), and 1.2106(a); see *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317 ¶ 42 & n.142 ("If any one of an applicant's controlling interests or their affiliates... is in default on any Commission licenses or is delinquent on any non-tax debt owed to any Federal agency at the time the applicant files it[s] 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.").

1.2110 of the Commission's rules,¹²⁰ 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.¹²¹ 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.¹²² 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.

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.¹²³ 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.¹²⁴ 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.¹²⁵ Parties are also encouraged to consult with the Wireless Telecommunications Bureau's Auctions and Spectrum Access Division staff if they have any questions about default and delinquency disclosure requirements.

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 its obligations under the Debt Collection Improvement Act of 1996, which governs the collection of debts owed to the United States.¹²⁶ Under the red light rule, applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission will not be processed. In the same rulemaking order, the Commission explicitly declared, however, that its competitive bidding rules "are not affected" by the red light rule.¹²⁷ As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of its competitive bidding rules,

¹²⁰ 47 C.F.R. § 1.2110.

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

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

¹²³ "Wireless Telecommunications Bureau Reminds Prospective Broadband PCS Spectrum Auction Applicants of Default and Delinquency Disclosure Requirements," *Public Notice*, DA 04-3491, 19 FCC Rcd 21920 (WTB 2004) ("*Auction Default Disclosure Public Notice*"). This public notice may be found at <http://wireless.fcc.gov/auctions/58/>.

¹²⁴ Letter to Cheryl A. Tritt, Esq., 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/>.

¹²⁵ 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 demand letter in the time period specified may render the subject debt delinquent, notwithstanding rules generally permitting late payment.

¹²⁶ 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*").

¹²⁷ *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) and states that "[t]hese rules are not affected by the red light rule.").

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 1.2105.¹²⁸ 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 94 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,¹²⁹ and such review may result in the dismissal of a winning bidder's long-form application.¹³⁰

G. Optional Applicant Status Identification

79. Applicants owned by members of minority groups and/or women, as defined in section 1.2110(c)(3),¹³¹ and rural telephone companies, as defined in section 1.2110(c)(4),¹³² 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.¹³³

H. Noncommercial Educational Status Election

80. In the *NCE Second Report and Order*, the Commission held that applications for noncommercial educational ("NCE") FM stations on nonreserved spectrum, filed during an FM filing window, will be returned as unacceptable for filing if mutually exclusive with any application for a commercial station.¹³⁴ Accordingly, if an FCC Form 175 filed during the Auction 94 filing window identifying the application's proposed station as noncommercial educational is mutually exclusive with any application filed during that window for a commercial station,¹³⁵ the NCE application will be returned as unacceptable for filing.¹³⁶ For this reason, each prospective applicant in this auction should consider

¹²⁸ *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).

¹²⁹ *Debt Collection Report and Order*, 19 FCC Rcd at 6540. See 47 C.F.R. § 1.1114.

¹³⁰ 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).

¹³¹ 47 C.F.R. § 1.2110(c)(3).

¹³² 47 C.F.R. § 1.2110(c)(4).

¹³³ 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).

¹³⁴ *NCE Second Report and Order*, 18 FCC Rcd at 6699-6701 ¶¶ 21-24. See also 47 C.F.R. § 73.5002(b). Applications specifying the same FM station construction permit are considered mutually exclusive. *Broadcast First Report and Order*, 13 FCC Rcd at 15979 n.166.

¹³⁵ In the *NCE Second Report and Order*, the Commission determined that short-form applications that do not identify the facilities proposed in the FCC Form 175 as "noncommercial educational" will be considered, as a matter of law, applications for commercial broadcast stations. *NCE Second Report and Order*, 18 FCC Rcd at 6700 ¶ 22.

¹³⁶ *NCE Second Report and Order*, 18 FCC Rcd at 6699-6701 ¶¶ 21-24. See also 47 C.F.R. § 73.5002(b).

carefully if they wish to propose NCE operation for any FM station acquired in this auction. This NCE election cannot be reversed after the initial application filing deadline.¹³⁷

I. Minor Modifications to Short-Form Applications

81. After the deadline for filing initial applications, an Auction 94 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 major modification to its application (e.g., change of construction permit selection, change control of the applicant, change the certifying official, claim eligibility for a higher percentage of bidding credit, or change the identification of the application's proposed facilities as noncommercial educational) after the initial application filing deadline.¹³⁸ Thus, any change in control of an applicant — resulting from a merger, for example — will be considered a major modification, and the application will consequently be dismissed.¹³⁹

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. For the change to be submitted and considered by the Commission, be sure to click on the SUBMIT button. After the revised application has been submitted, a confirmation page will be displayed stating the submission time, submission date, and a unique file number.¹⁴⁰

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 for 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 the FCC Auction System once it is available. Moreover, after the filing window has closed, the system will not permit applicants to make certain changes, such as the applicant's legal classification and the identification of the application's proposed facilities as noncommercial educational.

84. Any letter describing changes to an applicant's short-form application must be submitted by e-mail to auktion94@fcc.gov. The e-mail summarizing the changes must include a subject or caption referring to Auction 94 and the name of the applicant, for example, "Re: Changes to Auction 94 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

¹³⁷ 47 C.F.R. § 1.2105(b); *see also* NCE Second Report and Order, 18 FCC Rcd at 6700 ¶ 22.

¹³⁸ 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) ("Two Way Radio") (auction applicant not allowed to change its designated entity status after application filing deadline).

¹³⁹ 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.

¹⁴⁰ 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.¹⁴¹

86. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System, which was used for submitting comments regarding Auction 94.

J. Maintaining Current Information in Short-Form Applications

87. Sections 1.65 and 1.2105(b) of the Commission's rules require an applicant to maintain the accuracy and completeness of information furnished in its pending application and in competitive bidding proceedings to furnish additional or corrected information to the Commission within five days of a significant occurrence,¹⁴² or to amend a short form application no more than five days after the applicant becomes aware of the need for the amendment.¹⁴³ Changes that cause a loss of or reduction in the percentage of bidding credit specified on the originally-submitted application must be reported immediately, and no later than five business days after the change occurs.¹⁴⁴ If an amendment reporting 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.¹⁴⁵ As noted above, after the short-form filing deadline, applicants may make only minor changes to their applications. For changes to be submitted and considered by the Commission, be sure to click on the SUBMIT button in the FCC Auction System. In addition, an applicant cannot update its short-form application using the FCC Auction System after the initial and resubmission filing windows close. If information needs to be submitted pursuant to section 1.65 after these windows close, a letter briefly summarizing the changes must be submitted by e-mail to auction94@fcc.gov. This e-mail must include a subject or caption referring to Auction 94 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 January 28, 2013

88. On Monday, January 28, 2013, an educational auction tutorial will be available on the Auction 94 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.

89. The Auction 94 online tutorial replaces the live bidder seminars that have been offered for many previous auctions. The Bureaus believe parties interested in participating in this auction will find the interactive, online tutorial a more efficient and effective way to further their understanding of the

¹⁴¹ See 47 C.F.R. § 1.917; see also 47 C.F.R. § 73.3513.

¹⁴² We remind each applicant of its duty to continuously maintain the accuracy of information submitted in its auction application. See, e.g., *Vermont Telephone Company*, supra note <91>.

¹⁴³ 47 C.F.R. §§ 1.65, 1.2105(b). See also *Part 1 Procedural Amendments Order*, 25 FCC Rcd at 523 ¶ 8.

¹⁴⁴ See 47 C.F.R. § 73.5007(a). See also *Rural First Report and Order*, 25 FCC Rcd at 1611-1614 ¶¶ 57-63. 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 12077-79 ¶¶ 34-37. 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, and no later than five business days after the change occurs.

¹⁴⁵ 47 C.F.R. § 1.2105(b)(2).

auction process. The tutorial will allow viewers to navigate the presentation outline, review written notes, listen to audio recordings 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 online application and bidding system. The tutorial will be accessible through a web browser with Adobe Flash Player.¹⁴⁶

90. The auction tutorial will be accessible from the FCC's Auction 94 web page at <http://wireless.fcc.gov/auctions/94/> through an "Auction Tutorial" link. Once posted, this tutorial will remain available and accessible anytime for reference in connection with the procedures outlined in this Public Notice.

B. Short-Form Applications – Due Prior to 6:00 p.m. ET on February 6, 2013

91. In order to be eligible to bid in this auction, applicants must first follow the procedures set forth in Attachment B to this Public Notice to submit a short-form application (FCC Form 175) electronically via the FCC Auction System.¹⁴⁷ This short-form application must be submitted prior to 6:00 p.m. ET on February 6, 2013. **Late applications will not be accepted.** No application fee is required, but an applicant must submit a timely upfront payment to be eligible to bid.¹⁴⁸

92. Applications may generally be filed at any time beginning at noon ET on January 28, 2013, until the filing window closes at 6:00 p.m. ET on February 6, 2013. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applications can be updated or amended multiple times until the filing deadline on February 6, 2013.

93. 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 by Commission staff. Additional information about accessing, completing, and viewing the FCC Form 175 is included in Attachment B. 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

94. 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 that are complete; (2) those that are rejected; and (3) those that are incomplete or deficient because of minor defects that may be corrected. The public notice will include the deadline for resubmitting corrected applications.

95. Non-mutually exclusive applications will be listed in a subsequent public notice to be released by the Bureaus. Such applications will not proceed to auction, but will proceed in accordance with instructions set forth in that public notice.¹⁴⁹ All mutually exclusive applications will be considered under the relevant procedures for conflict resolution. Mutually exclusive applications proposing commercial stations will proceed to auction.

¹⁴⁶ Most users will already have the Flash Player browser plug-in, which can be downloaded from <http://get.adobe.com/flashplayer/>.

¹⁴⁷ 47 C.F.R. § 1.2105(a).

¹⁴⁸ See Section III.D. "Upfront Payments – Due March 18, 2013," below.

¹⁴⁹ See 47 C.F.R. § 73.3573(f)(4).

96. As described above, after the application filing deadline on February 6, 2013, applicants can make only minor corrections to their applications.¹⁵⁰ They will not be permitted to make major modifications (e.g., change construction permit selection, change control of the applicant, change the certifying official, claim eligibility for a higher percentage of bidding credit, or change identification of the application's proposed facilities as NCE).¹⁵¹

97. Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the 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.¹⁵² Authorizations may be sent by e-mail to auction94@fcc.gov.

D. Upfront Payments – Due March 18, 2013

98. In order to be eligible to bid in this auction, an upfront payment must be submitted and accompanied by an FCC Remittance Advice Form (FCC Form 159). 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 March 18, 2013.**

1. Making Upfront Payments by Wire Transfer

99. Wire transfer payments must be received before 6:00 p.m. ET on March 18, 2013.¹⁵³ No other payment method is acceptable.¹⁵⁴ 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. The following information will be needed:

ABA Routing Number: 081000210
Receiving Bank: U.S. Bank
1005 Convention Plaza
St. Louis, MO 63101
BENEFICIARY: FCC/Account # 152308790392
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: "U094")
FCC CODE 1: (same as FCC Form 159, block 28A: "94")
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.

¹⁵⁰ See Section II.I. "Minor Modifications to Short-Form Applications," above.

¹⁵¹ 47 C.F.R. § 1.2105(b); see also *Two Way Radio*, 14 FCC Red at 12035.

¹⁵² In no event, however, will the FCC send auction 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.

¹⁵³ 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.

¹⁵⁴ 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, write “Wire Transfer – Auction Payment for Auction 94.” In order to meet the upfront payment deadline, an applicant’s payment must be credited to the Commission’s account for Auction 94 before the deadline.¹⁵⁵

101. Each applicant is responsible for ensuring timely submission of its upfront payment and for timely filing of an accurate and complete FCC Remittance Advice Form (FCC Form 159). An applicant should coordinate with its financial institution well ahead of the due date regarding its wire transfer and allow sufficient time for the transfer to be initiated and completed prior to the deadline. The Commission repeatedly has cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer.¹⁵⁶ **Each applicant also is responsible for obtaining confirmation from its financial institution that its wire transfer to U.S. Bank was successful and from Commission staff that its upfront payment was timely received and that it was deposited into the proper account.** To receive confirmation from Commission staff, contact Gail Glasser of the Office of Managing Director’s Auctions Accounting Group at (202) 418-0578, or alternatively, Theresa Meeks at (202) 418-2945.

102. 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 94 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 March 18, 2013, deadline will result in dismissal of the short-form application and disqualification from participation in the auction.

2. FCC Form 159

103. An accurate and complete 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 this form is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment C. 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 it must be filed with U.S. Bank by fax.

3. Upfront Payments and Bidding Eligibility

104. The Commission has delegated to the Bureaus the authority and discretion to determine appropriate upfront payments for each auction.¹⁵⁷ Upfront payments help deter frivolous or insincere

¹⁵⁵ Letter to Lee G. Petro, from Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, DA 10-1270, 25 FCC Rcd 9046 (Auc. Div. 2010).

¹⁵⁶ See, e.g., Letter to David G. O’Neil, Esq. from Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, DA 08-622, 23 FCC Rcd 4765 (Auc. Div. 2008); Letter to Patrick Shannon, Esq., 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).

¹⁵⁷ Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Proceeding, WT Docket No. 97-82, *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, FCC 97-60, 12 FCC Rcd 5686, 5697-98 ¶ 16 (1997); see also *Broadcast First Report and Order*, 13 FCC Rcd at 15971 ¶ 134.

bidding, and provide the Commission with a source of funds in the event that the bidder incurs liability during the auction.

105. Applicants that are former defaulters, as described above, must pay upfront payments 50 percent greater than non-former defaulters.¹⁵⁸ 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.¹⁵⁹

106. 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 94 Comment Public 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.¹⁶⁰ Under the Bureaus’ proposal, in order to bid on a particular construction permit, a qualified bidder must have selected the construction permit on its FCC Form 175 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 selected on its FCC Form 175, 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 the applicant selected on its FCC Form 175, but only enough to cover the maximum number of bidding units that are associated with construction permits on which they wish to place bids and hold provisionally winning bids in any given round.¹⁶¹ The total upfront payment does not affect the total dollar amount the bidder may bid on any given construction permit.

107. In the *Auction 94 Comment Public Notice*, the Bureaus proposed an upfront payment 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. The specific upfront payment amounts and bidding units for each construction permit are set forth in Attachment A of this Public Notice.

108. 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.¹⁶² 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.**

¹⁵⁸ *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.

¹⁵⁹ 47 C.F.R. § 1.2110(c).

¹⁶⁰ *Auction 94 Comment Public Notice* at ¶ 17.

¹⁶¹ 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.

¹⁶² A qualified bidder’s maximum eligibility will not exceed the sum of the bidding units associated with the total number of construction permits identified on its FCC Form 175. 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 it selected on its FCC Form 175.

| Example: Upfront Payments and Bidding Flexibility | | | |
|--|--------------------|----------------------|------------------------|
| Construction Permit | Market Name | Bidding Units | Upfront Payment |
| MM-FM664-A | Harrison, MI | 7,500 | \$7,500 |
| MM-FM742-A | Tigerton, WI | 5,000 | \$5,000 |

If a bidder wishes to bid on both construction permits in a round, it must have selected both on its FCC Form 175 and purchased at least 12,500 bidding units (7,500 + 5,000) of bidding eligibility. If it only wishes to bid on one, but not both, purchasing 7,500 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 5,000 bidding units, the bidder would have enough eligibility for the Tigerton, WI construction permit but not for the Harrison, MI construction permit.

109. 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 1.5.¹⁶³ 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.¹⁶⁴

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

110. 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 faxed to the FCC, Financial Operations, Auctions Accounting Group, Attn: Gail Glasser, at (202) 418-2980. Eligibility for refunds is discussed in Section V.E., 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 Telephone Number
 Account Number to Credit
 Name of Account Holder
 FCC Registration Number (FRN)
 Correspondent Bank (if applicable)
 ABA Number
 Account Number

¹⁶³ 47 C.F.R. § 1.2106(a).

¹⁶⁴ If a former defaulter fails to submit a sufficient upfront payment to establish eligibility to bid on at least one of the construction permits selected on its FCC Form 175, the applicant will not be eligible to participate in the auction. *Broadcast First Report and Order*, 13 FCC Rcd at 15979-80 ¶ 153. This applicant will retain its status as an applicant in Auction 94 and will remain subject to 47 C.F.R. §§ 1.2105(c) and 73.5002(d). See *Star and Northeast Review Order*, 22 FCC Rcd at 8943.

F. Auction Registration

111. 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.

112. 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.

113. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, if this mailing is not received by noon on Wednesday, April 17, 2013, call the Auctions Hotline at (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.

114. 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. To request replacement of these items, call Technical Support at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY).

G. Remote Electronic Bidding

115. 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 94.

116. Please note that the SecurID® tokens can be recycled, and the Bureaus encourage bidders to return the tokens to the FCC. Pre-addressed envelopes will be provided to return the tokens once bidding has closed.

H. Mock Auction – April 19, 2013

117. All qualified bidders will be eligible to participate in a mock auction on Friday, April 19, 2013. The mock auction will enable bidders to become familiar with the FCC Auction System prior to the auction. The Bureaus strongly recommend that all bidders participate in the mock auction. Details will be announced by public notice.

IV. AUCTION

118. The first round of bidding for Auction 94 will begin on Tuesday, April 23, 2013. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

A. Auction Structure

1. Simultaneous Multiple Round Auction

119. In the *Auction 94 Comment Public Notice*, the Bureaus proposed to auction all construction permits in Auction 94 in a single auction using the Commission's standard simultaneous multiple-round auction format.¹⁶⁵ 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, and 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

120. As discussed above, the Bureaus will use upfront payments to determine initial (maximum) eligibility (as measured in bidding units) for Auction 94.¹⁶⁶ 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 as listed in Attachment A. Bidding units assigned to each construction permit do not change as prices rise during the auction. Upfront payments are not attributed to specific construction permits. Rather, a bidder may place bids on any of the construction permits selected on its FCC Form 175 as long as the total number of bidding units associated with those construction permits does not exceed its current eligibility.

121. 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. A bidder's activity level in a round is the sum of the bidding units associated with construction permits covered by the bidder's new and provisionally winning bids.¹⁶⁷ In the *Auction 94 Comment Public Notice*, the Bureaus proposed a 100 percent activity requirement.

122. Mark Jones comments on upfront payments and the proposed 100 percent activity rule. With respect to upfront payments Mr. Jones urges that we require each applicant to submit an upfront payment equal to the total of the upfront payment amounts for all of the permits they select on FCC Form 175. Mr. Jones argues that such a requirement would diminish defaults by eliminating non-serious bidders, would be fairer to other bidders by allowing them to determine the competition they face would favor smaller companies and new entrants, and would give the Commission a more realistic idea of which permits were not of interest to potential bidders. Mr. Jones also requests that we not adopt the 100 percent activity requirement. He argues that the lower activity requirements in prior auctions gave a bidder more flexibility. In Mr. Jones's view, a lower activity requirement, at least in earlier rounds, would result in more permits being sold, because bidders would not place bids on less desirable permits merely to maintain bidding eligibility.¹⁶⁸

123. We decline Mr. Jones's request to require an upfront payment covering of all the permits selected by an applicant in its FCC Form 175. Allowing each applicant to submit an upfront payment that covers the maximum number of bidding units on which it may wish to be active in any given round

¹⁶⁵ *Auction 94 Comment Public Notice* at ¶ 8.

¹⁶⁶ See Section III.D.3. "Upfront Payments and Bidding Eligibility," above.

¹⁶⁷ 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.

¹⁶⁸ Jones Comments, ¶¶ 1-2.

affords bidders the flexibility to pursue backup strategies – not unlike having an activity requirement below 100%.

124. With regard to the activity requirements, the Bureaus acknowledge Mr. Jones's point that using an activity requirement of less than 100%, as we have done for some previous auctions of FM broadcast construction permits, would provide bidders with more flexibility to pursue backup strategies, if they so desire. Accordingly, we do not adopt our proposal to have a 100% activity requirement. Instead, the Bureaus adopt two activity requirements: an 80% requirement for the beginning of the auction and a 95% requirement that will be used later in the auction. The Bureaus will implement these requirements using two "auction stages."

125. **Stage One:** During the first stage of the auction, a bidder desiring to maintain its current bidding eligibility will be required to be active on licenses representing at least 80 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in the use of an activity rule waiver or, if the bidder has no activity rule waivers remaining, a reduction in the bidder's bidding eligibility in the next round.¹⁶⁹ During Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by five-fourths (5/4).

126. **Stage Two:** During the second stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the required activity level will result in the use of an activity rule waiver or, if the bidder has no activity rule waivers remaining, a reduction in the bidder's bidding eligibility in the next round. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by twenty-nineteenths (20/19).

CAUTION: Since activity requirements increase in Stage Two, bidders must carefully check their activity during the first round following a stage transition to ensure that they are meeting the increased activity requirement. This is especially critical for bidders that have provisionally winning bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required activity level by logging into the FCC Auction System

127. When the Bureaus move the auction from Stage One to Stage Two, we will first alert bidders by announcement in the bidding system. The Bureaus have the discretion to further alter the activity requirements before and/or during the auction as circumstances warrant.

3. Activity Rule Waivers

128. In the *Auction 94 Comment Public Notice*, the Bureaus proposed that each bidder in the auction be provided with three activity rule waivers.¹⁷⁰ The Bureaus received no comments on this issue.

129. 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 eligibility despite its 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. Waivers can be either proactive or automatic 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.

¹⁶⁹ See Section IV.A.3. "Activity Rule Waivers," below.

¹⁷⁰ *Auction 94 Comment Public Notice* at ¶ 23.

130. The FCC Auction System assumes that a bidder 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 in which a bidder's activity level is below the minimum required unless (1) the bidder has no activity rule waivers remaining or (2) the bidder overrides the automatic application of a waiver by reducing eligibility. If no waivers remain and the activity requirement is not satisfied, the FCC Auction System will permanently reduce the bidder's eligibility, possibly curtailing or eliminating the ability to place additional bids in the auction.

131. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder 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 it into compliance with the activity rule described above. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility, even if the round has not yet closed.

132. Finally, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a proactive waiver is applied (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 bidding in a round, and applying a proactive waiver will preclude it from placing any bids in that round. **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

133. For Auction 94, the Bureaus proposed to employ a simultaneous stopping rule approach, which means all construction permits remain available for bidding until bidding stops simultaneously on every construction permit.¹⁷¹ More specifically, bidding will close on all construction permits after the first round in which no bidder submits any new bids or applies a proactive waiver.

134. We also sought comment on alternative versions of the simultaneous stopping rule for Auction 94:

Option 1. The auction would close for all construction permits after the first round in which no bidder applies a proactive 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.

Option 2. 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 that is not FCC held. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit that does not already have a provisionally winning bid (an "FCC-held" construction permit) would not keep the auction open under this modified stopping rule.

Option 3. The auction would close using a modified version of the simultaneous stopping rule that combines (a) and (b) above.

Option 4. 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), after which the auction will close.

¹⁷¹ Auction 94 Comment Public Notice at ¶¶ 12-14.

Option 5. 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.

135. We proposed to exercise these options only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely.¹⁷² Before exercising these options, we are likely to attempt to change the pace of the auction. For example, the Bureaus may adjust the pace of bidding by changing the number of bidding rounds per day and/or the minimum acceptable bids.¹⁷³ We proposed to retain the discretion to exercise any of these options with or without prior announcement during the auction.¹⁷⁴ We received no comment on these proposals and adopt them for Auction 94.

5. Auction Delay, Suspension, or Cancellation

136. In the *Auction 94 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.¹⁷⁵ We received no comment on this issue.

137. Because this approach has proven effective in resolving exigent circumstances in previous auctions, the Bureaus adopt these proposals regarding auction delay, suspension, or cancellation. By public notice or by announcement during the auction, we 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 or from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. We emphasize that we will exercise of this authority solely at our discretion, and not as a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

1. Round Structure

138. 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 each day.

139. 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. We may change the amount of time for the bidding rounds, the 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

140. Section 309(j) of the Act 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

¹⁷² *Id.* at ¶ 14.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* at ¶ 15.

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.¹⁷⁶ 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.¹⁷⁷ Among other factors, we 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.¹⁷⁸ The Commission concluded that the Bureaus should have the discretion to employ either or both of these mechanisms for future auctions.¹⁷⁹

141. In the *Auction 94 Comment Public Notice*, the Bureaus did not propose to establish reserve prices for the construction permits in Auction 94. This is consistent with policy applied in earlier broadcast spectrum auctions. We did, however, 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 tool for accelerating the competitive bidding process.¹⁸⁰ 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 FM broadcast facility, industry cash flow data, and recent broadcast transactions. We sought comment on the proposed minimum opening bids.

142. H&D requests that the minimum opening bids (and corresponding upfront payment amounts) for the construction permits at Oak Harbor, Washington (Channel 277A, MM-FM1057-A) and Sedro-Woolley, Washington (Channel 289A, MM-FM1058-A) be reduced from \$25,000 to \$14,500, and from \$45,000 to \$8,500, respectively.¹⁸¹ H&D contends that both of these channels will be affected by Canadian stations and will have to reduce power toward Canada. H&D therefore asks the Bureaus to recalculate the minimum opening bid amounts based on the total interference-free population that could be served by a facility at the respective allotment sites. For the Oak Harbor allotment, using 2010 U.S. Census data, our analysis indicates that the population within the standard 60 dBu contour would be approximately 131,100, while the population within the interference-free service area would be approximately 84,600. For the Sedro-Woolley allotment, our analysis indicates that the population within the standard 60 dBu contour would be approximately 322,000, while the population within the interference-free service area would be approximately 23,000. Recognizing the unique information of internationally-short-spaced allotments and the resultant impact on interference-free service which those allotments will provide, the Bureaus therefore agree that reduction of the proposed minimum opening bid amounts for the Oak Harbor and Sedro-Woolley allotments is warranted. After further consideration of the specific circumstances concerning these two construction permits, we adopt a minimum opening bid for MM-FM1057-A, at Oak Harbor, Washington, of \$15,000 and a minimum opening bid for MM-FM1058-A, at Sedro-Woolley, Washington, of \$5,000.

143. Similarly, Radio Pacific requests that the minimum opening bid (and corresponding upfront payment amount) for the construction permit at Sequim, Washington (Channel 237A, MM-FM1059-A) be reduced from \$20,000 to \$2,500. Radio Pacific contends that this channel will be affected by a Canadian station and will have to reduce power. Radio Pacific therefore asks the Bureaus to

¹⁷⁶ 47 U.S.C. § 309(j)(4)(F).

¹⁷⁷ *Part 1 Third Report and Order*, FCC 97-413, 13 FCC Red at 455-56 ¶ 141.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Auction 94 Comment Public Notice* at ¶ 26.

¹⁸¹ H&D (Oak Harbor) Comments at 1; H&D (Sedro-Woolley) Comments at 1.

recalculate the minimum opening bid amount based on the total interference-free population that could be served by a facility at the allotment site. For the Sequim allotment, using 2010 U.S. Census data, our analysis indicates that the population within the 60 dBu contour would be approximately 110,600, while the population within the interference-free service area would be approximately 9,000. For the reasons discussed above, the Bureaus agree that reduction of the proposed minimum opening bid amount for the Sequim construction permit is warranted. Accordingly, we adopt a minimum opening bid for MM-FM1059-A, at Sequim, Washington, of \$1,500.

144. For the rest of the construction permits, the Bureaus adopt the minimum opening bid amounts proposed in the *Auction 94 Comment Public Notice*. The specific minimum opening bid amounts for all the construction permits available in Auction 94 are again specified in Attachment A to this Public Notice.

3. Bid Amounts

145. In the *Auction 94 Comment Public Notice*, the Bureaus proposed that in each round, an eligible bidder will be able to place a bid on a given construction permit in any of up to nine different amounts.¹⁸² Under the proposal, the FCC Auction System interface will list the nine acceptable bid amounts for each construction permit.¹⁸³ The Bureaus received no comments on this proposal; therefore, it is adopted.

146. 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 for the construction permit. After there is a provisionally winning bid for a permit, the minimum acceptable bid amount will be a certain 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.¹⁸⁴

147. In the *Auction 94 Comment Public Notice*, we proposed to use a minimum acceptable bid percentage of 10 percent. We did not receive any comments on this proposal. Our experience in previous broadcast auctions assures us that a minimum acceptable bid percentage of 10 percent is sufficient to ensure active bidding. Therefore, we will begin the auction with a minimum acceptable bid percentage of 10 percent.

148. The eight additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage, which need not be the same as the percentage used to calculate the minimum acceptable amount. 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

¹⁸² 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.

¹⁸³ 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.

¹⁸⁴ 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 \$1000 are rounded to the nearest \$10.

increment percentage, rounded, or (minimum acceptable bid amount) * 1.15, rounded; etc. We will round the results of these calculations using the standard rounding procedures for auctions.¹⁸⁵

149. In the *Auction 94 Comment Public Notice*, the Bureaus proposed to use a bid increment percentage of 5 percent, and received no comment on this issue. We believe that a bid increment percentage of 5 percent will give bidders the flexibility to speed up the pace of the auction, if appropriate. We therefore adopt this proposal, and will begin the auction with a bid increment percentage of 5 percent.

150. 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 we determine that circumstances so dictate. Further, the Bureaus proposed to retain the discretion to do so on a construction permit-by-construction permit basis. We 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.

151. 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 we exercise this discretion, we will alert bidders by announcement in the FCC Auction System during the auction.

4. Provisionally Winning Bids

152. 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.¹⁸⁶

153. In the *Auction 94 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 submitted on a construction permit in a given round (i.e., tied bids).¹⁸⁷ No comments were received on this proposal.

154. Hence, the Bureaus adopt the tied bids 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

155. 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 94. Please note that telephonic bid

¹⁸⁵ *Id.*

¹⁸⁶ Section IV.A.2. “Eligibility and Activity Rules,” above.

¹⁸⁷ *Auction 94 Comment Public Notice* at ¶ 34.

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.

156. A bidder's ability to bid on specific construction permits is determined by two factors: (1) the construction permits selected on the bidder's FCC Form 175 and (2) the bidder's eligibility. The bid submission screens will allow bidders to submit bids on only those construction permits the bidder selected on its FCC Form 175.

157. 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.

158. 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.¹⁸⁸ For each construction permit, the FCC Auction System will list the acceptable bid amounts in a drop-down box.¹⁸⁹ 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 text files containing bid information to be uploaded.

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

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

6. Bid Removal and Bid Withdrawal

161. In the *Auction 94 Comment Public Notice*, the Bureaus proposed bid removal procedures.¹⁹⁰ We proposed to provide each bidder with the option of removing any bids placed in a 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 because a removed bid no longer counts toward bidding activity for the round. 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 94. Once a round closes, a bidder may no longer remove a bid.

162. In the *Auction 94 Comment Public Notice*, the Bureaus proposed to prohibit bidders from withdrawing any bids after the round in which the bids were placed has closed.¹⁹¹ This proposal was made in recognition of the site-specific nature and wide geographic dispersion of the permits available in

¹⁸⁸ 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.

¹⁸⁹ See Section IV.B.3. "Bid Amounts," above.

¹⁹⁰ *Auction 94 Comment Public Notice* at ¶ 36.

¹⁹¹ *Id.* at ¶¶ 37-39.

this auction. Our experience with auctions generally, and with past FM auctions in particular, convinces us that bid withdrawals are unnecessary in FM broadcast auctions. Because of the stand-alone nature of FM facilities, it is not necessary for bidders to aggregate facilities being offered in the same FM auction in order to realize full value from those facilities, or to put the spectrum to effective and efficient use. On the other hand, evidence suggests that some bidders may have used bid withdrawals improperly in prior auctions to keep new FM facilities out of the hands of competitors, thus delaying implementation of new service. The Bureaus received one comment in favor of the proposal not to allow bid withdrawals,¹⁹² and no comments in opposition. Accordingly, the Bureaus will prohibit bid withdrawals in Auction 94. Bidders are cautioned to select bid amounts carefully because no bid withdrawals will be allowed, even if a bid was mistakenly or erroneously made.

7. Round Results

163. Reports reflecting bidders' identities for Auction 94 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.

164. 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

165. The Commission will use auction announcements to report necessary information such as schedule changes. All auction announcements will be available by clicking a link in the FCC Auction System.

V. POST-AUCTION PROCEDURES

166. 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).

A. Down Payments

167. 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 94 to twenty percent of the net amount of its winning bids (gross bids less any applicable new entrant bidding credits).¹⁹³

B. Final Payments

168. 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.¹⁹⁴

C. Long-Form Application (FCC Form 301)

169. The Commission's rules¹⁹⁵ currently provide that within thirty days following the close of bidding and notification to the winning bidders, unless a longer period is specified by public notice,

¹⁹² Jones Comments, ¶ 3.

¹⁹³ 47 C.F.R. § 1.2107(b).

¹⁹⁴ 47 C.F.R. § 1.2109(a).

¹⁹⁵ 47 C.F.R. § 73.5005(a).

winning bidders must electronically submit a properly completed long-form application (FCC Form 301, Application for Construction Permit for Commercial Broadcast Station), and required exhibits for each construction permit won through Auction 94.¹⁹⁶ Winning bidders claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit.¹⁹⁷ Further instructions on these and other filing requirements will be provided to winning bidders in the auction closing public notice.

D. Default and Disqualification

170. 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).¹⁹⁸ This payment consists of a deficiency payment, equal to the difference between the amount of the Auction 94 bidder's winning 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.

171. 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 94 Comment Public Notice*, the Bureaus proposed to set the additional default payment for this auction at twenty percent of the applicable bid. We received no comments on this proposal, and it is therefore adopted.

172. 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.¹⁹⁹ 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.²⁰⁰

E. Refund of Remaining Upfront Payment Balance

173. 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.

174. 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 on the *Auction Application Submit Confirmation* page in the FCC Auction System. If an applicant has completed the refund instructions electronically, the refund will be

¹⁹⁶ The Commission's rules also provide that a winning bidder in a commercial broadcast spectrum auction is required to submit an application filing fee with its post-auction long-form application. See 47 C.F.R. § 1.2107(c). We reject MEI's request to delay the auction until after the Commission addresses petitions for reconsideration in docket 86-285 that seek changes to the filing fee requirement for post-auction long-form applications. MEI Comments at 5-6. The Commission and courts have consistently rejected requests to stay Commission auctions based on matters pending before the Commission. See, e.g., *Alpine*, 23 FCC Rcd at 10,488 ¶ 18. Of course, auction winners will be required to comply with the Commission's resolution of any pending issues in that proceeding.

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

¹⁹⁸ 47 C.F.R. § 1.2104(g)(2).

¹⁹⁹ 47 C.F.R. §§ 1.2109(b) and (c).

²⁰⁰ 47 C.F.R. § 1.2109(d).

sent automatically. If an applicant has not completed the refund instructions electronically, the applicant must send a written request including 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) 418-2980 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

175. Contact Information Table:

General Auction Information

General Auction Questions
 Auction Process and Procedures

FCC Auctions Hotline

(888) 225-5322, option two; or
 (717) 338-2868
 Hours of service: 8:00 a.m. – 5:30 p.m. ET,
 Monday through Friday

Auction 94 Process and Procedures

Auctions and Spectrum Access Division

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

Auction 94 Legal Information

Auction Rules, Policies, Regulations, including
 Reports of Section 1.2105(c) Violations and
 Application Major Modifications

Auctions and Spectrum Access Division

(202) 418-0660
 Howard Davenport (Attorney)

Licensing Information

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

Audio Division (202) 418-2700

Lisa Scanlan (Attorney)
 Tom Nessinger (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

Payment Information

Wire Transfers
Refunds

FCC Auctions Accounting Branch

Gail Glasser at (202) 418-0578, or alternatively,
Theresa Meeks at (202) 418-2945, or
(202) 418-2980 (fax)

Auction Bidder Line

Will be furnished only to qualified bidders

FCC Copy Contractor

Additional Copies of
Commission Documents

Best Copy and Printing, Inc

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

Press Information

Cecilia Sulhoff (202) 418-0587

FCC Forms

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

Accessible Formats

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

Consumer and Governmental Affairs Bureau

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

Small Businesses

Additional information for small and
disadvantaged businesses

Office of Communications Business

Opportunities
(202) 418-0990

<http://www.fcc.gov/ocbo/>

FCC Internet Sites

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

– FCC –

ATTACHMENT A

Auction 94 – Auction of FM Broadcast Construction Permits

This page was intentionally inserted as a placeholder for Attachment A, which is available as a separate file.

ATTACHMENT B

Short-Form Application Filing Instructions

This attachment provides instructions on submitting a short-form application and an upfront payment to participate in Auction 94. It also includes instructions for interested parties wishing to view the short-form applications filed.

I. Application Preparation and Submission

Among other requirements, each applicant to participate in this auction must submit its short-form application (FCC Form 175) electronically, via the FCC Auction System. **Short-form applications for Auction 94 must be submitted and confirmed prior to 6:00 p.m. ET on Wednesday, February 6, 2013.** 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, unnecessary sensitive information, such as Taxpayer Identification Numbers or Social Security Numbers, should not be included in short-form applications. Applicants may request information submitted not be made routinely available for public inspection following the procedures set forth in section 0.459 of the Commission's Rules.²⁰¹ 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.²⁰²

Applicants may make multiple changes to their short-form applications until the close of the filing window. However, they 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 the Java Plug-In, point your browser at <http://www.oracle.com/technetwork/java/javase/downloads/index.html> and click the Download button in the JRE column under *Java Platform, Standard Edition*.

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

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

²⁰¹ 47 C.F.R. § 0.459.

²⁰² 47 C.F.R. § 0.459(a).

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.²⁰³ 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 must 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.²⁰⁴

1. Applicant Information

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

- the applicant’s legal classification (e.g., individual, corporation, rural telephone cooperative, etc.)
- optional information regarding the applicant’s status as a minority- or woman-owned business or a rural telephone company

²⁰³ See generally, 47 C.F.R. § 1.2105.

²⁰⁴ See Section VI. “Contact Information,” above.

- Whether the application identifies proposed facilities as Noncommercial Educational. This response (yes or no) is mandatory.²⁰⁵
- the applicant's name, which will be used as the bidder name during the auction²⁰⁶
- 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 individual²⁰⁷
- the name, address, telephone and fax number of a contact person who will communicate with the Commission regarding the applicant's FCC Form 175²⁰⁸
- the names of up to three persons authorized to bid for the applicant in the auction²⁰⁹
- the applicant's preference for electronic or telephonic bidding
- whether the applicant claims a new entrant bidding credit and the percentage claimed²¹⁰

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 in this auction for telephonic bidding.
- **Any application for a noncommercial educational station that is mutually exclusive with any application for a commercial station will be returned as unacceptable for filing.**²¹¹

²⁰⁵ Any application for a noncommercial educational station that is mutually exclusive with any application for a commercial station will be returned as unacceptable for filing. See *NCE Second Report and Order*, 18 FCC Rcd at 6699-6701 ¶¶ 21-24. Applications specifying the same FM station construction permit are considered mutually exclusive. *Broadcast First Report and Order*, 13 FCC Rcd at 15979 n.166.

²⁰⁶ See 47 C.F.R. § 1.2105(a)(2)(ii)(A).

²⁰⁷ Section 1.2105(a)(2) requires that the name and title of an officer or director be reported if the applicant is a corporation. This rule requires disclosure of the name and title of a responsible person if a partner is not a natural person.

²⁰⁸ 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 auction94@fcc.gov.

²⁰⁹ See 47 C.F.R. § 1.2105(a)(2)(iii).

²¹⁰ See 47 C.F.R. §§ 1.2105(a)(2)(iv), 73.5002(b), 73.5007 and 73.5008.

²¹¹ See *NCE Second Report and Order*, 18 FCC Rcd at 6699-6701 ¶¶ 21-24.

2. Permit Selection

The *Permit Selection* screens make up the second series of screens in FCC Form 175. In these screens, the applicant will identify the construction permits offered on which they may wish to bid during the auction. While an applicant is not obligated to bid on all construction permits that it selects, it will not be able to bid on construction permits that it has not selected on its FCC Form 175.²¹² Be advised that there is no opportunity to change this list after the short-form application filing deadline.

To participate in an auction, applicants must select at least one construction permit. Until a construction permit is selected, the applicant cannot submit the FCC Form 175. An applicant's permit selections cannot be changed after the initial filing window has closed. Therefore, during the initial filing window it is important to carefully review the construction permit selections to make sure all permits on which the applicant may wish to bid have been selected.

The *Permit Selection* screens contain a list of all available construction permits in the auction. Applicants can navigate within this screen by selecting the individual page links or the "Previous" and "Next" buttons above and below the list of available permits. In addition, pre-defined filters can be used to narrow down the list of permits to be selected and saved. Specifically, construction permits can be selected by: (1) clicking the check box next to the construction permit name, then selecting the "Save Selected Items" button; (2) clicking the "Save All Items" button to save all available construction permits; or (3) clicking the "Save All Filtered Items" button after applying a filter. Once the applicant has successfully saved a construction permit, the word "Saved" will appear next to the permit name to confirm it has been saved with the application.

Construction Permits can be removed by: (1) clicking the check box (to uncheck) next to a previously saved construction permit, then selecting the "Remove Selected Items" button; (2) clicking the "Remove All Items" button to remove all previously saved construction permits; or (3) clicking the "Remove All Filtered Items" button after applying a filter. Removed construction permits will not have the word "Saved" next to the permit name.

Applicants may view all saved construction permits by either clicking the **Edit Icon** next to "View Saved Items" at the top-right corner of the list, or by clicking the "CONTINUE" button at the bottom of the page.

Once construction permits have been saved, the *View/Edit Permit Selections* screen will be the first screen displayed when navigating to the Permit Selection step. This screen lists all construction permits the applicant has selected and saved for the auction. To select a new construction permit or remove a previously selected permit, an applicant can click the **Edit Icon** next to "Return to Permit Selection" at the top-right corner of the list, which will return it to the original *Select Permits* screen, as described above.

The reference coordinates are also displayed for each listed FM allotment. Once the applicant has selected and added an FM permit, the reference coordinates are followed by an "Edit" icon. Clicking this icon produces a screen on which the applicant can change the reference coordinate values to preferred site coordinates.²¹³ If the applicant previously has selected construction permits, the initial *Permit Selection* screen will be the *View/Edit Permit Selections* screen. This screen lists the construction permits previously selected for this auction. To select a new construction permit or remove a

²¹² 47 C.F.R. § 1.2105(a)(2)(i).

²¹³ See *Broadcast First Report and Order*, 13 FCC Rcd at 15974-75 ¶ 142 & n.153.

previously selected permit, click the **Edit** icon next to Change Selection at the top-right corner of the list. This will take you to the original *Select Permits* screen, described above.

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 of this series, 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 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.

The Commission's relaxed equity/debt plus ("EDP") attribution standard,²¹⁴ adopted as the basis for the New Entrant Bidding Credit to allow for higher investment opportunities in entities meeting the definition of "eligible entities,"²¹⁵ will be unavailable in Auction 94, as discussed previously in this Public Notice.²¹⁶

Applicants seeking a 35 percent New Entrant Bidding Credit do not need to provide any 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 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.²¹⁷ 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, 73.5008.
- 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. Applicants must note that, for purposes of determining whether a broadcast facility identified for bidding in the auction is in the "same area" as an applicant's existing mass media facilities, the coverage area of the auction facility is calculated using maximum class facilities at the allotment reference coordinates, **not** applicant-specified preferred site coordinates.²¹⁸

²¹⁴ *Diversity Order*, 23 FCC Rcd at 5922.

²¹⁵ An "eligible entity" is defined in 47 C.F.R. § 73.3555, Note 2(i).

²¹⁶ Section II.C. "New Entrant Bidding Credit," above.

²¹⁷ 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*, 18 FCC Rcd at 614.

²¹⁸ *Rural First Report and Order*, 25 FCC Rcd at 1609 ¶ 52.

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, it 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 Auction 94 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 these screens, applicants will provide information regarding auction-related agreements subject to disclosure under the Commission’s rules.²¹⁹

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 a partnership, joint venture, consortia, or other agreement, arrangement or understanding 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,²²⁰ 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.”²²¹

²¹⁹ 47 C.F.R. § 1.2105(a)(2)(viii).

²²⁰ 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.

²²¹ 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 a specified individual is involved with two applicants in (continued....)

If an applicant answers “No,” the applicant will continue to 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 nor its description should indicate construction permit designations for this auction.

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.

(Continued from previous page) _____
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., Trinity*, 20 FCC Rcd at 14648 (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).

5. Ownership

The *Ownership* screens are the fifth series of screens in the FCC Form 175. In these screens, applicants will provide information regarding parties with ownership or controlling interests in the applicant that must be disclosed pursuant to Commission rules.²²² The disclosure and description of FCC-regulated businesses that are owned by the applicant and by parties with certain ownership interests in the applicant are also required.²²³

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 will automatically be entered into the applicant's short-form application, if it is 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). 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. An applicant must carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for submitting its short-form application in this auction. Information must be corrected directly in the FCC Form 175. After the deadline for filing this FCC Form 175, submitted ownership information will be considered to be the applicant's most current 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 175.²²⁴ **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 175.²²⁵

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 or parties with 10% or more ownership interest in the applicant have an interest. Each screen will specify the information that the applicant must provide. Please note the following with respect to particular information requested:

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

²²³ 47 C.F.R. § 1.2112.

²²⁴ 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.

²²⁵ 47 C.F.R. § 1.2112(a)(7).

- **If an application includes one or more disclosable interest holders with indirect ownership in the applicant,²²⁶ the application must include an attachment describing the relationship between the indirect interest holder(s) and the applicant.** The attachment should provide an overview of the ownership chain that links the indirect owner(s) 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.²²⁷ 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

²²⁶ 47 C.F.R. § 1.2112(a)(6).

²²⁷ *Id.*

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 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. These 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.
- 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 or deficient 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 the FCC Form 175. However, the automated check cannot be relied upon to determine whether the information provided 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. This 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.

After the short-form application filing deadline, an application attachment may not be deleted or withdrawn.

8. Certify and Submit

The *Certify and Submit* screens are the sixth and final series of screens in FCC Form 175. In these screens, applicants provide certifications required of all participants in the Commission's competitive bidding processes.²²⁸

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 has ever been delinquent on any non-tax debt owed to any Federal agency.²²⁹ Current defaulters or delinquents are not eligible to participate in this auction. Former defaulters or delinquents who have remedied all such defaults and cured all of the outstanding non-tax delinquencies can participate in this auction so long as they are otherwise qualified and make upfront payments that are equal to 50 percent more than otherwise required.²³⁰

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

²²⁸ See generally, 47 C.F.R. §§ 1.2105(a)(2) (iv)-(xi).

²²⁹ 47 C.F.R. § 1.2105(a)(2)(xi).

²³⁰ 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.²³¹

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 Commission license.²³² 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, complete 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 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. They may then view and print copies of their submitted applications by clicking on the **PRINT PREVIEW** button.

FCC Form 175 applications for Auction 94 must be submitted and confirmed prior to 6:00 p.m. ET on Wednesday, February 6, 2013. 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 *Review or Modify Existing Short-Form Applications* page. All previously-submitted data will be deleted.

After the short-form application filing deadline, 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 *Review or Modify Existing Short-Form 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. It 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

²³¹ See 47 C.F.R. § 1.917; see also 47 C.F.R. § 73.3513.

²³² 47 C.F.R. § 1.2105(a)(2)(v).

confirmation page will display the application's file number and submission time and date. A copy of the confirmation page should be printed for your 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. Major modifications will not be permitted (e.g., change its construction permit selection(s) or certifying official, change 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).²³³

II. Upfront Payment Submission

A. Upfront Payment Calculator and Form 159

Applicants may access the **Upfront Payment Calculator and Form 159** from the *Review or Modify Existing Short-Form Applications* page and from the *Auction Application Submit Confirmation* page. Clicking the **Upfront Payment Calculator and Form 159** icon or link will provide 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 C to this Public Notice.

B. Refund of Upfront Payment

On the *Auction Application Submit Confirmation* page, applicants can click on the **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 that are complete; (2) those that are rejected; and (3) those that are incomplete or deficient 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 Application Search** 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.

²³³ 47 C.F.R. § 1.2105(b).

ATTACHMENT C

**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 94. 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 "U094" |
| 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 "94" (indicating Auction 94). |

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 D

**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

Procedural Amendments to Commission Part 1 Competitive Bidding Rules, *Order*, FCC 10-4, 25 FCC Rcd 521 (2010).

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. Ciamporcero 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, or at <http://www.bcpweb.com>.