



# PUBLIC NOTICE

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## AUCTION OF FM BROADCAST CONSTRUCTION PERMITS 85 BIDDERS QUALIFIED TO PARTICIPATE IN AUCTION 94

### AU Docket No. 12-239

1. In this Public Notice, the Wireless Telecommunications and Media Bureaus (the “Bureaus”) identify 85 applicants found to be qualified to bid in the upcoming auction of 112 construction permits in the FM broadcast service (Auction 94). Bidding in Auction 94 is scheduled to begin on Tuesday, April 23, 2013.<sup>1</sup> This Public Notice contains bidding instructions and other important information regarding Auction 94. It also addresses the continuing obligations and auction procedures for all Auction 94 applicants, including those that have not qualified to bid.

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

##### A. Qualified Bidders

2. Attachment A to this Public Notice lists the name of each of the 85 qualified bidders, each qualified bidder’s upfront payment amount, and its maximum eligibility in bidding units. Designation of an applicant as qualified to bid in the auction indicates that the applicant has provided the certifications and information concerning its qualifications for participation in the auction and timely submitted a sufficient upfront payment as required by the Commission’s competitive bidding rules.<sup>2</sup>

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<sup>1</sup> See “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, *Public Notice*, DA 12-1865, 27 FCC Rcd 14299 (WTB/MB 2012) (“*Auction 94 Procedures Public Notice*”); see also “Auction of FM Broadcast Construction Permits; Status of Short-Form Applications to Participate in Auction 94,” *Public Notice*, DA 13-340 (rel. March 8, 2013) (“*Auction 94 Status Public Notice*”).

<sup>2</sup> Under the Commission’s two-phased auction application process, a winning bidder must submit a long-form application after the close of Auction 94 to demonstrate its qualifications to hold a Commission license or construction permit and, if a bidding credit is requested, its eligibility for the requested bidding credit. Thus, a determination that a short-form application is complete and complies with the Commission’s competitive bidding rules and policies is not determinative of an applicant’s qualifications to hold a license or construction permit, or entitlement to a bidding credit. See 47 C.F.R. §§ 1.2107 – 1.2109; see also Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, FCC 94-61, 9 FCC Rcd 2348, 2376-77 ¶¶ 163-168 (1994). Commission staff generally considers an applicant’s qualifications and eligibility for a bidding credit after the auction during the long-form application process. In the event that an applicant is found unqualified to be a Commission licensee or ineligible for any claimed bidding credit, it will be liable for any obligations incurred as a result of its participation in the auction. See generally 47 C.F.R. § 1.2109.

3. In order to participate effectively in the auction, each qualified bidder should again review the auction rules, procedures, and other information described in the *Auction 94 Procedures Public Notice* and subsequent public notices.<sup>3</sup> These public notices and other documents related to Auction 94 are available on the Commission's auctions website at <http://wireless.fcc.gov/auctions/94/>. This Public Notice provides additional guidance.

4. Attachment B to this Public Notice lists the construction permits specified on each qualified bidder's short-form application (FCC Form 175). Attachment B also shows, for each qualified bidder claiming a new entrant bidding credit, whether the applicant claims a bidding credit of 35 percent or 25 percent.

5. To assist in analyzing Auction 94, a file will be made available to the public on the Auction 94 web site. This file will list each construction permit each qualified bidder in Auction 94 selected on its FCC Form 175. The file will be located under the subheading "General Information" on the Auction 94 web site (<http://wireless.fcc.gov/auctions/94/>).

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

6. Attachment C to this Public Notice lists each applicant that submitted a short-form application but did not qualify to bid in this auction.<sup>4</sup> All applicants, including those who have been deemed ineligible to bid, remain subject to the Commission's rules prohibiting certain communications in connection with Commission auctions.<sup>5</sup>

## **II. REGISTRATION AND BIDDING ACCESS**

### **A. Registration Materials**

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

- At least two RSA SecurID<sup>®</sup> tokens
- Integrated Spectrum Auction System (ISAS) Bidder's Guide
- FCC Auction Bidder Line telephone number

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

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

9. Any qualified bidder listed in Attachment A of this Public Notice that has not received the registration mailing **by 12:00 noon Eastern Time (ET) on Wednesday, April 17, 2013**, must contact the Auctions Hotline directly at (717) 338-2868. Qualified bidders must have these registration materials to submit bids. Receipt of the registration mailing is critical to participating in both the mock auction and the actual auction, and each qualified bidder must ensure that it has received all registration information.

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<sup>3</sup> *Auction 94 Procedures Public Notice*, 27 FCC Rcd at 14304-05 ¶¶ 10-11; see also *Auction 94 Status Public Notice*.

<sup>4</sup> See 47 C.F.R. § 73.5002(b).

<sup>5</sup> See 47 C.F.R. §§ 1.2105(c) and 73.5002(d); see also *Auction 94 Procedures Public Notice*, 27 FCC Rcd at 14305-10 ¶¶ 12-32.

## **B. Registration Material Replacement**

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

## **C. Bidding Access**

11. The Commission will conduct Auction 94 over the Internet. Each qualified bidder can access the Integrated Spectrum Auction System ("ISAS" or "FCC Auction System") at <http://auctions.fcc.gov> or <http://auctions2.fcc.gov>. A bidder choosing to bid electronically should review the Integrated Spectrum Auction System (ISAS) Bidder's Guide provided in the registration materials. We remind bidders that Apple® Mac OS® is not currently supported.

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

13. Each authorized bidder must have its own SecurID® token to bid electronically or by telephone. An applicant with only one authorized bidder will be issued two SecurID® tokens, while an applicant with two or three authorized bidders will be issued three tokens. For security purposes, the SecurID® tokens and the instructions for using them are mailed only to the contact person at the contact address listed on the applicant's short-form application. Please note that each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 94.

14. SecurID® tokens can be recycled. We strongly encourage bidders to return the tokens to the FCC. We will provide pre-addressed envelopes to return the tokens once the auction is closed.

## **D. Bidding Contingency Plan**

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

# **III. BIDDING TOOLS**

## **A. Mock Auction**

16. The Bureaus strongly encourage each qualified bidder to participate in the mock auction that will be conducted on Friday, April 19, 2013. The mock auction will allow a qualified bidder to familiarize itself with the FCC Auction System and to ask FCC auction staff and technical support staff questions about the system and auction conduct. The Bureaus will conduct this auction over the Internet, and provide the option of bidding by telephone.

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

17. A qualified bidder can access the mock auction at <http://auctions.fcc.gov> or <http://auctions2.fcc.gov>. Bidders choosing to bid electronically should review the Integrated Spectrum Auction System (ISAS) Bidder's Guide provided in the registration materials. Any qualified bidder that wishes to place bids by telephone should use the Auction Bidder Line telephone number supplied in the Auction 94 registration materials.

18. The mock auction will include 20 of the 112 construction permits: FM598A–FM946C3, and will follow the rules governing the actual auction.<sup>7</sup> The mock auction will be identified as Mock Auction 74. The FCC Auction System will assume that each bidder submitted an upfront payment sufficient to give initial (maximum) eligibility (as measured in bidding units) to bid on all 20 of those construction permits. The mock auction will simulate the start of the auction, and each bidder will be required to be active on 80 percent of its current bidding eligibility. If a bidder does not meet this requirement, an activity rule waiver will be automatically applied (if any waivers are available) or its current eligibility will be permanently reduced (if no waivers remain), possibly eliminating it from further bidding in the mock auction. A bidder should take advantage of the mock auction to practice taking actions it might wish to take during Auction 94.

19. The mock auction bidding schedule for Friday, April 19, 2013, will be as follows:

Round 1	10:00 a.m.	-	11:00 a.m. ET
Round 2	12:00 p.m.	-	12:30 p.m. ET
Round 3	1:30 p.m.	-	2:00 p.m. ET
Round 4	2:30 p.m.	-	3:00 p.m. ET
Round 5	3:30 p.m.	-	3:45 p.m. ET

#### **B. Watchlists**

20. The FCC Auction System sets up for each qualified bidder a default watchlist, called "All Permits," which contains every construction permit selected on the applicant's short-form application. A qualified bidder may create additional watchlists containing construction permits of its own choosing, and construction permits may appear in multiple watchlists. A bidder may access the FCC Auction System and begin creating its watchlists upon receipt of the SecurID<sup>®</sup> tokens. Instructions for creating watchlists will be provided in the Integrated Spectrum Auction System (ISAS) Bidder's Guide. Please note that watchlists created in the mock auction will not display in Auction 94.

#### **C. Bidder Questions during the Mock Auction and Auction 94**

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

#### **D. Bidder Suggestions**

22. The FCC Auction System includes a function for any bidder to submit suggestions to the FCC, but this is not an appropriate mechanism for asking time-sensitive questions that may need an immediate response, such as questions about auction procedures or other issues. Any time-sensitive

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<sup>7</sup> The list will include the first twenty construction permits listed in Attachment A of the *Auction 94 Procedures Public Notice*, 27 FCC Rcd at 14364, Attachment A.

questions should be directed to the Auction Bidder Line or to the appropriate staff contact using the telephone number provided in Section VII, "Contact Information," below.

#### **IV. AUCTION INFORMATION**

##### **A. Auction Announcements**

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

##### **B. Bidding Schedule**

24. Beginning on Tuesday, April 23, 2013, and continuing until further notice, we will conduct Auction 94 with four rounds of bidding each business day as follows:

Bidding Round	10:00 a.m.	-	11:00 a.m. ET
Bidding Round	12:00 p.m.	-	1:00 p.m. ET
Bidding Round	2:00 p.m.	-	3:00 p.m. ET
Bidding Round	4:00 p.m.	-	5:00 p.m. ET

25. The Bureaus will set the pace of the auction based upon monitoring of the bidding and assessment of the auction's progress. We will provide notice of all subsequent schedule changes by announcement in the FCC Auction System during the course of the auction.

##### **C. Bid Amounts**

26. For each construction permit in Auction 94, the FCC Auction System will provide a minimum opening bid amount, as previously announced, and up to eight additional bid amounts from which to choose (for a typical total of nine bid amounts).<sup>8</sup> We caution each bidder to select its bid amounts carefully because each bidder assumes a binding obligation to pay the full bid amount, even if the bid was mistakenly or erroneously made.<sup>9</sup> Moreover, bid withdrawals are not permitted in Auction 94.

27. The Bureaus retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the bid increment percentage, the additional bid amounts, the dollar cap on bid increments, the number of acceptable bid amounts, and the parameters of the formulas used to calculate bid amounts if the Bureaus determine that circumstances so dictate.<sup>10</sup>

##### **D. Round Results**

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

29. Two types of reports will be available to qualified bidders during the auction: (1) publicly available information, and (2) bidder-specific information available only to that bidder when logged in to the FCC Auction System. The public information will be available on the FCC Auction System results page and in downloadable files. When a bidder is logged in to the FCC Auction system, it will have a selection of "My Bid Reports" available on the FCC Auction System's bidding page. Information in "My

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<sup>8</sup> *Auction 94 Procedures Public Notice*, 27 FCC Rcd at 14337-38 ¶¶ 145-51. Attachment A of the *Auction 94 Procedures Public Notice* lists the minimum opening bid amounts for each construction permit offered in Auction 94.

<sup>9</sup> See 47 C.F.R. § 1.2104(g).

<sup>10</sup> *Auction 94 Procedures Public Notice*, 27 FCC Rcd at 14337-38 ¶¶ 145-51.

Bid Reports” allows only the respective bidder to view all of its actions in the current and previous rounds of the auction.

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

## V. APPLICANTS’ CONTINUING OBLIGATIONS

### A. Prohibited Communications

31. The Bureaus remind applicants that sections 1.2105(c) and 73.5002(d) of the Commission’s rules prohibit applicants for construction permits in any of the same geographic license areas from communicating with another applicant about bids, bidding strategies, or settlements, which may include communications regarding post-auction market structure, unless each applicant has identified the other applicant on its short-form application as a party with which the applicant has entered into an agreement under section 1.2105(a)(2)(viii).<sup>11</sup> The “geographic license area” is the market designation of the particular service.<sup>12</sup> For the FM service, the market designation is the particular vacant FM allotment (e.g., Freer, Texas, Channel 288, Construction Permit MM-FM598-A). In Auction 94, the prohibition on certain communications would apply to any applicants that selected any of the same allotments or construction permits. Therefore, applicants that have applied to bid for an FM construction permit for the same allotment must not engage in any prohibited communication after the short-form application filing deadline. In addition, even if an auction applicant selected only one FM allotment in common with another Auction 94 applicant, the two applicants may not communicate with each other about bids or bidding strategy relating to any FM allotment selected by either applicant.<sup>13</sup> An applicant is prohibited from communicating not only about its own bids or bidding strategy, but also from communicating about another applicant’s bid or bidding strategy.

32. The prohibition on certain communications in sections 1.2105(c) and 73.5002(d) took effect for Auction 94 at the short-form application filing deadline, 6:00 p.m. ET on February 6, 2013, and extends until the post-auction down payment deadline, which will be announced in a public notice released shortly following close of bidding.<sup>14</sup> **The prohibition applies to each applicant regardless of whether such applicant becomes a qualified bidder or actually bids.**<sup>15</sup> For further information on the prohibition, applicants should refer to the *Auction 94 Procedures Public Notice*.<sup>16</sup>

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<sup>11</sup> 47 C.F.R. §§ 1.2105(a)(2)(viii), 1.2105(c)(1), 73.5002(d). *See also* Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Seventh Report and Order*, FCC 01-270, 16 FCC Rcd 17546 (2001) (“*Part 1 Seventh Report and Order*”); *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, FCC 00-274, 15 FCC Rcd 15293, 15297-98 ¶¶ 7-8 (2000).

<sup>12</sup> *See generally Part 1 Seventh Report and Order*, 16 FCC Rcd at 17549 n.12.

<sup>13</sup> *Id.*, 16 FCC Rcd at 17548-50 ¶¶ 4-8.

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

<sup>15</sup> For example, the Commission imposed a forfeiture in the amount of \$100,000 for violation of Section 1.2105(c) even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder. *See* Northeast Communications of Wisconsin, Inc., *Forfeiture Order*, DA 04-3027, 19 FCC Rcd 18635 (Enf. Bur. 2004). The Commission subsequently reduced the amount of the forfeiture to \$75,000 due to the parties’ history of compliance with Commission rules. *See* Star Wireless, LLC and Northeast Communications of Wisconsin, Inc., *Order on Review*, FCC 07-80, 22 FCC Rcd 8943 (2007), *petition for review denied*, *Star Wireless, LLC v. FCC*, 522 F.3d 469 (D.C. Cir. 2008) (Section 1.2105(c) applies to auction applicant regardless of whether the applicant is qualified to bid). The United States District Court for the Eastern District of Wisconsin granted summary judgment in favor of the United States pursuant to an effort by the Department of Justice to enforce the forfeiture. *United States v. Northeast Communications of Wisconsin, Inc.*, Decision and Order, 608 F. Supp. 2d 1049 (D. Wisc. 2008).

## B. Disclosure Obligations and Possible Sanctions

33. Section 1.2105(c)(6) requires any applicant that makes or receives a communication that appears to violate section 1.2105(c) to report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs.<sup>17</sup> 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.<sup>18</sup>

34. In addition, section 1.65 of the Commission's rules requires an applicant to report to the Commission any communication of a bid or bidding strategy that results in a bidding arrangement, agreement, or understanding after the short-form filing application deadline.<sup>19</sup>

35. Any party reporting a prohibited communication must take care to ensure that any such report does not itself give rise to a violation of section 1.2105(c). For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection. The Commission amended section 1.2105(c) to minimize the risk of inadvertent dissemination by requiring a party to file only a single report and to file that report with Commission personnel expressly charged with administering the Commission's auctions.<sup>20</sup> Pursuant to the amended rule, any report required by section 1.2105(c) must be filed consistent with the instructions set forth in the *Auction 94 Procedures Public Notice*.<sup>21</sup> Any such report must be filed immediately, and in no case later than five business days after the communication occurs, with the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, and either submitted by e-mail to [auction94@fcc.gov](mailto:auction94@fcc.gov) or delivered to the following address: Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Room 6423, Washington, DC 20554.

36. A party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection.<sup>22</sup>

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*See also* Letter to Robert Pettit, from Margaret W. Wiener, Chief, Auctions and Industry Analysis Div., DA 00-2905, 16 FCC Rcd 10080 (2000) (declining to exempt an applicant's controlling interest from coverage by Section 1.2105(c), even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder).

<sup>16</sup> *Auction 94 Procedures Public Notice*, 27 FCC Rcd at 14305-10 ¶¶ 12-32.

<sup>17</sup> 47 C.F.R. § 1.2105(c)(6); *see also Part 1 Seventh Report and Order*, 16 FCC Rcd at 17555 ¶ 17 (“[T]he Section 1.2105(c) reporting requirement we adopt today applies even if the communication of bids or bidding strategies does not result in a bidding arrangement, agreement or understanding that must be reported to the Commission under Section 1.65(a).” *Id.* at 17552 ¶ 12).

<sup>18</sup> *See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150, *Second Report and Order*, FCC 07-132, 22 FCC Rcd 15289, 15395 ¶¶ 285-86 (2007).

<sup>19</sup> *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17550-51 ¶ 9.

<sup>20</sup> Procedural Amendments to Commission Part 1 Competitive Bidding Rules, WT Docket No. 10-18, *Order*, FCC 10-4, 25 FCC Rcd 521, 522 ¶ 4 (2010) (“*Part 1 Procedural Amendments Order*”).

<sup>21</sup> *Id.*

<sup>22</sup> *See* 47 C.F.R. § 0.459 (procedures for requesting that materials or information submitted to the Commission be withheld from public inspection). If an applicant requests confidential treatment of a document, the cover page of the filing must prominently display that the applicant is seeking confidential treatment for that document. For example, a filing might include a cover page stamped with “Request for Confidential Treatment Attached” or “Not for Public Inspection.” Any such request must cover all of the material to which the request applies. *See* 47 C.F.R. § 0.459(a).

Any such report must include a cover sheet to avoid the inadvertent dissemination of information contained in the report. You are encouraged to consult with the Auctions and Spectrum Access Division staff about the procedures for submitting such a report.<sup>23</sup> The *Auction 94 Procedures Public Notice* provides additional guidance on procedures for submitting application-related information.<sup>24</sup>

37. Any applicant that is a winning bidder will be required to disclose in its long-form application the specific terms, conditions, and parties involved in any agreement or arrangement entered into relating to the competitive bidding process, including any agreement relating to the post-auction market structure.<sup>25</sup>

38. Any applicant found to have violated section 1.2105(c) of the Commission's rules may be subject to sanctions.<sup>26</sup> In addition, we remind each applicant that it is subject to the antitrust laws, which are designed to prevent anti-competitive behavior in the marketplace. If an applicant is found to have violated the antitrust laws 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 it may be prohibited from participating in future auctions, among other sanctions.<sup>27</sup>

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

39. As noted above, an applicant seeking to amend its short-form application during the auction must make modifications electronically and submit a letter, briefly summarizing the changes, by e-mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: [auktion94@fcc.gov](mailto: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.

40. A party wishing to submit a request, a complaint, or other information concerning Auction 94 should, in addition to following other procedures prescribed by the Commission's rules, send a copy by e-mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: [auktion94@fcc.gov](mailto:auktion94@fcc.gov). The Commission occasionally receives complaints regarding specific bidders and requests to suspend bidding during an auction. While the Commission reserves the right to take appropriate action during an auction to preserve the integrity of the auction process, it is generally our practice to address any such allegations only after a winning bidder has submitted its long-form application, when there is greater opportunity for investigation of such allegations, if warranted. The Commission will not investigate any complaints or allegations that are not accompanied by full contact information, including name, address, and telephone number, for the complaining party or parties.

41. Finally, parties wishing to make suggestions concerning Auction 94 or future auctions should present such ideas using the suggestion feature of the FCC Auction System. (As mentioned above, this feature is not an appropriate mechanism for asking time-sensitive questions that need an immediate response.) Commission staff considers all suggestions, but may not always provide an individualized response.

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<sup>23</sup> See Section VII, "Contact Information," below.

<sup>24</sup> See *Auction 94 Procedures Public Notice*, 27 FCC Rcd at 14309-10 ¶¶ 25-30, 14324-25 ¶¶ 81-87.

<sup>25</sup> See 47 C.F.R. § 1.2107(d).

<sup>26</sup> See 47 C.F.R. §§ 1.2105(c), 1.2109(d).

<sup>27</sup> See 47 C.F.R. § 1.2109(d).

#### D. Duty to Maintain Accurate Information in Short-Form Applications

42. Each applicant must maintain the accuracy and completeness of information furnished in its short-form application (FCC Form 175), including any attachments.<sup>28</sup> Sections 1.65(a) and 1.2105(c) of the rules require an applicant in a competitive bidding proceeding to furnish additional or corrected information within five days of a significant occurrence, or to amend its short-form application no more than five days after the applicant becomes aware of the need for amendment.<sup>29</sup> The Commission has established a five-day reporting requirement to facilitate the auction process, by making the information available promptly to all participants and enabling the Bureaus to act expeditiously on those changes when such action is necessary.<sup>30</sup> Therefore, an applicant must amend its short-form application to furnish additional or corrected information as promptly as possible, and in no case more than five business days after the applicant becomes aware of the need for amendment or five business days after the reportable event occurs, whichever is later.<sup>31</sup>

43. An applicant seeking to provide additional or updated information must modify its short-form application electronically and submit a letter briefly summarizing the change by e-mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: [auction94@fcc.gov](mailto:auction94@fcc.gov). The e-mail summarizing the change 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<sup>®</sup> Acrobat<sup>®</sup> (pdf) or Microsoft<sup>®</sup> Word documents. An applicant must not submit application-specific material through the Commission's Electronic Comment Filing System ("ECFS"). Questions about changes should be directed to the Auctions and Spectrum Access Division at (202) 418-0660.

44. As described in the Commission's rules, an applicant may make only minor corrections to its short-form application (e.g., deletion and addition of authorized bidders or contact information).<sup>32</sup> A major modification (e.g., construction permit selection change, newly claimed or increased bidding credit, or changing control of the applicant) will not be accepted.<sup>33</sup> Any change affecting an applicant's eligibility for a new entrant bidding credit, insofar as it results in the reduction or loss of the credit originally claimed on the Form 175 application, must be reported immediately, and no later than five business days after the change occurs.<sup>34</sup> Each applicant must clearly state the nature of the change in an amendment to its short-form application and in the summary letter referenced above. In cases of diminished bidding credit eligibility, the Commission will make appropriate adjustments in the bidding credit prior to the computation of any down and final payment amounts due.

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<sup>28</sup> See 47 C.F.R. § 1.65. For more information on making administrative changes to an existing application, see "Minor Modifications to Short-Form Applications" and "Maintaining Current Information in Short-Form Applications" in the *Auction 94 Procedures Public Notice*, 27 FCC Rcd at 14324-25 ¶¶ 81-87 and Attachment B at 14357.

<sup>29</sup> *Part 1 Procedural Amendments Order*, 25 FCC Rcd at 523 ¶ 8.

<sup>30</sup> *Id.*, 25 FCC Rcd at 523 ¶¶ 7-8.

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

<sup>32</sup> See 47 C.F.R. § 1.2105(b).

<sup>33</sup> *Id.*

<sup>34</sup> See 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, 1611-14 ¶¶ 57-63 (2010). See also 47 C.F.R. § 73.5007(a).

### **E. Ex Parte Rule**

45. Applicants should also be aware that the Commission has generally treated mutually exclusive short-form applications as exempt proceedings and, therefore, not subject to the *ex parte* prohibitions that pertain to restricted proceedings.<sup>35</sup>

### **F. Due Diligence**

46. 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 being offered in Auction 94. The Commission makes no representations or warranties about the use of this spectrum for particular services. We strongly encourage each potential bidder to conduct its own research prior to the beginning of bidding in Auction 94 in order to determine the existence of pending proceedings, pleadings, applications, or authorizations that might affect its decisions regarding participation in the auction. Each potential bidder is solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect its ability to bid on, otherwise acquire, or make use of any specific construction permit available in Auction 94. In addition, each potential bidder should perform sufficient technical analyses to assure itself that, should it be a winning bidder for any Auction 94 construction permit, it will be able to build and operate facilities that will comply fully with the Commission's technical and legal requirements.

47. Each participant must continue such research throughout the auction. For further details regarding due diligence, please refer to the *Auction 94 Procedures Public Notice* under Section I.B.3.<sup>36</sup>

## **VI. POST-AUCTION PROCEDURES**

48. Shortly after bidding has ended, the Commission will release a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments and final payments.<sup>37</sup> Each winning bidder will have ten business days following the release of that public notice to make down payments. Final payments will be due ten business days after the deadline for submitting down payments for this auction.

49. Each winning bidder must electronically file a complete and accurate long-form application (FCC Form 301), including required exhibits, for each construction permit won through Auction 94 within the time periods announced in the auction closing public notice.<sup>38</sup> Any winning bidder claiming new entrant status must include an exhibit demonstrating its eligibility for the bidding credit.<sup>39</sup> Further filing instructions will be provided to auction winners at the close of the auction.<sup>40</sup> Further information regarding these post-auction procedures is contained in the *Auction 94 Procedures Public Notice* and will be provided in the public notice announcing the winning bidders.<sup>41</sup>

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<sup>35</sup> See "Commission Announces that Mutually Exclusive 'Short Form' Applications (Form 175) to Participate in Competitive Bidding Process ('Auctions') Are Treated as Exempt for Ex Parte Purposes," *Public Notice*, FCC 94-283, 9 FCC Rcd 6760 (1994). See also 47 C.F.R. § 1.1202(d)(1) Note 1.

<sup>36</sup> See *Auction 94 Procedures Public Notice*, 27 FCC Rcd at 14311-13 ¶¶ 35-41.

<sup>37</sup> For more detail, see *Auction 94 Procedures Public Notice*, 27 FCC Rcd at 14340-41 ¶¶ 166-72.

<sup>38</sup> See 47 C.F.R. §§ 1.2107, 73.5005(a). See also Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, *First Report and Order*, FCC 98-194, 13 FCC Rcd 15920, 15984-85 ¶¶ 163-64 (1998).

<sup>39</sup> See 47 C.F.R. §§ 73.5005, 73.5007, 73.5008.

<sup>40</sup> See 47 C.F.R. §§ 1.2107, 1.2109(a), 73.3573, 73.5003, 73.5005, 73.5006(d).

<sup>41</sup> See *Auction 94 Procedures Public Notice*, 27 FCC Rcd at 14340-41 ¶¶ 166-72; see also 47 C.F.R. §§ 1.2107, 1.2109(a).

## VII. CONTACT INFORMATION

50. For further information concerning Auction 94, please contact:

### **General Auction Information**

General Auction Questions  
Auction Process and Procedures

### **FCC Auctions Hotline**

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

### **Auction 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  
Reports of section 1.2105(c) Violations and  
Application Major Modifications

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

(202) 418-0660  
Howard Davenport (Attorney)  
Lynne Milne (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

### **Auction Payments**

Instructions for Wiring Payments

### **FCC Auctions Accounting Group**

(202) 418-0578  
Gail Glasser  
(202) 418-2945  
Theresa Meeks

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

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