



# PUBLIC NOTICE

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## CLOSED AUCTION OF AM BROADCAST CONSTRUCTION PERMITS SCHEDULED FOR MAY 6, 2014

### NOTICE AND FILING REQUIREMENTS, MINIMUM OPENING BIDS, UPFRONT PAYMENTS, AND OTHER PROCEDURES FOR AUCTION 84

AU Docket No. 13-268

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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 closed auction of certain AM broadcast construction permits. This auction, which is designated as Auction 84, is scheduled to start on May 6, 2014. This Public Notice provides an overview of the procedures, terms and conditions governing Auction 84 and the post-auction application and payment processes. Auction 84 is a closed auction with participation limited to those parties that had previously submitted short-form applications.

2. On November 18, 2013, in accordance with section 309(j)(3) of the Communications Act of 1934, as amended (the “Act”),<sup>1</sup> the Bureaus released a public notice seeking comment on competitive bidding procedures to be used in Auction 84.<sup>2</sup> This Public Notice addresses filings submitted by four Auction 84 applicants in response to the *Auction 84 Comment Public Notice*.<sup>3</sup>

3. This Public Notice also provides instructions for Auction 84 applicants to review, verify and, if necessary, update their previously-filed short-form applications. Applicants will have an opportunity to review and update their short-form applications electronically using the FCC’s web-based Auction System during a remedial filing window that will open on February 19, 2014, and will close on March 4, 2014 at 6:00 PM Eastern Time (ET). Applicants whose applications are found to contain deficiencies after the close of the remedial filing window will be provided with a limited opportunity to bring their applications into compliance with the Commission’s competitive bidding rules during a resubmission window, the dates for which will be announced in a future public notice. An Auction 84 applicant will be qualified to bid in the auction only if: (1) it has submitted a short-form application that is complete and timely (i.e., the application complies with the Commission’s competitive bidding rules and the procedures and deadlines set forth in this Public Notice), and (2) timely submits a sufficient upfront payment for at least one of the permits for which it is designated as an applicant on Attachment A to this Public Notice.

### 1. Background

4. Auction 84 will resolve pending groups of mutually exclusive applications for AM construction permits. On November 6, 2003, the Bureaus announced an auction filing window for applications for new AM stations and major modifications to authorized AM stations.<sup>4</sup> By Public Notice dated June 15, 2005,<sup>5</sup> the Bureaus provided a list of all applications received during the filing window

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<sup>1</sup> 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).

<sup>2</sup> Closed Auction of AM Broadcast Construction Permits Scheduled for May 6, 2014; Comment Sought on Competitive Bidding Procedures for Auction 84, AU Docket No. 13-268, *Public Notice*, DA 13-2168, 28 FCC Rcd 15670 (WTB/MB 2013) (“*Auction 84 Comment Public Notice*”). A summary of this public notice was published at 78 Fed. Reg. 72081-86 (Dec. 2, 2013).

<sup>3</sup> Specifically, S&B Broadcasting Company (“S&B”), Royce International Broadcasting Company (“Royce”), Genesis Communications I, Inc. (“Genesis”) and Polnet Communications, Ltd. (“Polnet”) filed in response to the *Auction 84 Comment Public Notice*. Those filings may be viewed through the Commission’s Electronic Comment Filing System (“ECFS”) under proceeding 13-268.

<sup>4</sup> AM New Station and Major Modification Auction Filing Window; Minor Modification Application Freeze, *Public Notice*, DA 03-3532, 18 FCC Rcd 23016 (MB/WTB 2003) (“*AM Auction 84 Window Notice*”). The window opened on January 26, 2004, and closed on January 30, 2004. Applicants were required to file electronically an Application to Participate in an FCC Auction (FCC Form 175) and certain sections of FCC Form 301, Application for Construction Permit for Commercial Broadcast Station. A separate Form 301 “tech box” was required for each proposed AM station, which permitted the staff to make mutual exclusivity determinations between AM stations as proposed in timely and complete filings. *Id.*, 18 FCC Rcd at 23017-18.

<sup>5</sup> AM Auction No. 84 Mutually Exclusive Applicants Subject to Auction; Settlement Period Announced for Certain Mutually Exclusive Application Groups; September 16, 2005 Deadline Established for Section 307(b) Submissions, *Public Notice*, DA 05-1604, 20 FCC Rcd 10563 (MB/WTB 2005) (“*AM Auction 84 MX Public Notice*”). The specified deadlines were extended in a subsequent public notice. Auction No. 84 Settlement Period and Section (continued....)

that were mutually exclusive with other applications submitted in the filing window.<sup>6</sup> In the *AM Auction 84 MX Public Notice*, applicants in several of the listed groups of mutually exclusive applications (“MX groups”) were given the opportunity to eliminate their mutual exclusivity with each other by means of settlement or technical modification to their proposals.<sup>7</sup> In addition, for each MX group in which applicants proposed to serve different communities, an analysis under Section 307(b) of the Communications Act of 1934, as amended, was required.<sup>8</sup> Finally, any MX group consisting of only new commercial AM station applications for the same community did not require a Section 307(b) analysis and was deemed ready to proceed to auction.<sup>9</sup> On August 30, 2007, the Bureaus announced a limited, supplemental auction filing window to permit the filing of applications for a new AM station on 1700 kHz in a community located in Rockland County, New York.<sup>10</sup> The Bureaus will now proceed to auction with the 22 MX groups identified in Attachment A, which are those MX groups for which no community merited a dispositive Section 307(b) preference, those MX groups in which all of the applicants (or all of the remaining applicants after a Section 307(b) analysis) specified the same community, and the Rockland County applicants.

(Continued from previous page)

307(b) Submission Deadline Extended to October 31, 2005, *Public Notice*, DA 05-2401, 20 FCC Rcd 14492 (MB/WTB 2005).

<sup>6</sup> In determining mutual exclusivity the staff applied the following rule sections: 47 C.F.R. §§ 73.37, 73.182, 73.183(b)(1), 73.3571. See Review of the Technical Assignment Criteria for the AM Broadcast Service, MM Docket No. 87-267, *Report and Order*, FCC 91-303, 6 FCC Rcd 6273 (1991), *recon granted in part and denied in part, Memorandum Opinion and Order*, FCC 93-198, 8 FCC Rcd 3250 (1993); Nelson Enterprises, Inc., *Memorandum Opinion and Order*, FCC 03-38, 18 FCC Rcd 3414 (2003) (clarifying standards to establish mutual exclusivity between window-filed AM applications); Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures, MB Docket No. 09-52, *Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rule Making*, FCC 11-28, 26 FCC Rcd 2556, 2580-84 ¶¶ 46-53 (2011) (codifying technical standards for determining AM nighttime mutual exclusivity among window-filed AM applications).

<sup>7</sup> Specifically, MX groups that included at least one AM major modification application, or at least one noncommercial educational (“NCE”) application, were given a limited opportunity to settle. See *AM Auction 84 MX Public Notice*, 20 FCC Rcd at 10564. See also 47 C.F.R. § 73.5002(d); 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) (“*NCE Third Reconsideration Order*”).

<sup>8</sup> *AM Auction 84 MX Public Notice*, 20 FCC Rcd at 10565-66. 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, 15964-65 ¶¶ 117-20 (1998) (“*Broadcast First Report and Order*”) (prior to conducting an auction for the AM service, staff must undertake a traditional Section 307(b) analysis), *on recon.*, *Memorandum Opinion and Order*, FCC 99-74, 14 FCC Rcd 8724 (“*Broadcast First Reconsideration Order*”), *on further recon.*, *Memorandum Opinion and Order*, FCC 99-201, 14 FCC Rcd 12541 (1999) (“*Broadcast Second Reconsideration Order*”).

<sup>9</sup> See *AM Auction 84 MX Public Notice*, 20 FCC Rcd at 10564. See also 47 C.F.R. §§ 73.5002(c) and (d); *Orion Communications Ltd. v. FCC*, 213 F.3d 761 (D.C. Cir. 2000).

<sup>10</sup> On August 22, 2006, the Commission released a *Memorandum Opinion and Order* directing the Media Bureau to open a limited filing window to permit the filing of applications for a new AM station on 1700 kHz in a community located in Rockland County, New York. Alexander Broadcasting, Inc., *Memorandum Opinion and Order*, FCC 06-125, 21 FCC Rcd 9968 (2006) (“*Alexander*”); Supplemental AM New Station and Major Modification Auction Filing Window for Auction 84; Minor Modification Application Freeze; Notice and Filing Requirements Regarding October 1-5, 2007, Window for Certain AM Construction Permit Applications for Rockland County, New York; Notice Regarding Freeze on the Filing of AM Expanded Band Minor Change Construction Permit Applications, *Public Notice*, DA 07-3793, 22 FCC Rcd 16217 (MB/WTB 2007) (“*Supplemental Rockland County Window Notice*”).

## 2. Construction Permits in Auction 84

5. Auction 84 will offer construction permits for 22 new commercial AM stations. A list of the locations and frequencies of these stations is included as Attachment A. Attachment A also sets forth minimum opening bids and upfront payments for permits being offered in this auction.

6. An applicant listed in Attachment A<sup>11</sup> may become qualified to bid only if it meets the additional filing, qualification and payment requirements described in this Public Notice.<sup>12</sup> Each qualified bidder will be eligible to bid on only those construction permits specified for that qualified bidder in Attachment A to this Public Notice. All applicants within each MX group are directly mutually exclusive with one another; therefore, no more than one construction permit will be awarded for each MX group identified in Attachment A.

7. Two parties seek removal from, or stay of, the auction as to two MX groups. In its comments, S&B requests a stay of the auction for MX Group AM 84-172 until the applicants in this MX Group are given an opportunity to submit, and the Media Bureau rules upon, information in support of a section 307(b) analysis.<sup>13</sup> In essence, S&B seeks reconsideration or reversal of the Media Bureau's determination in its 2009 *Rockland Settlement Public Notice* that it would not conduct a section 307(b) analysis for this MX group because the specific geographic and service conditions imposed by the Commission in authorizing the opening of a limited supplemental filing window to applicants for expanded AM band stations in Rockland County, New York fulfill the section 307(b) statutory mandate.<sup>14</sup> Polnet opposes S&B's request and urges that the auction should proceed on the announced 2014 auction schedule.<sup>15</sup> Polnet argues that S&B's request is tardy and must be dismissed pursuant to the requirements of sections 1.106 and 1.115 of the Commission's rules.<sup>16</sup>

8. We have previously recognized that a stay may be granted pending review of a petition for reconsideration or other properly-filed challenge.<sup>17</sup> Because S&B failed to seek reconsideration of the *Rockland Settlement Public Notice* within the 30-day period mandated by Section 405 of the Act and section 1.106 of the Commission's rules,<sup>18</sup> it therefore lacks the necessary predicate to seek removal of the MX group or stay of the auction as to these permits.<sup>19</sup> Accordingly, S&B's request is dismissed.<sup>20</sup>

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<sup>11</sup> Attachment A to this Public Notice lists the names of Auction 84 applicants using the names supplied on the Form 175. Attachment A of the *Auction 84 Comment Public Notice* listed each applicant using the name provided on the Form 301 "tech box." Six applicants provided different names on their Form 175 and Form 301 "tech box" submissions. Accordingly, the names of six applicants are different on Attachment A to this Public Notice. Attachment D to this Public Notice provides a listing of those changes.

<sup>12</sup> All AM applicants listed in Attachment A previously filed short-form applications (FCC Form 175) in either the filing window announced in the *AM Auction 84 Window Notice* or the *Supplemental Rockland County Window Notice*.

<sup>13</sup> S&B "Comments and Motion to Stay Auction" at 1-7.

<sup>14</sup> *Id.* at 3-4.

<sup>15</sup> Polnet "Reply Comments and Opposition to Motion to Stay Auction" at 1-3.

<sup>16</sup> Polnet also contends that S&B's filing violates the section 1.44 proscription on combining multiple requests in a single pleading. *Id.*

<sup>17</sup> See Alpine PCS, Inc., 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*, DA 08-1602, 23 FCC Rcd 10485, 10487 ¶ 8 (WTB 2008) ("*Alpine*").

<sup>18</sup> 47 U.S.C. § 405(a); 47 C.F.R. § 1.106(f).

<sup>19</sup> See 47 C.F.R. § 1.102.



9. Similarly, Genesis requests removal of MX Group 84-163A from Auction 84 until final resolution of its pending Application for Review that challenges the Media Bureau's Audio Division decision denying Genesis a dispositive section 307(b) preference.<sup>21</sup> Genesis's filing reiterates arguments made in its pending Application for Review that challenges Media Bureau's denial of Genesis's petition for reconsideration of the Division's decision.<sup>22</sup> In effect, Genesis requests a stay of the auction of MX Group 84-163A. We evaluate such requests under a four-part legal standard.<sup>23</sup> We have recognized that a "stay is grantable if the petitioner can show that: (i) it is likely to prevail on the merits; (ii) it will suffer irreparable harm, absent a stay; (iii) other interested parties will not be harmed if the stay is granted; and (iv) the public interest would favor a grant of the stay." Genesis fails to make the necessary four-part showing to stay Commission action. While Genesis reiterates its claims on the merits, it does not claim that it will suffer irreparable harm if the auction goes forward, nor does it attempt to explain why the other competing applicant in this MX Group would not be harmed or how the public interest would be served. Pending administrative and judicial appeals may often be associated with licenses offered at auction,<sup>24</sup> and the Commission and the courts have consistently rejected requests to stay Commission auctions in whole or in part based on matters pending before the Commission.<sup>25</sup> Moving forward with the auction process for this MX group will have no effect on the power of the Commission to decide Genesis's Application for Review or to grant appropriate relief if Genesis were to ultimately prevail on the merits.<sup>26</sup> As a matter of policy, if we were to refrain from offering at auction licenses or permits that remain subject to administrative or judicial review, we would risk delay of future auctions for review by the Commission and courts of the myriad issues parties could raise in attempts to circumvent auctions for their individual

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<sup>20</sup> Moreover, S&B has not made any attempt to address or even recognize the criteria under which we would evaluate a request for stay, nor has it articulated any overriding public policy concern favoring such relief. See *Alpine*, 23 FCC Rcd at 10487 ¶ 8, citing *Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958) (four-part standard for grant of stay).

<sup>21</sup> "Statement of Genesis Communications I, Inc. for the Record" at 8.

<sup>22</sup> See *Rama Communications, Inc. and Genesis Communications I, Inc., Letter*, 1800B3-ATS (MB Dec. 4, 2008) ("*Letter Decision*"). The Media Bureau dismissed Genesis's petition for reconsideration of the *Letter Decision* as interlocutory, and thus not subject to reconsideration under section 1.106(a)(1) of the Commission's Rules. *Rama Communications, Inc. and Genesis Communications I, Inc., Letter*, 1800B3-BSH-LAS (MB Dec. 9, 2009). Genesis's Application for Review asks the Commission to reverse this decision and issue a decision before conducting any auction of this MX group. Application for Review of Genesis, MX Group 84-163A, File No. BMJP-20040128AKY (filed Jan. 6, 2010).

<sup>23</sup> *Alpine*, 23 FCC Rcd at 10487 ¶ 8.

<sup>24</sup> See, e.g., *Northcoast Communications L.L.C., Order*, DA 01-1885, 16 FCC Rcd 15637, 15641 ¶ 6 (WTB/CWD 2001), citing *Bachow Communications, Inc. v. FCC*, 237 F.3d 683 (D.C. Cir. 2001) (applicants for licenses in the 39 GHz band sought review of FCC interim procedures adopted during transition from comparative to competitive application process); *PLMRS Narrowband Corp. v. FCC*, 182 F.3d 995 (D.C. Cir. 1999) (applicants for licenses in the 220 MHz band sought review of FCC decision to assign licenses by auction rather than lottery); *Fresno Mobile Radio, Inc. v. FCC*, 165 F.3d 965 (D.C. Cir. 1999) (incumbent licensees sought review of FCC decision to allocate licenses in the 800 MHz band by auction).

<sup>25</sup> See, e.g., *FCC v. Radiophone, Inc.*, 516 U.S. 1301, 116 S.Ct. 283 (1995) (Justice Stevens vacating a stay of an auction); *Central Wyoming College and State Board of Education, State of Idaho*, 2002 U.S. App. Lexis 12184 (D.C. Cir. 2002); *Council Tree Communications, Inc. v. FCC*, No. 06-2943 (3d Cir. June 15, 2006) (per curiam) (denying a motion for stay of Auction 66 pending judicial review of movants' challenge to the revised designated entity rules).

<sup>26</sup> See *Alpine*, 23 FCC Rcd at 10490 ¶ 18. See also Auction of C, D, E, and F Block Broadband PCS Licenses, *Public Notice*, 14 FCC Rcd 5467, 5470-71 (1999) (auction would continue notwithstanding that several licenses to be auctioned were the subject of pending proceedings by parties claiming continuing interests in the licenses; winning bidders would receive refunds of any payments if forced to surrender licenses won at auction).

purposes.<sup>27</sup> For these reasons, we decline Genesis's request to remove MX Group 84-163A from this auction.

## **B. Rules and Disclaimers**

### **1. Relevant Authority**

10. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules,<sup>28</sup> including Commission decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees.<sup>29</sup> Broadcasters should also familiarize themselves with the Commission's AM broadcast service and competitive bidding requirements contained in Part 73 of the Commission's rules,<sup>30</sup> as well as Commission orders concerning competitive bidding of broadcast construction permits.<sup>31</sup> Applicants must also be thoroughly familiar with the procedures, terms and conditions contained in this Public Notice and any future public notices that may be released in this proceeding.

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 at the FCC Reference Information Center, 445 12th Street, SW, Room CY-A257, Washington, DC 20554, during its regular business hours. Documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. ("BCPI"), 445 12th Street, SW, Room CY-B402, Washington, DC 20554, 800-378-3160 or at <http://www.bcpiweb.com>.<sup>32</sup>

### **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

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<sup>27</sup> See *Alpine*, 23 FCC Rcd at 10491-92 ¶ 22; 21st Century Telesis, Inc., *Order*, DA 00-2889, 2000 WL 1868132 at ¶ 6 (WTB rel. Dec. 21, 2000); Motion of Ranger Cellular and Miller Communications, Inc. for a Stay of the Cellular Rural Service Areas Auction No. 45, *Order*, DA 02-1135, 17 FCC Rcd 9320, 9323 (WTB 2002).

<sup>28</sup> 47 C.F.R. Part 1, Subpart Q.

<sup>29</sup> 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).

<sup>30</sup> 47 C.F.R. §§ 73.1 – 73.190, 73.1001 – 73.5009.

<sup>31</sup> See, e.g., *Broadcast First Report and Order*, 13 FCC Rcd at 15920; *Broadcast Second Reconsideration Order*, 14 FCC Rcd at 12541; *NCE Second Report and Order*, 18 FCC Rcd at 6691; *NCE Third Reconsideration Order*, 23 FCC Rcd at 17423.

<sup>32</sup> When ordering documents from BCPI, please provide the appropriate FCC document number (for example, DA 13-2168 for the *Auction 84 Comment Public Notice*, or DA 14-63 for this Public Notice).

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).<sup>33</sup>

**a. Entities Subject to Section 1.2105**

13. Section 1.2105(c)'s prohibition on certain communications applies 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.<sup>34</sup> 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.**<sup>35</sup> In broadcast services, the "geographic license area" is the market designation of the particular service.<sup>36</sup> In Auction 84, this prohibition applies to all applicants that have applied for construction permits for either the same geographic license area or the same MX group.

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.<sup>37</sup> 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.<sup>38</sup>

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. While 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

<sup>33</sup> See 47 C.F.R. §§ 1.2105(a)(2)(viii), 1.2105(c)(1), 73.5002; see also *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17546.

<sup>34</sup> 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).

<sup>35</sup> 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 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).

<sup>36</sup> *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17549 n.12.

<sup>37</sup> 47 C.F.R. § 1.2105(c)(7)(i).

<sup>38</sup> 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).



information should be presumed to be communicated to the applicant, vigilance is necessary in these circumstances to prevent direct or indirect communication of information that affects, or could affect, bids, bidding strategy, or the negotiation of settlement agreements.

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.<sup>39</sup>

17. Moreover, Auction 84 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 violation similarly could occur.<sup>40</sup> 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).<sup>41</sup>

#### **b. Prohibition Applies Until Down Payment Deadline**

18. Section 1.2105(c)'s prohibition on certain communications became effective at the initial short-form application (FCC Form 175) filing deadline pursuant to which a short-form application was filed in either the filing window announced in the *AM Auction 84 Window Notice* or the *Supplemental Rockland County Window Notice*, and ends at the down payment deadline after the auction closes, which will be announced in a future public notice.<sup>42</sup>

#### **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).<sup>43</sup> 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.<sup>44</sup> 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

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<sup>39</sup> 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).

<sup>40</sup> 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*").

<sup>41</sup> *Id.*

<sup>42</sup> 47 C.F.R. § 1.2105(c)(1). Specifically, this prohibition took effect on January 30, 2004, for those applicants that filed pursuant to the *AM Auction 84 Window Notice*, and took effect on October 5, 2007, for those that filed pursuant to the *Supplemental Rockland County Window Notice*.

<sup>43</sup> *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17553-54 ¶ 14. For a discussion of the term "applicant" within the meaning of section 1.2105(c), see Section I.B.2.a above.

<sup>44</sup> 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).

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.”<sup>45</sup> 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,”<sup>46</sup> 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.”<sup>47</sup> 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.<sup>48</sup> Similarly, an applicant’s public statement of intent not to participate in Auction 84 bidding could also violate the rule. Applicants are hereby placed on notice that public disclosure of information relating to bids, or bidding strategies, or to post-auction market structures may violate section 1.2105(c).

**d. Disclosure of Bidding Agreements and Arrangements**

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.<sup>49</sup> 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.<sup>50</sup>

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 did not reach any such agreement by the short-form filing deadline, they may not negotiate, discuss or communicate with any other applicants any information covered by the rule until after the down payment deadline following the close of the auction.<sup>51</sup>

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<sup>45</sup> 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*”).

<sup>46</sup> Mercury PCS II, LLC, *Notice of Apparent Liability for Forfeiture*, FCC 97-388, 12 FCC Rcd 17970, 17974 ¶ 12, 17976 ¶ 17 (1997).

<sup>47</sup> Mercury PCS II, LLC, *Memorandum Opinion and Order*, FCC 98-203, 13 FCC Rcd 23755, 23760 ¶ 11 (1998).

<sup>48</sup> 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.”).

<sup>49</sup> 47 C.F.R. § 1.2105(c)(1).

<sup>50</sup> 47 C.F.R. §§ 1.2105(a)(2)(viii), (c)(1).

<sup>51</sup> 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*”).

23. Section 1.2105(c) does not prohibit non-auction-related business negotiations among auction applicants.<sup>52</sup> 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.<sup>53</sup>

**e. Section 1.2105(c) Certification**

24. By electronically submitting a short-form application, each applicant in Auction 84 certified its compliance with sections 1.2105(c) and 73.5002(d). In particular, each applicant has certified under penalty of perjury that 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.<sup>54</sup> However, the Bureaus caution that merely having filed 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.<sup>55</sup> The Commission has stated that it "intend[s] to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring."<sup>56</sup> Any applicant found to have violated section 1.2105(c) may be subject to sanctions.<sup>57</sup>

**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.<sup>58</sup> 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.<sup>59</sup>

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.<sup>60</sup> Thus, section 1.65 requires an auction applicant to notify the Commission of any substantial change to the

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<sup>52</sup> See, e.g., Todd Stuart Noordyk, *Memorandum Opinion and Order*, FCC 01-275, 16 FCC Rcd 18113, 18116-17 ¶ 12 (2001).

<sup>53</sup> 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").

<sup>54</sup> 47 C.F.R. § 1.2105(a)(2)(ix). The Bureaus suspended application of the section 1.2105(c) and 73.5002(d) prohibitions during certain periods for the limited purpose of allowing settlement discussions. See, e.g., Supplemental AM Auction 84 Mutually Exclusive Applicants Subject to Auction, Settlement Period Announced, *Public Notice*, DA 09-2196, 24 FCC Rcd 12522 (MB/WTB 2009). Discussions of information covered by the rules outside of those windows would violate the rules.

<sup>55</sup> *Nevada Wireless Order*, 13 FCC Rcd at 11978 ¶ 13.

<sup>56</sup> *Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689 ¶ 12.

<sup>57</sup> See 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

<sup>58</sup> 47 C.F.R. § 1.2105(c)(6); see also *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17553-55 ¶¶ 13-17.

<sup>59</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>60</sup> 47 C.F.R. § 1.65; see also *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17550-51 ¶ 9.

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).<sup>61</sup>

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 becomes aware of the need for amendment.<sup>62</sup> 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.<sup>63</sup>

**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 the Commission's auctions.<sup>64</sup> 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.<sup>65</sup> For Auction 84, 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 Margaret W. Wiener at the following e-mail address: [auktion84@fcc.gov](mailto:auktion84@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 12<sup>th</sup> 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.<sup>66</sup> Such parties also are encouraged to coordinate with the Auctions and Spectrum Access Division staff about the procedures for

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<sup>61</sup> See *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17550-51 ¶ 9.

<sup>62</sup> 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*").

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*, 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.

<sup>65</sup> *Id.*

<sup>66</sup> 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).

submitting such reports.<sup>67</sup> This Public Notice provides additional guidance on procedures for submitting application-related information below.<sup>68</sup>

**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 application 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.<sup>69</sup> 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 E. These documents are available on the Commission's auction web page at [http://wireless.fcc.gov/auctions/prohibited\\_communications](http://wireless.fcc.gov/auctions/prohibited_communications).

**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.<sup>70</sup> Compliance with the disclosure requirements of section 1.2105(c) will not insulate a party from enforcement of the antitrust laws.<sup>71</sup> For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submitted a short-form application.<sup>72</sup> 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."<sup>73</sup>

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

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<sup>67</sup> See Section VI "Contact Information," below.

<sup>68</sup> See Section II. C "Maintaining Current Information in Short-Form Applications," below.

<sup>69</sup> 47 C.F.R. § 1.2107(d).

<sup>70</sup> 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*").

<sup>71</sup> 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).

<sup>72</sup> 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.*

<sup>73</sup> *Anti-Collusion Public Notice*, 11 FCC Rcd at 9646.



the United States Department of Justice for investigation.<sup>74</sup> 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.<sup>75</sup>

### 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 AM broadcast facilities that it is 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 bidder to perform technical analyses and/or refresh its previous analyses to assure itself that, should it become a winning bidder for any Auction 84 construction permit, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements. We 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.<sup>76</sup>

37. The Bureaus strongly encourage each applicant to conduct its own research prior to Auction 84 in order to determine the existence of pending administrative or judicial proceedings that might affect its decision to participate in the auction. The Bureaus strongly encourage each participant in Auction 84 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 84. 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 84.** Each potential bidder is responsible for undertaking research to ensure that any permits won in this auction will be

<sup>74</sup> See 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, 2388 ¶ 226 (1994) (“*Competitive Bidding Second Report and Order*”).

<sup>75</sup> See 47 C.F.R. § 1.2109(d); see also *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226.

<sup>76</sup> 47 C.F.R. Part 1, Subpart I.

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) 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](mailto: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 84 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 84 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&section=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.<sup>77</sup> 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.<sup>78</sup> 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.<sup>79</sup> 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 84 will begin on Tuesday, May 6, 2014. Pre-auction dates and deadlines are listed below.

47. 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

48. Auction 84 – AM Broadcast

<sup>77</sup> 47 C.F.R. Part 1, Subpart I.

<sup>78</sup> 47 C.F.R. §§ 1.1301-1.1319.

<sup>79</sup> 47 C.F.R. Part 1, Appendix C.

### 3. Bidding Methodology

49. As discussed in more detail below, the bidding methodology for Auction 84 will be a simultaneous multiple round format.<sup>80</sup> 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

50. The following dates and deadlines apply:

Auction Tutorial Available (via Internet) .....	February 19, 2014
Short-Form Application (FCC Form 175)	
Remedial Filing Window Opens.....	February 19, 2014; 12:00 noon ET
Short-Form Application (FCC Form 175)	
Remedial Filing Window Deadline.....	March 4, 2014; prior to 6:00 p.m. ET
Upfront Payments (via wire transfer).....	April 7, 2014; 6:00 p.m. ET
Mock Auction .....	May 2, 2014
Auction Begins.....	May 6, 2014

### 5. Requirements for Participation

51. Those wishing to participate in this auction must:

- Be listed as an applicant on Attachment A of this Public Notice;
- Have submitted a short-form application (FCC Form 175) that complies with the Commission’s competitive bidding rules and the procedures and deadlines set forth in this Public Notice;
  - *Ensuring that Short-Form Application is Complete:* Each applicant should review, verify and, if necessary, update its previously-filed short-form application (FCC Form 175).
  - *Updating Short-Form Application in FCC Auction System:* Each applicant will have an opportunity to review and, if necessary, update its previously-filed short-form application by following the electronic filing procedures set forth in Attachment B to this Public Notice;
    - For example, an applicant may need to update its previously-filed short-form application if information contained in the application has changed, information required by the Commission’s competitive bidding rules had been omitted or was incomplete, or it believes that information or its compliance with auction requirements requires further description or explanation;
    - *Minor Changes Only:* An applicant may submit only a “minor amendment” to its application during the upcoming remedial and resubmission filing windows.<sup>81</sup>
  - *Windows for Review and Update of Short-Form Applications:* Review and update of applications must be completed within the following filing windows:
    - *Remedial Filing Window:* Applicants will have an opportunity to review and update their short-form applications electronically using the FCC’s web-based Auction System during a remedial filing window that will open on February 19,

<sup>80</sup> See Section IV.A.1, “Simultaneous Multiple Round Auction,” below.

<sup>81</sup> 47 C.F.R. § 1.2105(b)(2). For additional guidance on the permissible amendments during these windows, see Section II.B, “Minor Modifications to Short-Form Applications,” below.

2014, and will close on March 4, 2014 at 6:00 PM Eastern Time (ET). Commission staff will review all short-form applications (including previously-filed Forms 175 and those updated during the remedial filing window) to assess their compliance with the Commission's competitive bidding rules.

- *Resubmission Filing Window:* An applicant whose application is found to contain deficiencies after the close of the remedial filing window will be provided with a limited opportunity to bring its application into compliance with the Commission's competitive bidding rules during a resubmission window, the dates for which will be announced in a future public notice.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, on April 7, 2014, 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.

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

### A. Updating Applicant's FCC Form 175 in Integrated Spectrum Auction System – Remedial Filing Window Closes March 4, 2014

52. To qualify to participate in the bidding, each Auction 84 applicant must have submitted a short-form application (FCC Form 175) in the Integrated Spectrum Auction System (ISAS) that complies with the Commission's competitive bidding rules and the procedures and deadlines set forth in this Public Notice. Each applicant should review its previously-filed Form 175 and verify the accuracy of all information in its application. If an applicant updates information in its short-form, it will need to fully complete the electronic form and certify the application in order to bring its short-form application into compliance with the current version of ISAS because changes to the system have been implemented since these applications were initially submitted. Attachment B to this Public Notice contains detailed instructions for updating and verifying short-form applications.

53. Applicants will have an opportunity to make any updates and verify short-form application information during a remedial filing window. This window will open noon ET on Wednesday, February 19, 2014, and will close at 6:00 p.m. ET on Tuesday, March 4, 2014.

54. Each Auction 84 applicant should review its FCC Form 175 in ISAS to assure that all relevant information is provided and that the information contained in the application is accurate and complete. Some applicants may also need to provide updates or revisions of previously-submitted information, consistent with the requirement of section 1.65 of the rules.<sup>82</sup> To insure that the FCC Form 175 is accurate and complete, each applicant must review carefully all of the information provided in this public notice, including the section regarding declarations as to former defaults and delinquencies.<sup>83</sup>

### B. Minor Modifications to Short-Form Applications

55. Following the short-form application deadline, an Auction 84 applicant is permitted to make only minor changes to its application.<sup>84</sup> 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. If revised or updated information constitutes a "major amendment," as defined by section 1.2105, such changes may result in the dismissal

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<sup>82</sup> 47 C.F.R. § 1.65.

<sup>83</sup> See *infra* Section II. G.

<sup>84</sup> 47 C.F.R. § 1.2105(b)(2).



of the application.<sup>85</sup> In this context, major amendments include a change of technical proposals, change control of the applicant, 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.<sup>86</sup>

### C. Maintaining Current Information in Short-Form Applications

56. Sections 1.65 and 1.2105(b) of the Commission's rules require an applicant to maintain the accuracy and completeness of all 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,<sup>87</sup> or to amend a short form application no more than five days after the applicant becomes aware of the need for the amendment.<sup>88</sup> 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.<sup>89</sup>

### D. Submission of Updates to Short-Form Applications

57. Updates to short-form applications should be made electronically 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.<sup>90</sup>

58. An applicant cannot use the FCC Auction System outside of the remedial and resubmission filing windows to make changes to its short-form application for other than administrative changes (e.g., changing contact information or the name of an authorized bidder). After the filing window has closed, the system will not permit applicants to modify information in most of the application's data fields.

59. If 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. Any letter describing changes to an applicant's short-form application must be submitted by e-mail to [auCTION84@fcc.gov](mailto:auCTION84@fcc.gov). The e-mail summarizing the changes must include a subject or caption referring to Auction 84 and the name of the applicant, for example, "Re: Changes to Auction 84 Short-Form Application of ABC Corp." The Bureaus request that parties format any

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<sup>85</sup> *Id.*

<sup>86</sup> None of the AM stations listed in Attachment A are proposed as noncommercial educational facilities. *See* 47 U.S.C. §§ 309(j)(2)(C), 397(6)(B).

<sup>87</sup> We remind each applicant of its duty to continuously maintain the accuracy of information submitted in its auction application. *See, e.g., Vermont Telephone Co., Notice of Apparent Liability for Forfeiture*, DA 11-1536, 26 FCC Rcd 14130 (EB 2011).

<sup>88</sup> 47 C.F.R. §§ 1.65, 1.2105(b). *See also Part 1 Procedural Amendments Order*, 25 FCC Rcd at 523 ¶ 8.

<sup>89</sup> *See* 47 C.F.R. § 73.5007(a). *See also* 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). 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, MM Docket No. 88-577, *Memorandum Opinion and Order*, FCC 01-129, 16 FCC Rcd 12061, 12077-78 ¶¶ 34-37 (2001). Events occurring after the initial 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.

<sup>90</sup> After the revised application has been submitted, a confirmation page will be displayed stating the submission time, submission date, and a unique file number. The Bureaus advise applicants to retain a copy of this confirmation page.

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.

60. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System, which was used for submitting comments regarding procedures for conducting Auction 84.

61. Applicants should note that submission of a short-form application (and any amendments thereto) constitutes a representation by the person certifying the application that he or she is an authorized representative of the applicant with authority to bind 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 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.

#### **E. Electronic Review of Short-Form Applications**

62. During the remedial window, an applicant may review and update its electronic FCC Form 175 application in the FCC Auction System. There is no fee to access this system. See Attachment B for details on accessing ISAS.

63. Applicants will also be able to view other applicants' completed FCC Form 175 applications after the Commission has issued a public notice announcing the status of the resubmitted Auction 84 applications. Instructions for electronic review of FCC Form 175 applications will be discussed in the public notice concerning the status of the applications.

#### **F. Installment Payments**

64. Installment payments will not be available in Auction 84.

#### **G. Provisions Regarding Former and Current Defaulters**

65. Current defaulters or delinquents are not eligible to participate in Auction 84, 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.<sup>91</sup> 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, has defaulted on any Commission construction permit or license or been delinquent on any non-tax debt owed to any Federal agency, but has since remedied all such defaults and cured all of the outstanding non-tax delinquencies.

66. On the short-form application, an applicant must certify under penalty of perjury that it, its affiliates, its controlling interests, or the affiliates of its controlling interests, as defined by section 1.2110 of the Commission's rules,<sup>92</sup> is not in default on any payment for a Commission construction permit or license (including down payments) and is not delinquent on any non-tax debt owed to any

<sup>91</sup> 47 C.F.R. §§ 1.2105(a)(2)(x), (xi), 1.2105(b)(1), 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.").

<sup>92</sup> 47 C.F.R. § 1.2110.

Federal agency.<sup>93</sup> Each applicant must also state under penalty of perjury whether it, its affiliates, its controlling interests, or the affiliates of its controlling interests, 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.<sup>94</sup>

67. Applicants are encouraged to review previous guidance provided by the Wireless Telecommunications Bureau on default and delinquency disclosure requirements in the context of the short-form application process.<sup>95</sup> 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.<sup>96</sup> 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.<sup>97</sup> 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.

68. 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.<sup>98</sup> 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.<sup>99</sup> As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of its competitive bidding rules, including the provisions and certifications of sections 1.2105 and 1.2106, with regard to current and former defaults or delinquencies.

69. 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

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<sup>93</sup> 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.

<sup>94</sup> 47 C.F.R. § 1.2105(a)(2)(xi); *see also Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317 ¶ 42.

<sup>95</sup> 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/>.

<sup>96</sup> 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/>.

<sup>97</sup> 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.

<sup>98</sup> 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").

<sup>99</sup> *Id.*, 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.").

section 1.2105.<sup>100</sup> 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.<sup>101</sup>

70. Moreover, applicants in Auction 84 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,<sup>102</sup> and such review may result in the dismissal of a winning bidder's long-form application.<sup>103</sup>

### III. PRE-AUCTION PROCEDURES

#### A. Online Auction Tutorial – Available February 19, 2014

71. An educational auction tutorial will be available on the Auction 84 web page by Wednesday, February 19, 2014. This online tutorial will provide information about pre-auction procedures, updating previously-filed 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.

72. 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.<sup>104</sup>

73. The auction tutorial will be accessible from the FCC's Auction 84 web page at <http://wireless.fcc.gov/auctions/84/> 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. Revised Short-Form Applications – Due Prior to 6:00 p.m. ET on March 4, 2014

74. Each applicant should review its previously-filed, electronic short-form application (FCC Form 175) via the FCC Auction System.<sup>105</sup> If any information in the short-form application or its attachments is inaccurate or otherwise needs to be updated, any such changes must be reported in the Form 175 during the upcoming remedial filing window. Attachment B to this Public Notice contains instructions for updating short-form applications in the remedial window. Updates to the short-form application must be submitted prior to 6:00 p.m. ET on March 4, 2014. No application fee is required. An applicant must also submit a timely upfront payment to be eligible to bid, as discussed below.<sup>106</sup>

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<sup>100</sup> *Auction Default Disclosure Public Notice*, 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).

<sup>101</sup> *Id.*, 19 FCC Rcd at 21921-22.

<sup>102</sup> *Debt Collection Report and Order*, 19 FCC Rcd at 6540. See 47 C.F.R. § 1.1114.

<sup>103</sup> Applicants that have their long-form applications 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).

<sup>104</sup> Most users will already have the Flash Player browser plug-in, which can be downloaded from <http://get.adobe.com/flashplayer/>.

<sup>105</sup> 47 C.F.R. § 1.2105(a).

<sup>106</sup> See Section III.D "Upfront Payments – Due April 7, 2014," below.

75. Previously-submitted short-form applications may be viewed and updated at any time beginning at noon ET on February 19, 2014, until the filing window closes at 6:00 p.m. ET on March 4, 2014. 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 remedial filing deadline on March 4, 2014.

76. 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 telephony (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 Corrections of Deficiencies

77. The Commission will process all applications for permits listed in Attachment A to determine which are complete, and subsequent to the remedial filing window will issue a public notice identifying those that are complete and those that are incomplete or deficient because of minor defects that may be corrected. The public notice will include the deadline for addressing deficiencies in applications.

78. 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.<sup>107</sup> Authorizations may be sent by e-mail to [auction84@fcc.gov](mailto:auction84@fcc.gov).

### D. Upfront Payments – Due April 7, 2014

79. 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. This Form 159 can be printed and the completed form must be 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 April 7, 2014.**

#### 1. Making Upfront Payments by Wire Transfer

80. Wire transfer payments must be received before 6:00 p.m. ET on April 7, 2014.<sup>108</sup> No other payment method is acceptable.<sup>109</sup> 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

<sup>107</sup> 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.

<sup>108</sup> 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.

<sup>109</sup> The Commission will not accept checks, credit cards, or automated clearing house (ACH) payments.



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: “U084”)  
FCC CODE 1: (same as FCC Form 159, block 28A: “84”)  
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.

81. 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 84.” In order to meet the upfront payment deadline, an applicant’s payment must be credited to the Commission’s account for Auction 84 before the deadline.<sup>110</sup>

82. 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.<sup>111</sup> **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.

83. 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 84 go to a lockbox number different from the lockboxes used in previous FCC auctions.
- Failure to deliver a sufficient upfront payment as instructed herein by the April 7, 2014, deadline will result in dismissal of the short-form application and disqualification from participation in the auction.

## 2. FCC Form 159

84. 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

<sup>110</sup> 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).

<sup>111</sup> 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).

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

85. The Commission has delegated to the Bureaus the authority and discretion to determine appropriate upfront payments for each auction.<sup>112</sup> Upfront payments help deter frivolous or insincere bidding, and provide the Commission with a source of funds in the event that the bidder incurs liability during the auction.

86. Applicants that are former defaulters, as described above, must pay upfront payments 50 percent greater than non-former defaulters.<sup>113</sup> 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.<sup>114</sup>

87. 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 84 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 in any single round.<sup>115</sup> Under the Bureaus’ proposal, in order to bid on a particular construction permit, otherwise qualified bidders that are designated in Attachment A of this Public Notice for that construction permit 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 designated for that applicant in Attachment A of this Public Notice, 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 designated for that applicant in Attachment A of this Public Notice, 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.<sup>116</sup> The total upfront payment does not affect the total dollar amount the bidder may bid on any given construction permit.

88. In the *Auction 84 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, and this proposal is adopted. The specific upfront payment amounts and bidding units for each construction permit are set forth in Attachment A of this Public Notice.

89. 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)

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<sup>112</sup> 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.

<sup>113</sup> *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15316-18 ¶¶ 40-43; see also 47 C.F.R. § 1.2106(a); Section II.F “Provisions Regarding Former and Current Defaulters,” above.

<sup>114</sup> 47 C.F.R. § 1.2110(c).

<sup>115</sup> *Auction 84 Comment Public Notice*, 28 FCC Rcd at 15676 ¶ 20.

<sup>116</sup> 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.

in any single round, and submit an upfront payment amount covering that number of bidding units.<sup>117</sup> 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.**

<b>Example: Upfront Payments and Bidding Flexibility</b>			
<b>Construction Permit</b>	<b>Market Name</b>	<b>Bidding Units</b>	<b>Upfront Payment</b>
MM-AM84-39A	Nevada 2 – Spring Valley	10,000	\$10,000
MM-AM84-100	Texas 1 - Canyon	3,500	\$3,500

If a bidder wishes to bid on both construction permits in a round, it must be identified on Attachment A for both and have purchased at least 13,500 bidding units (10,000 + 3,500) of bidding eligibility. If it only wishes to bid on one, but not both, purchasing 10,000 bidding units would meet the eligibility requirement for either construction permit. The bidder would be able to bid on either construction permit, but not both at the same time. If the bidder purchased only 3,500 bidding units, the bidder would have enough eligibility for the Texas 1 - Canyon construction permit but not for the Nevada 2 – Spring Valley construction permit.

90. 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.<sup>118</sup> 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.<sup>119</sup>

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

91. 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 short-form application remedial 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

<sup>117</sup> A qualified bidder's maximum eligibility will not exceed the sum of the bidding units associated with the total number of construction permits identified for that applicant in Attachment A of this public notice. 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 designated for that bidder.

<sup>118</sup> 47 C.F.R. § 1.2106(a).

<sup>119</sup> If a former defaulter fails to submit a sufficient upfront payment to establish eligibility to bid on at least one of the construction permits designated for that applicant in Attachment A of this Public Notice, the applicant will not be eligible to participate in the auction. *Broadcast First Report and Order*, 13 FCC Rcd at 15979-80 ¶ 153. This applicant will retain its status as an applicant in Auction 84 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.

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

#### **F. Auction Registration**

92. 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.

93. 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.

94. 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 30, 2014, 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.

95. 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**

96. 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 84.

97. 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 – May 2, 2014**

98. All qualified bidders will be eligible to participate in a mock auction on Friday, May 2, 2014. 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

99. The first round of bidding for Auction 84 will begin on Tuesday, May 6, 2014. 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

100. In the *Auction 84 Comment Public Notice*, the Bureaus proposed to auction all construction permits in Auction 84 in a single auction using the Commission's standard simultaneous multiple-round auction format.<sup>120</sup> 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 for which that bidder is designated an applicant in Attachment A of this Public Notice. 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

101. As discussed above, the Bureaus will use upfront payments to determine initial (maximum) bidding eligibility (as measured in bidding units) for Auction 84.<sup>121</sup> 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 for which it is designated an applicant in Attachment A of this Public Notice as long as the total number of bidding units associated with those construction permits does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. At a minimum, an applicant's upfront payment must cover the bidding units for at least one of the construction permits for which it is designated an applicant in Attachment A of this Public Notice. The total upfront payment does not affect the total dollar amount a bidder may bid on any given construction permit.

102. 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.

103. 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.<sup>122</sup> A bidder is considered active on a construction permit in the current round if it is either the provisionally winning

<sup>120</sup> *Auction 84 Comment Public Notice*, 28 FCC Rcd at 15674 ¶ 11.

<sup>121</sup> See Section III.D.3 "Upfront Payments and Bidding Eligibility," above.

<sup>122</sup> 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.



bidder at the end of the previous bidding round or if it submits a bid in the current round (*see* “Bid Amounts” in Section IV.B.3, below).

104. The Bureaus received no comments on the proposed eligibility and activity rules. Therefore, in order to ensure that the auction closes within a reasonable period of time, the Bureaus adopt the proposal with the following activity requirement: a bidder is required to be active on 100 percent of its current eligibility during each round of the auction. That is, a bidder must either place a bid or be a provisionally winning bidder during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder’s eligibility, possibly curtailing or eliminating the bidder’s ability to place additional bids in the auction.<sup>123</sup>

### 3. Activity Rule Waivers

105. In the *Auction 84 Comment Public Notice*, the Bureaus proposed that each bidder in the auction be provided with three activity rule waivers.<sup>124</sup> The Bureaus received no comments on this issue.

106. 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.

107. 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.

108. 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.

109. 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

110. For Auction 84, the Bureaus proposed to employ a simultaneous stopping rule approach, which means all construction permits remain available for bidding until bidding stops simultaneously on

<sup>123</sup> *See* Section IV.A.3 “Activity Rule Waivers,” below.

<sup>124</sup> *Auction 84 Comment Public Notice*, 28 FCC Rcd at 15677 ¶ 26.

every construction permit.<sup>125</sup> 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.

111. We also sought comment on alternative versions of the simultaneous stopping rule for Auction 84:

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.

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.

112. 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.<sup>126</sup> 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.<sup>127</sup> We proposed to retain the discretion to exercise any of these options with or without prior announcement during the auction.<sup>128</sup> We received no comment on these proposals and adopt them for Auction 84.

##### **5. Auction Delay, Suspension, or Cancellation**

113. In the *Auction 84 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.<sup>129</sup> We received no comment on this issue.

114. Because this approach has proven effective in resolving exigent circumstances in previous auctions, the Bureaus adopt these proposals regarding auction delay, suspension, or cancellation.

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<sup>125</sup> *Id.* at 15674-75 ¶¶ 15-17.

<sup>126</sup> *Id.* at 15675 ¶ 17.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.* at 15675 ¶ 18.

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 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**

115. 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.

116. 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**

117. 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 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.<sup>130</sup> 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.<sup>131</sup> 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.<sup>132</sup> The Commission concluded that the Bureaus should have the discretion to employ either or both of these mechanisms for future auctions.<sup>133</sup>

118. In the *Auction 84 Comment Public Notice*, the Bureaus did not propose to establish reserve prices for the construction permits in Auction 84. 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.<sup>134</sup> Specifically, a minimum opening bid was proposed for each construction permit by taking into account various factors relating to the efficiency of the auction and the potential value of the spectrum, including the type of service and class of facility offered, market size, population covered by the proposed broadcast facility, industry cash flow data, and recent broadcast transactions. We sought comment on the proposed minimum opening bids.

119. The Bureaus received no comments on the proposed minimum opening bids, and therefore the Bureaus adopt the minimum opening bid amounts proposed in the *Auction 84 Comment*

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<sup>130</sup> 47 U.S.C. § 309(j)(4)(F).

<sup>131</sup> *Part 1 Third Report and Order*, 13 FCC Rcd at 455-56 ¶ 141.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Auction 84 Comment Public Notice*, 28 FCC Rcd at 15678 ¶¶ 29-31.

*Public Notice.* The specific minimum opening bid amounts for all the construction permits available in Auction 84 are again specified in Attachment A to this public notice.

### 3. Bid Amounts

120. In the *Auction 84 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.<sup>135</sup> Under the proposal, the FCC Auction System interface will list the nine acceptable bid amounts for each construction permit.<sup>136</sup> The Bureaus received no comments on this proposal; therefore, it is adopted.

121. 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.<sup>137</sup>

122. In the *Auction 84 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.

123. 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 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.<sup>138</sup>

124. In the *Auction 84 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.

125. 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

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<sup>135</sup> 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.

<sup>136</sup> 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 construction permit.

<sup>137</sup> 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.

<sup>138</sup> *Id.*

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.

126. 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

127. 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.<sup>139</sup>

128. In the *Auction 84 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).<sup>140</sup> No comments were received on this proposal.

129. 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

130. 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 84. Please note that telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of ten minutes.

131. An Auction 84 bidder’s ability to bid on specific construction permits is determined by two factors: (1) the construction permits designated for that applicant in Attachment A of this public notice and (2) the bidder’s eligibility. The bid submission screens will allow bidders to submit bids on only those construction permits designated for that applicant in Attachment A of this public notice.

132. 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<sup>®</sup> 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.

<sup>139</sup> Section IV.A.2 “Eligibility and Activity Rules,” above.

<sup>140</sup> *Auction 84 Comment Public Notice*, 28 FCC Rcd at 15679 ¶ 37.

133. 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.<sup>141</sup> For each construction permit, the FCC Auction System will list the acceptable bid amounts in a drop-down box.<sup>142</sup> 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.

134. 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.

135. 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**

136. In the *Auction 84 Comment Public Notice*, the Bureaus proposed bid removal procedures.<sup>143</sup> 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 84. Once a round closes, a bidder may no longer remove a bid.

137. In the *Auction 84 Comment Public Notice*, the Bureaus proposed to prohibit bidders from withdrawing any bids after the round in which the bids were placed has closed.<sup>144</sup> This proposal was made in recognition of the site-specific nature and wide geographic dispersion of the permits available in this auction. The Bureaus received no comments on this issue of bid withdrawal. Accordingly, the Bureaus will prohibit bid withdrawals in Auction 84. 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**

138. Reports reflecting bidders’ identities for Auction 84 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.

139. 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

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<sup>141</sup> 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.

<sup>142</sup> See Section IV.B.3 “Bid Amounts,” above.

<sup>143</sup> *Auction 84 Comment Public Notice*, 28 FCC Rcd at 15680 ¶ 39.

<sup>144</sup> *Id.*, 28 FCC Rcd at 15680 ¶¶ 40-42.



FCC-held, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access.

## 8. Auction Announcements

140. 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

141. 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

142. 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 84 to twenty percent of the net amount of its winning bids (gross bids less any applicable new entrant bidding credits).<sup>145</sup>

143. Royce has filed comments in which it requests that we waive, modify, or refrain from implementing the down payment and final payment procedures set forth herein and in sections 1.2107(b) and 1.2109(a) of the rules.<sup>146</sup> Royce argues that it would be unfair if Auction 84 winners were required to make payments prior to the grant of any construction permit and suggests that the “takings” clause of the Fifth Amendment to the U.S. Constitution might be violated if such amounts were paid and the Commission were to subsequently refuse to grant a permit.<sup>147</sup> Royce claims that, because the Auction 84 technical proposals have been pending for ten years, there is a “substantial possibility” that circumstances may have arisen that would preclude the granting of such proposals, in particular those in MX Group 84-31, in which Royce is an applicant.<sup>148</sup> Royce fails to describe any such circumstances or even state with certainty that any issues might exist which would affect the Commission’s ability to grant a permit for MX Group 84-31.

144. We decline to waive the payment deadlines set forth in sections 1.2107(b) and 1.2109(a).<sup>149</sup> These post-auction payment deadlines were designed to ensure that an auction’s ultimate

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<sup>145</sup> 47 C.F.R. § 1.2107(b).

<sup>146</sup> 47 C.F.R. §§ 1.2107(b), 1.2109(a).

<sup>147</sup> Royce Comments at 1-3.

<sup>148</sup> Royce Comments at 1-2. Royce also cites a case in which the Commission was unable to grant an FM construction permit to an auction winner due to circumstances that came to light following an auction. *Id.* at 2, citing *Connoisseur Media, LLC, Memorandum Opinion and Order*, DA 11-209, 26 FCC Rcd 1707 (WTB 2011) (“*Connoisseur*”). In *Connoisseur*, the Wireless Telecommunications Bureau refunded the winning bid amount to the auction winner as a result of interference issues raised by the Federal Aviation Administration on behalf of itself and the United States Air Force after the close of the auction, after which the Media Bureau deleted the underlying allotment from the FM Table of Allotments, rendering the auction winner no longer authorized to operate an FM radio station in that location. Royce asserts that AM applications are “subject to many more allocation variables than FM applications,” but fails to describe any allocation issues that might exist for applicants in MX Group 84-31 or any other MX groups in this auction.

<sup>149</sup> 47 C.F.R. §§ 1.2107(b), 1.2109(a). We note that the Commission explicitly extended these payment deadlines to broadcast auction winners in a 2006 rulemaking order. See *Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Bidding Rules and Procedures*, WT Docket No. 05-211, *Report and Order*, FCC 06-4, 21 FCC Rcd 891, 907-09 ¶¶ 43-46 (2006) (“*CSEA/Part 1 Report and Order*”).

purpose of encouraging and facilitating the provision of reliable service to the public is not undermined by winning bidders that lack the financial capability to pay for permits, construct stations, and provide service to the public.<sup>150</sup> As we have noted above, each auction applicant 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 AM broadcast facilities that it is seeking in this auction.<sup>151</sup> We also remind applicants that the Media Bureau will entertain minor post-auction technical amendments, should they be necessary to respond to changed circumstances. In the absence of any explanation of how the public interest objectives of these requirements would be served or specific circumstances indicating that a blanket waiver of the payment deadlines is warranted, we decline to modify or suspend our post-auction payment rules.

#### **B. Final Payments**

145. 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.<sup>152</sup>

#### **C. Long-Form Application (FCC Form 301)**

146. The Commission's rules 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,<sup>153</sup> 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 84.<sup>154</sup> Winning bidders claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit.<sup>155</sup> Further instructions on these and other filing requirements will be provided to winning bidders in the auction closing public notice.

#### **D. Default and Disqualification**

147. 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).<sup>156</sup> This payment consists of a deficiency payment, equal to the difference between the amount of the Auction 84 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.

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<sup>150</sup> See, e.g., *BDPCS, Inc., Memorandum Opinion and Order*, 15 FCC Rcd 17,590, 17,599-600 ¶ 15 (2000). Further, in its 2006 decision extending section 1.2109(a)'s final payment deadline to broadcast auction winners, the Commission observed that the underlying goal of this requirement is "to ensure that only serious, financially qualified applicants receive licenses and construction permits so that the provision of service to the public is expedited." *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 908 ¶ 45.

<sup>151</sup> See Section I.B.3 "Due Diligence," above. As discussed above, 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. Thus, we strongly encourage each potential bidder to perform technical analyses and/or refresh their previous analyses to assure itself that, should it become a winning bidder for any Auction 84 construction permit, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements.

<sup>152</sup> 47 C.F.R. § 1.2109(a); see *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 907-09 ¶¶ 43-46.

<sup>153</sup> 47 C.F.R. § 73.5005(a).

<sup>154</sup> 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).

<sup>155</sup> 47 C.F.R. §§ 1.2110(j) and 73.5005; see also 47 C.F.R. § 1.2112(b)(2).

<sup>156</sup> 47 C.F.R. § 1.2104(g)(2).

148. 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 84 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.

149. 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.<sup>157</sup> 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.<sup>158</sup>

#### **E. Refund of Remaining Upfront Payment Balance**

150. After the auction, applicants that are not winning bidders or that 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.

151. 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 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.

<sup>157</sup> 47 C.F.R. §§ 1.2109(b) and (c).

<sup>158</sup> 47 C.F.R. § 1.2109(d).

**VI. CONTACT INFORMATION**

152. 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 84 Process and Procedures****Auctions and Spectrum Access Division****(202) 418-0660**  
Jeff Crooks (Analyst)  
Linda Sanderson (Project Manager)**Auction 84 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**  
Lynne Milne (Attorney)  
Kathryn Hinton (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](mailto: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 84 –Construction Permits To Be Auctioned**

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



**ATTACHMENT B****Electronic Review and Updating of the FCC Form 175**

This attachment provides instructions on reviewing and updating short-form applications and submitting an upfront payment to participate in Auction 84. It also includes instructions for interested parties to view the short-form applications filed.

**I. Application Information Review, Updates and Submission**

Each applicant seeking to participate in this auction should review its electronic short-form application (FCC Form 175). Any updates to information in its application must be submitted via the FCC Auction System. **Any such updates to short-form applications for Auction 84 must be resubmitted and confirmed prior to 6:00 p.m. ET on Thursday, March 4, 2014.**

The short-form application requests information needed to determine whether an applicant qualifies to participate in competitive bidding for Commission licenses or construction permits.<sup>159</sup>

Information that an applicant had previously submitted in its Form 175 that remains valid under current rules will be prefilled and displayed in the new Form 175 format to the extent feasible.

Each applicant should review its Form 175 to ensure that all required information is provided. Auction 84 applicants will have an opportunity to review and update their applications during a remedial filing window which will be open from noon ET, February 19, 2014, until 6:00 p.m. ET, March 4, 2014.

Applicants are reminded that all application information required for participation in a spectrum auction is necessary to determine an applicant's qualifications, and will be made available for public inspection. Accordingly, unnecessary sensitive information, such as Taxpayer Identification Numbers or Social Security Numbers, must **not** be included in a Form 175. 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.<sup>160</sup> Such requests must be included as an attachment to the applicant's 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.<sup>161</sup>

An applicant may make multiple changes to its short-form application until the close of the remedial filing window. Applicants are reminded to press the **SUBMIT** button in the FCC Auction System for the changes to be submitted and considered by the Commission.

**A. Previously Submitted Information**

Each applicant is responsible for reviewing and verifying the accuracy of information provided in its previously-submitted short-form application. If information has changed or is no longer accurate, an applicant must update that information and resubmit its application prior to the close of the remedial filing window on March 4, 2014.

The current version of the electronic Form 175 provides data fields into which an applicant may input applicant information required by the Commission's competitive bidding rules. Auction 84 applicants initially filed using previous versions of the electronic Form 175 in which the majority of the required

<sup>159</sup> See generally 47 C.F.R. § 1.2105.

<sup>160</sup> 47 C.F.R. § 0.459.

<sup>161</sup> 47 C.F.R. § 0.459(a).

information was submitted in various attachments to the application. As discussed in greater detail below, information entered by an Auction 84 applicant in a data field of its Form 175 will be prefilled and displayed in a data field in the current version of the form.

Much of the information previously submitted in Auction 84 short-form applications exists in the form of an attachment to the Form 175. To the extent that an applicant may need to make changes to information previously submitted in an attachment, it may do so by uploading a new attachment describing any such changes. Applicants may view their previously-filed attachments, but may not delete any previously-filed attachment during the remedial filing window.

#### **B. 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 or later.
  - Mozilla® Firefox® 3.5 or later.
- PDF Viewer: Adobe Reader (previously called Adobe Acrobat Reader) version 5.0 or later, available at <http://www.adobe.com>
- Minimum Screen Resolution: 1024 x 768

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

#### **C. Logging On**

To review and resubmit a 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 Auction System* page, the applicant must log in to access a previously-filed short-form application using its FCC Registration Number (“FRN”) and password.

The applicant’s ten-digit FRN can be located in the Commission Registration System (“CORES”). If an applicant has forgotten or lost its password, the applicant should call Technical Support for assistance at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY).<sup>162</sup>

#### **D. Accessing Previously-Filed Short-Form Application (FCC Form 175)**

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 update 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.

#### **E. Application Filing Instructions**

For Auction 84, the screens comprising a Form 175 consist of six series, each requesting separate types of information: 1) *Applicant Information*; 2) *Permit Selection*; 3) *New Entrant Bidding Credit Eligibility*; 4)

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<sup>162</sup> See Section VI. “Contact Information,” above.

*Agreements*; 5) *Attachments*; and 6) *Certify and Submit*. In addition, *Summary* screens appear prior to the *Certify and Submit* screens. The *Summary* screens provide an overview of an applicant's Form 175 that facilitates reviewing and revising specific information, as well as an automated check for certain inconsistencies and omissions in submitted information.

An Auction 84 applicant must update, revise and supplement information it previously submitted by following the instructions below. Additional help in filling out 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. Applicants may use the contact information provided in this Public Notice to obtain additional assistance.<sup>163</sup>

### 1. Applicant Information

The *Applicant Information* screens are the first series of screens in a Form 175 in which the applicant provides basic information. At the opening of the remedial filing window, each screen of an applicant's Form 175 will display information that the applicant provided in its initial Form 175 filing. The applicant will be presented with Form 175 subjects in the following order:

**Applicant Legal Classification.** The applicant's legal classification field will be prefilled based on its original Form 175 selection (e.g., individual, corporation, rural telephone cooperative, etc.). An applicant's legal classification may be changed in this data field during the remedial filing window. If the applicant makes a change to its legal classification information, it should provide an attachment to the Form 175 describing its legal classification change.

**Applicant Status.** The next data entry field on the same screen allows an applicant to submit optional information regarding the applicant's status as a minority- or woman-owned business or a rural telephone company. The applicant's status field will be pre-filled based on its original Form 175 entry, if any.

**Applicant Name.** This field will be pre-filled with the name of the applicant as previously provided on the Form 175. An applicant's name may be changed during the remedial filing window to reflect a change in the legal name of the same applicant.

**Applicant Address.** This field will be pre-filled with the applicant's address as previously provided on the Form 175. Address information may be updated during the remedial filing window. Each applicant must provide a physical address; a post office box may **not** be used for an applicant's address.

**Applicant Citizenship or Jurisdiction of Formation.** Each applicant must disclose its citizenship (for individuals) or jurisdiction of formation (for legal entities) in this field. This field will be pre-filled only for those Auction 84 applicants that filed a Form 175 in 2007.

**Responsible Individual.** If an applicant did not identify a responsible individual in its previous filing or seeks to update information on file, the name and title of that individual must be supplied in the next set of data fields.<sup>164</sup> This information is not required if the applicant is an individual.<sup>165</sup> These fields will be pre-filled only for those Auction 84 applicants that filed a Form 175 in 2007.

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<sup>163</sup> See Section VI. "Contact Information," above.

<sup>164</sup> 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.

**Contact Representative.** All Auction 84 applicants should review and update, if necessary, the name, street address, e-mail address, telephone number or fax number of the contact person who will communicate with Commission personnel regarding the applicant's Form 175. Applicants should note that Commission personnel will communicate only with an applicant's contact person or certifying official, as designated on the applicant's Form 175, unless the applicant's certifying official or contact person notifies the Commission in writing that the applicant's counsel or other representative is authorized to speak on its behalf.<sup>166</sup>

A post office box may **not** be used for a contact person's address. If any contact information changes before the release of a public notice announcing the Auction 84 winning bidders, such changes must be entered in these specific data entry fields of the applicant's Form 175.<sup>167</sup>

To simplify filling out the 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.

**Authorized Bidders.** Applicants must identify in these data fields at least one person authorized to bid for the applicant in the auction, but may identify as many as three authorized bidders.<sup>168</sup> Only those bidders listed in these Form 175 data entry fields will be authorized to place bids for the applicant during the auction.<sup>169</sup>

**Bidding Preference.** Any qualified bidder may bid either via the Internet or by telephone during the auction. This data entry field allows designation of the applicant's preference for electronic or telephonic bidding. Specifying a preference for electronic or telephonic bidding assists the Commission in determining the staff required in this auction for telephonic bidding.

## 2. Permit Selection

The *Permit Selection* screens make up the second series of screens in a Form 175. The initial *Permit Selection* screen will be the *View/Edit Permit Selection* screen. This screen lists the construction permits designated for that applicant in Attachment A of this public notice. The construction permits listed in this section of the Form 175 are based on the initially-filed Form 301 "tech box" proposals of AM stations which were used by Commission personnel to make mutual exclusivity determinations. Because the initial filing deadline for Auction 84 Forms 175 has passed, as well as the deadlines for settlement periods as described earlier in this public notice, an applicant will be able to view its construction permit listing but will not be able to change its technical proposals.<sup>170</sup> Applicants are not obligated to bid on all permits previously proposed; however, applicants will not be able to bid on any permits not specified for that applicant in any particular mutual exclusivity group as listed in Attachment A of this public notice.

(Continued from previous page) \_\_\_\_\_

<sup>165</sup> When information regarding a responsible party is required by 47 C.F.R. § 1.2105(a)(2) for a general partnership, this information must be reported in an attachment.

<sup>166</sup> Authorization to communicate with individuals other than the designated contact or certifying official may be sent by email to auction84@fcc.gov.

<sup>167</sup> These contact representative data fields may be changed by the applicant until close of bidding in this auction.

<sup>168</sup> See 47 C.F.R. § 1.2105(a)(2)(iii).

<sup>169</sup> These authorized bidder data fields may be changed by the applicant until close of bidding in this auction.

<sup>170</sup> A change of any of its technical proposals would be a major amendment. See 47 C.F.R. § 1.2105(b).

### 3. New Entrant Bidding Credit Eligibility

The *New Entrant Eligibility* screens are the third series of screens in a Form 175. The applicant's new entrant bidding credit eligibility field will be prefilled based on its original Form 175 selection. On the initial screen in this series, applicants will view whether they had previously claimed the new entrant bidding credit, and the percentage of bidding credit (25 percent or 35 percent) claimed.<sup>171</sup> Applicants should ensure that bidding credit information is consistent with the bidding credit eligibility information provided on the first *Applicant Information* screen.

Applicants are not permitted to seek an increase in the bidding credit percentage initially claimed on their short-form applications.<sup>172</sup>

**No Bidding Credit Requested in Initial Filing.** If an applicant has claimed no bidding credit eligibility, no data entry fields will be available. Such applicants should continue to the next series of screens.

**25 Percent Bidding Credit Requested in Initial Filing.** An applicant claiming eligibility for a 25 percent new entrant bidding credit must provide information in data fields of the Form 175 to support its claim during the remedial filing window.

If an applicant is no longer eligible for the 25 percent bidding credit originally claimed, the applicant should send an e-mail to [auction84@fcc.gov](mailto:auction84@fcc.gov) during the remedial filing window to seek assistance in implementing that change on its Form 175. In addition, the applicant should submit an attachment to its Form 175 during the remedial filing window with a narrative to explain the loss of eligibility for a 25 percent bidding credit, and a statement that the applicant no longer claims eligibility for a bidding credit in Auction 84.

If an applicant remains eligible for the 25 percent new entrant bidding credit originally claimed, the applicant must now provide additional information in data fields that it had previously submitted in an attachment.<sup>173</sup>

An applicant remaining eligible for the initially claimed 25 percent bidding credit must continue to a screen and provide additional required 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.<sup>174</sup> Applicants must identify in the appropriate data entry fields of the reformatted Form 175:

- the existing mass media facility or facilities;
- the individual or entity with an attributable interest in the existing mass media facility;

<sup>171</sup> See 47 C.F.R. §§ 1.2105(a)(2)(iv), 73.5002(b), 73.5007 and 73.5008.

<sup>172</sup> See 47 C.F.R. § 1.2105(b).

<sup>173</sup> Information regarding "same area" facilities for participants claiming a 25 percent new entrant bidding credit directly affects bidding, because the location of the same area facilities affects whether the applicant is eligible for the new entrant bidding credit on a permit-by-permit basis. That is, the applicant's bidding credit percentage may vary by permit (either 25 percent or zero). The newly formatted Form 175 has been integrated with the Commission's bidding system, so that this information is reflected in round results during the course of bidding. Accordingly, applicants claiming eligibility for a 25 percent new entrant bidding credit now must enter information in the data fields regarding its claimed eligibility, including same area facilities. Providing such information in an attachment is not sufficient and applicants will not be able to submit an updated Form 175 without providing the information in the appropriate data entry fields.

<sup>174</sup> Full-service noncommercial educational stations, on both reserved and nonreserved channels, are included among "media of mass communications" as defined in section 73.5008(b). See *Minnesota Christian Broadcasters, Inc.*, *Memorandum Opinion and Order*, FCC 03-5, 18 FCC Rcd 614 (2003).

- 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.<sup>175</sup>
- 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.

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 should 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 84 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 in the correct data entry fields, an applicant claiming eligibility for a 25 percent bidding credit should click the **CONTINUE** button.

**35 Percent Bidding Credit Requested in Initial Filing.** If an applicant originally claimed eligibility for a new entrant bidding credit of 35 percent, a designation of 35 percent will be pre-filled in this data field. If this information remains accurate, such applicants should continue to the next series of screens.

**Changes to Amount of Claimed 35 Percent Bidding Credit.** If an applicant is no longer eligible for the 35 percent bidding credit it originally claimed, it should send an e-mail to [auction84@fcc.gov](mailto:auction84@fcc.gov) during the remedial filing window to seek assistance in implementing that change on its Form 175. In addition, the applicant should submit an attachment to its Form 175 during the remedial filing window with a narrative to explain the loss of eligibility for the claimed bidding credit, and a statement that the applicant no longer claims eligibility for a bidding credit, or seeks a lower credit.

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<sup>175</sup> See 47 C.F.R. §§ 73.5007 - 73.5008.



#### 4. Agreements

The *Agreements* screens are the next series of screens in a Form 175. In these screens, applicants will provide information regarding auction-related agreements subject to disclosure under the Commission's rules.<sup>176</sup>

While any previous disclosures concerning bidding agreements were filed in an attachment to the Form 175, all Auction 84 applicants will now have access to the agreements data fields in the Form 175 to report any updated or revised information.

If disclosures are required about any agreement or understanding, Auction 84 applicants will need to enter the name of each party to an agreement or understanding (other than its own name) in the data entry fields of the Agreements screen. Applicants may provide additional explanatory information in an attachment during the remedial window for any additional disclosures under section 1.2105(a)(viii).<sup>177</sup>

#### 5. Ownership

Applicants must disclose current ownership information as required by sections 1.2105, 1.2110, 1.2112 and 73.5002 of the Commission's rules.<sup>178</sup> Those rules generally require disclosure of the following ownership information:

- All real parties in interest in the applicant, including the identity and relationship of those persons or entities directly or indirectly owning or controlling the applicant.
- Name, address, and citizenship of any party directly or indirectly holding a 10 percent or greater interest in the applicant, as well as the percentage of interest held in the applicant and whether the interest is an indirect or direct interest.
- If there is an indirect interest in the auction applicant of 10 percent or greater, the attachment must describe the relationship between the indirect interest holder and the auction applicant.
- Whether the party directly or indirectly holding a 10 percent or greater interest in the applicant has voting or non-voting, common or preferred, stock and the specific amount of interest held.
- Any FCC-regulated entity or applicant for an FCC license, in which the auction applicant or any real party in interest in the auction applicant owns a 10 percent or greater interest. Such disclosure must include a description of the FCC-regulated entity's principal business and its relationship to the auction applicant.

Auction 84 applicants were required to disclose information on ownership of the applicant in an attachment to the Form 175.<sup>179</sup> To the extent an applicant needs to make any changes to information contained in its previously-filed Ownership attachment(s), it may do so by uploading a new attachment.

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<sup>176</sup> 47 C.F.R. § 1.2105(a)(2)(viii)

<sup>177</sup> *Id.*

<sup>178</sup> 47 C.F.R. §§ 1.2105, 1.2110, 1.2112(a), 73.5002.

<sup>179</sup> *AM Auction 84 Window Notice*, 18 FCC Rcd at 23016, Attachment B at 23025-28; *Supplemental Rockland County Window Notice*, 22 FCC Rcd at 16217, Attachment A at 16222-35.

## 6. Summary

The *Summary* screens summarize information applicants have provided in previous screens, offering an overview of an applicant's 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 of the information entered in previous screens and to provide an opportunity to check for certain inconsistencies or omissions in the information within the Form 175.

The first *Summary* screen, the *Summary Overview* screen, lists a 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. (Permit selection information cannot be modified.)
- 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 you to the first page of the Agreements section.

Clicking on the **CHECK ERRORS** button initiates an automated check of the data entry fields of the application. We note, however, that this **CHECK ERRORS** functionality does not check information in attachments. Auction 84 applicants must check carefully all information disclosed in its attachments.

If the automated check encounters certain inconsistencies or omissions in information within the data entry fields of the 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 inconsistencies or omissions within the data entry fields of the Form 175 that might render the application incomplete or deficient if the application is submitted with the 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 Form 175. The automated check is provided to assist applicants in completing the 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 data entry fields of the screens comprising the Form 175, the applicant can provide that information in an attachment. For Auction 84, applicants can update or revise information in previously submitted attachments in a new attachment. Applicants may view their previously filed attachments. Applicants will not be able to delete any previously filed attachments during the remedial filing window. Thus, applicants providing new or revised information during this window are encouraged to provide a full description of any changes, including an explanation of how such changes comply with relevant disclosure requirements (if appropriate), so as to minimize the likelihood that inconsistencies or questions may arise during staff review of the application.

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

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

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

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

## 8. Certify and Submit

The *Certify and Submit* screens are the sixth and final series of screens in a Form 175. In these screens, applicants provide certifications required of all participants in the Commission's competitive bidding processes.<sup>180</sup>

**First Certification Screen.** 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.<sup>181</sup> 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.<sup>182</sup>

Applicants that filed during the 2007 supplemental window will find that the former defaulter option button is pre-filled on the form based on its previous response. Such applicants should confirm that this information remains accurate, and revise its response if the initial response no longer is accurate.

<sup>180</sup> See generally, 47 C.F.R. §§ 1.2105(a)(2)(iv)-(xi).

<sup>181</sup> 47 C.F.R. § 1.2105(a)(2)(xi).

<sup>182</sup> 47 C.F.R. §§ 1.2105(a)(2)(xi), 1.2106(a).

**Second Certification Screen.** To submit any changes to the information in its short-form application, an applicant must go to the *Certify and Submit* screens and click the **SUBMIT** button. In certifying its application, each applicant certifies under penalty of perjury that it is legally, technically, financially and otherwise qualified to hold a Commission license.<sup>183</sup> Applicants are reminded that submission of a Form 175 constitutes a representation by the certifying official that he or she is an authorized representative of the applicant who 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.

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. The name and title of a certifying official was provided when the Form 175 was filed initially. An applicant seeking to submit new or revised information during this remedial filing window must provide the name and title in the appropriate data entry fields of this screen of the individual certifying the application on behalf of the applicant.

**Who Can Certify.** A short-form application must be certified by a person with the authority to bind the applicant. For example, a short-form application may 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; or (5) 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.

Once the first *Certify and Submit* screen has been filled out and the second *Certify and Submit* screen has been verified for accuracy and completeness, 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.

Any updates to Forms 175 for Auction 84 must be resubmitted and confirmed prior to 6:00 p.m. ET on Tuesday, March 4, 2014. Late applications or unconfirmed submissions of electronic data will not be accepted.

## **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 or 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.

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<sup>183</sup> 47 C.F.R. § 1.2105(a)(2)(v).

**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 remedial filing window deadline for 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; and (2) 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 Commission 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 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 January 23, 2014.

## 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 84. 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:

<b>Block Number</b>	<b>Required Information</b>
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 ( <b>not Post Office box number</b> ) 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 "U084"
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 "84" (indicating Auction 84).



## 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**  
**Cross-Walk of Applicant Names**

<b>Applicant Name Listed in Attachment A (name provided on FCC Form 175)</b>	<b>Applicant Name Listed in <i>Auction 84 Comment PN</i> (name provided on FCC Form 301 Tech Box)</b>
Bret Huggins	Bret D. Huggins
Jerrold T. Lundquist	Chaparral Broadcasting Company
Lexington Broadcasters, Inc.	Lexington Park Broadcasters, Inc.
Nashville Radio 1410, Inc.	Nashville Radio 1410, Incorporated
Ronald W. Matheny dba Murphy Broadcasting System	Murphy Broadcasting System
Steve E. King	Steve King

## ATTACHMENT E

**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, 463-69 ¶¶ 155-66 (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, 7687-89 ¶¶ 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, 6866-69 ¶¶ 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, 7253-54 ¶¶ 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, 5570-71 ¶¶ 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, 2386-88 ¶¶ 221-26 (1994).

### C. Wireless Telecommunications Bureau Decisions

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

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

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

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

Applications of GWI PCS, Inc., *Memorandum Opinion and Order*, DA 97-674, 12 FCC Rcd 6441 (WTB 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 (WTB 1995).

#### 1. Public Notices

Wireless Telecommunications Bureau Reminder of Anti-Collusion Rule Obligations, *Public Notice*, DA 04-3677, 19 FCC Rcd 22880 (WTB 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 (WTB 2001).

Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction, *Public Notice*, DA 98-37, 13 FCC Rcd 341 (WTB 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 (WTB 1996).

FCC Staff Clarifies Application of Anti-Collusion Rule to Broadband PCS "C" Block Reaction, *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 (WTB 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 (rel. Dec. 14, 1994).

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

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

Letter to Alan F. Ciamporcero from William E Kennard, General Counsel, Federal Communications Commission (rel. Oct. 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**

*U.S. v. Northeast Communications of Wis., Inc.*, No. 07-C-715, 608 F.Supp.2d 1049 (E.D.Wis. 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](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>.