



# PUBLIC NOTICE

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**DA 15-706**  
**June 17, 2015**

## **AUCTION OF FM BROADCAST CONSTRUCTION PERMITS STATUS OF SHORT-FORM APPLICATIONS TO PARTICIPATE IN AUCTION 98**

### **AU Docket No. 15-3**

1. By this Public Notice, the Wireless Telecommunications and Media Bureaus (collectively the “Bureaus”) announce the status of the 112 short-form applications received for Auction 98. This auction, which is scheduled to begin on Thursday, July 23, 2015, will offer 131 construction permits in the FM broadcast service.<sup>1</sup> This Public Notice also provides other important information and reminders relating to the auction.

#### **I. SHORT-FORM APPLICATIONS AND UPFRONT PAYMENTS**

##### **A. Status of Short-Form Applications**

2. The short-form applications (FCC Forms 175) for Auction 98 have been reviewed for completeness and compliance with the Commission’s rules, and have been classified into the categories listed below.

<b>Complete</b> .....	<b>87 applications</b>
<b>Incomplete</b> .....	<b>24 applications</b>
<b>Rejected</b> .....	<b>1 application</b>

3. **Complete Applications.** Attachment A to this Public Notice lists the short-form applications for Auction 98 that are accepted for filing and complete. Each of these applicants will become a qualified bidder upon receipt by the Commission of the required upfront payment by the June 29, 2015, deadline described below.<sup>2</sup> Each applicant must also maintain the accuracy of its short-form application as required by sections 1.65 and 1.2105 of the Commission’s rules.<sup>3</sup> Attachment A indicates

<sup>1</sup> See “Auction of FM Broadcast Construction Permits Scheduled for July 23, 2015; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 98,” AU Docket No. 15-3, *Public Notice*, DA 15-452, 30 FCC Rcd 3544 (WTB/MB 2015) (“*Auction 98 Procedures Public Notice*”). A summary of this public notice was published at 80 Fed. Reg. 27572 (May 14, 2015).

<sup>2</sup> See section I.B., below; see also 47 C.F.R. § 1.2106 (upfront payment rule).

<sup>3</sup> 47 C.F.R. §§ 1.65, 1.2105(b). Sections 1.65(a) and 1.2105(b) of the Commission’s rules require each applicant in a competitive bidding proceeding to furnish additional or corrected information within five days of a significant occurrence, or to amend its short-form application no more than five days after the applicant becomes aware of the need for amendment. See 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*”). See also 47 C.F.R. § 1.2105(c)(6) (any applicant that makes or receives a prohibited communication must report such communication in writing to the Commission no later than five business days after the communication occurs); 47 (continued....)

the construction permits selected by each applicant on its short-form application. If an applicant claimed a new entrant bidding credit,<sup>4</sup> the applicant's claimed bidding credit percentage for each construction permit is indicated as 35 percent or 25 percent.

4. Designation of an application as complete indicates the applicant has provided the certifications and basic information concerning its qualifications as required by the Commission's competitive bidding rules for participation in the auction. Under the Commission's two-phased auction application process, a winning bidder must submit a long-form application after the close of the auction to demonstrate its qualifications to hold a Commission construction permit or license and, if a bidding credit is requested, its eligibility for the bidding credit requested.<sup>5</sup> Thus, a determination that a short-form application is complete and complies with the Commission's competitive bidding rules and policies is not determinative of an applicant's qualifications to hold a license or of entitlement to a bidding credit. In the event that an applicant is found unqualified to be a Commission permittee or licensee or is ineligible for claimed designated entity benefits, it will be liable for any obligations incurred as a result of its participation in the auction.<sup>6</sup>

5. **Incomplete Applications.** Attachment B to this Public Notice lists the short-form applications for Auction 98 that are accepted for filing but found to be incomplete or otherwise deficient. Each of these applicants will receive a letter identifying the deficiency(ies) in its application. This letter will be sent to the contact person and contact address listed on the incomplete application via overnight delivery, along with a copy of this Public Notice. To become a qualified bidder, each applicant must make the required upfront payment and resubmit its application, having corrected any deficiencies, by the June 29, 2015, deadline.<sup>7</sup> Each applicant must also maintain the accuracy of its short-form application as required by sections 1.65 and 1.2105 of the Commission's rules.<sup>8</sup>

6. **Rejected Application.** Attachment C to this Public Notice lists the short-form application for Auction 98 classified as rejected. An applicant whose application has been classified as rejected is disqualified from participation in Auction 98.<sup>9</sup> The Commission concluded in the *Second Report and Order in Reexamination of the Comparative Standard for Noncommercial Educational Applicants* that any application for a noncommercial educational ("NCE") station that is mutually exclusive with any application for a commercial broadcast station will be returned as unacceptable for filing.<sup>10</sup> The application identified in Attachment C has checked "yes" to the Noncommercial Educational (Continued from previous page) \_\_\_\_\_

C.F.R. § 73.5007(a) (changes in circumstances underlying an applicant's new entrant bidding credit eligibility claim must be reported immediately and no later than five business days after the change occurs).

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

<sup>5</sup> See 47 C.F.R. §§ 1.2107, 1.2109, 73.5005; see also Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, FCC 94-61, 9 FCC Rcd 2348, 2376-77 ¶¶ 163-168 (1994) ("*Competitive Bidding Second Report and Order*").

<sup>6</sup> See generally 47 C.F.R. § 1.2109.

<sup>7</sup> See 47 C.F.R. §§ 1.2105(b), 1.2106.

<sup>8</sup> 47 C.F.R. §§ 1.65, 1.2105.

<sup>9</sup> The rejected applicant will retain its status as an applicant in Auction 98. As with any other applicants that may be found not qualified to bid, this applicant will remain subject to the Commission's rules prohibiting certain communications, 47 C.F.R. §§ 1.2105(c) and 73.5002(d).

<sup>10</sup> Reexamination of the Comparative Standard for Noncommercial Educational Applicants, MM Docket No. 95-31, *Second Report and Order*, 18 FCC Rcd 6691, 6699-6700 ¶¶ 21-22, FCC 03-44 (2003); *Memorandum Opinion and Third Order on Reconsideration*, 23 FCC Rcd 17423, FCC 08-219 (2008). This procedure has been codified at 47 C.F.R. § 73.5002(b).

election question on the FCC Form 175 for the NCE FM broadcast stations selected on that application, is mutually exclusive with applications for FM commercial broadcast stations,<sup>11</sup> and therefore is excluded from further Auction 98 participation.<sup>12</sup>

## B. Upfront Payments

7. Upfront payments and accompanying FCC Remittance Advice forms (FCC Form 159, Revised 2/03) for Auction 98 are due in the proper account at U.S. Bank, St. Louis, Missouri, **by 6:00 p.m. Eastern Time (ET) on Monday, June 29, 2015.** In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account by the deadline. **Payments must be made by wire transfer only in accordance with the instructions provided in the Auction 98 Procedures Public Notice.**<sup>13</sup> No other payment method is acceptable for this auction.<sup>14</sup> Each applicant is reminded to provide its FCC Registration Number ("FRN") on the FCC Form 159 and to submit the same FRN with all future payments for Auction 98. At least one hour before placing the order for the wire transfer (but on the same business day), each applicant must fax a completed FCC Form 159 to U.S. Bank at (314) 418-4232.

8. 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).<sup>15</sup> An applicant should coordinate with its financial institution well ahead of the due date regarding its wire transfer and allow sufficient time for the wire transfer to be initiated and completed prior to the deadline. The Commission has repeatedly cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer.<sup>16</sup> Each applicant should obtain confirmation from its financial institution that its wire transfer to U.S. Bank was successful and from Commission staff that the applicant's payment has been received by the Commission in the proper account. For confirmation from the Commission, contact Gail Glasser of the Office of Managing Director's Revenue & Receivables Operations Group/Auctions at (202) 418-0578, or Theresa Meeks at (202) 418-2945. Detailed information regarding upfront payments, including additional requirements for "former defaulters," can be found in the *Auction 98 Procedures Public Notice* under section II.F. and

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<sup>11</sup> Applications specifying the same FM station construction permit are considered mutually exclusive. 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, 15979 n.166 (1998) ("*Broadcast First Report and Order*"), *Memorandum Opinion and Order*, FCC 99-74, 14 FCC Rcd 8724 (1999), *Memorandum Opinion and Order*, FCC 99-201, 14 FCC Rcd 12541 (1999), *aff'd*, *Orion Communications Ltd. v. FCC*, 221 F.3d 196, No. 98-1424, slip op. (D.C. Cir. June 13, 2000) (unpublished opinion available at 2000 WL 816046 (D.C. Cir.), *aff'd*, *Orion Communications Ltd. v. FCC*, 213 F.3d 761 (D.C. Cir. 2000).

<sup>12</sup> The Bureaus provided guidance on this noncommercial educational status election in the *Auction 98 Procedures Public Notice*, including an explanation of the consequences of claiming such status in the context of this auction. See *Auction 98 Procedures Public Notice*, DA 15-452, 30 FCC Rcd at 3566 ¶ 75.

<sup>13</sup> See *Auction 98 Procedures Public Notice*, DA 15-452, 30 FCC Rcd at 3569-73 ¶¶ 93-105, C-1 – C-2. A wire transfer is a transaction that is initiated through an applicant's bank. It authorizes the bank to wire funds from an applicant's account to the Commission's account.

<sup>14</sup> The Commission will not accept checks, credit cards, or automated clearing house ("ACH") payments.

<sup>15</sup> Each applicant may access an electronic pre-filled version of the FCC Form 159 through the FCC Auction System. See *Auction 98 Procedures Public Notice*, DA 15-452, 30 FCC Rcd at 3571 ¶ 98, C-1 – C-2.

<sup>16</sup> See, e.g., Letter to Lee G. Petro, counsel for Four Corners Broadcasting, LLC, from Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, DA 10-1270, 25 FCC Rcd 9046 (WTB 2010); Letter to David G. O'Neil, counsel for Spectrum Acquisition, Inc., from Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, DA 08-622, 23 FCC Rcd 4765 (WTB 2008); Letter to Patrick Shannon, counsel for Lynch 3G Communications Corp., from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, DA 03-1944, 18 FCC Rcd 11552 (WTB 2003).

section III.D.<sup>17</sup>

### C. Short-Form Application Changes and Resubmission

9. Each applicant whose application for Auction 98 has been identified as incomplete must address defects in its application during the resubmission window, which is now open.<sup>18</sup> Corrected applications must be filed **prior to 6:00 p.m. ET on Monday, June 29, 2015**. This will be the only opportunity to cure application defects. Late resubmissions will not be accepted. An applicant that filed an application deemed to be incomplete or otherwise deficient, as noted in Attachment B to this Public Notice, must submit a timely and sufficient upfront payment before the Commission will review its resubmitted application. If an application is incomplete or otherwise deficient after the resubmission deadline has passed or if the required upfront payment is not made by the specified deadline, the applicant will not be permitted to participate in bidding.<sup>19</sup>

10. During this resubmission window, all applicants may make minor changes as described below in more detail. We remind applicants that sections 1.65 and 1.2105 of the Commission's rules require an applicant to maintain the accuracy and completeness of information furnished in its pending short-form application.<sup>20</sup> Each applicant should amend its short-form application to furnish additional or corrected information within five days of a significant occurrence, or no more than five days after the applicant becomes aware of the need for amendment.<sup>21</sup> To the extent that changes may be made directly in the electronic Form 175 at the time of the amendment, an applicant must modify its short-form application electronically.<sup>22</sup> An applicant seeking to report changes outside of the resubmission window must submit a letter briefly summarizing the changes by e-mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, at the following address: [auCTION98@fcc.gov](mailto:auCTION98@fcc.gov). Questions about changes should be directed to the Auctions and Spectrum Access Division at (202) 418-0660.

11. The electronic Form 175 will not permit an applicant to make changes to its application after the short-form application filing deadline, including changes to the following data fields: applicant name, legal classification, certifier, bidding credit, and permit selection. The electronic Form 175 also will not permit an applicant to change the identification of the application's proposed facilities as noncommercial educational. Administrative and minor changes can be made, including, for example, deletion and addition of authorized bidders (to a maximum of three), revision of addresses and telephone numbers of the applicants and their contact persons, and changes to responsible party. While changes can

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<sup>17</sup> See *Auction 98 Procedures Public Notice*, DA 15-452, 30 FCC Rcd at 3564-66 ¶¶ 68-73, 3569-73 ¶¶ 93-105.

<sup>18</sup> 47 C.F.R. § 1.2105(b)(2).

<sup>19</sup> Any applicant that submits a short-form application but fails to become a qualified bidder for any reason, including a failure to timely submit an upfront payment, will retain its status as an applicant in Auction 98 and will remain subject to the Commission's rules prohibiting certain communications, 47 C.F.R. §§ 1.2105(c) and 73.5002(d). Any such unqualified applicant will not be eligible to bid. See *Broadcast First Report and Order*, 13 FCC Rcd at 15979-80 ¶ 153.

<sup>20</sup> 47 C.F.R. §§ 1.65, 1.2105.

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

<sup>22</sup> During the resubmission phase, applicants will have electronic access to update the following application fields: jurisdiction of formation/country of citizenship, applicant address, responsible party information, responsible party address, contact information, contact address, authorized bidder information, bidding option (telephonic or electronic), agreement information, and ownership information. During the resubmission period, some required updates in an Auction 98 Form 175 may need to be submitted by uploading an attachment. During all phases of the application process, applicants have electronic access to make certain administrative changes including updates to: applicant address, responsible party address, contact information, contact address, and bidding option (telephonic or electronic).

be made to ownership and agreement information,<sup>23</sup> we remind each applicant that any application changes must comply with the Commission's rules, which prohibit, among other things, changes in ownership that would constitute an assignment or transfer of control, as well as changes in ownership or agreements that would constitute violations of section 1.2105(c).<sup>24</sup> If any application is changed to effect a major amendment, such as a change in control, the applicant will be ineligible to bid in the auction.<sup>25</sup>

## II. OTHER IMPORTANT AUCTION 98 INFORMATION

12. **Announcement of Qualified Bidders.** Approximately three weeks after the upfront payment deadline, following Commission review of resubmitted short-form applications and the correlation of payments and applications, a public notice listing all applicants qualified to bid in Auction 98 will be released. The same public notice will also include bidding schedules for both the mock auction and the first day of bidding.

13. When two or more short-form applications are submitted specifying the same FM allotment in Auction 98, mutual exclusivity exists for auction purposes and that construction permit must be awarded by competitive bidding procedures.<sup>26</sup> Once mutual exclusivity exists for auction purposes, even if only one applicant is qualified to bid for a particular construction permit, that applicant is required to submit a bid in order to obtain the construction permit.<sup>27</sup>

14. **Due Diligence.** Potential bidders are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the construction permits for broadcast facilities being offered in Auction 98. The Commission 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. These conditions include, but are not limited to, the condition that FCC licenses and other authorizations (whether awarded through competitive bidding or otherwise) are subject to the authority of the FCC, under the Communications Act of 1934, as amended, to modification through rulemaking and adjudicative proceedings. The Bureaus strongly encourage potential bidders to conduct their own research prior to the beginning of bidding in order to determine the existence of pending administrative or judicial proceedings, pleadings, applications, or authorizations that might affect their decisions regarding participation in the auction. A potential bidder should also review all underlying Commission orders, such as the specific *Report and Order* amending the FM Table of Allotments and allotting the FM channel(s) on which it plans to bid.<sup>28</sup> Additionally, a potential bidder should perform technical analyses or refresh their previous analyses to assure itself that, should it become a winning bidder for any Auction 98 construction permit, it will be able to build and operate facilities that will fully comply with the Commission's current technical and legal requirements. Participants in this auction should continue such research throughout the auction. For further details regarding due diligence, please

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<sup>23</sup> For more information on making administrative changes to an existing application, see "Minor Modifications to Short-Form Applications" and "Maintaining Current Information in Short-Form Applications" in the *Auction 98 Procedures Public Notice*, DA 15-452, 30 FCC Rcd at 3566-68 ¶¶ 76-82 and Attachment B at B-9 – B-12.

<sup>24</sup> See 47 C.F.R. § 1.2105(b) – (c).

<sup>25</sup> See 47 C.F.R. § 1.2105(b)(2). See also, e.g., Letter to Koch Broadcasting Corp. and Birch Broadcasting Corp. from Margaret W. Wiener, Chief, Auctions and Spectrum Access Div. and Peter H. Doyle, Chief, Audio Div., DA 06-38, 21 FCC Rcd 147 (WTB/MB 2006) (dismissing short-form application filed for AM Auction 84 due to major amendment changing control).

<sup>26</sup> See *Broadcast First Report and Order*, 13 FCC Rcd at 15979 n.166.

<sup>27</sup> See *Auction 98 Procedures Public Notice*, DA 15-452, 30 FCC Rcd at 3547 ¶ 5.

<sup>28</sup> See 47 C.F.R. § 73.202. The interactive auction tutorial for Auction 98 provides additional information on accessing an underlying allotment order. The auction tutorial may be accessed from the FCC's Auction 98 web page at <http://wireless.fcc.gov/auctions/98/> through the "Auction Tutorial" link.

refer to the *Auction 98 Procedures Public Notice*, section I.B.3.<sup>29</sup>

15. **New Entrant Bidding Credit Eligibility.** An applicant seeking a new entrant bidding credit must have indicated on its short-form application that it is claiming eligibility for a credit, along with the percentage of the bidding credit it is claiming.<sup>30</sup> The bidding credit percentage indicated on the short-form application as of the May 28, 2015, filing deadline is the maximum level of bidding credit that an applicant can claim for this auction.<sup>31</sup> Circumstances may arise after the short-form application deadline under which an applicant may no longer be eligible to claim a bidding credit or may only be eligible for a bidding credit at a lower percentage. This might be the case, for example, where the applicant or one of its attributable interest holders acquires an interest in another radio station after the May 28, 2015, deadline.<sup>32</sup> Any change affecting eligibility for the new entrant bidding credit must be reported immediately, and no later than five business days after the change occurs,<sup>33</sup> if the change could result in the reduction or loss of the credit originally claimed on the short-form application.<sup>34</sup> To report any change regarding its new entrant bidding credit eligibility claim, an applicant must submit a letter briefly summarizing the change by e-mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, at the following address: [auction98@fcc.gov](mailto:auction98@fcc.gov).

16. **Prohibition of Certain Communications.** The Bureaus remind applicants that sections 1.2105(c) and 73.5002(d) of the Commission's rules prohibit applicants for construction permits in any of the same geographic license areas from communicating with each other about bids, bidding strategies, or settlements, which may include communications regarding the post-auction market structure, unless they have identified each other on their short-form applications (FCC Form 175) as parties with which they have entered into agreements pursuant to section 1.2105(a)(2)(viii).<sup>35</sup> In broadcast services, the "geographic license area" is the market designation of the particular service.<sup>36</sup> For the FM service, the market designation is the particular vacant FM allotment (e.g., Hermitage, Arkansas, Channel 300A, MM-FM979-A). In Auction 98, this rule applies to applicants designating on the short-form application any of the same FM allotments.<sup>37</sup>

<sup>29</sup> See *Auction 98 Procedures Public Notice*, DA 15-452, 30 FCC Rcd at 3555-56 ¶¶ 31-37.

<sup>30</sup> 47 C.F.R. § 73.5007.

<sup>31</sup> 47 C.F.R. § 73.5007(a).

<sup>32</sup> Additional information on the new entrant bidding credit may be found in the *Auction 98 Procedures Public Notice*, DA 15-452, 30 FCC Rcd at 3560-63 ¶ 55-64.

<sup>33</sup> An applicant's obligation to make such amendment or modification to its pending application continues until it is made. See 47 C.F.R. §§ 1.65, 1.2105(b)(4); see also *Part 1 Procedural Amendments Order*, 25 FCC Rcd at 522-23 ¶¶ 6-8.

<sup>34</sup> The Commission has recognized that changes occurring subsequent to the short form application filing deadline which could serve as the basis for reducing or eliminating an applicant's previously claimed bidding credit eligibility may arise in a wide range of circumstances. See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, MB Docket No. 09-52, *First Report and Order and Further Notice of Proposed Rule Making*, FCC 10-24, 25 FCC Rcd 1583, 1611-14 ¶¶ 57-63 (2010). See also 47 C.F.R. § 73.5007(a).

<sup>35</sup> See 47 C.F.R. §§ 1.2105(a)(2)(viii), 1.2105(c)(1) and 73.5002. See also Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, WT Docket No. 97-82, *Seventh Report and Order*, FCC 01-270, 16 FCC Rcd 17546 (2001) ("*Part 1 Seventh Report and Order*"); *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, FCC 00-274, 15 FCC Rcd 15293, 15297-98 ¶¶ 7-8 (2000).

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

<sup>37</sup> Additional guidance on the requirements of sections 1.2105(c) and 73.5002(d) may be found in the *Auction 98 Procedures Public Notice*. See *Auction 98 Procedures Public Notice*, DA 15-452, 30 FCC Rcd at 3548-54 ¶¶ 8-28.

17. This prohibition took effect as of the short-form application filing deadline, which for Auction 98 was May 28, 2015, at 6:00 p.m. ET, and ends at the post-auction down payment deadline, which will be announced in a public notice released shortly following close of bidding.<sup>38</sup> **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.**<sup>39</sup>

18. We also emphasize that, for purposes of this prohibition, an “applicant” includes all controlling interests of the entity submitting a short-form application to participate in the auction — including all officers and directors of that entity and 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>40</sup> Thus, for example, a violation of section 1.2105(c) of the Commission’s rules could occur when an individual serves as an officer and/or director for two or more competing applicants that have not disclosed an agreement on both short-form applications.<sup>41</sup> Therefore, applicants should continue to take precautionary steps to prevent prohibited communications between any of the entities or persons described covered by the prohibition.<sup>42</sup>

19. If parties had agreed in principle on all material terms of a bidding agreement(s), those parties must have been identified on the short-form application under section 1.2105(c), even if the agreement had not been reduced to writing. If parties had not agreed in principle by the short-form application filing deadline on May 28, 2015, an applicant should not have included the names of those parties on its application, and must not have continued negotiations.<sup>43</sup>

20. **Disclosure Obligations and Possible Sanctions.** Section 1.65 and 1.2105(c) of the Commission’s rules require each auction applicant to maintain the accuracy and completeness of information furnished in its pending application and to provide additional or corrected information within five days of a significant occurrence, or amend its short-form application no more than five days after the applicant becomes aware of the need for amendment.<sup>44</sup> In addition, section 1.2105(c)(6) requires each

<sup>38</sup> 47 C.F.R. § 1.2105(c)(1).

<sup>39</sup> See, e.g., *Star Wireless, LLC, Forfeiture Order*, DA 04-3026, 19 FCC Rcd 18626, 18627-28 ¶ 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, Counsel to Noverr Publishing, Inc., 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>40</sup> 47 C.F.R. § 1.2105(c)(7)(i).

<sup>41</sup> See e.g., *Lotus Communications Corp., Order*, DA 08-1364, 23 FCC Rcd 9107 (WTB 2008) (affirming finding of apparent violation of communication prohibitions of section 1.2105(c) when one individual served as officer for two competing auction applicants where applications disclosed no bidding arrangement); *Letter to Colby M. May, TCCSA, Inc., from Barbara A. Kreisman, Chief, Video Division, and Margaret W. Wiener, Chief, Auctions & Spectrum Access Division*, DA 05-2445, 20 FCC Rcd 14648 (WTB/MB 2005) (finding apparent violation of communication prohibitions of section 1.2105(c) where competing applicants shared same individual as an officer and director and reported having no bidding agreement).

<sup>42</sup> See *Application of Nevada Wireless, Memorandum Opinion and Order*, DA 98-1137, 13 FCC Rcd 11973, 11977-78 ¶¶ 11-13 (WTB 1998). The Bureau cautions, however, that the mere existence of precautionary measures will not outweigh specific evidence of prohibited communications, nor will it preclude the initiation of an investigation when warranted. *Id.* at 11978 ¶ 13.

<sup>43</sup> See *Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, Public Notice*, DA 95-2244, 11 FCC Rcd 9645, 9646 (WTB 1995).

<sup>44</sup> 47 C.F.R. §§ 1.65, 1.2105(c). See also *Auction 98 Procedures Public Notice*, DA 15-452, 30 FCC Rcd at 3552-53 ¶¶ 21-23.

auction applicant to report a prohibited discussion or disclosure regarding bids or bidding strategy to the Commission in writing immediately, but in no case later than five business days after the communication occurs, even if the communication does not result in an agreement or understanding regarding bids or bidding strategy that must be reported under section 1.65.<sup>45</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>46</sup>

21. **Reporting Prohibited Communications.** A party reporting any communication pursuant to sections 1.65 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.

22. The Commission amended section 1.2105(c) to minimize the risk of inadvertent dissemination of information by requiring any party 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>47</sup> Pursuant to the amended rule, any report required by section 1.2105(c) must be filed consistent with the instructions set forth in the *Auction 98 Procedures Public Notice*.<sup>48</sup> Any such report must be filed immediately with the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunication Bureau and either submitted by e-mail to Margaret W. Wiener at the following email address: [auction98@fcc.gov](mailto:auction98@fcc.gov) or delivered to the following address: Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Room 6423, Washington, DC 20554. Any party submitting such a report should include a cover sheet to avoid the inadvertent dissemination of information contained in the report.

23. A party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection.<sup>49</sup> Any such party is also encouraged to consult with the Auctions and Spectrum Access Division staff if it has any questions about the procedures for submitting such reports.<sup>50</sup> The *Auction 98 Procedures Public Notice* provides additional guidance on procedures for submitting application-related information.<sup>51</sup>

24. 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 bidding consortia, joint ventures, partnerships, or other agreements, understandings or arrangements entered into relating to the competitive bidding process.<sup>52</sup> Any applicant found to have violated section 1.2105(c) of the Commission's rules may

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<sup>45</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>46</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>47</sup> *Part 1 Procedural Amendments Order*, 25 FCC Rcd at 522 ¶ 4.

<sup>48</sup> *Auction 98 Procedures Public Notice*, DA 15-452, 30 FCC Rcd at 3552-53 ¶¶ 21-26.

<sup>49</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).

<sup>50</sup> See section III. "Contact Information" below.

<sup>51</sup> See *Auction 98 Procedures Public Notice*, DA 15-452, 30 FCC Rcd at 3566-68 ¶¶ 76-82.

<sup>52</sup> See 47 C.F.R. § 1.2107(d).

be subject to sanctions.<sup>53</sup> In addition, we remind applicants that they are subject to the antitrust laws, which are designed to prevent anti-competitive behavior in the marketplace.<sup>54</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>55</sup>

25. **Ex Parte Rule.** Applicants should also be aware that the Commission has generally treated mutually exclusive short-form applications to participate in the auctions process as exempt proceedings and, therefore, not subject to the *ex parte* prohibitions that pertain to restricted proceedings.<sup>56</sup>

26. **Mock Auction.** All qualified bidders will be eligible to participate in a mock auction on Monday, July 20, 2015. The Bureaus encourage all qualified bidders to take advantage of this opportunity to become familiar with the FCC's Auction System. In the public notice announcing the qualified bidders, the Bureaus will announce the bidding schedule for the mock auction. The mock auction will be conducted over the Internet, and telephonic bidding will be available as well.

27. **Electronic Bidding.** Applicants are reminded that qualified bidders are eligible to bid either electronically or telephonically and should specify their bidding preference on the FCC Form 175, if they have not already done so.

28. Bidders can access the FCC Auction System over the Internet. The following software is required to use the FCC Auction System:

- Web Browser, either of the following is recommended:
  - Microsoft® Internet Explorer 8.0 or higher,
  - Mozilla® Firefox® 3.5 or higher.
- PDF Viewer: Adobe Acrobat Reader 5.0 or higher (available at <http://www.adobe.com>)
- Minimum Screen Resolution: 1024 x 768

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

30. **Post-Auction Procedures.** Shortly after bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments and final payments.<sup>57</sup> Winning bidders must submit electronically 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

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<sup>53</sup> See 47 C.F.R. §§ 1.2105(c), 1.2109(d).

<sup>54</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 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 7694, 7689 ¶ 12 (1994) (“[W]e wish to emphasize that all applicants and their owners continue to be subject to existing antitrust laws. Applicants should note that conduct that is permissible under the Commission's Rules may be prohibited by the antitrust laws.”); Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Fourth Memorandum Opinion and Order*, FCC 94-264, 9 FCC Rcd 6858, 6869 n. 134 (1994) (“[A]pplicants will also be subject to existing antitrust laws.”).

<sup>55</sup> See 47 C.F.R. § 1.2109(d); see also *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226.

<sup>56</sup> See “Commission Announces that Mutually Exclusive ‘Short-Form’ Applications (Form 175) to Participate in Competitive Bidding Process (‘Auctions’) Are Treated as Exempt for *Ex Parte* Purposes,” *Public Notice*, FCC 94-283, 9 FCC Rcd 6760 (1994). See also 47 C.F.R. § 1.1202(d)(1) Note 1.

<sup>57</sup> For more details on these payments and procedures, see *Auction 98 Procedures Public Notice*, DA 15-452, 30 FCC Rcd at 3583-85 ¶¶ 163-171.

98. Further filing instructions will be provided to auction winners at the close of the auction.

### III. CONTACT INFORMATION

31. For specific questions about an applicant's incomplete status or its application deficiencies, the applicant should contact the staff reviewer identified in the correspondence sent to the applicant by overnight mail.

32. For further information concerning Auction 98, contact:

#### General Auction Information

General Auction Questions

#### FCC Auctions Hotline

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

#### Auction 98 Process and Procedures

Bidding Procedures  
Auction Inventory (Construction Permits)  
Auction Schedule

#### Auctions and Spectrum Access Division

(202) 418-0660  
Jeff Crooks (Analyst)  
Sue Sterner (Project Manager)

#### Auction 98 Legal Information

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

#### Auctions and Spectrum Access Division

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

#### Licensing Information

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

#### Audio Division

(202) 418-2700  
Lisa Scanlan (Attorney)  
Tom Nessinger (Attorney)

#### Technical Support

Hardware/Software Issues with Electronic Filing  
or FCC Auction System

#### 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

Instructions for Wiring Upfront Payments and  
Completing Form 159

#### FCC Revenue & Receivables Operations Group/Auctions

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

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

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