



# PUBLIC NOTICE

Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington, D.C. 20554

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

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## AUCTION OF FM BROADCAST CONSTRUCTION PERMITS 88 BIDDERS QUALIFIED TO PARTICIPATE IN AUCTION 98

### AU Docket No. 15-3

1. In this Public Notice, the Wireless Telecommunications and Media Bureaus (the “Bureaus”) identify 88 applicants found to be qualified to bid in the upcoming auction of 131 construction permits in the FM broadcast service (Auction 98). Bidding in Auction 98 is scheduled to begin on Thursday, July 23, 2015.<sup>1</sup> This Public Notice contains bidding instructions and other important information regarding Auction 98. It also addresses the continuing obligations and auction procedures for all Auction 98 applicants, including those that have not qualified to bid.

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

##### A. Qualified Bidders

2. Attachment A to this Public Notice lists the name of each of the 88 qualified bidders, each qualified bidder’s upfront payment amount, and its maximum eligibility in bidding units. Designation of an applicant as qualified to bid in the auction indicates that the applicant has provided the certifications and information concerning its qualifications for participation in the auction and timely submitted a sufficient upfront payment as required by the Commission’s competitive bidding rules.<sup>2</sup>

3. In order to participate effectively in the auction, each qualified bidder should carefully review the auction rules, procedures, and other information described in the *Auction 98 Procedures*

<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*”); see also “Auction of FM Broadcast Construction Permits; Status of Short-Form Applications to Participate in Auction 98,” *Public Notice*, DA 15-706 (rel. June 17, 2015) (“*Auction 98 Status Public Notice*”).

<sup>2</sup> See 47 C.F.R. §§ 1.2105, 1.2106, 1.2112, 73.5002. Under the Commission’s two-phased auction application process, a winning bidder must submit a long-form application after the close of Auction 98 to demonstrate its qualifications to hold a Commission license or construction permit and, if a bidding credit is requested, its eligibility for the requested bidding credit. Thus, a determination that a short-form application is complete and complies with the Commission’s competitive bidding rules and policies is not determinative of an applicant’s qualifications to hold a license or construction permit, or entitlement to a bidding credit. See 47 C.F.R. §§ 1.2107 – 1.2109; see also Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, FCC 94-61, 9 FCC Rcd 2348, 2376-77 ¶¶ 163-168 (1994). Commission staff considers an applicant’s qualifications and eligibility for a bidding credit after the auction during the long-form application process. In the event that an applicant is found unqualified to be a Commission licensee or ineligible for any claimed bidding credit, it will be liable for any obligations incurred as a result of its participation in the auction. See generally 47 C.F.R. § 1.2109.

*Public Notice* and subsequent public notices.<sup>3</sup> These public notices and other documents related to Auction 98 are available on the Commission's auctions website at <http://wireless.fcc.gov/auctions/98/>. This Public Notice provides additional guidance.

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

5. To assist in analyzing Auction 98, we will make a file available to the public on the Auction 98 web site. This file will list each construction permit each qualified bidder in Auction 98 selected on its FCC Form 175. The file will be located under the subheading "General Information" on the Auction 98 web site (<http://wireless.fcc.gov/auctions/98/>).

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

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

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

#### **A. Registration Materials**

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

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

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

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

9. Any qualified bidder listed in Attachment A of this Public Notice that has not received the registration mailing **by 12:00 noon Eastern Time (ET) on Thursday, July 16, 2015**, must contact the Auctions Hotline directly at (717) 338-2868. Qualified bidders must have these registration materials to submit bids. Receipt of the registration mailing is critical to participating in both the mock auction and the actual auction, and each qualified bidder is responsible for ensuring that it has received all registration information.

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<sup>3</sup> *Auction 98 Procedures Public Notice*, 30 FCC Rcd at 3548 ¶¶ 6-7; *see also Auction 98 Status Public Notice* at 5-9.

<sup>4</sup> This list includes one applicant previously disqualified because its application was rejected. *See Auction 98 Status Public Notice* at 2-3 ¶ 6; *see also Auction 98 Procedures Public Notice*, 30 FCC Rcd at 3566 ¶ 75.

<sup>5</sup> *See* 47 C.F.R. §§ 1.2105(c) and 73.5002(d); *see also Auction 98 Procedures Public Notice*, 30 FCC Rcd at 3548-54 ¶¶ 8-28.

## **B. Registration Material Replacement**

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

## **C. Bidding Access**

11. The Commission will conduct Auction 98 over the Internet. Each qualified bidder can access the FCC Auction System at <http://auctions.fcc.gov> or <http://auctions2.fcc.gov>. A bidder choosing to bid electronically should review the FCC Auction System Bidder's Guide provided in the registration materials. We remind bidders that Apple® Mac OS® and smartphones are not currently supported. If a logged-in bidder does not take any actions or navigate within the FCC Auction System for an extended period of time, its session will time out, and it will have to log in again. Bidders are therefore advised to navigate within the FCC Auction System during each round, even when not placing bids or taking other bidding-related actions.

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

13. Each authorized bidder must have its own SecurID® token to bid electronically or by telephone. An applicant with only one authorized bidder will be issued two SecurID® tokens, while an applicant with two or three authorized bidders will be issued three tokens. For security purposes, the SecurID® tokens and the instructions for using them are mailed only to the contact person at the contact address listed on the applicant's short-form application. Please note that each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the Commission will not work for Auction 98.

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

## **D. Bidding Contingency Plan**

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

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<sup>6</sup> Because the length of a call to place bids may vary, the bidder should initiate its call a minimum of ten minutes prior to the scheduled end of the bidding round.

### III. BIDDING TOOLS

#### A. Mock Auction

16. The Bureaus strongly encourage each qualified bidder to participate in the mock auction that will be conducted on Monday, July 20, 2015. The mock auction will allow a qualified bidder to familiarize itself with the FCC Auction System and to ask Commission auction staff and technical support staff questions about the system and auction conduct. The Bureaus will conduct this auction over the Internet, and provide the option of bidding by telephone.

17. A qualified bidder can access the mock auction at <http://auctions.fcc.gov> or <http://auctions2.fcc.gov>. Bidders choosing to bid electronically should review the FCC Auction System Bidder's Guide provided in the registration materials. Any qualified bidder that wishes to place bids by telephone should use the Auction Bidder Line telephone number supplied in the Auction 98 registration materials.

18. The mock auction will include 20 of the 131 construction permits: FM216A–FM1064A, and will follow the rules governing the actual auction.<sup>7</sup> The mock auction will be identified as Mock Auction 74. The FCC Auction System will assume that each bidder submitted an upfront payment sufficient to give initial (maximum) eligibility (as measured in bidding units) to bid on all 20 of those construction permits. The mock auction will simulate the start of the auction, and each bidder will be required to be active on 80 percent of its current bidding eligibility. If a bidder does not meet this requirement, an activity rule waiver will be automatically applied (if any waivers are available) or its current eligibility will be permanently reduced (if no waivers remain), possibly eliminating it from further bidding in the mock auction. A bidder should take advantage of the mock auction to practice taking actions it might wish to take during Auction 98.

19. The mock auction bidding schedule for Monday, July 20, 2015, will be as follows:

Round 1	10:00 a.m.	-	11:00 a.m. ET
Round 2	12:00 p.m.	-	12:30 p.m. ET
Round 3	2:00 p.m.	-	2:30 p.m. ET
Round 4	3:00 p.m.	-	3:30 p.m. ET
Round 5	4:00 p.m.	-	4:15 p.m. ET

#### B. Watchlists

20. The FCC Auction System sets up for each qualified bidder a default watchlist, called "All Permits," which contains every construction permit selected on the applicant's short-form application. A qualified bidder may create additional watchlists containing construction permits of its own choosing, and construction permits may appear in multiple watchlists. A bidder may access the FCC Auction System and begin creating its watchlists upon receipt of the SecurID® tokens. Instructions for creating watchlists will be provided in the FCC Auction System Bidder's Guide. Please note that watchlists created in the mock auction will not display in Auction 98.

#### C. Bidder Questions during the Mock Auction and Auction 98

21. Commission auction staff and technical support staff will be available during the auction. Only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application should call on behalf of a bidder. When calling, the

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<sup>7</sup> The list will include the first twenty construction permits listed in Attachment A of the *Auction 98 Procedures Public Notice*, 30 FCC Rcd at 3612, Attachment A.

person should state that he or she is calling on behalf of a bidder with a time-sensitive auction question. To place bids by telephone or to ask questions during the auction, a bidder must use the FCC Auction Bidder Line telephone number supplied in the registration materials. Otherwise, a bidder should refer to the contact information provided in Section VII, "Contact Information," below.

**D. Bidder Suggestions**

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

**IV. AUCTION INFORMATION**

**A. Auction Announcements**

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

**B. Bidding Schedule**

24. Beginning on Thursday, July 23, 2015, and continuing until further notice, we will conduct Auction 98 with four rounds of bidding each business day as follows:

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

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

**C. Bid Amounts**

26. For each construction permit in Auction 98, the FCC Auction System will provide a minimum opening bid amount, as previously announced, and up to eight additional bid amounts from which to choose (for a typical total of nine bid amounts).<sup>8</sup> While a bidder can change the amount of or remove new bids during a round, it cannot do so once a round ends. We caution each bidder to select its bid amounts carefully because each bidder assumes a binding obligation to pay the full bid amount, even if the bid was mistakenly or erroneously made.<sup>9</sup> Moreover, no bidder will be permitted to withdraw any of its bids submitted in a prior round in Auction 98.

27. The Bureaus retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the bid increment percentage, the additional bid amounts, the dollar cap on bid increments, the number of acceptable bid amounts, and the parameters of the formulas used to

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<sup>8</sup> *Auction 98 Procedures Public Notice*, 30 FCC Rcd at 3580-81 ¶¶ 142-48. Attachment A of the *Auction 98 Procedures Public Notice* lists the minimum opening bid amount for each construction permit offered in Auction 98.

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

calculate bid amounts if the Bureaus determine that circumstances so dictate.<sup>10</sup>

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

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

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

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

### **V. APPLICANTS’ CONTINUING OBLIGATIONS**

#### **A. Prohibited Communications**

31. The Bureaus remind applicants that sections 1.2105(c) and 73.5002(d) of the Commission’s rules prohibit in Auction 98 applicants that have applied to bid for an FM construction permit for the same allotment from communicating with another applicant about bids, bidding strategies, or settlements, which may include communications regarding post-auction market structure, unless each applicant has identified the other applicant on its short-form application as a party with which the applicant has entered into an agreement under section 1.2105(a)(2)(viii).<sup>11</sup> Therefore, such applicants must not engage in any prohibited communication after the short-form application filing deadline. In addition, even if an auction applicant selected only one FM allotment in common with another Auction 98 applicant, the two applicants may not communicate with each other about bids or bidding strategy relating to any FM allotment selected by either applicant.<sup>12</sup> An applicant is prohibited from communicating not only about its own bids or bidding strategy, but also from communicating about another applicant’s bid or bidding strategy.

32. The prohibition on certain communications in sections 1.2105(c) and 73.5002(d) took effect for Auction 98 at the short-form application filing deadline, 6:00 p.m. ET on May 28, 2015, and extends until the post-auction down payment deadline, which will be announced in a public notice released shortly following close of bidding.<sup>13</sup> **The prohibition applies to each applicant regardless of**

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<sup>10</sup> *Auction 98 Procedures Public Notice*, 30 FCC Rcd at 3580-81 ¶¶ 142-48.

<sup>11</sup> 47 C.F.R. §§ 1.2105(a)(2)(viii), 1.2105(c)(1), 73.5002(d). *See generally* 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, 17549 n.12 (2001) (“*Part 1 Seventh Report and Order*”); *see also Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, FCC 00-274, 15 FCC Rcd 15293, 15297-98 ¶¶ 7-8 (2000).

<sup>12</sup> *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17548-50 ¶¶ 4-8.

<sup>13</sup> 47 C.F.R. § 1.2105(c)(1).

**whether such applicant becomes a qualified bidder or actually bids.**<sup>14</sup> For further information on the prohibition, applicants should refer to the *Auction 98 Procedures Public Notice*.<sup>15</sup>

**B. Disclosure Obligations and Possible Sanctions**

33. Section 1.2105(c)(6) requires any applicant that makes or receives a communication that appears to violate section 1.2105(c) to report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs.<sup>16</sup> Each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.<sup>17</sup>

34. In addition, section 1.65 of the Commission's rules requires an applicant to report to the Commission any communication of a bid or bidding strategy after the short-form application filing deadline that results in a bidding arrangement, agreement, or understanding.<sup>18</sup>

35. Any party reporting a prohibited communication must take care to ensure that any such report does not itself give rise to a violation of section 1.2105(c). For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection. To minimize the risk of inadvertent dissemination of a report of a potential prohibited communication, section 1.2105(c)(6) requires a party to file only a single report with the Chief of the Auctions and Spectrum Division in the Wireless Telecommunications Bureau.<sup>19</sup> In Auction 98, any such report must be filed according to the instructions set forth in the *Auction 98 Procedures Public Notice*.<sup>20</sup> Any such report must be filed immediately, and in no case later than five

<sup>14</sup> For example, the Commission imposed a forfeiture in the amount of \$100,000 for violation of Section 1.2105(c) even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder. See *Northeast Communications of Wisconsin, Inc., Forfeiture Order*, DA 04-3027, 19 FCC Rcd 18635 (Enf. Bur. 2004). The Commission subsequently reduced the amount of the forfeiture to \$75,000 due to the parties' history of compliance with Commission rules. See *Star Wireless, LLC and Northeast Communications of Wisconsin, Inc., Order on Review*, FCC 07-80, 22 FCC Rcd 8943 (2007), *petition for review denied*, *Star Wireless, LLC v. FCC*, 522 F.3d 469 (D.C. Cir. 2008) (Section 1.2105(c) applies to auction applicant regardless of whether the applicant is qualified to bid). The United States District Court for the Eastern District of Wisconsin granted summary judgment in favor of the United States pursuant to an effort by the Department of Justice to enforce the forfeiture. *United States v. Northeast Communications of Wis., Inc.*, Decision and Order, 608 F. Supp. 2d 1049 (D. Wis. 2008). See also Letter to Robert Pettit, from Margaret W. Wiener, Chief, Auctions and Industry Analysis Div., DA 00-2905, 16 FCC Rcd 10080 (2000) (declining to exempt an applicant's controlling interest from coverage by Section 1.2105(c), even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder).

<sup>15</sup> *Auction 98 Procedures Public Notice*, 30 FCC Rcd at 3548-54 ¶¶ 8-28.

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

<sup>17</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>18</sup> *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17550-51 ¶ 9.

<sup>19</sup> 47 C.F.R. § 1.2105(c)(6); Procedural Amendments to Commission Part 1 Competitive Bidding Rules, WT Docket No. 10-18, *Order*, FCC 10-4, 25 FCC Rcd 521, 522 ¶ 4 (2010) (“*Part 1 Procedural Amendments Order*”).

<sup>20</sup> See *Auction 98 Procedures Public Notice*, 30 FCC Rcd at 3553 ¶ 25.

business days after the communication occurs, and must either be submitted by e-mail to [auction98@fcc.gov](mailto:auction98@fcc.gov) or delivered to the following address: Margaret Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington, DC 20554.<sup>21</sup>

36. A party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection.<sup>22</sup> Any such report must include a cover sheet to avoid the inadvertent dissemination of information contained in the report. Parties are encouraged to consult with the Auctions and Spectrum Access Division staff about the procedures for submitting such a report.<sup>23</sup> The *Auction 98 Procedures Public Notice* provides additional guidance on procedures for submitting application-related information.<sup>24</sup>

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

38. Any applicant found to have violated section 1.2105(c) of the Commission's rules may be subject to sanctions.<sup>26</sup> In addition, we remind each applicant that it is subject to the antitrust laws, which are designed to prevent anti-competitive behavior in the marketplace. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount, and it may be prohibited from participating in future auctions, among other sanctions.<sup>27</sup>

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

39. As noted above, an applicant seeking to amend its short-form application during the auction must make such modifications electronically, and submit a letter summarizing the changes by e-mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: [auction98@fcc.gov](mailto:auction98@fcc.gov). The e-mail summarizing the changes must include a subject or caption referring to Auction 98 and the name of the applicant.

40. A party wishing to submit a request, a complaint, or other information concerning Auction 98 should, in addition to following other procedures prescribed by the Commission's rules, send a copy by e-mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: [auction98@fcc.gov](mailto:auction98@fcc.gov). The Commission occasionally receives complaints regarding

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

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

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

<sup>24</sup> See *Auction 98 Procedures Public Notice*, 30 FCC Rcd at 3552-53 ¶¶ 21-26, 3566-6 ¶¶ 76-82.

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

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

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



specific bidders and requests to suspend bidding during an auction. While the Commission reserves the right to take appropriate action during an auction to preserve the integrity of the auction process, it is generally our practice to address any such allegations only after a winning bidder has submitted its long-form application, when there is greater opportunity for investigation of such allegations, if warranted. The Commission will not investigate any complaints or allegations that are not accompanied by full contact information, including name, address, and telephone number, for the complaining party or parties.

41. Finally, parties wishing to make suggestions concerning Auction 98 or future auctions should present such ideas using the suggestion feature of the FCC Auction System. (As mentioned above, this feature is not an appropriate mechanism for asking time-sensitive questions that need an immediate response.) Commission staff considers all suggestions, but may not always provide an individualized response.

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

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

43. An applicant seeking to provide additional or updated information must modify its short-form application electronically and submit a letter summarizing the change by e-mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: [auction98@fcc.gov](mailto:auction98@fcc.gov). The e-mail summarizing the change must include a subject or caption referring to Auction 98 and the name of the applicant.<sup>32</sup> An applicant must not submit application-specific material through the Commission's Electronic Comment Filing System ("ECFS"). Questions about changes should be directed to the Auctions and Spectrum Access Division at (202) 418-0660.

44. As described in the Commission's rules, an applicant may make only minor corrections to its short-form application (e.g., deletion and addition of authorized bidders or change contact information).<sup>33</sup> Outside of the initial and resubmission filing windows, the FCC Auction System

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<sup>28</sup> See 47 C.F.R. § 1.65. For more information on making administrative changes to an existing application, see "Minor Modifications to Short-Form Applications" and "Maintaining Current Information in Short-Form Applications" in the *Auction 98 Procedures Public Notice*, 30 FCC Rcd at 3566-68 ¶¶ 76-82 and Attachment B at 3588.

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

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

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

<sup>32</sup> The Bureaus request that parties format any attachments to e-mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

<sup>33</sup> See 47 C.F.R. § 1.2105(b).

generally prevents an applicant from making changes to its short-form application for other than administrative changes (e.g., changing certain contact information or the name of an authorized bidder).<sup>34</sup> A major modification (e.g., construction permit selection change, newly claimed or increased bidding credit, or changing control of the applicant) will not be accepted.<sup>35</sup> Any change affecting an applicant's eligibility for a new entrant bidding credit, insofar as it results in the reduction or loss of the credit originally claimed on the Form 175 application, must be reported immediately, and no later than five business days after the change occurs.<sup>36</sup> Each applicant must clearly state the nature of the change in an amendment to its short-form application and in the summary letter referenced above. In cases of diminished bidding credit eligibility, the Commission will make appropriate adjustments in the bidding credit prior to the computation of any down and final payment amounts due.

**E. Ex Parte Rule**

45. Applicants should also be aware that the Commission has generally treated mutually exclusive short-form applications as exempt proceedings and, therefore, not subject to the *ex parte* prohibitions that pertain to restricted proceedings.<sup>37</sup>

**F. Due Diligence**

46. We remind each potential bidder that it is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on its valuation of the construction permits 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 Communication Act of 1934, as amended, to modification through rulemaking and adjudicative proceedings. We strongly encourage each potential bidder to conduct its own research prior to the beginning of bidding in Auction 98 in order to determine the existence of pending proceedings, pleadings, applications, or authorizations that might affect its decisions regarding participation in the auction. Each potential bidder is solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect its ability to bid on, otherwise acquire, or make use of any specific construction permit available in Auction 98. In addition, each potential bidder should perform sufficient technical analyses or refresh their previous analyses to

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<sup>34</sup> During all phases of the application process, an applicant has electronic access to its Form 175 to make certain administrative changes, including updates to: applicant address, responsible party information, contact information, authorized bidders, and bidding option (telephonic or electronic). Auction applicants are not permitted to make a change to the following data fields after the short-form application filing deadline: applicant name, legal classification, certifier, bidding credit and construction permit selection.

<sup>35</sup> See 47 C.F.R. § 1.2105(b). See also, e.g., Letter to Koch Broadcasting Corp. and Birach 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>36</sup> See Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures, MB Docket No. 09-52, *First Report and Order and Further Notice of Proposed Rule Making*, FCC 10-24, 25 FCC Rcd 1583, 1611-14 ¶¶ 57-63 (2010). See also 47 C.F.R. § 73.5007(a).

<sup>37</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.

assure itself that, should it be a winning bidder for any Auction 98 construction permit, it will be able to build and operate facilities that will comply fully with the Commission's technical and legal requirements.

47. Each participant must continue such research throughout the auction. For further details regarding due diligence, please refer to the *Auction 98 Procedures Public Notice* under Section I.B.3.<sup>38</sup>

## VI. POST-AUCTION PROCEDURES

48. Shortly after bidding has ended, the Commission will release a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments and final payments.<sup>39</sup> Each winning bidder will have ten business days following the release of that public notice to make down payments. Final payments will be due ten business days after the deadline for submitting down payments for this auction.

49. Each winning bidder must electronically file a complete and accurate long-form application (FCC Form 301, Application for Construction Permit for Commercial Broadcast Station), including required exhibits, for each construction permit won through Auction 98 within the time periods announced in the auction closing public notice.<sup>40</sup> Any winning bidder claiming new entrant status must include an exhibit demonstrating its eligibility for the bidding credit.<sup>41</sup> Further filing instructions will be provided to auction winners at the close of the auction.<sup>42</sup> Further information regarding these post-auction procedures is contained in the *Auction 98 Procedures Public Notice* and will be provided in the public notice announcing the winning bidders.<sup>43</sup>

## VII. CONTACT INFORMATION

50. For further information concerning Auction 98, please 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)

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<sup>38</sup> See *Auction 98 Procedures Public Notice*, 30 FCC Rcd at 3555-56 ¶¶ 31-37.

<sup>39</sup> For more detail, see *Auction 98 Procedures Public Notice*, 30 FCC Rcd at 3583-84 ¶¶ 163-69.

<sup>40</sup> See 47 C.F.R. §§ 1.2107, 73.5005(a). See also Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, *First Report and Order*, FCC 98-194, 13 FCC Rcd 15920, 15984-85 ¶¶ 163-64 (1998).

<sup>41</sup> See 47 C.F.R. §§ 73.5005, 73.5007, 73.5008.

<sup>42</sup> See 47 C.F.R. §§ 1.2107, 1.2109(a), 73.3573, 73.5003, 73.5005, 73.5006(d).

<sup>43</sup> See *Auction 98 Procedures Public Notice*, 30 FCC Rcd at 3583-84 ¶¶ 163-69; see also 47 C.F.R. §§ 1.2107, 1.2109(a).

**Auction 98 Legal Information**

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

**Licensing Information**

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

**Technical Support**

Electronic Filing  
FCC Auction System (Hardware/Software  
Issues)

**Auction Payments**

Instructions for Wiring Payments

**Auctions and Spectrum Access Division**

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

**Audio Division**

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

**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

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

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

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

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