



# PUBLIC NOTICE

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**DA 18-1115**  
**October 31, 2018**

## **AUCTION OF 28 GHz UPPER MICROWAVE FLEXIBLE USE SERVICE LICENSES FOR NEXT-GENERATION WIRELESS SERVICES**

### **40 APPLICANTS QUALIFIED TO BID IN AUCTION 101**

#### **AU Docket No. 18-85**

1. In this Public Notice, the Wireless Telecommunications Bureau (Bureau) identifies 40 applicants found to be qualified to bid in Auction 101.<sup>1</sup> Auction 101 will offer 3,072 Upper Microwave Flexible Use Service (UMFUS) licenses in the 27.5–28.35 GHz (28 GHz) band. Bidding in Auction 101 is scheduled to begin on Wednesday, November 14, 2018.<sup>2</sup> This Public Notice contains bidding instructions and other important information regarding Auction 101. It also addresses the continuing obligations and auction procedures for all Auction 101 applicants, including those that have been deemed not qualified to bid.

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

2. The short-form applications to participate in Auction 101 (FCC Forms 175) have been reviewed for completeness and compliance with the Commission’s rules, and they have been classified into the categories listed below.

<b>Qualified</b> .....	<b>40 applications</b>
<b>Non-Qualified</b> .....	<b>10 applications</b>

3. **Qualified Bidders.** Attachment A to this Public Notice lists the name of each of the 40 qualified bidders. Attachment A also indicates whether the applicant has claimed eligibility for a rural service provider or small business bidding credit. For those claiming a small business status, the

<sup>1</sup> A copy of this Public Notice will be sent by overnight delivery to the contact person listed on the FCC Form 175 for each Auction 101 applicant. The status of applications to participate in Auction 102 (24 GHz) is addressed in a separate public notice. *Auction of 24 GHz Upper Microwave Flexible Use Service Licenses for Next-Generation Wireless Services; Applications of 58 Applicants for Auction 102 Deemed to be Complete*, Public Notice, DA 18-1116 (WTB, Oct. 31, 2018).

<sup>2</sup> See *Auction of Upper Microwave Flexible Use Licenses for Next-Generation Wireless Services; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auctions 101 (28 GHz) and 102 (24 GHz); Bidding in Auction 101 Scheduled to Begin November 14, 2018*, Public Notice, FCC 18-109 (Aug. 3, 2018) (*Auctions 101 and 102 Procedures Public Notice*).

attachment lists each qualified bidder's claimed bidding credit revenue range.<sup>3</sup> 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 that it timely submitted a sufficient upfront payment as required by the Commission's competitive bidding rules.<sup>4</sup>

4. In order to participate effectively in the auction, each qualified bidder should carefully review the auction rules, procedures, and other information described in the *Auctions 101 and 102 Procedures Public Notice* and subsequent public notices.<sup>5</sup> These public notices and other documents related to Auction 101 are available on the Auction 101 website under the "Documents" section at [www.fcc.gov/auction/101](http://www.fcc.gov/auction/101). This Public Notice provides additional guidance.

5. **Non-Qualified Applicants.** Attachment B to this Public Notice lists each applicant that submitted an FCC Form 175 but did not qualify to bid in Auction 101. All applicants, including those that have been deemed not eligible to bid, remain subject to the Commission's rules prohibiting certain communications in connection with Commission auctions.<sup>6</sup>

## II. REGISTRATION AND ACCESS TO THE AUCTION BIDDING SYSTEM

### A. Registration Materials

6. All qualified bidders have been automatically registered for the auction. Registration materials will be sent by overnight delivery to the contact person at the contact person's address identified in the qualified bidder's FCC Form 175.<sup>7</sup> Upon receipt, each qualified bidder should possess the following:

- At least two RSA SecurID® tokens (RSA Tokens);<sup>8</sup>
- A web address and instructions for accessing and logging in to the FCC auction bidding system;

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<sup>3</sup> We note that one applicant Western Independent Networks, Inc. -OR changed its eligibility selection for the small business bidding credit from 25 percent to 15 percent.

<sup>4</sup> See 47 CFR §§ 1.2105, 1.2106, 1.2112. Under the Commission's two-phased auction application process, a winning bidder must submit a long-form application after the close of bidding in an auction to demonstrate its qualifications to hold a Commission license and, if a bidding credit is requested, its eligibility for the requested bidding credit. Thus, a determination that a short-form application to participate in Auction 101 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 entitlement to a bidding credit. See 47 CFR §§ 1.2107–1.2109; *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Second Report and Order, 9 FCC Rcd 2348, 2376-77, paras. 163-68 (1994). Commission staff generally consider an applicant's qualifications and eligibility for a bidding credit after the auction during the long-form application process. If 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 CFR § 1.2109.

<sup>5</sup> See generally *Auctions 101 and 102 Procedures Public Notice; Auctions of Upper Microwave Flexible Use Licenses for Next-Generation Wireless Services; Status of Short-Form Applications to Participate in Auctions 101 (28 GHz) and 102 (24 GHz)*, Public Notice, DA 18-1035 (WTB Oct. 10, 2018) (*Auctions 101 and 102 Status Public Notice*).

<sup>6</sup> See 47 CFR § 1.2105(c); see also *Auctions 101 and 102 Procedures Public Notice* at 25, para. 59 n.137.

<sup>7</sup> This package will require a signature for delivery in order to confirm receipt by the applicant. The person signing for the package does not need to be the contact person identified in the qualified bidder's application.

<sup>8</sup> Each qualified bidder has been issued either two or three RSA tokens depending on the number of persons it identified on its FCC Form 175 as authorized to bid on behalf of the qualified bidder ("authorized bidders"). A bidder with three authorized bidders has been issued three RSA tokens. A bidder with one or two authorized bidder(s) has been issued an RSA token for each of its authorized bidders, plus one extra RSA token. The extra RSA token cannot be used unless the contact person, certifier, or an authorized bidder for the qualified bidder

- An FCC assigned username (user ID) for each authorized bidder; and
- FCC Auction Bidder Line telephone number.

7. A qualified bidder must have the above-referenced registration materials to participate in the mock auction and to bid in Auction 101.<sup>9</sup> 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 Tuesday, November 6, 2018**, must contact the Auctions Hotline at (717) 338-2868. Receipt of the registration mailing is crucial to participating in the mock and actual auction bidding. Each qualified bidder is responsible for ensuring that it has received all of the registration materials.

8. Each qualified bidder is solely responsible for ensuring the security and functionality of its computer systems, internet connection(s), and its registration materials, in addition to ensuring that only its 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.**

#### **B. Registration Material Replacement**

9. In the event that a qualified bidder's RSA 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 FCC Form 175 may request replacements. To request replacement of these items, call the Auction Bidder Line at the telephone number provided in the registration materials or the Auction Hotline at (717) 338-2868.

#### **C. Access to the Auction Bidding System**

10. The Commission will conduct the mock auction and bidding in Auction 101 electronically over the internet and will provide the option of telephonic bidding using the Auction Bidder Line. Each qualified bidder will receive in its registration materials the web address for accessing the FCC auction bidding system and the phone number for the Auction Bidder Line.

11. Each authorized bidder must have its own RSA token to bid electronically or by telephone in the mock auction and Auction 101. For security purposes, the RSA tokens and the instructions for using them are sent only to the contact person at the contact address listed on the qualified bidder's FCC Form 175. Please note that each RSA token is tailored to a specific auction and for a specific authorized bidder. RSA tokens issued for other auctions or obtained from a source other than the Commission will not work for Auction 101.

12. All bidders should carefully review the FCC Auction Bidding System User Guide, which is available on the "Education" tab of the Auction 101 webpage at [www.fcc.gov/auction/101](http://www.fcc.gov/auction/101), or directly at [www.fcc.gov/file/14584/download](http://www.fcc.gov/file/14584/download).

13. There are minimum system requirements for accessing the FCC auction bidding system. Bidders can access the FCC auction bidding system over the internet. The following software is required to use the FCC auction bidding system:

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contacts the FCC to activate the extra token for a specific additional authorized bidder or for an authorized bidder whose RSA token has been lost or damaged.

<sup>9</sup> The contact person is responsible for distributing each RSA token to the specific authorized bidder(s) associated with each token, as well as the relevant information in the registration materials necessary for the authorized bidder to set up its access to the FCC auction bidding system.

- Web browser, either of the following is recommended:
  - A recent version of Google Chrome™ (preferred) or Microsoft® Internet Explorer® 11 (the browser must be configured to accept cookies and JavaScript) with a minimum of TLS 1.2 security
- Operating system:
  - Microsoft® Windows® 7, Windows® 8, or Windows® 10; or Apple® Mac OS X® 10.13
- Access to the internet
- 1366 x 768 screen resolution<sup>10</sup>

Smartphones and tablets are not supported.

14. Users should test their computer configurations and browser(s) with the FCC auction bidding system in advance of the auction—for example during the mock auction. Any user attempting to access the FCC auction bidding system with a computer configuration or device that does not meet the requirements listed in the user guide is solely responsible for any resulting failure to access the auction bidding system, failure to do so in a timely manner, or failure of the bidding system to process the user's attempted bidding or other actions (even if it appears that such actions were completed properly).

15. Any bidder may use the Auction Bidder Line as an alternative method of bidding in the mock auction and Auction 101.<sup>11</sup> The mock auction provides an opportunity for bidders to try to bid using the Auction Bidder Line and to become familiar with that process and the time required.

16. Qualified bidders choosing to bid telephonically during the mock auction and Auction 101 should initiate their calls as early as possible during a round. Telephonic bid assistants must use a script, and the length of a call to place bids may vary depending on the complexity and number of bids.<sup>12</sup>

17. RSA tokens can be recycled.<sup>13</sup> We strongly encourage bidders to return the tokens to the Commission. We will provide pre-addressed envelopes for returning the tokens once auction bidding is closed.

#### **D. Bidding Contingency Plan**

18. Prior to the start of the auction, 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, or power; adverse local weather conditions; unavailability of its authorized bidders; or the loss or breach of confidential security codes.

19. A qualified bidder should ensure that each of its authorized bidders can access and place bids in the FCC auction bidding system, without relying upon the same computer to do so. Contingency

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<sup>10</sup> Other screen sizes will work, but a minimum of 1366x768 is required to fit all of the information on a single screen without horizontal scrolling. If all of the information from ABS cannot fit on your display, you can either zoom out using your internet browser or scroll right and left using the scroll bars. To adjust the zoom, hold down the control ("ctrl") key and use the "+" and "-" keys to zoom in and out.

<sup>11</sup> The Auction Bidder Line telephone number will be supplied in the registration materials sent to each qualified bidder.

<sup>12</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.

<sup>13</sup> An RSA token can only be recycled if it is returned to the Commission in good condition with nothing written or glued on it.

plans will ideally include arrangements for accessing and placing bids in the FCC auction bidding system from one or more alternative locations.

20. We remind bidders that their contingency plans might include, among other arrangements, calling the Auction Bidder Line. If a bidder encounters a situation in which it must implement its backup plan and call the Auction Bidder Line, it should do so as soon as possible and as early in the round as possible. Calling at the beginning of a round will help ensure that the call can be completed before the end of the round. Failure to call early in the round may affect the bidder's ability to submit some or all of its bids before the round closes. Even if a bidder does not plan to bid using the Auction Bidder Line, we encourage all bidders to do so at least once during the mock auction.

21. If for any reason a bidder fails to submit all of its bids before the round closes, and fails to meet the requisite activity level, an activity rule waiver will be used, if any remain, or the bidder's eligibility will be reduced, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction. The Commission will not be able to restore any portion of a bidder's lost bidding eligibility.

### **III. EDUCATIONAL MATERIALS AND IMPORTANT UPCOMING EVENTS AND DATES FOR AUCTION 101 QUALIFIED BIDDERS**

22. Below we provide information regarding the availability of educational and informational materials, and the opportunity for qualified bidders to participate in a mock auction prior to the start of bidding in Auction 101.

#### **A. FCC Auction Bidding System User Guide**

23. The FCC Auction Bidding System User Guide, which describes the features and functionality of the bidding system that will be used in Auction 101, is available in the "Education" section of the Auction 101 website at [www.fcc.gov/auction/101](http://www.fcc.gov/auction/101), or directly at [www.fcc.gov/file/14584/download](http://www.fcc.gov/file/14584/download). The user guide will remain accessible on the Auction 101 website for reference. Bidders are encouraged to read the user guide prior to participating in the mock auction in order to familiarize themselves with the bidding system.

#### **B. Bidding and Post-Auction Process Tutorial**

24. An online tutorial regarding bidding and post-auction procedures for Auction 101 will be available as soon as possible following the release of this Public Notice. The tutorial will allow viewers to navigate the presentation outline, review written notes, listen to an audio recording 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, email links for contacting Commission auctions and licensing staff, and screen shots of the bidding system. The online tutorial will be accessible from the Auction 101 website through a link in the "Education" section. Once posted, the tutorial will remain available and accessible on the Auction 101 website for reference.

#### **C. Mock Auction**

25. All qualified bidders in Auction 101 will be eligible to participate in a mock auction on Thursday, November 8, 2018. The Bureau strongly encourages each qualified bidder in Auction 101 to participate in the mock auction as it provides an opportunity for the bidder to practice taking actions it may wish to take during actual bidding in Auction 101, to further familiarize itself with the bidding software and telephonic bid process, and to test its contingency plans.

26. A qualified bidder can access the mock auction at the web address provided to qualified bidders in the registration materials. Telephonic bidding will be available as well.

27. The mock auction will include the 950 licenses for markets C01003–C20207. Each bidder in the mock auction will have 500,000 bidding units of eligibility. The mock auction will otherwise follow the rules governing Auction 101. 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.

28. The mock auction bidding schedule for Thursday, November 8, 2018, will be as follows:

Round 1	10:00 a.m.	–	11:00 a.m. ET
Round 2	12:00 p.m.	–	1:00 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

#### IV. AUCTION INFORMATION

##### A. Bidding Schedule

29. Bidding in Auction 101 will begin Wednesday, November 14, 2018, with the following schedule:

Bidding Round 1	10:00 a.m.	–	12:00 p.m. ET
Bidding Round 2	2:00 p.m.	–	4:00 p.m. ET

30. The bidding schedule starting on Thursday, November 15, 2018, and continuing each business day until further notice, will be:

Bidding Round	10:00 a.m.	–	11:00 a.m. ET
Bidding Round	1:00 p.m.	–	2:00 p.m. ET
Bidding Round	4:00 p.m.	–	5:00 p.m. ET

31. The Bureau will set the pace of the auction based upon monitoring of the bidding and assessment of the auction's progress. The Bureau will provide notice of any and all subsequent schedule changes by announcement in the FCC auction bidding system during the course of the auction.

##### B. Auction Announcements

32. The Commission will post pertinent auction information as announcements in the FCC auction bidding system. Each bidder should routinely check for announcements each time it enters the bidding system and should click on and read each announcement carefully. Announcements convey important auction information including—but not limited to—bidding schedule changes.

##### C. Bid Amounts

33. The minimum opening bid amounts for the licenses available in Auction 101 are set forth in the electronic Attachment A files available in the “Summary” section of the Auction 101 website at [www.fcc.gov/auction/101](http://www.fcc.gov/auction/101). For each license in Auction 101, the FCC auction bidding system will provide a minimum 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>14</sup> While a bidder can change the amount of a bid or remove new bids during a round, it cannot do so once a round ends.<sup>15</sup> We caution each bidder to select its

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<sup>14</sup> *Auctions 101 and 102 Procedures Public Notice* at 66, para. 198.

<sup>15</sup> *See id.* at 68, para. 206.

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>16</sup>

34. The Bureau retains the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid increment percentage, the additional bid increment percentage, the number of acceptable bid amounts, and the parameters of the formulas used to calculate bid amounts if the Bureau determines that circumstances so dictate.<sup>17</sup> Further, the Bureau retains the discretion to do so on a license-by-license basis. The Bureau also retains the discretion to limit (a) the amount by which a minimum acceptable bid for a license 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. If the Bureau exercises its discretion to make any of these changes, they will alert bidders by announcement in the FCC auction bidding system.<sup>18</sup>

#### **D. Watchlists**

35. The FCC auction bidding system sets up for each qualified bidder a default watchlist, called “My Licenses,” which contains every license selected on the applicant’s short-form application. A qualified bidder may create additional watchlists containing licenses of its own choosing, and licenses may appear in multiple watchlists. A bidder may begin creating its watchlists when access to the FCC auction bidding system becomes available. Instructions for creating watchlists will be provided in the FCC Auction Bidding System User Guide. Please note that watchlists created in the mock auction will be for the mock auction only. Bidders will need to create new watchlists for bidding in Auction 101.

#### **E. Round Results**

36. Round results will be available approximately ten minutes after the close of each round. We remind bidders that the results of their bidding are subject to procedures that limit the disclosure of information on bidder interests and identities until after the close of bidding in Auction 102.<sup>19</sup>

37. 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 bidding system. The public information will be available on the Public Reporting System at <https://auctiondata.fcc.gov>, for which there is a link in the “Results” section of the Auction 101 website at [www.fcc.gov/auction/101](http://www.fcc.gov/auction/101). When a bidder is logged in to the FCC auction bidding system, it will have access to a record of the bids it placed by using the *round summary* feature and will have access to the results of its bids by using the *posted results* feature. These features can be accessed using the links in the navigation bar of the FCC auction bidding system.

38. Detailed instructions for reviewing and downloading round results are provided in the FCC Auction Bidding System User Guide. The user guide is available in the “Education” section of the Auction 101 website at [www.fcc.gov/auction/101](http://www.fcc.gov/auction/101), or directly at [www.fcc.gov/file/14584/download](http://www.fcc.gov/file/14584/download).

#### **F. Bidder Questions During Auction 101 and the Mock Auction**

39. Commission auction staff and technical support staff will be available during the auction and the mock auction. Only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the qualified bidder’s FCC Form 175 should call on behalf of a bidder. When calling, the person should state that he or she is calling on behalf of a bidder with a time-sensitive auction question. To place bids by telephone or to ask questions during the auction, a bidder must use the

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<sup>16</sup> See 47 CFR § 1.2104(g).

<sup>17</sup> *Auctions 101 and 102 Procedures Public Notice* at 67, para. 202.

<sup>18</sup> *Id.*

<sup>19</sup> See *id.* at 22-24, paras. 50-56.

FCC Auction Bidder Line telephone number supplied in the registration materials and have his or her login information and RSA token available. Otherwise, a bidder should refer to the contact information provided in Section VII, Contact Information, below.

### G. Bidder Suggestions

40. A bidder may submit suggestions to the Commission staff concerning Auction 101 or future auctions by using the *messages* feature in the FCC auction bidding system.<sup>20</sup> However, this is not an appropriate mechanism for asking time-sensitive questions that may need an immediate response, such as questions about auction procedures or placing bids. Any time-sensitive questions should be directed to the Auction Bidder Line. Commission staff considers all suggestions, but may not always provide an individualized response.

## V. APPLICANTS' CONTINUING OBLIGATIONS

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

41. We remind applicants that Sections 1.65 and 1.2105(b)(4) of the Commission's rules require they maintain the accuracy and completeness of information furnished in their applications to participate in Auction 101.<sup>21</sup> Each applicant should amend its 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>22</sup> All changes are subject to review by Commission staff.

42. An applicant that needs to make permissible minor changes to its FCC Form 175,<sup>23</sup> or that must make changes in order to maintain the accuracy and completeness of its short-form application during a time when the FCC auction application system is available to the applicant for purposes of making the type of change(s) required, must make such changes to its FCC Form 175 electronically using the FCC auction applications system.<sup>24</sup> The applicant must also submit a letter briefly summarizing the changes to its FCC Form 175 by email to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, at the following address: [auction101@fcc.gov](mailto:auction101@fcc.gov). The letter summarizing the changes must include a subject or caption referring to Auction 101 and the name of the applicant, for example, "Re: Changes to Auction 101 Application of XYZ Corp." Any

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<sup>20</sup> To access the *messages* feature, select the Messages link on the navigation pane of the FCC auction bidding system. For information on how to use this feature, please see the FCC Auction Bidding System User Guide.

<sup>21</sup> 47 CFR §§ 1.65, 1.2105.

<sup>22</sup> *Id.*

<sup>23</sup> As described in the Commission's rules, an applicant may make only minor corrections to its short-form application (e.g., changing certain contact information or authorized bidder information). See 47 CFR § 1.2105(b). A major modification includes a change in license selection, newly claimed or increased bidding credit, or change in control of the applicant. *Id.*; see also, e.g., Letter from Margaret W. Wiener, Chief, Auctions and Spectrum Access Div., and Peter H. Doyle, Chief, Audio Div., to Koch Broadcasting Corp. and Birch Broadcasting Corp., 21 FCC Rcd 147 (WTB/MB 2006) (dismissing short-form application filed for AM Auction 84 due to major amendment changing control).

<sup>24</sup> An applicant should not use the auction application system outside of the initial and resubmission filing windows to make changes to its short-form application for other than administrative changes. 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 license selection.



attachments to the email must be formatted as Adobe® Acrobat® (PDF) or Microsoft® Word documents. An applicant must not submit application-specific material through the Commission's Electronic Comment Filing System.

43. For more information on an applicant's continuing obligation to maintain the accuracy and completeness of information furnished in its application to participate in Auction 101, applicants should refer to previous Auction 101 public notices, including the *Auctions 101 and 102 Procedures Public Notice* and the *Auctions 101 and 102 Status Public Notice*.<sup>25</sup>

#### **B. Due Diligence**

44. We remind each potential bidder that it is solely responsible for investigating and evaluating all legal, technical, and marketplace factors and risks associated with the licenses that it is seeking in Auction 101; evaluating the degree to which those factors and risks may have a bearing on the value of the licenses being offered and/or affect the bidder's ability to bid on, otherwise acquire, or make use of such licenses; and conducting any technical analyses necessary to assure itself that, if it wins any license(s), it will be able to build and operate facilities in accordance with the Commission's rules.<sup>26</sup> In addition, each potential bidder's due diligence efforts should include, among other things: (1) reviewing all Commission orders and public notices establishing rules and policies for the UMFUS bands, including but not limited to potential impairments affecting certain licenses;<sup>27</sup> (2) conducting research to determine the existence of any pending administrative or judicial proceedings, including pending allocation rulemaking proceedings, that might affect its decision to participate in the auction;<sup>28</sup> (3) performing (or refreshing previous) technical analyses; and (4) inspecting any prospective transmitter sites located in, or near, the service area for which it plans to bid and confirming the availability of such sites and their conformance with applicable federal, state, and local land use requirements.<sup>29</sup> Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

45. 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 licensee, subject to certain conditions and regulations. Participants in Auction 101

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<sup>25</sup> See *Auctions 101 and 102 Procedures Public Notice* at 43-45, paras. 112-20; *Auctions 101 and 102 Status Public Notice* at 5, para. 11; see also 47 CFR §§ 1.65, 1.2105(b). Questions about FCC Form 175 amendments should be directed to the Auctions and Spectrum Access Division at (202) 418-0660 or by email to [auction101@fcc.gov](mailto:auction101@fcc.gov).

<sup>26</sup> See *Auctions 101 and 102 Procedures Public Notice* at 45-46, paras. 121-25.

<sup>27</sup> For additional information concerning the UMFUS rules and policies, including impairments affecting certain licenses available in Auction 101, applicants should refer to orders, public notices, and other releases in GN Docket No. 14-177 and AU Docket No. 18-85.

<sup>28</sup> Pending and future administrative and judicial proceedings may relate to particular applicants or the licenses available in Auction 101 (or the terms and conditions thereof, including all applicable Commission rules and regulations), and each prospective applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on licenses available in this auction. The Commission's statutory authority under the Communications Act of 1934, as amended, to add, modify and eliminate rules governing spectrum use, as the public interest warrants, applies equally to all licenses, whether acquired through the competitive bidding process or otherwise. See 47 U.S.C. § 309(j)(6)(C)-(D); *Celtronix Telemetry, Inc. v. FCC*, 272 F.3d 585 (D.C. Cir. 2001).

<sup>29</sup> See, e.g., 47 U.S.C. §§ 332(c)(7), 1455(a); see also *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report and Order, 29 FCC Rcd 12865 (2014).

should continue such research throughout the auction. For further details regarding due diligence, please refer to the *Auctions 101 and 102 Procedures Public Notice*, Section III.A.<sup>30</sup>

### C. Prohibited Communications

46. The Bureau reminds applicants that the rules prohibiting certain communications set forth in Section 1.2105(c) of the Commission's rules apply to each applicant that filed a short-form application (FCC Form 175) in Auction 101 and/or Auction 102.<sup>31</sup> Section 1.2105(c)(1) provides that, subject to specified exceptions, after the deadline for filing a short-form application, "all applicants are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other or any nationwide provider [of communications services] that is not an applicant, or, if the applicant is a nationwide provider, any non-nationwide provider that is not an applicant, in any manner the substance of their own, or each other's, or any other applicants' bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after the down payment deadline[.]"<sup>32</sup> An "applicant" for purposes of this rule includes all "controlling interests" in the entity submitting the FCC Form 175 auction application, as well as all holders of interests amounting to 10 percent or more of the entity, and all officers and directors of that entity.<sup>33</sup> For Auctions 101 and 102, a party that submitted an application for either auction is an "applicant" for both auctions under the rule, and that status does not change based on later developments.<sup>34</sup>

47. This prohibition took effect as of the short-form application filing deadline, which for Auctions 101 and 102 was Tuesday, September 18, at 6:00 p.m. ET, and ends at the post-auction down payment deadline for Auction 102, which will be announced in a future public notice.<sup>35</sup> **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid in Auction 101 and/or Auction 102.**<sup>36</sup> For further information on the prohibition, applicants should refer to the *Auctions 101 and 102 Procedures Public Notice*.<sup>37</sup>

48. *Disclosure Obligations and Possible Sanctions.* Section 1.2105(c)(4) requires each auction applicant to report a prohibited communication 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

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<sup>30</sup> See *Auctions 101 and 102 Procedures Public Notice* at 45-46, paras. 121-25 (Due Diligence).

<sup>31</sup> 47 CFR §§ 1.2105(c); see also *Auctions 101 and 102 Procedures Public Notice* at 24, para. 57.

<sup>32</sup> 47 CFR § 1.2105(c). The Commission identified AT&T, Sprint, T-Mobile, and Verizon Wireless as "nationwide providers" for the purpose of implementing the Commission's competitive bidding rules in Auctions 101 and 102. *Auctions 101 and 102 Procedures Public Notice* at 19, para. 44.

<sup>33</sup> 47 CFR § 1.2105(c)(5)(i); *Auctions 101 and 102 Procedures Public Notice* at 25, para. 59.

<sup>34</sup> *Auctions 101 and 102 Procedures Public Notice* at 25, para. 59.

<sup>35</sup> *Id.* at 25, paras. 60-61; see also 47 CFR § 1.2105(c)(1).

<sup>36</sup> See, e.g., *Star Wireless, LLC v. FCC*, 522 F.3d 469 (D.C. Cir. 2008) (holding that Section 1.2105(c) applies to applicants regardless of whether they are qualified to bid). Thus, an auction applicant that does not correct deficiencies in its application, fails to submit a timely and sufficient upfront payment, or does not otherwise become qualified, remains an "applicant" for purposes of the rule and remains subject to the prohibition on certain communications until the post-auction down payment deadline for Auction 102. *Auctions 101 and 102 Procedures Public Notice* at 25, para. 59 & n.137.

<sup>37</sup> *Auctions 101 and 102 Procedures Public Notice* at 24-32, paras. 57-84.

regarding bids or bidding strategy that must be reported under Section 1.65.<sup>38</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>39</sup>

49. *Reporting Prohibited Communication.* Any party reporting any communication pursuant to Sections 1.65, 1.2105(a)(2), or 1.2105(c)(4) must take care to ensure that any such report does not itself give rise to a violation of Section 1.2105(c). 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 Access Division in the Wireless Telecommunications Bureau.<sup>40</sup> In Auction 101, any such report must be filed according to the instructions set forth in the *Auctions 101 and 102 Procedures Public Notice*.<sup>41</sup> Any such report must be filed immediately, and in no case later than five business days after the communication occurs.

50. Any applicant found to have violated Section 1.2105(c) of the Commission's rules may be subject to sanctions.<sup>42</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>43</sup>

#### **D. Limited Information Procedures**

51. We remind applicants that, under the limited information procedures in effect for Auction 101 (sometimes also referred to as anonymous bidding), the Commission is withholding from public release, until after the close of bidding in Auction 102, any information that may indicate specific applicants' interests in the auction—including, among other things, license selections, upfront payments and eligibility information, and the identities of bidders placing bids or taking other bidding-related actions.<sup>44</sup> Accordingly, communication with other applicants or public disclosure of such non-public information may violate the Commission's limited information procedures and the rule prohibiting certain communications, Section 1.2105(c) of the Commission's rules.

52. This prohibition includes communication of any such non-public information by an applicant to the public, financial analysts, or the press, as well as any such communication by an applicant to another applicant in Auction 101 or Auction 102.<sup>45</sup> Examples of communications raising concern,

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<sup>38</sup> 47 CFR § 1.2105(b); *see also Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures*, Seventh Report and Order, 16 FCC Rcd 17546, 17553-55, paras. 13-17 (2001).

<sup>39</sup> *See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, Second Report and Order, 22 FCC Rcd 15289, 15395, paras. 285-86 (2007).

<sup>40</sup> 47 CFR § 1.2105(c)(6); *Procedural Amendments to Commission Part 1 Competitive Bidding Rules*, Order, 25 FCC Rcd 521, 522, para. 4 (2010).

<sup>41</sup> *See Auctions 101 and 102 Procedures Public Notice* at 30-31, paras. 78-80.

<sup>42</sup> *See* 47 CFR §§ 1.2105(c), 1.2109(d).

<sup>43</sup> *See id.* § 1.2109(d).

<sup>44</sup> *See Auctions 101 and 102 Procedures Public Notice* at 22-24, paras. 50-56.

<sup>45</sup> The Commission has long expressed the concern that applicants should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become a conduit for the communication of non-public information relating to auctions, such as bids and bidding strategies. *See Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction*, Public Notice, 13 FCC Rcd 341, 347-48 (WTB 1998) ("Public statements can give rise to collusion concerns. This has

given the limited information procedures in effect for Auction 101, would include an applicant's statement to the press about its upfront payment or bidding eligibility, and an applicant's statement to the press that it is or is not interested in bidding in the auction.

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

53. A party wishing to submit a request, a complaint, or other information concerning Auction 101 should, in addition to following other procedures prescribed by the Commission's rules, send a copy by email to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: [auction101@fcc.gov](mailto:auction101@fcc.gov). The Commission occasionally receives complaints regarding specific bidders and requests to suspend bidding during an auction. While the Commission reserves the right to take appropriate action during an auction to preserve the integrity of the auction process, it is generally our practice to address any such allegations only after a winning bidder has submitted its long-form application, when there is greater opportunity for investigation of such allegations, if warranted. The Commission will not investigate any complaints or allegations that are not accompanied by full contact information, including name, address, and telephone number, for the complaining party or parties.

#### **F. Ex Parte Rule**

54. 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>46</sup>

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

55. To insure prompt receipt of time-sensitive Commission communications, the Bureau urges each applicant to verify now the accuracy and completeness of the information for its contact in its Form 175. Corrections to contact information in a Form 175 should be made promptly in preparation for post-auction procedures.

56. Shortly after bidding has ended, the Commission will release a public notice declaring the auction closed and establishing the deadlines for submitting down payments and final payments.<sup>47</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.

57. Additional information regarding these post-auction procedures is contained in the *Auctions 101 and 102 Procedures Public Notice* and will be provided in the public notice announcing the winning bidders.<sup>48</sup>

(Continued from previous page) \_\_\_\_\_  
occurred in the antitrust context, where certain public statements can support other evidence which tends to indicate the existence of a conspiracy.”).

<sup>46</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, 9 FCC Rcd 6760 (1994). See also 47 CFR § 1.1202(d)(1) Note 1.

<sup>47</sup> For more detail, see *Auctions 101 and 102 Procedures Public Notice* at 84-87, paras. 283-99.

<sup>48</sup> See *Auctions 101 and 102 Procedures Public Notice* at 84-87, paras. 283-99; see also 47 CFR §§ 1.2107, 1.2109(a).

**VII. CONTACT INFORMATION**

58. Additional information for applicants is available at the Auction 101 web page ([www.fcc.gov/auction/101](http://www.fcc.gov/auction/101)).

59. For further information concerning Auction 101, please contact:

<b>General Auction Information</b> General Auction Questions	<b>FCC Auctions Hotline</b> (888) 225-5322, option two; or (717) 338-2868
<b>Auction 101 Process and Procedures</b> Bidding Procedures Auction Schedule	<b>Auctions and Spectrum Access Division</b> Auctions Hotline (717) 338-2868
<b>Auction 101 Legal Information</b> Auction Rules, Policies, Regulations, Including Reports of Section 1.2105(c) Violations and Application Modifications	<b>Auctions and Spectrum Access Division</b> (202) 418-0660 Erik Beith (Attorney) Kathryn Hinton (Attorney)
<b>Licensing Information</b> Service Rules, Policies, Regulations Licensing Issues, Engineering Issues Due Diligence, Incumbency Issues	<b>Broadband Division</b> (202) 418-2487 Nancy Zaczek (Attorney) Tim Hilfiger (Engineer)
<b>Technical Support</b> Hardware/Software Issues with Electronic Filing or FCC Auction System	<b>FCC Auctions Technical Support Hotline</b> (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
<b>Payment Information</b> Instructions for Wiring Auction Payments and Completing Form 159 Refunds	<b>FCC Revenue &amp; Receivables Operations Group/Auctions</b> Gail Glasser (202) 418-0578, or Theresa Meeks (202) 418-2945, or (202) 418-2843 (fax)

60. To request materials in accessible formats (Braille, large print, electronic files, audio format) for people with disabilities, send an email 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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