



# PUBLIC NOTICE

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## AUCTION OF FM TRANSLATOR CONSTRUCTION PERMITS SCHEDULED FOR JUNE 21, 2018

### NOTICE AND FILING REQUIREMENTS, MINIMUM OPENING BIDS, UPFRONT PAYMENTS, AND OTHER PROCEDURES FOR AUCTION 83

AU Docket No. 17-351

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February 2003 Edition)

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**I. GENERAL INFORMATION**

**A. Introduction**

1. By this Public Notice, the Wireless Telecommunications Bureau (WTB) and the Media Bureau (MB) (collectively, the Bureaus) establish the procedures and minimum opening bid amounts for the upcoming auction of certain FM translator construction permits. Bidding in this auction, which is designated as Auction 83, is scheduled to start on June 21, 2018. This Public Notice provides an overview of the procedures, terms and conditions governing Auction 83 and the post-auction application and payment processes. Auction 83 is a closed auction; only those individuals or entities listed in Attachment A to this Public Notice are eligible to complete the remaining steps to become qualified to bid in this auction.

2. On January 16, 2018, in accordance with section 309(j)(3) of the Communications Act of 1934, as amended (the Act),<sup>1</sup> the Bureaus released a public notice seeking comment on competitive bidding procedures to be used in Auction 83.<sup>2</sup> This Public Notice addresses three filings submitted in response to the *Auction 83 Comment Public Notice*.<sup>3</sup>

3. In order to become qualified to bid, an Auction 83 applicant must submit an updated FCC Form 175 auction application (also referred to as a short-form application) in the upcoming remedial filing window in accordance with the instructions in this Public Notice as well as a sufficient upfront payment for the permit(s) it seeks to bid upon. This Public Notice provides instructions for each Auction 83 applicant to review, verify and update its previously filed FCC Form 175 auction application during the upcoming remedial filing window through the Commission's auction application system. Each applicant will have an opportunity to review and update its short-form application electronically during the remedial filing window, which will open on April 16, 2018, and will close on April 26, 2018 at 6:00 PM Eastern Time (ET). An applicant whose application is found to contain deficiencies after the close of the remedial filing window will be provided with a limited opportunity to bring its application into compliance with the Commission's competitive bidding rules during a resubmission window, the dates for which will be announced in a future public notice. An Auction 83 applicant will become qualified to bid in the auction only if: (1) it submits a short-form application that is timely and substantially complete (i.e., the application substantially complies with the Commission's competitive bidding rules and the procedures and deadlines set forth in this Public Notice), and (2) it timely submits a sufficient upfront payment for at least one of the permits for which it is designated as an applicant on Attachment A to this Public Notice.

#### 1. Background

4. Auction 83 will resolve pending groups of mutually exclusive (MX) applications for commercial FM translator construction permits. On February 6, 2003, the Bureaus announced an auction filing window for applications for new FM translator stations in the non-reserved band (Channels 221 to 300), as well as major modifications to authorized FM translator facilities.<sup>4</sup> By Public Notices released May 21, 2013 and April 30, 2014,<sup>5</sup> the Bureaus provided a list of all applications received during the

<sup>1</sup> 47 U.S.C. § 309(j)(3)(E)(i) (requirement to seek comment on proposed auction procedures); *see also* 47 U.S.C. § 309(j)(4)(F) (authorization to prescribe reserve price or minimum bid); 47 CFR §§ 1.2104(c) and (d).

<sup>2</sup> *Auction of FM Translator Construction Permits Scheduled for June 21, 2018; Comment Sought on Competitive Bidding Procedures for Auction 83*, AU Docket No. 17-351, Public Notice, 33 FCC Rcd 23 (WTB/MB 2018) (*Auction 83 Comment Public Notice*). A summary of this public notice was published at 83 Fed. Reg. 4455 (Jan. 31, 2018).

<sup>3</sup> Specifically, iHeart Communications, Inc. on behalf of three of its indirect subsidiaries that are Auction 83 applicants, submitted comments in support of its previously filed request for waiver of 47 CFR section 1.2105(b)(2) (iHeart Comments). (The three subsidiary-applicants are: Clear Channel Broadcasting Licenses, Inc., Capstar TX, LLC (as successor to Capstar TX Limited Partnership), and AMFM Radio Licenses, LLC (as successor to Cleveland Radio Licenses, LLC); iHeart was formerly named Clear Channel Communications, Inc.) Frank G. McCoy submitted comments opposing grant of a waiver (McCoy Comments). iHeart submitted reply comments (iHeart Reply). Those filings may be viewed through the Commission's Electronic Comment Filing System (ECFS) under proceeding 17-351.

<sup>4</sup> *See FM Translator Auction Filing Window and Application Freeze*, Public Notice, 18 FCC Rcd 1565 (MB/WTB 2003) (*Auction 83 Filing Window Public Notice*). The application filing deadline was subsequently extended to March 17, 2003. *FM Translator Auction Filing Window and Application Freeze Extended to March 17, 2003*, Public Notice, 18 FCC Rcd 3275 (MB/WTB 2003) (*Auction 83 Extension Public Notice*). Each applicant was required to file FCC Form 175, Application to Participate in an FCC Auction, and certain sections of FCC Form 349, Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station, which permitted staff to determine mutual exclusivities between applicant engineering proposals.

<sup>5</sup> *See FM Translator Auction 83 Mutually Exclusive Applicants Subject to Auction*, Public Notice, 28 FCC Rcd 9716 (MB 2013) (*Auction 83 First Settlement Public Notice*). *FM Translator Auction 83 Mutually Exclusive Applications* (continued....)

filing window that were mutually exclusive with other applications submitted in the filing window. In the *Auction 83 Settlement Public Notices*, applicants in listed groups of mutually exclusive engineering proposals (MX groups) were given the opportunity to eliminate their mutual exclusivity with other applicants' engineering proposals by settlement or technical modification to their proposals.<sup>6</sup> The Bureaus will now proceed to auction with the 43 MX groups identified in Attachment A.

## 2. Construction Permits and Entities Eligible to Participate in Auction 83

5. Auction 83 will resolve mutually exclusive applications for up to 43 new FM translator construction permits. A list of the locations and channels of these proposed stations is included as Attachment A to this Public Notice. Attachment A also sets forth the names of applicants in each MX group along with a minimum opening bid and an upfront payment amount for each construction permit in this auction.

6. An applicant listed in Attachment A may become qualified to bid only if it meets the additional filing, qualification and payment requirements and otherwise complies with applicable requirements described in this Public Notice.<sup>7</sup> Each applicant may become a qualified bidder only for those construction permits specified for that applicant in Attachment A. Each of the engineering proposals within each MX group are directly mutually exclusive with one another; therefore, no more than one construction permit will be awarded for each MX group identified in Attachment A. As noted in the *Auction 83 Comment Public Notice*, the Commission's established precedent provides that, once it accepts mutually exclusive applications for a construction permit,<sup>8</sup> an applicant for that permit cannot obtain it without placing a bid even if no other applicant for that construction permit becomes qualified to bid or in fact places a bid.<sup>9</sup> While the *Auction 83 Comment Public Notice* had sought comment on whether certain changes made since 2003 to Section 1.2105 of the auction rules warranted any different approach in this context,<sup>10</sup> no commenter directly addressed this issue.<sup>11</sup> We do not see any reason to depart from established precedent in this case.

7. In the *Auction 83 Comment Public Notice*, the Bureaus sought comment on whether to waive section 1.2105(b)'s prohibition on major changes with respect to transfers of control or assignments that had occurred prior to release of the *Auction 83 Comment Public Notice* and/or that have

(Continued from previous page)

Subject to Auction, Public Notice, 29 FCC Rcd 4868 (MB/WTB 2014) (*Auction 83 Second Settlement Public Notice*).

<sup>6</sup> See *Auction 83 Second Settlement Public Notice*, 29 FCC Rcd at 4868; *Auction 83 First Settlement Public Notice*, 28 FCC Rcd at 9716. See also 47 CFR § 73.5002(d).

<sup>7</sup> Attachment A to this Public Notice lists the names of Auction 83 applicants using the names supplied on the Form 175 in 2003. Attachment A of the *Auction 83 Comment Public Notice* listed each applicant using the name provided in 2003 on the Form 349 "tech box." Thirteen applicants provided different names or entered typographical differences between their 2003 Form 175 and 2003 Form 349 "tech box" submissions. Accordingly, the names of those thirteen applicants differ between Attachment A to this Public Notice and Attachment A of the *Auction 83 Comment Public Notice*. Attachment D to this Public Notice identifies the thirteen applicants with different names in the respective attachments.

<sup>8</sup> See *Auction 83 Comment Public Notice*, 33 FCC Rcd at 25, para. 4, citing 47 U.S.C. § 309(j)(1).

<sup>9</sup> See *id.*, citing authorities.

<sup>10</sup> *Auction 83 Comment Public Notice*, 33 FCC Rcd at 26-30, paras. 6-11.

<sup>11</sup> iHeart states that it intends to voluntarily withdraw one application in an MX group in which two of its subsidiaries are listed as the only two applicants in hopes of having the MX group removed from the auction inventory. iHeart Comments at 4, n.6. While iHeart could have settled any mutual exclusivity during previously-announced settlement periods, any such effort now, following the close of the settlement period, will not remove the construction permit from the auction inventory. See 47 CFR § 73.5002(d), (e) (settlements permitted only during windows specified by Commission public notices); see also *Auction 83 First Settlement Public Notice*, 28 FCC Rcd 9716; *Auction 83 Second Settlement Public Notice*, 29 FCC Rcd 4868.

been subject to Commission review and approval by a particular date.<sup>12</sup> Section 1.2105(b)(2) provides that an auction applicant that undertakes a major change, including a change of ownership that would constitute an assignment or transfer of control, after the short-form application deadline will be disqualified from participating in bidding.<sup>13</sup> The Bureaus noted that the parent corporation of certain Auction 83 applicants that had consummated a transfer of control pursuant to authorization granted by the Commission had subsequently sought waiver of section 1.2105(b)(2)'s bar on major modifications.<sup>14</sup> In response to the *Auction 83 Comment Public Notice*, iHeart, the parent company of three Auction 83 applicants, filed comments supporting grant of waivers of section 1.2105(b)(2) "to allow the iHeart Applicants and any other similarly situated Auction 83 applicants, to participate in ... Auction 83, notwithstanding an interim 'major change' in ownership at the parent level."<sup>15</sup> Frank McCoy, an Auction 83 applicant whose proposal is mutually exclusive with that of an iHeart subsidiary, opposes granting any such relief.<sup>16</sup>

8. Section 1.3 of the Commission's rules provides that a provision of the rules may be waived if good cause is shown.<sup>17</sup> In making this determination, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>18</sup> Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.<sup>19</sup> To make such a public interest determination, the waiver cannot undermine the purposes of the rule, and there must be a stronger public interest benefit in granting the waiver than in applying the rule.<sup>20</sup> As we noted in the *Auction 83*

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<sup>12</sup> *Auction 83 Comment Public Notice*, 33 FCC Rcd at 26-27, at paras. 7-8. See generally 47 CFR § 1.2105(b)(2). The language of this rule section has not changed since the filing of Auction 83 Forms 175 in 2003.

<sup>13</sup> See 47 CFR § 1.2105(b)(2).

<sup>14</sup> See *Auction 83 Comment Public Notice*, 33 FCC Rcd at 27-28, at para. 8, citing Letter to Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, WTB, from Marissa G. Repp, Esq. (dated Aug. 13, 2013) (seeking waiver of major change rule for transaction authorized in *Existing Shareholders of Clear Channel Communications, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 1421 (2008)) and subsequent filings.

<sup>15</sup> iHeart Reply at 1; see also iHeart Comments at 1-4.

<sup>16</sup> McCoy Comments at 1-6. As noted in the *Auction 83 Comment Public Notice*, Monticello Media, LLC in 2013 filed an opposition to Clear Channel's request for waiver which presents similar arguments to those of McCoy. See *Auction 83 Comment Public Notice*, 33 FCC Rcd at 27 n. 19, citing also Letter to Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, WTB, from Lewis J. Paper, Esq. (dated Oct. 17, 2013) and subsequent pleadings. Monticello Media's opposition supports its previously-filed petition to deny Clear Channel Broadcasting Licenses, Inc.'s proposed FM translator at Charlottesville, VA. See Petition to Deny, File No. BNPFT-20130821ABF (filed Sept. 11, 2013) and subsequent pleadings. Monticello Media did not file comments in response to the *Auction 83 Comment Public Notice*. Because Clear Channel's Form 349 application for a Charlottesville facility remains pending, we need not rule on the merits of Monticello Media's petition to deny or whether Monticello Media has standing to oppose that application in this Public Notice. Nevertheless, we address in this Public Notice those arguments raised by Monticello in its 2013 Opposition relating to the section 1.2105(b) issues raised in this proceeding.

<sup>17</sup> 47 CFR § 1.3.

<sup>18</sup> See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972) (*WAIT Radio*); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>19</sup> *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-28 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166; *WAIT Radio*, 418 F.2d at 1158.

<sup>20</sup> See, e.g., *Request for Permanent Renewal of, and Changes to Conditions on, Waiver Granted to SafeView, Inc.*, Order, 26 FCC Rcd 10250, 10252 (OET 2011), citing *Northeast Cellular*, 897 F.2d at 1166. See also *WAIT Radio*, 418 F.2d at 1155, 1157. The waiver standard applied under section 1.3 and the waiver standard applied in the context of wireless radio services licenses, 47 C.F.R. § 1.925, have been found to be substantially the same. See *Delta Radio, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 16889, 16891 para. 7 & n.19 (2003) (citing (continued....))

*Comment Public Notice*, the prohibition at issue here promotes a number of related objectives, including assuring that: parties relevant to an auction application are identified prior to the auction; the representations and certifications in the application remain effective and enforceable while the application is pending; the pre-auction process is transparent; and the Commission, auction participants, and other applicants have consistent and transparent information about the identity of other applicants, which enhances auction competition by leveling the informational playing field.<sup>21</sup> The set of mutually exclusive applications for Auction 83 have been pending for approximately 15 years. McCoy acknowledges that the 15-year period that the Auction 83 applications have been pending “has occupied a much greater time than is normally expected,”<sup>22</sup> but he argues that allowing major changes would encourage speculative applications in other auctions.<sup>23</sup> While we agree that in general we do not want to encourage auction applicants to engage in assignments or transfers of control, we conclude that allowing a major change under the unique circumstances here is unlikely to provide such general encouragement. McCoy and Monticello Media contend that some delay in the auction application process may not be an unusual circumstance.<sup>24</sup> Auction 83 applicants, however, have faced a series of actions undertaken by the Commission to resolve issues involving the Low Power FM service and to implement those policies.<sup>25</sup> During much of this period, the Commission ordered a suspension on processing of Auction 83 applications. Under these unique factual circumstances, application of the rule would be unduly burdensome to Auction 83 applicants that have completed a transfer of control or assignment that was

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\_\_\_\_\_ *Bellsouth Corp. v. FCC*, 162 F.3d 1215, 1225 n.10 (D.C. Cir. 1999)). Section 1.925(b)(3) provides that “[t]he Commission may grant a request for waiver if it is shown that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.” 47 C.F.R. § 1.925(b)(3).

<sup>21</sup> See *Auction 83 Comment Public Notice*, 33 FCC Rcd at 27-28, para. 8, citing *Guidance Regarding the Prohibition of Certain Communications During the Incentive Auction, Auction 1000*, Public Notice, 30 FCC Rcd 10794, 10803 para. 24 (WTB 2015) (*Prohibited Communications Public Notice*); see also *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Fifth Report and Order, 9 FCC Rcd 5532, 5557 para. 59 (1994) (necessity of short-form application demonstrating compliance with rules); *Consent to Transfer Control of License Subsidiaries of Media General, Inc., from Shareholders of Media General, Inc. to Nexstar Media Group, Inc.*, Memorandum Opinion and Order, 32 FCC Rcd 183, 207, para. 64 (MB/WTB 2017) (granting waiver to broadcast incentive auction applicant to permit transaction was dependent on assurances that the parties were identified to the Commission prior to the auction and that the representations in the application remained effective notwithstanding the transaction proceeding).

<sup>22</sup> McCoy Comments at 3.

<sup>23</sup> *Id.* at 1-3.

<sup>24</sup> See McCoy Comments at 3; Monticello Media Opposition at 3.

<sup>25</sup> For example, in 2008, the Media Bureau temporarily suspended processing of the pending Auction 83 engineering proposals, while the Commission considered issues raised by petitioners regarding the preclusive impact on the Low Power FM (LPFM) Service of Auction 83 proposals. *Media Bureau Suspends Dismissal of FM Translator Applications Related to Processing Cap (MM Docket No. 99-25)*, Public Notice, 23 FCC Rcd 5629 (MB 2008). In 2012, the Commission’s *Fifth Order on Reconsideration and Sixth Report and Order* in the LPFM proceeding, imposed caps on the number of pending Auction 83 proposals that could be processed for each applicant, both on a national level, and a per-market level. *Creation of a Low Power Radio Service*, MM Docket No. 99-25, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402 (2012). This Order directed the Media Bureau to resume processing of these applications, starting with the implementation of the caps. *Id.* at 15402 (“When effective, these orders will permit the Commission to move forward with the long-delayed processing of over 6,000 FM translator applications . . .”). The Bureau opened a brief window at the end of January 2013 for applicants to submit information necessary to comply with the caps. *Media Bureau Announces January 10 – January 25, 2013 Filing Window for Auction 83 FM Translator Application Selections and Caps Showings*, Public Notice, 27 FCC Rcd 15961 (MB 2012).

authorized by the Commission during this multi-year period.<sup>26</sup> We also disagree with McCoy's suggestions that enforcing the rule in these circumstances will protect applicants against being "blindsided" by ownership changes.<sup>27</sup> Even though these applications have been on file for approximately 15 years, the Forms 175 filings have not yet been made available for public review. Moreover, information on iHeart's ownership was made publicly available during the Commission's review of Clear Channel's request for transfer of control in 2008.<sup>28</sup> In addition, the Commission has reviewed, and approved, the changes in control in question here.<sup>29</sup> Further, granting relief for applicants with respect to changes in Auction 83 applications pending since 2003 does not give rise to concerns over unnecessary work or wasted Commission resources because Commission staff have not yet begun to review the auction applications. Accordingly, we find that the public interest in preserving the affected applicants' ability to compete for the construction permits for which they filed MX applications over 15 years ago outweighs the public interest in applying the rule and waive section 1.2105(b)(2)'s bar on major modifications for any Auction 83 applicant, such as iHeart or any other similarly-situated party, that has completed a transfer of control or assignment pursuant to a transaction that has been reviewed and approved by the Commission prior to the close of the remedial filing window on April 26, 2018.<sup>30</sup>

9. The Bureaus also sought comment in the *Auction 83 Comment Public Notice* on how to apply section 1.2105's provisions that prohibit multiple auction applications by applicants subject to common control in light of the amendments to the Commission's competitive bidding rules in 2015. The amended rules require entities with any overlapping controlling interest to participate in an auction through just a single auction application.<sup>31</sup> The only party to address this issue, iHeart, supports our proposal to require applicants subject to common control to participate through a single bidding entity by filing a single application covering all of the MX engineering proposals applied for previously by the separate commonly controlled applicants.<sup>32</sup> We find good cause to waive the current rule's application to the originally filed Form 175s, which pre-dated the current rule by more than a decade, and to permit applicants to come into compliance with the current rule by modifying the relevant auction applications as necessary to come into compliance. Accordingly, any Auction 83 applicants with overlapping controlling interests will be permitted to amend their Form 175 auction applications to participate as a single bidding entity.<sup>33</sup> Any Auction 83 applicants seeking to consolidate multiple Forms 175 to comply with the

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<sup>26</sup> See *Northeast Cellular*, 897 F.2d at 1166; *WAIT Radio*, 418 F.2d at 1155, 1157.

<sup>27</sup> McCoy Comments at 2.

<sup>28</sup> See *Existing Shareholders of Clear Channel Communications, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 1421 (2008) (approving transfer of control of Clear Channel and its 1,172 radio and 35 television stations).

<sup>29</sup> Monticello Media also argues that Clear Channel is in violation of section 1.2105(b)(4) for failing to promptly amend its auction application to report its change of control. Monticello Media Opposition at 2, citing 47 CFR § 1.2105(b)(4). Section 1.2105(b)(4) was adopted in 2010. *Procedural Amendments to Commission Part 1 Competitive Bidding Rules*, Order, 25 FCC Rcd 521 (2010) (*Part 1 Procedural Amendments Order*). That rule imposes upon auction applicants a continuing requirement to maintain the accuracy and completeness of their Form 175 auction applications, and to report any relevant changes within five business days. We make no determination at this time as to whether Clear Channel is in compliance with this requirement and reserve the right to address any such failure separately.

<sup>30</sup> An applicant seeking to participate in Auction 83 pursuant to this relief should include with its updated Form 175 during the upcoming remedial filing window a brief explanation of any changes it has undertaken during the pendency of its Form 175, including relevant details such as citations to or file numbers of Commission authorizations for such changes.

<sup>31</sup> See 47 CFR § 1.2105(a)(3).

<sup>32</sup> See iHeart Reply at 6-7, citing *Auction 83 Comment Public Notice*, 33 FCC Rcd at 29-30, para. 11.

<sup>33</sup> Any such applicant that may become a winning bidder would be permitted to assign the resulting construction permit to a subsidiary following the auction, consistent with Part 73 rules and procedures. As an alternative, Auction 83 applicants with overlapping controlling interests may form a consortium or a joint venture and submit a (continued....)

current rules must email Commission staff on or before March 30, 2018, following the instructions in Attachment B of this Public Notice.<sup>34</sup>

## **B. Rules and Disclaimers**

### **1. Relevant Authority**

10. Applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules,<sup>35</sup> including Commission decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees.<sup>36</sup> Broadcasters should also familiarize themselves with the Commission's commercial FM translator broadcast service and competitive bidding requirements contained in Parts 73 and 74 of the Commission's rules,<sup>37</sup> as well as Commission orders concerning competitive bidding.<sup>38</sup> Applicants must also be thoroughly familiar with the procedures, terms and conditions contained in this Public Notice and any future public notices that may be released in this proceeding.

11. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of each applicant to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most auctions-related Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at [wireless.fcc.gov/auctions](http://wireless.fcc.gov/auctions).<sup>39</sup>

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single short-form application. If the consortium is a winning bidder, a consortium member that was named in the auction application could file the long-form application for the construction permit. Presumably any such long-form applicant would be the same entity currently listed as an Auction 83 applicant on Attachment A to this Public Notice.

<sup>34</sup> See Attachment B, at B-2, which provides instructions for a request to consolidate multiple Auction 83 Form 175 applications during the remedial filing window in order to comply with 47 CFR § 1.2105(a)(3).

<sup>35</sup> 47 CFR Part 1, Subpart Q.

<sup>36</sup> See, e.g., *Updating Part 1 Competitive Bidding Rules*, Report and Order, Order on Reconsideration of the First Report and Order, Third Order on Reconsideration of the Second Report and Order, Third Report and Order, 30 FCC Rcd 7493 (2015) (*Updating Part 1 Report and Order*) (modified by Erratum, 30 FCC Rcd 8518 (2015)); *Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures*, Order, Memorandum Opinion and Order and Notice of Proposed Rule Making, 12 FCC Rcd 5686 (1997) (*Auction Procedures Consolidation Order*); Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making, 15 FCC Rcd 15293 (2000) (*Part 1 Fifth Report and Order*) (modified by Erratum, 15 FCC Rcd 21520 (2000)); Seventh Report and Order, 16 FCC Rcd 17546 (2001) (*Part 1 Seventh Report and Order*); Eighth Report and Order, 17 FCC Rcd 2962 (2002); Second Order on Reconsideration of the Third Report and Order and Order on Reconsideration of the Fifth Report and Order, 18 FCC Rcd 10180 (2003); Second Order on Reconsideration of the Fifth Report and Order, 20 FCC Rcd 1942 (2005).

<sup>37</sup> 47 CFR §§ 73.1001 – 73.5009, 74.1201 – 74.1290.

<sup>38</sup> See, e.g., *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, 13 FCC Rcd 15920 (1998) (*Broadcast First Report and Order*), *on recon.*, Memorandum Opinion and Order, 14 FCC Rcd 8724 (*Broadcast First Reconsideration Order*), *on further recon.*, Memorandum Opinion and Order, 14 FCC Rcd 12541 (1999) (*Broadcast Second Reconsideration Order*); *Reexamination of the Comparative Standard for Noncommercial Educational Applicants*, Second Report and Order, 18 FCC Rcd 6691 (2003) (*NCE Second Report and Order*); Memorandum Opinion and Third Order on Reconsideration, 23 FCC Rcd 17423 (2008) (*NCE Third Reconsideration Order*).

<sup>39</sup> Documents are also available at the Commission's headquarters, located at 445 12th Street, SW, Washington, DC 20554, between 8:00 a.m. and 4:30 p.m. Eastern Time (ET) Monday through Thursday or 8:00 a.m. to 11:30 a.m. ET Fridays.



## 2. Prohibited Communications and Compliance with Antitrust Laws

12. The rules prohibiting certain communications set forth in sections 1.2105(c) and 73.5002(d) and (e) of the rules apply to each applicant that filed a short-form application (FCC Form 175) in Auction 83.<sup>40</sup> Section 1.2105(c)(1) of the Commission's rules 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 . . . 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>41</sup>

### a. Entities Subject to Section 1.2105

13. An "applicant" for purposes of this rule includes the officers and directors of the applicant, 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>42</sup> A party that submits an application becomes an "applicant" under the rule at the application deadline and that status does not change based on subsequent developments.<sup>43</sup>

### b. Scope of Prohibition on Communications; Prohibition on Joint Bidding Agreements

14. The Commission updated and revised section 1.2105(c)'s prohibition on communications by auction applicants in recent years.<sup>44</sup> Significantly, the Commission in 2015 amended section 1.2105(c) to extend the prohibition on communications to cover all applicants for an auction regardless of whether the applicants seek permits in the same geographic area, or market.<sup>45</sup> In connection with those 2015 amendments to the competitive bidding rules, the Commission now prohibits "joint bidding arrangements," including arrangements relating to the licenses being auctioned that address or communicate, directly or indirectly, bidding at the auction, bidding strategies, including arrangements regarding price or the specific licenses on which to bid, and any such arrangements relating to the post-auction market structure.<sup>46</sup> The revised rule provides limited exceptions for communications within the scope of any arrangement consistent with the exclusions from our rule prohibiting joint bidding, provided such arrangement is disclosed on the applicant's auction application.<sup>47</sup> An applicant may continue to

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<sup>40</sup> 47 CFR §§ 1.2105(c), 73.5002(d), (e).

<sup>41</sup> 47 CFR § 1.2105(c)(1). Specifically, this prohibition became effective for Auction 83 at the initial short-form application filing deadline on March 17, 2003.

<sup>42</sup> 47 CFR § 1.2105(c)(5)(i).

<sup>43</sup> See *Star Wireless, LLC v. FCC*, 522 F.3d 469 (D.C. Cir. 2008). Thus, an auction applicant that does not make and submit updates to its FCC Form 175 auction application during the upcoming remedial filing window, 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 applicable down payment deadline.

<sup>44</sup> See, e.g., *Part 1 Procedural Amendments Order*, 25 FCC Rcd at 521; (2010) (*Part 1 Procedural Amendments Order*); *Updating Part 1 Report and Order*, 30 FCC Rcd 7493.

<sup>45</sup> See *Updating Part 1 Report and Order*, 30 FCC Rcd at 7577, para. 199; see also 47 CFR § 1.2105(a)(2)(ix), (c)(1).

<sup>46</sup> 47 CFR § 1.2105(a)(2)(ix). Joint bidding arrangements include arrangements relating to the licenses being auctioned that address or communicate, directly or indirectly, bids or bidding strategies, including arrangements regarding price or the specific construction permits or licenses on which to bid, as well as any such arrangements relating to the post-auction market structure. *Updating Part 1 Report and Order*, 30 FCC Rcd at 7575-76, para. 195.

<sup>47</sup> *Id.*, 30 FCC Rcd at 7576-7, paras. 197-99.

communicate pursuant to any pre-existing agreements, arrangements, or understandings that are solely operational or that provide for a transfer or assignment of licenses, provided that such agreements, arrangements or understandings do not involve the communication or coordination of bids (including amounts), bidding strategies, or the particular licenses on which to bid and provided that such agreements, arrangements or understandings are disclosed on its application.<sup>48</sup>

15. In the *Auction 83 Comment Public Notice*, the Bureaus sought comment on whether waiver of certain provisions of section 1.2105 might be appropriate or necessary in light of the passage of time since the 2003 filing of the original Auction 83 Forms 175, the rule revisions in 2015, and the business changes that applicants may have undergone.<sup>49</sup> The Bureaus noted that some Auction 83 applicants and their pending applications might not be in compliance with the current section 1.2105 provisions regarding joint bidding agreements and auction-related communications. We received no comment on this issue in response to the *Auction 83 Comment Public Notice*. We further note that no party has filed notice of any potential violation of the provisions of Section 1.2105(c) with respect to prohibited bidding agreements or communications. Consequently, we find no cause to waive the relevant rules.

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

16. By electronically submitting its Form 175 auction application, each applicant in Auction 83 certified its compliance with sections 1.2105(c) and 73.5002(d) of the rules.<sup>50</sup> However, the mere filing of a certifying statement as part of an application will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted.<sup>51</sup> Any applicant found to have violated these communication prohibitions may be subject to sanctions.<sup>52</sup>

**d. Reporting Requirements**

17. Section 1.2105(c)(4) requires that any applicant that makes or receives a communication that appears to violate section 1.2105(c) must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs.<sup>53</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>54</sup>

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<sup>48</sup> *Id.*

<sup>49</sup> *Auction 83 Comment Public Notice*, 33 FCC Rcd at 29-30, para. 11. We address provisions of section 1.2105 regarding applications by more than one commonly controlled entity in para. 9, above.

<sup>50</sup> 47 CFR § 1.2105(a)(2)(ix). The Bureaus suspended for Auction 83 application of the section 1.2105(c) and 73.5002(d) prohibitions during certain periods for the limited purpose of allowing settlement discussions. *See, e.g., Auction 83 First Settlement Public Notice*, 28 FCC Rcd at 9716; *Auction 83 Second Settlement Public Notice*, 29 FCC Rcd at 4868. Discussions of information covered by the rules outside of those windows would violate the rules.

<sup>51</sup> *See Application of Nevada Wireless*, Memorandum Opinion and Order, 13 FCC Rcd 11973, 11978 para. 13 (WTB 1998) (*Nevada Wireless Order*). *See also Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Memorandum Opinion and Order, 9 FCC Rcd 7684, 7689 para. 12 (1994) (*Competitive Bidding Memorandum Opinion and Order*).

<sup>52</sup> *See* 47 CFR §§ 1.2105(c), 1.2107(d), 1.2109(d).

<sup>53</sup> 47 CFR § 1.2105(c)(4); *see also Part 1 Seventh Report and Order*, 16 FCC Rcd at 17553-55 paras. 13-17.

<sup>54</sup> *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) (*Reporting Requirement Declaratory Ruling*); *see Part 1 Procedural Amendments Order*, 25 FCC Rcd at 523, para. 8; *see also* 47 CFR § 1.65; *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17550-51 para. 9.

**e. Procedures for Reporting Prohibited Communications**

18. Section 1.2105(c) requires parties to file only a single report concerning a prohibited communication and to file that report with Commission personnel expressly charged with administering the Commission's auctions.<sup>55</sup> This rule is designed to minimize the risk of inadvertent dissemination of information in such reports. Any reports required by section 1.2105(c) must be filed consistent with the instructions set forth in this Public Notice.<sup>56</sup> For Auction 83, such reports must be filed with the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available. Any such report should be submitted by e-mail to Margaret W. Wiener at the following e-mail address: [auction83@fcc.gov](mailto:auction83@fcc.gov). If you choose instead to submit a report in hard copy, any such report must be delivered only to: Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Room 6C217, Washington, DC 20554.

19. A 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 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. A party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by following the procedures specified in section 0.459 of the Commission's rules.<sup>57</sup> Such parties also are encouraged to coordinate with the Auctions and Spectrum Access Division staff about the procedures for submitting such reports.<sup>58</sup> This Public Notice provides additional guidance on procedures for submitting application-related information below.<sup>59</sup>

**f. Winning Bidders Must Disclose Terms of Agreements**

20. Each applicant that is a winning bidder will be required to disclose in its long-form application the specific terms, conditions, and parties involved in any agreement it has entered into. This applies to any bidding consortia, joint venture, partnership, or agreement, understanding, or other arrangement entered into relating to the competitive bidding process, including any agreement relating to the post-auction market structure.<sup>60</sup> Failure to comply with the Commission's rules can result in enforcement action.

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<sup>55</sup> *Part 1 Procedural Amendments Order*, 25 FCC Rcd at 522 para. 4. This process differs from filing procedures used in connection with other Commission rules and processes which may call for submission of filings to the Commission's Office of the Secretary or ECFS. Filing through the Office of Secretary or ECFS could allow the report to become publicly available and might result in the communication of prohibited information to other auction applicants.

<sup>56</sup> *Id.*

<sup>57</sup> See 47 CFR § 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 CFR § 0.459(a).

<sup>58</sup> See Section VII. "Contact Information," below.

<sup>59</sup> See Section II. C. "Maintaining Current Information in Short-Form Applications," below.

<sup>60</sup> 47 CFR § 1.2107(d).

**g. Additional Information Concerning Rule Prohibiting Certain Communications**

21. A summary listing of documents issued by the Commission and the Bureaus addressing the application of section 1.2105(c) is available on the Commission's auction web page at [www.fcc.gov/summary-listing-documents-addressing-application-rule-prohibiting-certain-communications](http://www.fcc.gov/summary-listing-documents-addressing-application-rule-prohibiting-certain-communications).

**h. Antitrust Laws**

22. Regardless of compliance with the Commission's rules, applicants remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace.<sup>61</sup> Compliance with the disclosure requirements of section 1.2105(c) will not insulate a party from enforcement of the antitrust laws.<sup>62</sup> For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submitted a short-form application.<sup>63</sup> Similarly, the Wireless Telecommunications Bureau previously reminded potential applicants and others that "[e]ven where the applicant discloses parties with whom it has reached an agreement on the short-form application, thereby permitting discussions with those parties, the applicant is nevertheless subject to existing antitrust laws."<sup>64</sup>

23. To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation.<sup>65</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>66</sup>

**3. Due Diligence**

24. We remind each potential bidder that it is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the construction permits for commercial FM translators that it is seeking in this auction. **The FCC makes no representations or warranties about the use of this spectrum or these construction permits for particular services. Applicants should be aware that an FCC auction represents an opportunity to**

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<sup>61</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, 14 FCC Rcd 21558, 21560-61 para. 4 & n.17 (1999) quoting *Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689 para. 12 (“[W]e wish to emphasize that all applicants and their owners continue to be subject to existing antitrust laws. Applicants should note that conduct that is permissible under the Commission's Rules may be prohibited by the antitrust laws.”); *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Fourth Memorandum Opinion and Order, 9 FCC Rcd 6858, 6869 n.134 (1994) (*Fourth Memorandum Opinion and Order*) (“[A]pplicants will also be subject to existing antitrust laws.”).

<sup>62</sup> See *Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689 para. 12. See also “Justice Department Sues Three Firms Over FCC Auction Practices,” *Press Release* 98-536 (DOJ Nov. 10, 1998).

<sup>63</sup> See, e.g., *Fourth Memorandum Opinion and Order*, 9 FCC Rcd at 6869 n.134. The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws. For example, actual or potential competitors may not agree to divide territories in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another market for the other. *Id.*

<sup>64</sup> *Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules*, Public Notice, 11 FCC Rcd 9645, 9646 (WTB 1995) (*Anti-Collusion Public Notice*).

<sup>65</sup> See *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Second Report and Order, 9 FCC Rcd 2348, 2388 para. 226 (1994) (*Competitive Bidding Second Report and Order*).

<sup>66</sup> See 47 CFR § 1.2109(d); see also *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 para. 226.

**become an FCC permittee in a broadcast service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success.**

25. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. In particular, the Bureaus strongly encourage each potential bidder to perform technical analyses and/or refresh its previous analyses to assure itself that, should it become a winning bidder for any Auction 83 construction permit, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements. We strongly encourage each applicant to inspect any prospective transmitter sites located in, or near, the service area for which it plans to bid, confirm the availability of such sites, and to familiarize itself with the Commission's rules regarding the National Environmental Policy Act.<sup>67</sup>

26. The Bureaus strongly encourage each applicant to continue its own research throughout Auction 83. Pending and future administrative or judicial proceedings—including applications, applications for modification, rulemaking proceedings, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal objections, and applications for review—may relate to particular applicants or the licenses available in Auction 83 (or the terms and conditions thereof, including all applicable Commission rules and regulations) and might affect an applicant's decision on continued participation in the auction. Each applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on construction permits available in this auction. The due diligence considerations mentioned in this Public Notice do not comprise an exhaustive list of steps that should be undertaken prior to participating in this auction. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon specific facts and circumstances related to its interests.

27. **Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the construction permits available in Auction 83.** Each potential bidder is responsible for undertaking research to ensure that any permits won in this auction will be suitable for its business plans and needs. Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

28. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, it must obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

#### **4. Use of Auction Systems**

29. Qualified bidders will be able to place bids in Auction 83 over the Internet using the FCC auction application system and the auction bidding system. The Commission makes no warranty whatsoever with respect to the FCC auction systems. In no event shall the Commission, or any of its officers, employees, or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning, or use of the FCC auction systems that are accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming, or other advice or service provided in connection with the FCC auction systems.

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<sup>67</sup> 47 CFR Part 1, Subpart I.

### C. Auction Specifics

#### 1. Auction Start Date

30. Bidding in Auction 83 will begin on Thursday, June 21, 2018. Pre-auction dates and deadlines are listed below.

31. The initial schedule for bidding rounds will be announced by public notice at least one week before the auction starts. Moreover, unless otherwise announced, bidding on all construction permits will be conducted on each business day until bidding has stopped on all construction permits.

#### 2. Auction Title

32. Auction 83 – FM Translator

#### 3. Bidding Methodology and Options

33. As discussed in more detail below, the bidding methodology for Auction 83 will be a simultaneous multiple round format.<sup>68</sup> The Commission will conduct this auction over the Internet using the FCC auction bidding system. Qualified bidders are permitted to bid electronically via the Internet or by telephone using the telephonic bidding option. All telephone calls are recorded.

#### 4. Pre-Auction Dates and Deadlines

34. The following dates and deadlines apply:

Auction Tutorial Available (via Internet) .....	April 12, 2018
Short-Form Application (FCC Form 175)	
Remedial Filing Window Opens.....	April 16, 2018; 12:00 noon Eastern Time (ET)
Short-Form Application (FCC Form 175)	
Remedial Filing Window Deadline.....	April 26, 2018; prior to 6:00 p.m. ET
Upfront Payments (via wire transfer).....	May 31, 2018; 6:00 p.m. ET
Mock Auction .....	June 19, 2018
Auction Begins.....	June 21, 2018

#### 5. Requirements for Participation

35. A party whose application is listed on Attachment A of this Public Notice may participate in the bidding in Auction 83 only if the applicant:

- During the remedial filing window, provides sufficient information in the data fields of its electronic FCC Form 175 that it is able to “certify and submit” its auction application. Instructions for submitting an updated application are provided in this Public Notice below.
  - In the event that the application is found to be incomplete after Commission staff review, an applicant will have an opportunity to limited opportunity to address deficiencies in its application during a resubmission window, the dates for which will be announced in a future public notice.
  - **If a listed party fails to “certify and submit” its auction application during the remedial window, that auction application will be designated as Incomplete-Disqualified. If an application is designated as Incomplete-Disqualified, that applicant will have no further opportunity to update its application, and the applicant will not become qualified to participate in the bidding.**

<sup>68</sup> See Section IV.A.1. “Simultaneous Multiple Round Auction,” below.

- Submits a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET on May 31, 2018, following the procedures and instructions set forth in Attachment C to this Public Notice; and
- Complies with all provisions outlined in this Public Notice and applicable Commission rules.

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

### A. Updating Applicant's FCC Form 175 in Auction Application System—Remedial Filing Window Closes April 26, 2018

36. As mentioned above, each Auction 83 applicant that seeks to qualify to participate in bidding, each provide sufficient information in the data fields of its electronic FCC Form 175 that it is able to “certify and submit” its auction application, in compliance with the Commission’s competitive bidding rules and the procedures and deadlines set forth in this Public Notice. Attachment B to this Public Notice contains detailed instructions for updating and verifying short-form applications.

37. Applicants must make necessary updates and certifications, and must verify short-form application information during a remedial filing window. This window will open at noon ET on Monday, April 16, 2018,<sup>69</sup> and will close at 6:00 p.m. ET on Thursday, April 26, 2018.

38. Each Auction 83 applicant is required to review its FCC Form 175 in the auction application system to assure that all relevant information is provided and that the information contained in the application is accurate and complete. Each applicant must provide updates or revisions of previously submitted information, as required by section 1.65 of the rules.<sup>70</sup> The auction application system will permit an applicant to navigate to the “certify and submit” screen in its Form 175 only after providing required disclosures of information in specified data entry fields. An applicant may also be required to upload an attachment to its Form 175 application in some circumstances. Each applicant is advised to begin its application updating process early during the remedial filing window so that it can “certify and submit” its FCC Form 175 prior to the close of the remedial filing window.

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

39. Notwithstanding the relief from section 1.2105(b)’s major change restriction for past transactions as discussed above,<sup>71</sup> at this stage in application process, an Auction 83 applicant is permitted to make only minor changes to its application.<sup>72</sup> Permissible minor changes include, among other things, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons. If revised or updated information constitutes a “major amendment,” as defined by section 1.2105, such changes may result in the dismissal of the application.<sup>73</sup> In this context, major amendments include a change of technical proposals, change control of the applicant, claim eligibility for a higher percentage of bidding credit, or change the identification of the application’s proposed facilities as noncommercial educational after the initial application filing deadline.<sup>74</sup>

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<sup>69</sup> The electronic FCC Form 175 will not be available to Auction 83 applicants until this filing window opens.

<sup>70</sup> 47 CFR § 1.65.

<sup>71</sup> See Section I.A.2. “Construction Permits and Entities Eligible to Participate in Auction 83,” above (discussing limited waiver of section 1.2105(b)(2) for certain Auction 83 applicants).

<sup>72</sup> 47 CFR § 1.2105(b)(2).

<sup>73</sup> *Id.*

<sup>74</sup> None of the FM translator construction permits listed in Attachment A are proposed as noncommercial educational facilities. See 47 U.S.C. §§ 309(j)(2)(C), 397(6)(B).

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

40. Sections 1.65 and 1.2105(b) of the Commission's rules require an applicant to maintain the accuracy and completeness of all information furnished in its pending application and in competitive bidding proceedings to furnish additional or corrected information to the Commission within five days of a significant occurrence,<sup>75</sup> or to amend a short-form application no more than five days after the applicant becomes aware of the need for the amendment.<sup>76</sup> Changes that cause a loss of or reduction in the percentage of bidding credit specified in the application must be reported immediately, and no later than five business days after the change occurs.<sup>77</sup>

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

41. Updates to short-form applications should be made electronically using the FCC auction application system whenever possible. For the change to be submitted and considered by the Commission, be sure to click on the CERTIFY & SUBMIT button.<sup>78</sup>

42. An applicant can use the auction application system outside of the remedial and resubmission filing windows to make administrative and certain other changes to its short-form application. However, after the resubmission filing window has closed, the system will permit applicants to modify information in most of the application's data fields.

43. If changes need to be made outside of these windows, the applicant must submit a letter briefly summarizing the changes and subsequently update its short-form application in the auction application system. Any letter describing changes to an applicant's short-form application must be addressed to Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, and submitted by e-mail to [auction83@fcc.gov](mailto:auction83@fcc.gov). The e-mail summarizing the changes must include a subject or caption referring to Auction 83 and the name of the applicant, for example, "Re: Changes to Auction 83 Short-Form Application of ABC Corp." The Bureaus request that parties format any attachments to e-mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Questions about short-form application amendments should be directed to the Auctions and Spectrum Access Division at (202) 418-0660.

44. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System, which was used for submitting comments regarding procedures for conducting Auction 83.

45. Applicants should note that submission of a short-form application (and any amendments thereto) constitutes a representation by the person certifying the application that he or she is an authorized representative of the applicant with authority to bind the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any

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<sup>75</sup> We remind each applicant of its duty to continuously maintain the accuracy of information submitted in its auction application. See, e.g., *Vermont Telephone Co.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 14130 (EB 2011).

<sup>76</sup> 47 CFR §§ 1.65, 1.2105(b). See also *Part 1 Procedural Amendments Order*, 25 FCC Rcd at 523 para. 8.

<sup>77</sup> See 47 CFR § 73.5007(a). See also *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, First Report and Order and Further Notice of Proposed Rule Making, 25 FCC Rcd 1583, 1611-14 paras. 57-63 (2010). For example, if ownership changes result in the attribution of new interest holders that affect the applicant's qualifications for a new entrant bidding credit, such information must be clearly stated in the bidder's amendment. See *Liberty Productions*, Memorandum Opinion and Order, 16 FCC Rcd 12061, 12077-78 paras. 34-37 (2001). Events occurring after the initial application filing deadline, such as the acquisition of attributable interests in media of mass communications, may also cause diminishment or loss of the bidding credit, and must be reported immediately, and no later than five business days after the change occurs.

<sup>78</sup> After the revised application has been submitted, a confirmation page will be displayed stating the submission time, submission date, and a unique file number. The Bureaus advise applicants to print and retain a copy of this confirmation page.



attachments are true and correct. Applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

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

46. During the remedial filing window, an applicant listed in Attachment A must review and update its electronic FCC Form 175 in the auction application system. There is no fee to access this system. See Attachment B for details on accessing the auction application system. **During the remedial filing window, each Auction 83 applicant listed in Attachment A must, at a minimum, “certify and submit” its Form 175.**

47. Applicants will also be able to view other applicants’ FCC Forms 175 after the Commission has issued a public notice announcing the status of the resubmitted Auction 83 applications. Instructions for electronic review of FCC Forms 175 will be discussed in the public notice concerning the status of the applications.

#### F. Provisions Regarding Former and Current Defaulters

48. Current defaulters or delinquents are not eligible to participate in Auction 83, but former defaulters or delinquents can participate so long as they are otherwise qualified and, as discussed below, make upfront payments that are fifty percent more than would otherwise be necessary.<sup>79</sup> An applicant is considered a “current defaulter” or a “current delinquent” when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, is in default on any payment for any Commission construction permit or license (including a down payment) or is delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for FCC Forms 175 in that auction.<sup>80</sup> An applicant is considered a “former defaulter” or a “former delinquent” when the applicant or any of its controlling interests has defaulted on any Commission construction permit or license or has been delinquent on any non-tax debt owed to any Federal agency, but has since remedied all such defaults and cured all of the outstanding non-tax delinquencies prior to the Form 175 remedial filing window deadline

49. On the short-form application, an applicant must certify under penalty of perjury that it, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by section 1.2110 of the Commission’s rules,<sup>81</sup> are not in default on any payment for a Commission construction permit or license (including down payments) and that it is not delinquent on any non-tax debt owed to any Federal agency.<sup>82</sup> **Accordingly, if an applicant has an outstanding non-tax debt to the Commission or any other Federal agency, including any debt that results in a listing of the applicant on the Commission’s Red Light Display System, as of the closing deadline of the remedial filing window, the applicant will be unable to make the required certification that it is not currently in default; if so, such applicant will not be eligible to participate in the bidding for Auction 83.**

<sup>79</sup> 47 C.F.R. §§ 1.2105(a)(2)(xi), (xii), 1.2105(b)(1), and 1.2106(a); see *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317 para. 42 & n.142 (“If any one of an applicant’s controlling interests or their affiliates...is in default on any Commission licenses or is delinquent on any non-tax debt owed to any Federal agency at the time the applicant files it[s] FCC Form 175, the applicant will not be able to make the certification required by [the rules]...and will not be eligible to participate in Commission auctions.”)

<sup>80</sup> See *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317 para. 42 & n.142; *Wireless Telecommunications Bureau Reminds Prospective Broadband PCS Spectrum Auction Applicants of Default and Delinquency Disclosure Requirements*, Public Notice 19 FCC Rcd 21920 (WTB 2004) (*Auction Default Disclosure Public Notice*). For purposes of making this certification, the term “controlling interest” is defined in 47 CFR § 1.2105(a)(4)(i).

<sup>81</sup> 47 C.F.R. § 1.2110.

<sup>82</sup> 47 C.F.R. § 1.2105(a)(2)(x); see also *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317 para. 42 & n.142. Applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

50. Each applicant must also certify under penalty of perjury whether it, along with any of its controlling interests, has ever been in default on any payment for a Commission construction permit or license (including a down payment) or has ever been delinquent on any non-tax debt owed to any Federal agency, subject to the exclusions described below.<sup>83</sup> If an applicant or any controlling interest is a “former defaulter” or “form delinquent” may participate further in Auction 83 so long as it is otherwise qualified, and that applicant makes an upfront payment that is fifty percent more than would otherwise be required.<sup>84</sup>

51. In 2015, the Commission narrowed the scope of the individuals and entities to be considered a former defaulter or a former delinquent.<sup>85</sup> For purposes of the certification under section 1.2105(a)(2)(xii), the applicant may exclude from consideration any cured default on a Commission construction permit or license or delinquency on a non-tax debt owed to a Federal agency for which any of the following criteria are met: (1) the notice of the final payment deadline or delinquency was received more than seven years before the FCC Form 175 filing deadline; (2) the default or delinquency amounted to less than \$100,000; (3) the default or delinquency was paid within six months after receiving the notice of the final payment deadline or delinquency; or (4) the default or delinquency was the subject of a legal or arbitration proceeding and was cured upon resolution of the proceeding.<sup>86</sup>

52. Applicants are encouraged to review previous guidance provided by the Wireless Telecommunications Bureau on default and delinquency disclosure requirements in the context of the auction short-form application process.<sup>87</sup> For example, it has been determined that, to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for purposes of sections 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline.<sup>88</sup> Therefore, with respect to regulatory or application fees, the provisions of sections 1.2105(a) and 1.2106(a) regarding default and delinquency in connection with competitive bidding are limited to circumstances in which the relevant party has not complied with a final Commission payment deadline.<sup>89</sup> Parties are also encouraged to consult with the Wireless Telecommunications Bureau’s Auctions and Spectrum Access Division staff if they have any questions about default and delinquency disclosure requirements.

53. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the “red light rule,” that implement its obligations under the Debt Collection Improvement Act of 1996, which governs the collection of debts owed to the United States.<sup>90</sup> Under the red light rule, applications

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<sup>83</sup> 47 CFR § 1.2105(a)(2)(xii). For purposes of making this certification, the term “controlling interest” is defined in 47 CFR § 1.2105(a)(4)(i).

<sup>84</sup> 47 CFR §§ 1.2105(a)(2)(xii), 1.2105(b)(1), 1.2106(a).

<sup>85</sup> See *Updating Part 1 Report and Order*, 30 FCC Rcd at 7568, para. 175; see also 47 CFR § 1.2105(a)(2)(xii), (c)(1).

<sup>86</sup> See 47 CFR § 1.2105(a)(2)(xii), (a)(4); see also *Updating Part 1 Report and Order*, 30 FCC Rcd at 7566-68 paras. 173-75.

<sup>87</sup> *Auction Default Disclosure Public Notice*, 19 FCC Rcd at 21920.

<sup>88</sup> Letter to Cheryl A. Tritt, Esq., from Margaret Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, 19 FCC Rcd 22907 (WTB 2004) (clarifying the term “debt” or “non-tax debt” as referenced in 47 CFR §§ 1.2105(a) and 1.2106(a)).

<sup>89</sup> Even where Commission rules expressly permit late payment, subject to payment of an additional late fee, and do not impose a final payment deadline, the Commission may in some cases issue a demand for payment by a date certain. See 47 CFR § 1.1164(a). Failure to comply with the terms of a demand letter in the time period specified may render the subject debt delinquent, notwithstanding rules generally permitting late payment.

<sup>90</sup> *Amendment of Parts 0 and 1 of the Commission's Rules; Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors*, Report and (continued....)

and other requests for benefits filed by parties that have outstanding debts owed to the Commission will not be processed. In the same rulemaking order, the Commission explicitly declared, however, that its competitive bidding rules “are not affected” by the red light rule.<sup>91</sup> As a consequence, the Commission’s adoption of the red light rule does not alter the applicability of any of its competitive bidding rules, including the provisions and certifications of sections 1.2105 and 1.2106, with regard to current and former defaults or delinquencies.

54. The Bureaus remind each applicant, however, that the Commission’s Red Light Display System, which provides information regarding debts currently owed to the Commission, may not be determinative of an auction applicant’s ability to comply with the default and delinquency disclosure requirements of section 1.2105.<sup>92</sup> Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant’s lack of current “red light” status is not necessarily determinative of its eligibility to participate in an auction (or whether it will have an increased upfront payment obligation).<sup>93</sup>

55. Moreover, applicants in Auction 83 should note that any long-form applications filed after the close of bidding will be reviewed for compliance with the Commission’s red light rule,<sup>94</sup> and such review may result in the dismissal of a winning bidder’s long-form application.<sup>95</sup> The Bureaus strongly encourage each applicant to carefully review all records and other available federal agency databases and information sources to determine whether the applicant, or any of its affiliates, or any of its controlling interests, or any of the affiliates of its controlling interests, owes or was ever delinquent in the payment of non-tax debt owed to any federal agency.

### III. PRE-AUCTION PROCEDURES

#### A. Online Tutorial on Auction Process – Available April 12, 2018

56. An educational auction tutorial will be available on the Auction 83 web page by Thursday, April 12, 2018. This online tutorial will provide information about pre-auction procedures, updating previously filed short-form applications, auction conduct, the FCC auction bidding system, auction rules, and broadcast services rules. The tutorial will also provide an avenue to ask FCC staff questions about the auction, auction procedures, filing requirements, and other matters related to this auction.

57. The tutorial will allow viewers to navigate the presentation outline, review written notes, listen to audio recordings of the notes, and search for topics using a text search function. Additional features of this web-based tool include links to auction-specific Commission releases, e-mail links for contacting Commission licensing and auctions staff, a timeline with deadlines for auction preparation, and screen shots of the online application and FCC auction bidding system. The tutorial will be accessible through a web browser with Adobe Flash Player.<sup>96</sup>

(Continued from previous page) \_\_\_\_\_  
Order, 19 FCC Rcd 6540 (2004) (implementing Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996)) (*Debt Collection Report and Order*).

<sup>91</sup> *Id.*, 19 FCC Rcd at 6541 n.11 (specifically noting the current defaulter and former defaulter certifications of 47 CFR §§ 1.2105(a)(2)(x) and (xi) and stating that “[t]hese rules are not affected by the red light rule.”).

<sup>92</sup> *Auction Default Disclosure Public Notice*, 19 FCC Rcd at 21920 (addressing relationship between Commission’s Red Light Display System and short-form application default and delinquency disclosure requirements for auction applicants).

<sup>93</sup> *Id.*, 19 FCC Rcd at 21921-22.

<sup>94</sup> *Debt Collection Report and Order*, 19 FCC Rcd at 6540 para. 1, 6541-42 paras. 3-5. See 47 CFR § 1.1114.

<sup>95</sup> Applicants that have their long-form applications dismissed will be deemed to have defaulted and will be subject to default payments under 47 CFR §§ 1.2104(g) and 1.2109(c).

<sup>96</sup> Most users will already have the Flash Player browser plug-in, which can be downloaded from <http://get.adobe.com/flashplayer/>.

58. The auction tutorial will be accessible from the FCC's Auction 83 web page at <https://www.fcc.gov/auction/83> through an "Auction Tutorial" link. Once posted, this tutorial will remain available and accessible anytime for reference in connection with the procedures outlined in this Public Notice.

**B. Revised Short-Form Applications – Due Prior to 6:00 p.m. ET on April 26, 2018**

59. Each applicant must provide sufficient information in the data fields of its electronic FCC Form 175 that it is able to "certify and submit" its auction application via the FCC's auction application system. If any information in the short-form application or its attachments is inaccurate or otherwise needs to be updated, any such changes must be reported in the Form 175 during the upcoming remedial filing window. Attachment B to this Public Notice contains instructions for updating short-form applications in the remedial window. Updates to the short-form application must be submitted prior to 6:00 p.m. ET on April 26, 2018. No application fee is required. An applicant must also submit a timely upfront payment to be eligible to bid, as discussed below.<sup>97</sup>

60. Each Auction 83 applicant's previously submitted short-form applications may be viewed and updated by the applicant at any time beginning at noon ET on April 16, 2018, until the filing window closes at 6:00 p.m. ET on April 26, 2018. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applications can be updated or amended multiple times until the remedial filing window closes at 6:00 p.m. ET on April 26, 2018.

61. An applicant must click on the CERTIFY & SUBMIT button on the *Certify & Submit* screen to successfully submit its FCC Form 175 and any modifications; otherwise the application or changes to the application will not be received or reviewed by Commission staff. Additional information about accessing, completing, and viewing the FCC Form 175 is included in Attachment B. FCC Auctions Technical Support is available at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (text telephony (TTY)); hours of service are Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET. In order to provide better service to the public, all calls to Technical Support are recorded.

**C. Application Processing and Corrections of Deficiencies**

62. The Commission will process all applications for permits listed in Attachment A that are certified and submitted during the remedial filing window to determine which are complete, incomplete, or incomplete-disqualified. Subsequent to the remedial filing window will issue a public notice identifying the status of each application: complete, incomplete, or incomplete-disqualified. An applicant whose application is incomplete will have a limited opportunity to address deficiencies during a resubmission window, the dates for which will be announced in a future public notice. If a listed Auction 83 applicant does not certify and submit its Form 175 auction application during the remedial filing window, its application will be "incomplete-disqualified," and the applicant will be disqualified from further participation in Auction 83.

63. Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the short-form application, unless the applicant's certifying official or contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on its behalf.<sup>98</sup> Authorizations may be sent by e-mail to [auction83@fcc.gov](mailto:auction83@fcc.gov).

**D. Upfront Payments – Due May 31, 2018**

64. In order to be eligible to bid in this auction, a sufficient upfront payment and a complete and accurate FCC Remittance Advice Form (FCC Form 159) must be submitted prior to **before 6:00 p.m.**

<sup>97</sup> See Section III.D. "Upfront Payments – Due May 31, 2018," below.

<sup>98</sup> In no event, however, will the FCC send auction registration materials to anyone other than the contact person listed on the applicant's FCC Form 175 or respond to a request for replacement registration materials from anyone other than the authorized bidder, contact person, or certifying official listed on the applicant's FCC Form 175. See Section III.E. "Auction Registration," below.

**ET on May 31, 2018, following the procedures outlined below and the instructions in Attachment C to this Public Notice.** After completing its short-form application, an applicant will have access to an electronic version of the FCC Form 159. This Form 159 can be printed and the completed form must be sent by fax to the FCC at (202) 418-2843.

### 1. Making Upfront Payments by Wire Transfer

65. Wire transfer payments must be received before 6:00 p.m. ET on May 31, 2018.<sup>99</sup> No other payment method is acceptable.<sup>100</sup> To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their bankers several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. The following information will be needed:

ABA Routing Number: 021000021  
 Receiving Bank: JP Morgan Chase  
 BENEFICIARY: FCC/Account # 267516869  
 Originating Bank Information (OBI Field): (Skip one space between each information item)  
 "AUCTIONPAY"  
 APPLICANT FCC REGISTRATION NUMBER (FRN): (same as FCC Form 159, block 21)  
 PAYMENT TYPE CODE: (same as FCC Form 159, block 24A: "U083")  
 FCC CODE 1: (same as FCC Form 159, block 28A: "83")  
 PAYER NAME: (same as FCC Form 159, block 2)  
 PAYER FCC REGISTRATION NUMBER (FRN): (If different from applicant FRN): #

NOTE: The BNF Account Number is specific to the upfront payments for this auction. Do not use BNF Account Number from previous auctions.

66. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must fax a completed FCC Form 159 (Revised 2/03) to the FCC (202) 418-2843. On the fax cover sheet, write "Wire Transfer – Auction Payment for Auction 83." In order to meet the upfront payment deadline, an applicant's payment must be credited to the Commission's account for Auction 83 before the deadline.<sup>101</sup>

67. Each applicant is responsible for ensuring timely submission of its upfront payment and for timely filing of an accurate and complete FCC Remittance Advice Form (FCC Form 159). An applicant should coordinate with its financial institution well ahead of the due date regarding its wire transfer and allow sufficient time for the transfer to be initiated and completed prior to the deadline. The Commission repeatedly has cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer.<sup>102</sup> **Each applicant also is responsible for obtaining confirmation from its financial institution that its wire transfer to JP Morgan Chase was successful and from Commission staff that its upfront payment was timely received and that it was deposited into the proper account.** To receive confirmation from Commission staff, contact Gail Glasser of the Office of Managing Director's Revenue & Receivables Operations Group/Auctions at (202) 418-0578, or alternatively, Theresa Meeks at (202) 418-2945.

<sup>99</sup> An applicant must initiate the wire transfer through its bank, authorizing the bank to wire funds from the applicant's account to the Commission's auction payment lockbox bank.

<sup>100</sup> The Commission will not accept checks, credit cards, or automated clearing house (ACH) payments.

<sup>101</sup> Letter to Lee G. Petro, from Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, 25 FCC Rcd 9046 (Auc. Div. 2010).

<sup>102</sup> See, e.g., Letter to David G. O'Neil, Esq. from Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, 23 FCC Rcd 4765 (Auc. Div. 2008); Letter to Patrick Shannon, Esq., Counsel for Lynch 3G Communications Corp., from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 18 FCC Rcd 11552 (WTB 2003).

68. Please note the following information regarding upfront payments:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction 83 go to an Account Number different from the Accounts used in previous FCC auctions.

69. Failure to deliver a sufficient upfront payment as instructed herein by the May 31, 2018, deadline will result in dismissal of the short-form application and disqualification from participation in the auction.

## 2. FCC Form 159

70. An accurate and complete FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be faxed to the FCC at (202) 418-2843 to accompany each upfront payment. Proper completion of this form is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment C. An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payers using the pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate.

## 3. Upfront Payments and Bidding Eligibility

71. The Bureaus have delegated authority and discretion to determine appropriate upfront payments for each construction permit being auctioned, taking into account such factors as the efficiency of the auction process and the potential value of similar construction permits.<sup>103</sup> Upfront payments that are related to the specific construction permits being auctioned protect against frivolous or insincere bidding, and provide the Commission with a source of funds from which to collect payments owed at the close of bidding.<sup>104</sup>

72. Applicants that are former defaulters, as described above, must pay upfront payments 50 percent greater than non-former defaulters.<sup>105</sup> For purposes of this classification as a former defaulter or a former delinquent, defaults and delinquencies of the applicant itself and its controlling interests are included.<sup>106</sup>

73. Applicants must make upfront payments sufficient to obtain bidding eligibility on the construction permits on which they will bid. The Bureaus proposed, in the *Auction 83 Comment Public Notice*, that the amount of the upfront payment would determine a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids in any single round.<sup>107</sup> Under the Bureaus' proposal, in order to bid on a particular construction permit, otherwise qualified bidders that are designated in Attachment A of this Public Notice for that construction permit must have a current eligibility level that meets or exceeds the number of bidding units assigned to that construction permit. **At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits designated for that applicant in Attachment A of this Public Notice, or else the applicant will not be eligible to participate in the**

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<sup>103</sup> See *Auction Procedures Consolidation Order*, 12 FCC Rcd at 5697-98, para 16. See also *Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures*, WT Docket No. 97-82, Third Report and Order and Second Further Notice of Proposed Rule Making, 13 FCC Rcd at 374, 425 para. 86 (1997) (*Part 1 Third Report and Order*); *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2377-79, paras. 169-75.

<sup>104</sup> See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2377-79, paras. 169-76.

<sup>105</sup> *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15316-18 paras. 40-43; see also 47 CFR § 1.2106(a); Section II.F. "Provisions Regarding Former and Current Defaulters," above.

<sup>106</sup> For this purpose, the term "controlling interest" is defined in 47 CFR § 1.2105(a)(4)(i).

<sup>107</sup> *Auction 83 Comment Public Notice*, 33 FCC Rcd at 33-34, paras. 23-24.

**auction.** An applicant does not have to make an upfront payment to cover all construction permits designated for that applicant in Attachment A of this Public Notice, but only enough to cover the maximum number of bidding units that are associated with construction permits on which they wish to place bids and hold provisionally winning bids in any given round.<sup>108</sup> The total upfront payment does not affect the total dollar amount the bidder may bid on any given construction permit.

74. In the *Auction 83 Comment Public Notice*, the Bureaus proposed an upfront payment for each construction permit, taking into account various factors related to the efficiency of the auction process and the potential value of similar spectrum, and sought comment on this proposal. The Bureaus received no comments on the proposal that the upfront payment amount would determine a bidder’s initial bidding eligibility, and this proposal is adopted. The specific upfront payment amounts and bidding units for each construction permit are set forth in Attachment A of this Public Notice.

75. In calculating its upfront payment amount, an applicant should determine the **maximum** number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units.<sup>109</sup> In order to make this calculation, an applicant should add together the bidding units for all construction permits on which it seeks to be active in any given round. **Applicants should check their calculations carefully, as there is no provision for increasing a bidder’s eligibility after the upfront payment deadline.**

<b>Example: Upfront Payments, Bidding Eligibility and Bidding Flexibility</b>			
<b>Construction Permit</b>	<b>Market Name</b>	<b>Bidding Units</b>	<b>Upfront Payment</b>
MM-FM036	New Hampshire / Vermont	750	\$750
MM-FMT022	Florida 2 – Panama City	1,500	\$1,500

If a bidder wishes to bid on both of the above construction permits in a round, each construction permit must be designated for that bidder in Attachment A of this Public Notice, and that bidder must have purchased at least 2,250 bidding units (750 + 1,500) of bidding eligibility. If it only wishes to bid on one, but not both, purchasing 1,500 bidding units would meet the eligibility requirement for either construction permit. The bidder would be able to bid on either construction permit, but not both at the same time. If the bidder purchased only 750 bidding units, the bidder would have enough eligibility to bid for the New Hampshire / Vermont construction permit but not for the Panama City, Florida construction permit.

76. If an applicant is a former defaulter, it must calculate its upfront payment for all of its identified construction permits by multiplying the number of bidding units on which it wishes to be active by 1.5.<sup>110</sup> In order to calculate the number of bidding units to assign to former defaulters, the

<sup>108</sup> Provisionally winning bids are bids that would become final winning bids if the auction were to close after the given round. See Section IV.B.4. “Provisionally Winning Bids,” below.

<sup>109</sup> A qualified bidder’s maximum eligibility will not exceed the sum of the bidding units associated with the total number of construction permits identified for that applicant in Attachment A of this public notice. In some cases, a qualified bidder’s maximum eligibility may be less than the amount of its upfront payment because the qualified bidder has either previously been in default on a Commission construction permit or license or delinquent on non-tax debt owed to a Federal agency (see 47 CFR § 1.2106(a)), or has submitted an upfront payment that exceeds the total amount of bidding units associated with the construction permits designated for that bidder.

<sup>110</sup> 47 CFR § 1.2106(a).

Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.<sup>111</sup>

#### E. Auction Registration

77. At least one week before the beginning of bidding in the auction, the Bureaus will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants with submitted FCC Form 175 applications that are deemed timely filed, accurate, and substantially complete, provided that such applicants have timely submitted an upfront payment that is sufficient to qualify them to bid.

78. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID® tokens that will be required to place bids, the web address and instructions for accessing and logging in to the auction bidding system, an FCC assigned username (User ID) for each authorized bidder, and the Auction Bidder Line phone number.

79. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, if this mailing is not received by noon on Thursday, June 14, 2018, call the Auctions Hotline at (717) 338-2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

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

#### F. Remote Electronic Bidding

81. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Only qualified bidders are permitted to bid. Each applicant should indicate its bidding preference — electronic or telephonic — on its FCC Form 175. In either case, each authorized bidder must have its own SecurID® token, which the Commission will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. **For security purposes, the SecurID® tokens, bidding system web address, FCC assigned username, and the telephonic bidding telephone number are only mailed to the contact person at the contact address listed on the FCC Form 175.** Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 83.

82. Please note that the SecurID® tokens can be recycled, and the Bureaus encourage bidders to return the tokens to the FCC. Pre-addressed envelopes will be provided to return the tokens once bidding has closed.

#### G. Mock Auction – June 19, 2018

83. All qualified bidders will be eligible to participate in a mock auction on Tuesday, June 19, 2018. The mock auction will enable bidders to become familiar with the FCC auction bidding system

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<sup>111</sup> If a former defaulter fails to submit a sufficient upfront payment to establish eligibility to bid on at least one of the construction permits designated for that applicant in Attachment A of this Public Notice, the applicant will not be eligible to participate in the auction. *Broadcast First Report and Order*, 13 FCC Rcd at 15979-80 para. 153. This applicant will retain its status as an applicant in Auction 83 and will remain subject to 47 CFR §§ 1.2105(c) and 73.5002(d). See *Star Wireless, LLC*, Forfeiture Order, 19 FCC Rcd 18626, 18628 para. 4 & n.19 (EB 2004), *order granted in part sub nom, Star Wireless, LLC and Northeast Communications of Wisconsin, Inc.*, Order on Review, 22 FCC Rcd 8943 (2007), *petition for review denied, Star Wireless, LLC v. FCC*, 522 F.3d 469 (D.C. Cir. 2008).



prior to the auction. The Bureaus strongly recommend that all bidders participate in the mock auction. Details will be announced by public notice.

#### **IV. AUCTION**

84. The first round of bidding for Auction 83 will begin on Thursday, June 21, 2018. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released at least one week before the start of the auction.

##### **A. Auction Structure**

###### **1. Simultaneous Multiple Round Auction**

85. In the *Auction 83 Comment Public Notice*, the Bureaus proposed to auction all construction permits listed in Attachment A of this Public Notice in a single auction using the Commission's standard simultaneous multiple-round auction format.<sup>112</sup> This type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which qualified bidders may place bids on individual construction permits. The Bureaus received no comment on this proposal, and this proposal is adopted. Unless otherwise announced, bids will be accepted on all construction permits in each round of the auction until bidding stops on every construction permit.

###### **2. Eligibility and Activity Rules**

86. As discussed above, the Bureaus will use upfront payments to determine initial (maximum) bidding eligibility (as measured in bidding units) for Auction 83.<sup>113</sup> The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. As noted earlier, each construction permit is assigned a specific number of bidding units as listed in Attachment A. Bidding units assigned to each construction permit do not change as prices rise during the auction. Upfront payments are not attributed to specific construction permits. Rather, a bidder may place bids on any of the construction permits for which it is designated an applicant in Attachment A of this Public Notice as long as the total number of bidding units associated with those construction permits does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount and therefore its initial bidding eligibility, an applicant must determine the maximum number of bidding units on which it may wish to bid or hold provisionally winning bids in any single round, and submit an upfront payment amount covering that total number of bidding units. At a minimum, an applicant's upfront payment must cover the bidding units for at least one of the construction permits for which it is designated an applicant in Attachment A of this Public Notice. The total upfront payment does not affect the total dollar amount a bidder may bid on any given construction permit. The Bureaus received no comments on the bidding eligibility proposals, and these proposals are adopted.

87. In order to ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction.

88. A bidder's activity level in a round is the sum of the bidding units associated with construction permits covered by the bidder's new bids in the current round and provisionally winning bids from the previous round.<sup>114</sup>

89. The Bureaus received no comments on the eligibility and activity rules proposal. Therefore, in order to ensure that the auction closes within a reasonable period of time, the Bureaus adopt

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<sup>112</sup> *Auction 83 Comment Public Notice*, 33 FCC Rcd at 24, paras. 1-3.

<sup>113</sup> See Section III.D.3. "Upfront Payments and Bidding Eligibility," above.

<sup>114</sup> Provisionally winning bids are bids that would become final winning bids if the auction were to close after the given round. See Section IV.B.4. "Provisionally Winning Bids," below.

the proposal with the following activity requirement: a bidder is required to be active on 100 percent of its current eligibility during each round of the auction. That is, a bidder must either place a bid or be a provisionally winning bidder during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.<sup>115</sup>

### 3. Activity Rule Waivers

90. In the *Auction 83 Comment Public Notice*, the Bureaus proposed that each bidder in the auction be provided with three activity rule waivers.<sup>116</sup> The Bureaus received no comments on this issue.

91. Therefore, the Bureaus adopt this proposal to provide bidders with three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's eligibility despite its activity in the current round being below the required minimum activity level. An activity rule waiver applies to an entire round of bidding, not to a particular construction permit. Activity rule waivers can be either proactive or automatic. Activity rule waivers are principally a mechanism for a bidder to avoid the loss of bidding eligibility in the event that exigent circumstances prevent it from bidding in a particular round.

92. The FCC auction bidding system will assume that a bidder that does not meet the activity requirement would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required unless (1) the bidder has no activity rule waivers remaining or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the activity requirement. If a bidder has no waivers remaining and does not satisfy the required activity level, the bidder's current eligibility will be permanently reduced, possibly curtailing or eliminating the ability to place additional bids in the auction.

93. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the *reduce eligibility* function in the FCC auction bidding system. In this case, the bidder's eligibility would be permanently reduced to bring it into compliance with the activity rule described above. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder cannot regain its lost bidding eligibility.

94. Finally, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively were to apply an activity rule waiver (using the *proactive waiver* function in the FCC auction bidding system) during a bidding round in which no bids are placed, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC auction bidding system in a round in which there are no new bids or a proactive waiver will not keep the auction open.

### 4. Auction Stopping Rule

95. For Auction 83, the Bureaus proposed to employ a simultaneous stopping rule approach, which means all construction permits remain available for bidding until bidding stops on every construction permit.<sup>117</sup> Specifically, bidding will close on all construction permits after the first round in which no bidder submits any new bid or applies a proactive waiver.<sup>118</sup>

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<sup>115</sup> See Section IV.A.3. "Activity Rule Waivers," below.

<sup>116</sup> *Auction 83 Comment Public Notice*, 33 FCC Rcd at 35, para. 30.

<sup>117</sup> *Id.*, at 32, para.19.

<sup>118</sup> Provisionally winning bids are bids that would become final winning bids if the auction were to close after the given round. See Section IV.B.4 "Provisionally Winning Bids," below. Proactive waivers are described in Section IV.A.3. "Activity Rule Waivers," above.

96. We also sought comment on alternative versions of the simultaneous stopping rule for Auction 83:

Option 1. The auction would close for all construction permits after the first round in which no bidder applies a waiver or places any new bid on a construction permit for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule.

Option 2. The auction would close for all construction permits after the first round in which no bidder applies a proactive waiver or places any new bid on a construction permit that already has a provisionally winning bid. Thus, absent any other bidding activity, a bidder placing a new bid on an FCC-held construction permit (a construction permit that does not have a provisionally winning bid) would not keep the auction open under this modified stopping rule.

Option 3. The auction would close using a modified version of the simultaneous stopping rule that combines Option 1 and Option 2 above.

Option 4. The auction would close after a specified number of additional rounds (special stopping rule) to be announced by the Bureaus. If the Bureaus invoke this special stopping rule, they will accept bids in the specified final round(s), after which the auction will close.

Option 5. The auction would remain open even if no bidder places any new bids or applies a waiver. In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

97. The Bureaus proposed to exercise these options only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely.<sup>119</sup> Before exercising these options, the Bureaus are likely to attempt to change the pace of the auction. For example, the Bureaus may adjust the pace of bidding by changing the number of bidding rounds per day and/or the minimum acceptable bids.<sup>120</sup> The Bureaus propose to retain the discretion to exercise any of these options with or without prior announcement during the auction.<sup>121</sup> The Bureaus received no comment on these proposals and adopt them for Auction 83.

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

98. In the *Auction 83 Comment Public Notice*, the Bureaus proposed that, by public notice and/or by announcement through the FCC auction bidding system, they may delay, suspend, or cancel bidding in the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding.<sup>122</sup> We received no comment on this issue.

99. Because this approach has proven effective in resolving exigent circumstances in previous auctions, the Bureaus adopt these proposals regarding auction delay, suspension, or cancellation. By public notice and/or by announcement through the FCC auction bidding system, we may delay, suspend, or cancel bidding in the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other

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<sup>119</sup> *Auction 83 Comment Public Notice*, 33 FCC Rcd at 32-33, paras. 20-21.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> See *Auction Procedures Consolidation Order*, 12 FCC Rcd at 5697-98, para. 16. See also *Part 1 Third Report and Order*, 13 FCC Rcd at 425 para. 86; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2377-79, paras. 169-76.

reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. The Bureaus emphasize that we will exercise this authority solely at our discretion, and not as a substitute for situations in which bidders may wish to apply their activity rule waivers.

## **B. Bidding Procedures**

### **1. Round Structure**

100. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released at least one week before the start of bidding in the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted each day.

101. In the *Auction 83 Comment Public Notice*, the Bureaus proposed to retain the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureaus received no comment on these proposals, and adopt them for Auction 83. The Bureaus may change the amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors.

### **2. Reserve Price and Minimum Opening Bids**

102. Section 309(j) of the Act calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when applications for FCC licenses or construction permits are subject to auction (i.e., because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest.<sup>123</sup> Consistent with this mandate, the Commission directed the Bureaus to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.<sup>124</sup> Among other factors, we must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on the spectrum being auctioned.<sup>125</sup> The Commission concluded that the Bureaus should have the discretion to employ either or both of these mechanisms for future auctions.<sup>126</sup>

103. In the *Auction 83 Comment Public Notice*, the Bureaus did not propose to establish reserve prices for the construction permits listed in Attachment A.<sup>127</sup> This is consistent with policy applied in earlier broadcast spectrum auctions. The Bureaus did not receive comment on this proposal, and adopt it.

104. Consistent with a statutory mandate and Commission delegation of authority,<sup>128</sup> the Bureaus in the *Auction 83 Comment Public Notice*, however, sought comment on specifically proposed minimum opening amounts for each construction permit listed in Attachment A to this Public Notice,

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<sup>123</sup> 47 U.S.C. § 309(j)(4)(F).

<sup>124</sup> *Part 1 Third Report and Order*, 13 FCC Rcd at 455-56 para. 141.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Auction 83 Comment Public Notice*, 33 FCC Rcd at 35, para. 33. Normally, a reserve price is an absolute minimum price below which a construction permit or license will not be sold in a specific auction. A minimum opening bid, in contrast, is the minimum bid price set at the beginning of the auction below which no bids are accepted.

<sup>128</sup> 47 U.S.C. § 309(j)(4)(F); see *Part 1 Third Report and Order*, 13 FCC Rcd at 455-56 para. 141.

reasoning that a minimum opening bid, which has been used in other auctions, is an effective tool for accelerating the competitive bidding process.<sup>129</sup> Specifically, a minimum opening bid was proposed for each construction permit by taking into account various factors relating to the efficiency of the auction and the potential value of the spectrum, including the type of service and class of facility offered, market size, population covered by the proposed broadcast facility, industry cash flow data, and recent broadcast transactions.

105. The Bureaus received no comments on the proposed minimum opening bids, and therefore the Bureaus adopt the minimum opening bid amounts proposed in the *Auction 83 Comment Public Notice*. The specific minimum opening bid amounts for each of the construction permits are again specified in Attachment A to this public notice.

### 3. Bid Amounts

106. In the *Auction 83 Comment Public Notice*, the Bureaus proposed that in each round, an eligible bidder will be able to place a bid on a given construction permit in any of up to nine different amounts.<sup>130</sup> Under the proposal, the FCC auction bidding system interface will list the nine acceptable bid amounts for each construction permit. The Bureaus received no comments on this proposal; therefore, it is adopted.

107. In the *Auction 83 Comment Public Notice*, in calculating the first of the acceptable bid amounts, the Bureaus proposed to use a *minimum acceptable bid increment percentage* of 10 percent. This means that the minimum acceptable bid amount for a construction permit will be approximately 10 percent greater than the provisionally winning bid amount for the construction permit. To calculate the eight additional acceptable bid amounts, the Bureaus proposed in the *Auction 83 Comment Public Notice*, to use an *additional bid increment percentage* of 5 percent. We did not receive any comments on these proposals to use 10 and 5 percent respectively in our calculation of nine acceptable bid amounts for each construction permit. Our experience in previous broadcast auctions assures us that a minimum acceptable bid increment percentage of 10 percent and an additional bid increment percentage of 5 percent are sufficient to ensure active bidding. Therefore, we will begin the auction with a minimum acceptable bid increment percentage of 10 percent and an additional bid increment percentage of 5 percent.

108. In Auction 83, the minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid for the construction permit. After there is a provisionally winning bid for a construction permit, the minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount by one plus the minimum acceptable bid percentage—i.e., provisionally winning bid amount \* 1.10, rounded.<sup>131</sup>

109. In Auction 83, the FCC auction bidding system will calculate the eight additional bid amounts by multiplying the minimum acceptable bid amount by the additional bid increment percentage of 5 percent, and that result (rounded<sup>132</sup>) is the additional increment amount. The first additional acceptable bid amount equals the minimum acceptable bid amount plus the additional increment amount. The second additional acceptable bid amount equals the minimum acceptable bid amount plus two times the additional increment amount; the third additional acceptable bid amount is the minimum acceptable bid amount plus three times the additional increment amount, etc. Because the additional bid increment

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<sup>129</sup> *Auction 83 Comment Public Notice*, 33 FCC Rcd at 35-36, paras. 33-34.

<sup>130</sup> See 47 U.S.C. § 309(j)(4)(F); 47 CFR § 1.2104(d) (minimum bid increments, minimum opening bids and maximum bid increments). A bidder must have sufficient eligibility to place a bid on the particular construction permit. See Section III.D.3. “Upfront Payments and Bidding Eligibility,” above.

<sup>131</sup> Under the Commission’s standard rounding procedure for auctions, results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1000 are rounded to the nearest \$10.

<sup>132</sup> See note 131 (concerning rounding), above.

percentage is 5 percent, the calculation of the additional increment amount is (minimum acceptable bid amount) \* (0.05), rounded. The first additional acceptable bid amount equals (minimum acceptable bid amount) + (additional increment amount); the second additional acceptable bid amount equals (minimum acceptable bid amount) + (2\*(additional increment amount)); the third additional acceptable bid amount equals (minimum acceptable bid amount) + (3\*(additional increment amount)); etc.

110. The Bureaus proposed to retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the additional bid increment percentage, and the number of acceptable bid amounts if the Bureaus determine that circumstances so dictate, consistent with past practice.<sup>133</sup> Further, the Bureaus proposed to retain the discretion to do so on a construction permit-by-construction permit basis. The Bureaus also proposed to retain the discretion to limit (a) the amount by which a minimum acceptable bid for a construction permit may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, the Bureaus could set a \$1,000 limit on increases in minimum acceptable bid amounts over provisionally winning bids. Thus, if calculating a minimum acceptable bid using the minimum acceptable bid percentage results in a minimum acceptable bid amount that is \$1,200 higher than the provisionally winning bid on a construction permit, the minimum acceptable bid amount would instead be capped at \$1,000 above the provisionally winning bid.

111. The Bureaus did not receive any comments on their proposals to retain the discretion to change bid amounts as described above if they determine that circumstances so dictate. The Bureaus adopt these proposals. If we exercise this discretion, we will alert bidders by announcement in the FCC auction bidding system during the auction.

#### 4. Provisionally Winning Bids

112. Consistent with practice in past auctions,<sup>134</sup> the FCC auction bidding system at the end of each bidding round will determine a *provisionally winning bid* for each construction permit based on the highest bid amount received for that permit. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids.

113. In the *Auction 83 Comment Public Notice*, the Bureaus proposed to use a pseudo-random number generator to select a single provisionally winning bid in the event of identical high bid amounts being submitted on a construction permit in a given round (i.e., tied bids).<sup>135</sup> No comments were received on this proposal. Hence, the Bureaus adopt this tied bids proposal.

114. Accordingly, the FCC auction bidding system will assign a pseudo-random number to each bid upon submission. The tied bid with the highest random number wins the tiebreaker, and becomes the provisionally winning bid. The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to close with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid. If the construction permit receives any bids in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the construction permit.

115. A provisionally winning bid will be retained until there is a higher bid on the construction

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<sup>133</sup> See e.g., *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*, Public Notice, 30 FCC Rcd 3544, 3588 paras. 147-48 (WTB/MB 2015) (*Auction 98 Procedures Public Notice*); see also 47 CFR § 1.2104(d) (“The Commission may, by announcement before or during an auction, require minimum bid increments in dollar or percentage terms.”)

<sup>134</sup> See, e.g., *Auction 98 Comment Public Notice*, 30 FCC Rcd at 1764-65 para.37.

<sup>135</sup> *Auction 83 Comment Public Notice*, 33 FCC Rcd at 37, para. 42.

permit at the close of a subsequent round. As a reminder, provisionally winning bids count toward activity for purposes of the activity rule.<sup>136</sup>

## 5. Bidding

116. All bidding will take place remotely either through the FCC auction bidding system or by telephonic bidding. There will be no on-site bidding during Auction 83. Please note that telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of ten minutes.

117. An Auction 83 bidder's ability to bid on specific construction permits is determined by two factors: (1) the construction permits designated for that applicant in Attachment A of this public notice and (2) the bidder's eligibility. The bid submission screens will allow bidders to submit bids on only those construction permits designated for that applicant in Attachment A of this public notice.

118. In order to access the bidding function of the FCC auction bidding system, bidders must be logged in during the bidding round using the passcode generated by the SecurID<sup>®</sup> token and a personal identification number ("PIN") created by the bidder. Bidders are strongly encouraged to print a *round summary* for each round after they have completed all of their activity for that round.

119. In each round, eligible bidders will be able to place bids on a given construction permit in any of up to nine pre-defined bid amounts.<sup>137</sup> For each construction permit, the FCC auction bidding system will list the acceptable bid amounts in a drop-down box.<sup>138</sup> Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC auction bidding system also includes an *upload* function that allows text files containing bid information to be uploaded.

120. Until a bid has been placed on a construction permit, the minimum acceptable bid amount for that permit will be equal to its minimum opening bid amount. Once there are bids on a permit, minimum acceptable bids for the following round will be determined as described in Section IV.B.3, above.

121. During a round, an eligible bidder may submit bids for as many construction permits as it wishes (providing that it is eligible to bid on the specific permits), remove bids placed in the current bidding round, or permanently reduce eligibility. If multiple bids are submitted for the same construction permit in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidding units associated with construction permits for which the bidder has removed bids do not count towards current activity.

## 6. Bid Removal and Bid Withdrawal

122. In the *Auction 83 Comment Public Notice*, the Bureaus explained bid removal procedures in the FCC auction bidding system.<sup>139</sup> Each qualified bidder has the option of removing any bids placed in a round provided that such bids are removed before the close of that bidding round. By removing a bid within a round, a bidder effectively "unsubmits" the bid. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity because a removed bid no longer counts toward bidding activity for the round. Once a round closes, a bidder may no longer remove a bid.

123. In the *Auction 83 Comment Public Notice*, the Bureaus proposed to prohibit bidders from

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<sup>136</sup> See Section IV.A.2. "Eligibility and Activity Rules," above.

<sup>137</sup> A bidder must have sufficient eligibility to place a bid on the particular construction permit. See Section III.D.3. "Upfront Payments and Bidding Eligibility," above.

<sup>138</sup> See Section IV.B.3. "Bid Amounts," above.

<sup>139</sup> *Auction 83 Comment Public Notice*, 33 FCC Rcd at 38, para. 44.

withdrawing any bid after close of the round in which that bid was placed.<sup>140</sup> This proposal was made in recognition of the site-specific nature and wide geographic dispersion of the permits available in this auction, as well as the experience of the Bureaus with past auctions of broadcast construction permits. The Bureaus received no comments on this issue of bid withdrawal. Accordingly, the Bureaus will prohibit bid withdrawals in Auction 83. Bidders are cautioned to select bid amounts carefully because no bid withdrawals will be allowed, even if a bid was mistakenly or erroneously made.

#### **7. Round Results**

124. Reports reflecting bidders' identities for Auction 83 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

125. Bids placed during a round will not be made public until the conclusion of that round. After a round closes, the Bureaus will compile reports of all bids placed, current provisionally winning bids, new minimum acceptable bid amounts for the following round, whether the construction permit is FCC-held, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access.

#### **8. Auction Announcements**

126. The Commission will use auction announcements to report necessary information such as schedule changes. All auction announcements will be available by clicking a link in the FCC auction bidding system.

### **V. POST-AUCTION PROCEDURES**

127. Shortly after bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, final payments, and the long-form applications (FCC Forms 349).

#### **A. Down Payments**

128. Within ten business days after release of the auction closing public notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 83 to twenty percent of the net amount of its winning bids (gross bids less any applicable new entrant bidding credits).<sup>141</sup>

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

129. Each winning bidder will be required to submit the balance of the net amount for each of its winning bids within ten business days after the applicable deadline for submitting down payments.<sup>142</sup>

#### **C. Long-Form Application (FCC Form 349)**

130. The Commission's rules currently provide that within thirty days following the close of bidding and notification to the winning bidders, unless a longer period is specified by public notice,<sup>143</sup> winning bidders must electronically submit a properly completed long-form application (FCC Form 349, Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station) and

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<sup>140</sup> *Id.*, at 38, paras. 45-47.

<sup>141</sup> 47 CFR § 1.2107(b).

<sup>142</sup> 47 CFR § 1.2109(a); see *Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures*, Report and Order, 21 FCC Rcd 891, 907-09 paras. 43-46 (2006).

<sup>143</sup> 47 CFR § 73.5005(a).



required exhibits for each construction permit won through Auction 83.<sup>144</sup> Winning bidders claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit.<sup>145</sup> Further instructions on these and other filing requirements will be provided to winning bidders in the auction closing public notice.

#### D. Default and Disqualification

131. Any winning bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment by the specified deadline, fails to submit a timely long-form application, fails to make a full and timely final payment, or is otherwise disqualified) is liable for default payments as described in section 1.2104(g)(2).<sup>146</sup> This payment consists of a deficiency payment, equal to the difference between the amount of the Auction 83 bidder's winning bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

132. The percentage of the applicable bid to be assessed as an additional payment for defaults in a particular auction is established in advance of the auction. Accordingly, in the *Auction 83 Comment Public Notice*, the Bureaus proposed to set the additional default payment for this auction at 20 percent of the applicable bid. We received no comments on this proposal, and it is therefore adopted.

133. Finally, in the event of a default, the Commission has the discretion to re-auction the construction permit or offer it to the next highest bidder (in descending order) at its final bid amount.<sup>147</sup> In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing authorizations held by the applicant.<sup>148</sup>

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

134. All refunds of upfront payment balances will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. Bidders are encouraged to use the **Refund Information** icon found on the *Auction Application Manager* page or through the **Refund Form** link available on the *Auction Application Submit Confirmation* page in the FCC auction application system to access the form. After the required information is completed on the blank form, the form should be printed, signed, and submitted to the Commission by mail or fax as instructed below.

135. If you have elected not to complete the Refund Form through the Auction Application Manager page, the Commission is requesting that all information listed below be supplied in writing.

Name, address, contact and phone number of Bank  
ABA Number  
Account Number to Credit  
Name of Account Holder  
FCC Registration Number (FRN)

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<sup>144</sup> The Commission's rules also provide that a winning bidder in a commercial broadcast spectrum auction is required to submit an application filing fee with its post-auction long-form application. *See* 47 CFR § 1.2107(c).

<sup>145</sup> 47 CFR §§ 1.2110(j) and 73.5005; *see also* 47 CFR § 1.2112(b)(2).

<sup>146</sup> 47 CFR § 1.2104(g)(2).

<sup>147</sup> 47 CFR §§ 1.2109(b) and (c).

<sup>148</sup> 47 CFR § 1.2109(d).

The refund request must be submitted by fax to the Revenue & Receivables Operations Group/Auctions at (202) 418-2843 or by mail to:

Federal Communications Commission  
Financial Operations  
Revenue & Receivables Operations Group/Auctions  
Gail Glasser  
445 12th Street, SW, Room 1-C864  
Washington, DC 20554

NOTE: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Gail Glasser at (202) 418-0578 or Theresa Meeks at (202) 418-2945.

## VI. FINAL REGULATORY FLEXIBILITY CERTIFICATION

136. The Regulatory Flexibility Act of 1980, as amended (RFA),<sup>149</sup> requires that a regulatory flexibility analysis be prepared for a notice-and-comment rulemaking proceeding, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”<sup>150</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>151</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>152</sup> A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

137. As required by the RFA, an Initial Regulatory Flexibility Certification (IRFC) was incorporated in the January 16, 2018, public notice seeking comment on competitive bidding procedures to be used in Auction 83.<sup>153</sup> The *Auction 83 Procedures Public Notice* implements competitive bidding rules adopted by the Commission in multiple notice-and-comment rulemaking proceedings,<sup>154</sup> as well as

<sup>149</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>150</sup> 5 U.S.C. § 605(b).

<sup>151</sup> 5 U.S.C. § 601(6).

<sup>152</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

<sup>153</sup> *Auction of FM Translator Construction Permits Scheduled for June 21, 2018; Comment Sought on Competitive Bidding Procedures for Auction 83*, AU Docket No. 17-351, Public Notice, 33 FCC Rcd 23 (WTB/MB 2018) (*Auction 83 Comment Public Notice*). A summary of this public notice was published at 83 Fed. Reg. 4455 (Jan. 31, 2018).

<sup>154</sup> See, e.g., *Updating Part 1 Competitive Bidding Rules*, Report and Order, Order on Reconsideration of the First Report and Order, Third Order on Reconsideration of the Second Report and Order, Third Report and Order, 30 FCC Rcd 7493 (2015) (*Updating Part 1 Report and Order*) (modified by Erratum, DA 15-959 (rel. Aug. 25, 2015)); *Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures*, WT Docket No. 97-82, Order, Memorandum Opinion and Order and Notice of Proposed Rule Making, 12 FCC Rcd 5686 (1997); Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making, 15 FCC Rcd 15293 (2000) (modified by Erratum, DA 00-2475 (rel. Nov. 3, 2000)); Seventh Report and Order, 16 FCC Rcd 17546 (2001); Eighth Report and Order, 17 FCC Rcd 2962 (2002); Second Order on Reconsideration of the Third Report and Order and Order on Reconsideration of the Fifth Report and Order, 18 FCC Rcd 10180 (2003); Second Order on Reconsideration of the Fifth Report and Order, 20 FCC Rcd 1942 (2005); 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, 13 FCC Rcd (continued....)

establishes by the Bureaus, on delegated authority, additional procedures for competitive bidding in FM Translator Auction 83 for certain FM translator construction permits. More specifically, the *Public Notice* provides an overview of the procedures, terms and conditions governing Auction 83 and the post-auction application and payment processes. The *Public Notice* also provides instructions for Auction 83 applicants to review, verify and update their previously filed short-form applications during the upcoming Remedial Window, as required. In addition, the *Public Notice* addresses three filings submitted by parties in response to the *Auction 83 Comment Public Notice*.

138. Auction 83 is a “closed” auction, therefore the specific competitive bidding procedures and minimum opening bid amounts described in the *Auction 83 Comment Public Notice* will affect only the 57 individuals or entities listed in Attachment A to this Public Notice who are eligible to complete the remaining steps to become qualified to bid in this auction.<sup>155</sup> The latest available U.S. Census Bureau data show that there were 2,849 radio station firms that operated in 2012.<sup>156</sup> Of that number 2,806 firms operated with annual receipts below the Small Business Administration’s (SBA’s) small business size standard of firms having \$38.5 million or less in annual receipts.<sup>157</sup> The 57 eligible individuals or entities for Auction 83 include firms of all sizes and constitute approximately two percent of all firms that operated and of firms meeting the SBA small business size standard. Consequently, because the proposed procedures and minimum opening bid amounts would affect a maximum of 57 radio station firms, or approximately two percent of the total, and not all 57 are small entities, the Bureaus find that a substantial number of small entities would not be affected by these competitive bidding procedures or minimum opening bid amounts contained in the *Auction 83 Procedures Public Notice*. Therefore, the Bureaus certify that these competitive bidding procedures and minimum opening bid amounts announced in the *Auction 83 Procedures Public Notice* will not have a significant economic impact on a substantial number of small entities.

139. The Bureaus will send a copy of the *Auctions 83 Procedures Public Notice* including this Final Regulatory Flexibility Certification, in a Report to Congress pursuant to the Congressional Review Act.<sup>158</sup> In addition the *Auctions 83 Procedures Public Notice* and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the Federal Register.<sup>159</sup>

## VII. CONTACT INFORMATION

140. Contact Information Table:

### General Auction 83 Information

General Auction Questions  
Auction Process and Procedures

### FCC Auctions Hotline

(888) 225-5322, option two; or  
(717) 338-2868  
Hours of service: 8:00 a.m. – 5:30 p.m. ET,  
Monday through Friday

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

15920 (1998), *on recon.*, Memorandum Opinion and Order, 14 FCC Rcd 8724, *on further recon.*, Memorandum Opinion and Order, 14 FCC Rcd 12541 (1999); *Reexamination of the Comparative Standard for Noncommercial Educational Applicants*, Second Report and Order, 18 FCC Rcd 6691 (2003); Memorandum Opinion and Third Order on Reconsideration, 23 FCC Rcd 17423 (2008).

<sup>155</sup> *Auction 83 Comment Public Notice*, 33 FCC Rcd at 23.

<sup>156</sup> U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ4, *Information: Subject Series – Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* NAICS Code 515112 (Radio Stations), [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ4/naics~515112](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4/naics~515112).

<sup>157</sup> *Id.*, see also 13 CFR § 121.201; NAICS code 515112.

<sup>158</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>159</sup> 5 U.S.C. § 605(b).

**Auction 83 Legal Information**

Auction Rules, Policies, Regulations, including  
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)

**Payment Information**

Wire Transfers  
Refunds

**Auction Bidder Line****Press Information****FCC Forms****Accessible Formats**

Braille, large print, electronic files, or  
audio format for people with disabilities

**Small Businesses**

Additional information for small and disadvantaged  
businesses

**FCC Internet Sites****Auctions and Spectrum Access Division**

(202) 418-0660  
Lynne Milne (Attorney)

**Audio Division (202) 418-2700**

Lisa Scanlan (Attorney)  
Tom Nessinger (Attorney)  
James Bradshaw (Engineer)

**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, or alternatively,  
Theresa Meeks at (202) 418-2945, or  
(202) 418-2843 (fax)

Will be furnished only to qualified bidders

Cecilia Sulhoff (202) 418-0587

(800) 418-3676 (outside Washington, DC)  
(202) 418-3676 (in the Washington area)  
[www.fcc.gov/formpage.html](http://www.fcc.gov/formpage.html)

**Consumer and Governmental Affairs Bureau**

(202) 418-0530 or (202) 418-0432 (TTY)  
[fcc504@fcc.gov](mailto:fcc504@fcc.gov)

**Office of Communications Business**

**Opportunities**  
(202) 418-0990  
[www.fcc.gov/ocbo/](http://www.fcc.gov/ocbo/)

[www.fcc.gov](http://www.fcc.gov)  
[www.fcc.gov/auction/83](http://www.fcc.gov/auction/83)  
[www.fcc.gov/mb](http://www.fcc.gov/mb)

**Auction 83 - FM Translator**  
**DA 18-257**  
**Attachment A**

Construction Permit	Description	Channel	State	City	Applicant	File Numbers	Bidding Units	Upfront Payment	Minimum Opening Bid
MM-FMT009	Alabama 1 - Florence	284	AL	Florence	Clear Channel Broadcasting Licenses, Inc.	BNPFT20030317A0A	2,500	\$2,500	\$2,500
		284	AL	Florence	Ohio Broadcast Associates	BNPFT20030317LNG			
MM-FMT010	Alaska 1 - Kenai, Soldotna	285	AK	Kenai	TURQUOISE BROADCASTING COMPANY, LLC	BNPFT20030317BNT	1,500	\$1,500	\$1,500
		283	AK	Soldotna	TURQUOISE BROADCASTING COMPANY, LLC	BNPFT20030317BFB			
MM-FMT011	Arizona 1 - Eagar, Springfield	234	AZ	Springerville	Country Mountain Airwaves, LLC	BNPFT20030317ECP	750	\$750	\$750
		230	AZ	Springerville	Country Mountain Airwaves, LLC	BNPFT20030317EDP			
MM-FMT012	Arizona 2 - Show Low	232	AZ	Eagar	KM Radio of St. Johns, L.L.C.	BNPFT20030317LJO	1,500	\$1,500	\$1,500
		234	AZ	Show Low	Country Mountain Airwaves, LLC	BNPFT20030317BCI			
		234	AZ	Show Low	KM Radio of St. Johns, L.L.C.	BNPFT20030317LXW			
MM-FMT013	Arizona 3 - Lake of the Woods, Show Low	284	AZ	Show Low	Country Mountain Airwaves, LLC	BNPFT20030317BDB	1,500	\$1,500	\$1,500
		286	AZ	Lake of the Woods	KM Radio of St. Johns, L.L.C.	BNPFT20030317LRW			
MM-FMT014	Arizona 4 - Eagar, Springerville	290	AZ	Springerville	Country Mountain Airwaves, LLC	BNPFT20030317EES	750	\$750	\$750
		289	AZ	Eagar	KM Radio of St. Johns, L.L.C.	BNPFT20030317LEA			
MM-FMT015	Arkansas / Louisiana	229	LA	West Monroe	CAMERON CRAVEY	BNPFT20030317KYP	5,000	\$5,000	\$5,000
		229	AR	Monroe	Sister Grace, Inc.	BNPFT20030317ALW			
MM-FMT016	California 1 - Monterey, Pebble Beach	232	CA	Pebble Beach	Educational Media Foundation	BNPFT20030317BAQ	3,500	\$3,500	\$3,500
		232	CA	Monterey	Pacific Foundation	BNPFT20030313AAP			
MM-FMT017	California 2 - Muscatel, West Fresno	261	CA	West Fresno	Big Broadcasting, Inc.	BNPFT20030313ATO	5,000	\$5,000	\$5,000
		262	CA	Muscatel	JUAN ALBERTO AYALA	BNPFT20030317HHA			
MM-FMT018	Colorado / Nebraska	247	NE	Chappell	Dale Kastens	BNPFT20030317KLD	750	\$750	\$750
		247	CO	Sterling	KSID Radio, Inc.	BNPFT20030317HLO			
MM-FMT019	Colorado 1 - Avon, Eagle, Snowmass	252	CO	Eagle	Cool Radio, LLC	BNPFT20030317GKP	750	\$750	\$750
		254	CO	Snowmass	Pitkin County Translator Department	BNPFT20030312AKT			
		254	CO	Avon	Professional Antenna, Tower and Translator Service	BNPFT20030314BPE			
MM-FMT020	Colorado 2 - Basalt, West Glenwood	258	CO	Basalt	Colorado West Broadcasting, Incorporated	BNPFT20030310AYB	750	\$750	\$750
		258	CO	West Glenwood Springs	Colorado West Broadcasting, Incorporated	BNPFT20030310AYH			
MM-FMT021	Florida 1 - Nevinns, Vero Beach	265	FL	Nevins	Capsstar TX, Limited Partnership	BNPFT20030314BOE	5,000	\$5,000	\$5,000
		263	FL	Vero Beach	Vero Beach Broadcasters, LLC	BNPFT20030317LPH			
MM-FMT022	Florida 2 - Panama City	274	FL	Panama City	Clear Channel Broadcasting Licenses, Inc.	BNPFT20030317ANN	1,500	\$1,500	\$1,500
		273	FL	Panama City	Larry L. Lee	BNPFT20030314AMF			
MM-FMT023	Georgia - Macon	300	GA	Macon	Cleveland Radio Licenses, LLC	BNPFT20030314BWE	3,500	\$3,500	\$3,500
		300	GA	Macon	Robins Partners, LLC	BNPFT20030317BBI			
MM-FMT024	Hawaii 1 - Kailua-Kona	252	HI	Kailua-Kona	Better Best, Inc.	BNPFT20030317LDR	750	\$750	\$750
		249	HI	Kailua-Kona	Colin H. Naito	BNPFT20030317EBN			
		247	HI	Kailua-Kona	Colin H. Naito	BNPFT20030317EFP			
MM-FMT025	Hawaii 2 - Hummulla, Kailua-Kona, Kona	281	HI	Hummula	Better Best, Inc.	BNPFT20030317LEO	750	\$750	\$750
		278	HI	Kailua-Kona	Better Best, Inc.	BNPFT20030317LKG			
		281	HI	Kailua-Kona	Colin H. Naito	BNPFT20030317EFL			
		277	HI	Kailua-Kona	Colin H. Naito	BNPFT20030317EFT			
		281	HI	Kona	K & D Group, Inc.	BNPFT20030314BGZ			
		277	HI	Kona	K & D Group, Inc.	BNPFT20030314BKI			
MM-FMT026	Indiana 1 - Lafayette	232	IN	Lafayette	Confiteor, Inc.	BNPFT20030317AMN	7,500	\$7,500	\$7,500
		230	IN	Lafayette	Kaspar Broadcasting Co., Inc.	BNPFT20030317GUY			
		232	IN	Lafayette	Kaspar Broadcasting Co., Inc.	BNPFT20030317GVI			
MM-FMT027	Indiana 2 - Logansport	241	IN	Logansport	Kaspar Broadcasting Co., Inc.	BNPFT20030317GSH	1,500	\$1,500	\$1,500
		239	IN	Logansport	Kaspar Broadcasting Co., Inc.	BNPFT20030317GTY			
MM-FMT028	Iowa - Dubuque	282	IA	Dubuque	E-String Wireless, Ltd.	BNPFT20030317HNO	750	\$750	\$750
		282	IA	Dubuque	Northwestern College	BNPFT20030314CHD			
MM-FMT029	Louisiana - Bossier City, Shreveport	288	LA	Bossier City	Black Media Works, Inc.	BNPFT20030317LWL	10,000	\$10,000	\$10,000
		288	LA	Shreveport	CAMERON CRAVEY	BNPFT20030317LQB			

Construction Permit	Description	Channel	State	City	Applicant	File Numbers	Bidding Units	Upfront Payment	Minimum Opening Bid
MM-FMT030	Maine - Old Town, Orono	257	ME	Old Town	David M. Stout	BNPFT20030317ALX			
		255	ME	Orono	Salt Pond Community Broadcasting, Inc.	BNPFT20030312BDD	750	\$750	\$750
MM-FMT031	Massachusetts - So. Hadley, Westfield	247	MA	Westfield	Capstar TX, Limited Partnership	BNPFT20030317AHB			
		247	MA	South Hadley	Great Northern Radio, LLC	BNPFT20030314BAW	750	\$750	\$750
MM-FMT032	Michigan 1 - Menominee	255	MI	Menominee	COKERSTONE COMMUNITY RADIO, INC	BNPFT20030317HSK	1,500	\$1,500	\$1,500
		255	MI	Menominee	David M. Stout	BNPFT20030314BHN			
		279	MI	Menominee	Sister Grace, Inc.	BNPFT20030313AHV			
MM-FMT033	Michigan 2 - Gladstone	280	MI	Gladstone	Escanaba License Corp.	BNPFT20030312BEC	750	\$750	\$750
		280	WI	Gladstone	Escanaba License Corp.	BNPFT20030312BEF			
MM-FMT034	Minnesota / Wisconsin	296	MN	La Crosse	Evangel Ministries, Inc.	BNPFT20030317KYE	2,500	\$2,500	\$2,500
		297	WI	La Crosse	Sister Grace, Inc.	BNPFT20030313AUF			
MM-FMT035	Montana - Bozeman, Gallatin Gateway	286	MT	Gallatin Gateway	Harlan Communications Corp.	BNPFT20030314ASI	750	\$750	\$750
		286	MT	Bozeman	Neal Ganser	BNPFT20030317LYP			
MM-FMT036	New Hampshire / Vermont	226	NH	Clarendon	Clear Channel Broadcasting Licenses, Inc.	BNPFT20030317APX			
		226	NH	Lebanon	Sheila E. Vinikoor	BNPFT20030317MDO	750	\$750	\$750
		226	VT	Woodstock	Vermont Public Radio	BNPFT20030317HHJ			
MM-FMT037	New Hampshire - Hanover, Lebanon	267	NH	Lebanon	Larry G. Cushing & Sons, Inc	BNPFT20030317MRT	750	\$750	\$750
		267	NH	Hanover	Vermont Public Radio	BNPFT20030317HJB			
MM-FMT038	North Carolina / South Carolina	222	SC	Rock Hill	Bible Broadcasting Network, Inc.	BNPFT20030317AEA	2,500	\$2,500	\$2,500
		222	NC	Charlotte	CAMERON CRAVEY	BNPFT20030317MUW			
MM-FMT039	North Carolina 1 - Morrisville, Raleigh	225	NC	Rock Hill	Capstar TX, Limited Partnership	BNPFT20030314BRQ	7,500	\$7,500	\$7,500
		225	NC	Morrisville	Capstar TX, Limited Partnership	BNPFT20030317KBC			
		240	NC	Raleigh	Carolina Radio Group, Inc.	BNPFT20030317AKO			
MM-FMT040	North Carolina 2 - Eden	240	NC	Eden	Capstar TX, Limited Partnership	BNPFT20030317AQU	750	\$750	\$750
		240	NC	Eden	Clear Channel Broadcasting Licenses, Inc.	BNPFT20030317LYH			
MM-FMT041	North Carolina 3 - Cary, Raleigh	253	NC	Raleigh	CAMERON CRAVEY	BNPFT20030314BRX	7,500	\$7,500	\$7,500
		253	NC	Raleigh	Capstar TX, Limited Partnership	BNPFT20030317LJA			
		255	NC	Cary	Comer Media, Inc.	BNPFT20030317LJA			
MM-FMT042	North Carolina 4 - Waynesville, Clyde	264	NC	Waynesville	Capstar TX, Limited Partnership	BNPFT20030317AJO	750	\$750	\$750
		264	NC	Clyde	Frank McCoy	BNPFT20030312AQJ			
MM-FMT043	SC 1 - Hammond Crossroads, Orangeburg	271	SC	Orangeburg	Capstar TX, Limited Partnership	BNPFT20030317AJA	750	\$750	\$750
		271	SC	Hammond Crossroads	Miller Communications, Inc.	BNPFT20030317CCZ			
MM-FMT044	South Carolina 2 - Sumter	300	SC	Sumter	Capstar TX, Limited Partnership	BNPFT20030317CGR	1,500	\$1,500	\$1,500
		300	SC	Sumter	Miller Communications, Inc.	BNPFT20030317CGR			
MM-FMT045	Texas 1 - Huntsville	237	TX	Huntsville	Gerard R. Proctor	BNPFT20030317AEO	2,500	\$2,500	\$2,500
		237	TX	Huntsville	HOUSTON CHRISTIAN BROADCASTERS, INC.	BNPFT20030317CMA			
MM-FMT046	Texas 2 - Corsicana	300	TX	Corsicana	E-String Wireless, Ltd.	BNPFT20030313AOY	750	\$750	\$750
		300	TX	Corsicana	Iglesia JesuChristo es mi Refugio	BNPFT20030317JIC			
MM-FMT047	Texas 3 - Austin, Greenshores	300	TX	Greenshores	JUAN ALBERTO AYALA	BNPFT20030317AGF	1,500	\$1,500	\$1,500
		300	TX	Austin	Katherine Pysatt	BNPFT20030317BLV			
MM-FMT048	Utah 1 - Blanding, Ferron	243	UT	Blanding	BLANDING CITY CORPORATION	BNPFT20030317GDU	750	\$750	\$750
		243	UT	Ferron	Edward Linn	BNPFT20030317MOU			
MM-FMT049	Utah 2 - Gunnison, Manti, Salina, Wayne	300	UT	Gunnison	Micro Communications, Inc.	BNPFT20030314AKL	750	\$750	\$750
		300	UT	Manti	Micro Communications, Inc.	BNPFT20030314ANL			
		300	UT	Salina	Sevier County	BNPFT20030311AUW			
		300	UT	Rural Wayne County	Wayne County	BNPFT20030312BDO			
MM-FMT050	Vermont - Burlington	298	VT	Burlington	Radio Broadcasting Services, Inc.	BNPFT20030317HPI	750	\$750	\$750
		298	VT	Burlington	Vermont Public Radio	BNPFT20030317HLZ			
MM-FMT051	Wisconsin - Oshkosh	239	WI	Oshkosh	Evangel Ministries, Inc.	BNPFT20030317KVO	3,500	\$3,500	\$3,500
		238	WI	Oshkosh	Sister Grace, Inc.	BNPFT20030317FKZ			

## ATTACHMENT B

## Electronic Review and Updating of the FCC Form 175

This attachment provides instructions on reviewing and updating short-form applications and submitting an upfront payment to participate in Auction 83. It also includes instructions for interested parties to view the short-form applications filed. Information previously submitted in attachments to Form 175 is in many cases now required to be entered in Form 175 data fields. Moreover, as discussed below, data fields for information that may have previously been submitted in attachments, or for information required by more recent rule changes, have not been pre-filled. Therefore, each Auction 83 applicant *must* review and complete Form 175 during the remedial filing window. **If an applicant fails to provide sufficient information in the data fields of its electronic FCC Form 175 and therefore is not able to “certify and submit” its auction application during the remedial filing window, its application will be deemed Incomplete-Disqualified, and the applicant will be disqualified from further participation in Auction 83.**

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

Each applicant seeking to participate in this auction must review its electronic short-form application (FCC Form 175). Any updates to information in its application must be submitted via the FCC auction application system. **Any such updates to short-form applications for Auction 83 must be certified and submitted, and its submission confirmed prior to 6:00 p.m. ET on Thursday, April 26, 2018.**

The short-form application requests information needed to determine whether an applicant qualifies to participate in competitive bidding for Commission licenses or construction permits.<sup>1</sup>

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

Each applicant should review its Form 175 to ensure that all required information is provided. Auction 83 applicants will have an opportunity to review and update their applications during a remedial filing window which will be open from noon ET, April 16, 2018, until 6:00 p.m. ET, April 26, 2018.

Applicants are reminded that all application information required for participation in a spectrum auction is necessary to determine an applicant’s qualifications, and will be made available for public inspection.

Accordingly, unnecessary sensitive information, such as Taxpayer Identification Numbers or Social Security Numbers, must **not** be included in a Form 175. Applicants may request that information submitted not be made routinely available for public inspection, by following the procedures set forth in section 0.459 of the Commission’s rules.<sup>2</sup> Such requests must be included as an attachment to the applicant’s Form 175, and must identify the specific information to which the request applies. Because the required information bears on each applicant’s qualifications, confidentiality requests will not be routinely granted.<sup>3</sup>

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

**A. Previously Submitted Information**

Each applicant is responsible for reviewing and verifying the accuracy of information provided in its previously-submitted short-form application. Each applicant must also submit additional information to

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<sup>1</sup> See generally 47 CFR § 1.2105.

<sup>2</sup> 47 CFR § 0.459.

<sup>3</sup> *Id.* § 0.459(a).

comply with requirements of the existing auction application system as well as any updates required under the Commission's amended competitive bidding rules. If information has changed or is no longer accurate, an applicant must update that information and resubmit its application prior to the close of the remedial filing window on April 26, 2018.

The current version of the electronic Form 175 provides data fields into which an applicant must input applicant information required by the Commission's competitive bidding rules. Auction 83 applicants initially filed using a previous version of the electronic Form 175 in which the majority of the required information was submitted in various attachments to the application. Thus, to the extent that an applicant may need to make changes to information previously submitted in an attachment, it will enter the information in the applicable Form 175 data fields. As discussed in greater detail below, information entered by an Auction 83 applicant in a data field of its previous Form 175 will be pre-filled and displayed in a data field in the current version of the form. Applicants may view their previously-filed attachments, but may not delete any previously-filed attachment during the remedial filing window.<sup>4</sup>

#### **B. Commonly Controlled Applicants**

As explained previously in this Public Notice,<sup>5</sup> no individual or entity may file more than one Form 175 or have a controlling interest in more than one Form 175.<sup>6</sup> Applicants that have a controlling interest in more than one Form 175 listed in Attachment A, must bring those commonly controlled Auction 83 applications into compliance with this limitation by filing a written request as an attachment to an email sent to [auction83@fcc.gov](mailto:auction83@fcc.gov) on or before March 30, 2018. This written request must identify by applicant name and applicant FCC registration number (FRN) each of that applicant's 2003 Forms 175 listed in Attachment A in which there is common control, as well as identification of the individual or entity with such common control. This email must request consolidation of the previously filed Forms 175 in Attachment A with common control. The request must be signed by a person who is an authorized representative of the applicant with authority to bind that applicant. The remaining single applicant would be required to update and certify and submit its FCC Form 175 auction application during the remedial filing window.

#### **C. Minimum Software Requirements**

The following software, at a minimum, is required to use the FCC auction application system:

- Web Browser, either of the following is recommended:
  - Microsoft® Internet Explorer 7.0 or later.
  - Mozilla® Firefox® 3.5 or later.
- PDF Viewer: Adobe Reader (previously called Adobe Acrobat Reader) version 5.0 or later, available at <http://www.adobe.com>
- Minimum Screen Resolution: 1024 x 768

Currently, neither the Apple® Mac OS® nor Microsoft® Edge® is supported.

#### **D. Logging On**

To review and resubmit a Form 175 electronically via the Internet, an applicant should start its web browser and point it to either <http://auctions.fcc.gov/> (primary location) or <http://auctions2.fcc.gov/> (secondary location). Once on the *FCC Auction System* page, the applicant must log in to access a

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<sup>4</sup> The applicant may wish to identify in its current filing any information contained in a previously-submitted attachment is no longer accurate or is otherwise being updated by its current filing.

<sup>5</sup> See I.A.2., "Construction Permits and Entities Eligible to Participate in Auction 83," above.

<sup>6</sup> 47 CFR § 1.2105(a)(3).



previously-filed short-form application using its FCC Registration Number (FRN) and password. Applicants are reminded that the same FRN that was used to submit its previously-filed Form 175 will be needed to log in during this remedial window. A letter will be sent to each applicant specifying the applicant's FRN that was used during the 2003 initial filing window.

The applicant's ten-digit FRN can be located in the Commission Registration System (CORES). If an applicant has forgotten or lost its password, the applicant should call Technical Support for assistance at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY).<sup>7</sup>

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

The *Review or Modify Existing Short-Form Applications* page displays any application created or submitted within a filing window. This page shows the application status, the date and time the application was last modified, and the date and time the application was last submitted. It may be used as a reference to confirm the date and time of the most recent submission of the application.

To review or update an existing short-form application, an applicant should click the application auction number, which will produce the application's *Summary* page in a view/edit mode.

#### **F. Application Filing Instructions**

For Auction 83, the screens comprising a Form 175 consist of six series, each requesting separate types of information: 1) *Applicant Information*; 2) *Permit Selection*; 3) *New Entrant Bidding Credit Eligibility*; 4) *Agreements*; 5) *Ownership*; and 6) *Certify and Submit*. In addition, an *Error Summary* screen appears prior to the *Certify and Submit* screens. The *Error Summary* screen provides an overview of an applicant's Form 175 that facilitates reviewing and revising specific information, as well as an automated check for certain inconsistencies and omissions in submitted information.

An Auction 83 applicant must update, revise and supplement information it previously submitted by following the instructions below. Additional help in filling out Form 175 can be accessed in two ways: 1) by clicking on the **Help** link in the upper right of any screen, which will open Auction Application Online Filing Help; or 2) by clicking on the text of any **Common Question** link appearing on the right side of the screen. The common questions displayed relate to the current screen and vary from screen to screen. Applicants may use the contact information provided in this Public Notice to obtain additional assistance.<sup>8</sup>

##### **1. Applicant Information**

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

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

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

<sup>7</sup> See Section VII. "Contact Information," above.

<sup>8</sup> See Section VII. "Contact Information," above.

**Noncommercial Educational Election.** This field will be pre-filled based on the original Form 175 entry. Applicants are not permitted to change the response initially selected on the original Form 175.

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

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

**Applicant Citizenship or Jurisdiction of Formation.** This field is not pre-filled. Therefore, each applicant must disclose its citizenship (for individuals) or jurisdiction of formation (for legal entities) in this field during the remedial filing window.

**Responsible Party.** These fields are not pre-filled. Therefore, an applicant must identify a responsible individual by providing the name, title, and e-mail address of that individual in the next set of data fields.<sup>9</sup> This information is not required if the applicant is an individual.<sup>10</sup>

**Contact Representative.** All Auction 83 applicants should review and update, if necessary, the name, street address, e-mail address, telephone number and fax number of the contact person who will communicate with Commission personnel regarding the applicant's Form 175. Applicants should note that Commission personnel will communicate only with an applicant's contact person or certifying official, as designated on the applicant's Form 175, unless the applicant's certifying official or contact person notifies the Commission in writing that the applicant's counsel or other representative is authorized to speak on its behalf.<sup>11</sup>

A post office box may **not** be used for a contact person's address. If any contact information changes before the release of a public notice announcing the Auction 83 winning bidders, such changes must be entered in these specific data entry fields of the applicant's Form 175.<sup>12</sup>

To simplify filling out the Form 175, an applicant that has the same address as its contact person can click on the **COPY APPLICANT ADDRESS** button to automatically fill in the contact person's address.

**Authorized Bidders.** Applicants must identify in these data fields at least one person authorized to bid for the applicant in the auction, but may identify as many as three authorized bidders.<sup>13</sup> Only those bidders listed in these Form 175 data entry fields will be authorized to place bids for the applicant during the auction.<sup>14</sup> All Auction 83 applicants should review their listed authorized bidders, particularly in light of the 2015 revision to Section 1.2105(a)(2) of the rules,<sup>15</sup> which prohibits an individual from serving as an authorized bidder for more than one auction applicant. For any authorized bidder whose name is pre-filled in the applicant's Form 175, the applicant must provide the bidder's e-mail address and telephone

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<sup>9</sup> Section 1.2105(a)(2) requires that the name and title of an officer or director be reported if the applicant is a corporation. This rule requires disclosure of the name and title of a responsible person if a partner is not a natural person.

<sup>10</sup> When information regarding a responsible party is required by 47 CFR § 1.2105(a)(2) for a general partnership, this information must be reported in an attachment.

<sup>11</sup> Authorization to communicate with individuals other than the designated contact or certifying official may be sent by email to [auction83@fcc.gov](mailto:auction83@fcc.gov).

<sup>12</sup> These contact representative data fields may be changed by the applicant until close of bidding in this auction.

<sup>13</sup> See 47 CFR § 1.2105(a)(2)(iii).

<sup>14</sup> These authorized bidder data fields may be changed by the applicant until close of bidding in this auction.

<sup>15</sup> 47 CFR § 1.2105(a)(2).

number. Click on the **EDIT** button next to the authorized bidder's pre-filled name to enter the authorized bidder's telephone and e-mail information in the appropriate fields, and then click the **UPDATE** button.

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

## 2. Permit Selection

The *Permit Selection* screens make up the second series of screens in a Form 175. The initial *Permit Selection* screen will be the *Select Permits* screen. This screen lists the construction permits designated for that applicant in Attachment A of this public notice, as does the subsequent *View Selected Permits* screen. The construction permits listed in this section of the Form 175 are based on the initially-filed Form 349 "tech box" proposals of FM translator stations which were used by Commission personnel to make mutual exclusivity determinations. Because the initial filing deadline for Auction 83 Forms 175 has passed, as well as the deadlines for settlement periods as described earlier in this public notice, an applicant will be able to view its construction permit listing but will not be able to change its technical proposals.<sup>16</sup> Applicants are not obligated to bid on all permits previously proposed; however, applicants will not be able to bid on any permits not specified for that applicant in any particular mutual exclusivity group as listed in Attachment A of this public notice.

## 3. New Entrant Bidding Credit Eligibility

The *New Entrant Eligibility* screens are the third series of screens in Form 175. The applicant's new entrant bidding credit eligibility field will be pre-filled based on its original Form 175 selection. On the initial screen in this series, applicants will view whether they had previously claimed the new entrant bidding credit, and the percentage of bidding credit (25 percent or 35 percent) claimed.<sup>17</sup>

The applicant can modify the answer to the *New Entrant Eligibility* question during the remedial filing window, but only to reduce the bidding credit percentage requested from "35%" to "25%," from "35%" to "not seeking," or from "25%" to "not seeking." Applicants are not permitted to seek an increase in the bidding credit percentage initially claimed on their short-form applications.<sup>18</sup> Any changes after the remedial filing window must be entered by Commission staff.

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

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

If an applicant is no longer eligible for the 25 percent bidding credit originally claimed, the applicant should change the answer to the *New Entrant Eligibility* question, from "25%" to "not seeking" during the remedial filing window. In addition, the applicant should submit an attachment to its Form 175 during the remedial filing window with a narrative to explain the loss of eligibility for a 25 percent bidding credit, and a statement that the applicant no longer claims eligibility for a bidding credit in Auction 83.

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<sup>16</sup> A change of any of its technical proposals would be a major amendment. See 47 CFR § 1.2105(b).

<sup>17</sup> See 47 CFR §§ 1.2105(a)(2)(iv), 73.5002(b), 73.5007 and 73.5008.

<sup>18</sup> See 47 CFR § 1.2105(b).

If an applicant remains eligible for the 25 percent new entrant bidding credit originally claimed, the applicant must now provide additional information in data fields that it had previously submitted in an attachment.<sup>19</sup>

If an applicant remains eligible for a 25 percent new entrant bidding credit, it must answer for the first time the *Eligible Entity Election* question. After answering the *Eligible Entity Election* question, an applicant remaining eligible for the initially claimed 25 percent bidding credit must continue to a screen and provide additional required information regarding existing mass media facilities in which the applicant, or any individual or entity with an attributable interest in the applicant, has an attributable interest.<sup>20</sup> Applicants must identify in the appropriate data entry fields of the reformatted Form 175:

- the existing mass media facility or facilities;
- the individual or entity with an attributable interest in the existing mass media facility;
- the attributable interest in the facility; and
- whether any broadcast facilities proposed by the applicant in this auction are in the “same area” as an existing mass media facility, as defined by applicable Commission rules.<sup>21</sup>
- In the event that the applicant indicates that any of the broadcast FM translator facilities proposed in its application for this auction are in the “same area” as the identified existing mass media facility, the applicant must continue to an additional screen where the applicant must indicate which broadcast FM translator facility it proposed in this auction is in the “same area” as the identified existing mass media facility.

Once the applicant has identified all relevant existing mass media facilities, and all broadcast facilities proposed in its application that are located in the “same area” as each relevant existing mass media facility, it should continue to the *View/Edit All Facilities* screen. This screen lists the applicant’s claimed new entrant bidding credit of 25 percent, the relevant existing mass media facilities, and the Auction 83 broadcast facilities proposed by the applicant in the “same area” as each relevant existing mass media facility. From this screen, options include:

- Clicking the **Back to New Entrant Bidding Credit Section** button to return to the initial New Entrant Bidding Credit eligibility screen.
- Modifying information about relevant mass media facilities by clicking on them.
- Clicking the **Delete** button next to the name of any listed Mass Media Facility to delete that facility and any identified proposed broadcast facilities in the “same area.”

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<sup>19</sup> Information regarding “same area” facilities for participants claiming a 25 percent new entrant bidding credit directly affects bidding, because the location of the same area facilities affects whether the applicant is eligible for the new entrant bidding credit on a permit-by-permit basis. That is, the applicant’s bidding credit percentage may vary by permit (either 25 percent or zero). The newly formatted Form 175 has been integrated with the Commission’s bidding system, so that this information is reflected in round results during the course of bidding. Accordingly, applicants claiming eligibility for a 25 percent new entrant bidding credit now must enter information in the data fields regarding its claimed eligibility, including same area facilities. Providing such information in an attachment is not sufficient and applicants will not be able to submit an updated Form 175 without providing the information in the appropriate data entry fields.

<sup>20</sup> Full-service noncommercial educational stations, on both reserved and nonreserved channels, are included among “media of mass communications” as defined in section 73.5008(b). See *Minnesota Christian Broadcasters, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 614 (2003).

<sup>21</sup> See 47 CFR §§ 73.5007 - 73.5008.

- Clicking the **Add/Remove Proposed “Same Area” Facilities** button next to the name of a particular proposed broadcast FM translator facility in the “same area” to remove the corresponding facility or to add “same area” facilities.
- Clicking the **Add Existing Mass Media Facility** button to add additional mass media facilities.

When all relevant existing mass media facilities, and proposed broadcast facilities in the “same area” as each relevant existing mass media facility, have been identified in the correct data entry fields, an applicant claiming eligibility for a 25 percent bidding credit should click the **Continue to Agreements** button.

**35 Percent Bidding Credit Requested in Initial Filing.** If an applicant originally claimed eligibility for a new entrant bidding credit of 35 percent, a designation of 35 percent will be pre-filled in this data field. If this information remains accurate, the applicant must answer for the first time the *Eligible Entity Election* question. After answering the *Eligible Entity Election* question, the applicant should click on the **Save & Continue** button to navigate to the next series of screens.

**Changes to Amount of Claimed 35 Percent Bidding Credit.** If an applicant is no longer eligible for the 35 percent bidding credit it originally claimed, it should change the answer to the *New Entrant Eligibility* question from “35%” to “25%” or “not seeking” during the remedial filing window. If the applicant changes its answer from “35%” to “25%,” required data entry fields on the Form 175 application regarding *Add Existing Mass Media Facility* and *Add Proposed “Same Area” Facilities* become available. Any changes after the remedial filing window must be entered by Commission staff. In addition, the applicant should submit an attachment to its Form 175 during the remedial filing window with a narrative to explain the loss of eligibility for the claimed bidding credit, and a statement that the applicant no longer claims eligibility for a bidding credit, or seeks a lower credit.

#### 4. Agreements

The *Agreements* screens are the next series of screens in a Form 175. In these screens, applicants will provide information regarding auction-related agreements subject to disclosure under the Commission’s rules.<sup>22</sup>

While any previous disclosures concerning bidding agreements were filed in an attachment to the Form 175, all Auction 83 applicants will now have access to the *Agreements* data fields in the Form 175 to report this information. The initial *Agreements With Other Parties and Joint Bidding Arrangements* screen response is not pre-filled, therefore the applicant must click on the “Yes” or “No” radio button to indicate whether it has entered into any such agreements or arrangements.

If an Auction 83 applicant responds “yes” it must, in the data entry fields of the *Create New Agreement* screen, (1) select or create an agreement identifier; (2) select an Agreement Type from the pull-down menu, and (3) enter the name of each party (individual or entity) to the agreement or understanding (other than its own name). Applicants must also, during the remedial window, provide a brief description of any agreement or understanding in an attachment to Form 175, which may include any additional disclosures under section 1.2105(a)(2)(viii).<sup>23</sup> Applicants with auction-related agreements must upload the explanatory attachment by clicking the **Attachments** link at the upper right of the screen, selecting “Agreement” from the pull-down menu for attachment Type, providing a brief description of the attachment in the Description field, and selecting and uploading the attachment, which may not exceed 10 MB in size.

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<sup>22</sup> 47 CFR § 1.2105(a)(2)(viii)

<sup>23</sup> *Id.*

## 5. Ownership

Auction 83 applicants were required to disclose information on ownership of the applicant in an attachment to the Form 175.<sup>24</sup> During the remedial filing window, all applicants must enter this information for the first time in the fields provided in the *Ownership* screens of Form 175.

Some applicants may have previously filed FCC Form 602 disclosing ownership information in connection with wireless services. In addition, some applicants may have filed a short-form application (FCC Form 175) for a previous auction disclosing ownership information. To simplify filling out FCC Form 175, an applicant's most current ownership information on file with the Commission will automatically be entered into the applicant's short-form application, if it is in an electronic format compatible with the short-form application (FCC Form 175) (such as information submitted in an on-line FCC Form 602 or in an FCC Form 175 filed for a previous auction using ISAS). Applicants with ownership information automatically entered into FCC Form 175 will proceed directly to the *View/Edit Ownership* screen described below.

Applicants must disclose current ownership information as required by sections 1.2105, 1.2110, 1.2112 and 73.5002 of the Commission's rules.<sup>25</sup> Those rules generally require disclosure of the following ownership information:

- All real parties in interest in the applicant, including the identity and relationship of those persons or entities directly or indirectly owning or controlling the applicant.
- Name, address, and citizenship of any party directly or indirectly holding a 10 percent or greater interest in the applicant, as well as the percentage of interest held in the applicant and whether the interest is an indirect or direct interest.
- If there is an indirect interest in the auction applicant of 10 percent or greater, the applicant must file an attachment describing the relationship between the indirect interest holder and the auction applicant. Applicants with indirect interest holders must upload an explanatory attachment by clicking the **Attachments** link at the upper right of the screen, selecting "Indirect Ownership" from the pull-down menu for attachment Type, providing a brief description of the attachment in the Description field, and selecting and uploading the attachment, which may not exceed 10 MB in size.
- Whether the party directly or indirectly holding a 10 percent or greater interest in the applicant has voting or non-voting, common or preferred, stock and the specific amount of interest held.
- Any FCC-regulated entity or applicant for an FCC license, in which the auction applicant or any real party in interest in the auction applicant owns a 10 percent or greater interest. Such disclosure must include a description of the FCC-regulated entity's principal business and its relationship to the auction applicant.

Each applicant is responsible for information submitted in its FCC Form 175 being complete and accurate. An applicant must carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for submitting its short-form application in this auction. Information must be corrected directly in the FCC Form 175. After the deadline for filing this FCC Form 175, submitted ownership information will be considered to be the applicant's most current information on file with the Commission for this auction.

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<sup>24</sup> *FM Translator Auction Filing Window and Application Freeze*, 18 FCC Rcd 1565, 1577, Attachment B (MB/WTB 2003).

<sup>25</sup> 47 CFR §§ 1.2105, 1.2110, 1.2112(a), 73.5002.

## 6. Error Summary

The *Error Summary* screen summarizes information applicants have provided in previous screens, offering an overview of an applicant's Form 175 to help locate specific information. This screen will appear prior to the *Certify and Submit* screens, in order to permit the applicant to review all of the information entered in previous screens and to provide an opportunity to check for certain inconsistencies or omissions in the information within the Form 175.

The *Summary* screen, which is labeled as the *Error Summary* screen, lists the first five sections of the application and indicates by background color code whether there are errors or warnings in those sections. Green means there are no errors or warnings; Yellow means that there are warnings that will not prevent the applicant from certifying and submitting the Form 175 application; Red means that there are errors in the section that must be remedied before the applicant can certify and submit the Form 175 application.

- Clicking on the section name of any yellow or red section will display all the warnings and/or errors detected in that section of the Form 175 application.
- Clicking the **View All** button displays all errors and warnings detected in all sections of the Form 175 application.
- Clicking the **Hide All** button will hide all errors and warnings being displayed.
- Clicking on the **Page** link in any displayed error or warning will take the applicant directly to the application page on which the error or warning was detected.
- If there are errors detected in any application section (the section name displays in a red field), the applicant will not be able to continue to the *Certify & Submit* section until the error(s) are resolved.

When there are no errors displayed on the *Error Summary* screen, clicking on the **Continue to Certify** button will take the applicant to the *Certify & Submit* section of Form 175.

Each applicant is solely responsible for providing complete and accurate information in its Form 175. The automated error check is provided to assist applicants in completing the Form 175. However, the automated check cannot be relied upon to determine whether the information provided is complete or accurate. The automated check may not catch all errors and applicants cannot rely on the automated check to determine the completeness or the accuracy of submitted information.

When there are no errors displayed on the *Error Summary* screen, the applicant may then click the **Continue to Certify** button to continue to the *Certify & Submit* screens.

## 7. Attaching Additional Information

Information previously submitted in attachments is now required to be entered in Form 175 data fields. However, if an applicant needs to provide additional information not requested directly in the data entry fields of the screens comprising the Form 175, the applicant can provide that information in an attachment. For Auction 83, applicants can update or revise information in previously submitted attachments in a new attachment, except where the updated or revised information must be entered in a Form 175 data field. Applicants may view their previously filed attachments. Applicants will not be able to delete any previously filed attachments during the remedial filing window. Thus, applicants providing new or revised information during this window are encouraged to provide a full description of any changes, including an explanation of how such changes comply with relevant disclosure requirements (if appropriate), so as to minimize the likelihood that inconsistencies or questions may arise during staff review of the application.

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

NOTE: If the attachment is a request for a waiver or exemption of any of the Commission's rules or procedures, the applicant must identify the "Type" of attachment as a "Waiver" to facilitate prompt processing. Likewise, if the attachment is an explanation of an auction-related agreement or of an indirect ownership interest, the applicant must identify the attachment Type as "Agreement" or "Indirect Ownership," as appropriate.

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

When uploading attachments, you may use a variety of file formats, including Word (.doc and .docx), Adobe PDF (.pdf), and text files (.txt and .odt).<sup>26</sup> You must, however, verify that the files contain all attachment information. Any uploaded files may be no larger than 10 MB each and must not be password-protected. Graphics files (e.g., .bmp, .tiff, .jpg) are not supported. Spreadsheets (.xls, .xlsx, and .csv) are supported but are not recommended. Once all attachments are uploaded, click the **CONTINUE** button. After the FCC Form 175 filing deadline, an application attachment may not be deleted or withdrawn

## 8. Certify and Submit

The *Certify & Submit* screens are the seventh and final series of screens in a Form 175. In these screens, applicants provide certifications required of all participants in the Commission's competitive bidding processes.<sup>27</sup>

**First Certification Screen.** The first *Certify & Submit* screen requires each applicant to indicate whether the applicant, any affiliate of the applicant, any controlling interest of the applicant, or any affiliate of a controlling interest has ever been in default on any Commission construction permit or license or has ever been delinquent on any non-tax debt owed to any Federal agency.<sup>28</sup> Current defaulters or delinquents are not eligible to participate in this auction. Former defaulters or delinquents who have remedied all such defaults and cured all of the outstanding non-tax delinquencies can participate in this auction so long as they are otherwise qualified and make upfront payments that are equal to 50 percent more than otherwise required.<sup>29</sup> The former defaulter and delinquency information was previously submitted in an attachment. Therefore, this question will not be pre-filled. Applicants must answer this question for the first time in the remedial filing window.

**Second Certification Screen.** To submit any changes to the information in its short-form application, an applicant must go to the *Certify Auction Application* screen and click the **Certify & Submit** button. In certifying its application, each applicant certifies under penalty of perjury that it is legally, technically, financially and otherwise qualified to hold a Commission license.<sup>30</sup> Applicants are reminded that submission of a Form 175 constitutes a representation by the certifying official that he or she is an authorized representative of the applicant who has read the form's instructions and certifications, and that the contents of the application, its certifications and any attachments are true, complete and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

The second *Certify & Submit* screen, the *Certify Auction Application* screen, lists the certifications required of all applicants in the Commission's competitive bidding processes and requests that the

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<sup>26</sup> Any files uploaded will be automatically converted to a .pdf format.

<sup>27</sup> See generally 47 CFR §§ 1.2105(a)(2)(iv)-(xi).

<sup>28</sup> *Id.* § 1.2105(a)(2)(xi).

<sup>29</sup> *Id.* §§ 1.2105(a)(2)(xi), 1.2106(a).

<sup>30</sup> *Id.* § 1.2105(a)(2)(v).



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

**Who Can Certify.** A short-form application must be certified by a person with the authority to bind the applicant. For example, a short-form application may be certified by: (1) the applicant, if the applicant is an individual; (2) one of the partners, if the applicant is a partnership; (3) an officer, director, or duly-authorized employee, if the applicant is a corporation; (4) a member who is an officer, if the applicant is an unincorporated association; or (5) a duly elected or appointed official who is authorized to make such certifications under the laws of the applicable jurisdiction, if the applicant is a governmental entity.

Once the first *Certify & Submit* screen has been completed and the second *Certify & Submit* screen has been verified, the application may be submitted by clicking on the **Certify & Submit** button.

After the application has been submitted, a confirmation screen will be displayed that states the submission time and date, along with a unique file number. Applicants should print a copy of the confirmation page for their records. They may then view and print copies of their submitted applications by clicking on the **Print** link at the upper right of any application page. The applicant may choose to print any or all sections of the Form 175 application, and any or all of the Attachments.

Any updates to Forms 175 for Auction 83 must be resubmitted and confirmed prior to 6:00 p.m. ET on Thursday, April 26, 2018. Late applications or unconfirmed submissions of electronic data will not be accepted.

## II. Upfront Payment Submission

### A. Upfront Payment Calculator and Form 159

Applicants may access the **Upfront Payment Calculator and Form 159** from the *Auction Application Manager – Create or Review Auction Applications* page or from the *Confirmation of Submission* page. Clicking the **Upfront Payment Calculator and Form 159** icon or link will provide a calculator to determine the appropriate upfront payment amount to submit with the FCC Form 159. From the *Upfront Payment Calculator* page, the applicant may click the **Form 159** button to obtain the FCC Form 159. For further instructions on how to submit the FCC Form 159, see Attachment C to this Public Notice.

### B. Refund of Upfront Payment

On the *Auction Application Manager – Create or Review Auction Applications* page or the *Confirmation of Submission* page, applicants can click on the **Refund Form** icon or link to provide wire transfer instructions for purposes of refunds of upfront payments. The Commission will use this information to refund excess funds on deposit.

## III. Miscellaneous

### A. Access to View Short-Form Applications

After the remedial filing window deadline for short-form applications, the Commission will process all timely-submitted applications to determine which are complete, and subsequently will issue a public notice identifying: (1) those that are complete; and (2) those that are incomplete or deficient because of minor defects that may be corrected. Once that public notice is released, any interested parties may be able to view the short-form applications by searching for them in the Commission database.

To start a search, go to either <http://auctions.fcc.gov/> (primary location) or <http://auctions2.fcc.gov> (secondary location) and click the **Auction Application Search** link in the Public Access area on the *FCC Auction Application System* page.

**B. Technical Support**

For technical assistance with using FCC software, contact the FCC Technical Support Hotline at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY). The FCC Technical Support Hotline is available Monday through Friday from 8 a.m. to 6 p.m. ET. All calls to the FCC Technical Support Hotline are recorded.

*Paperwork Reduction Act Approval:* The FCC Form 175 was assigned control number 3060-0600 and was approved, as revised, by the Office of Management and Budget on June 1, 2016.

## ATTACHMENT C

**Auction-Specific Instructions for  
FCC Remittance Advice (FCC Form 159-February 2003 Edition)**

**Upfront Payments**

The following information supplements the standard instructions for FCC Form 159 (Revised 2/03), and is provided to help ensure correct completion of FCC Form 159 for upfront payments for Auction 83. Applicants need to complete FCC Form 159 carefully, because:

- **Mistakes may affect bidding eligibility; and**
- **Lack of consistency between information provided in FCC Form 159 (Revised 2/03), FCC Form 175, long-form application, and correspondence about an application may cause processing delays.**

Therefore, appropriate cross-references between the FCC Form 159 Remittance Advice and the short-form application (FCC Form 175) are described below:

<b>Block Number</b>	<b>Required Information</b>
1	LOCKBOX # - Enter "Leave Blank"
2	Payer Name - Enter the name of the person or company making the payment. If the applicant itself is the payer, this entry would be the same as FCC Form 175.
3	Total Amount Paid - Enter the amount of the upfront payment associated with the FCC Form 159 (Revised 2/03).
4-8	Street Address, City, State, ZIP Code - Enter the street mailing address ( <b>not Post Office box number</b> ) where mail should be sent to the payer. If the applicant is the payer, these entries would be the same as FCC Form 175 from the Applicant Information section.
9	Daytime Telephone Number - Enter the telephone number of a person knowledgeable about this upfront payment.
10	Country Code - For addresses outside the United States, enter the appropriate postal country code (available from the Mailing Requirements Department of the U.S. Postal Service).
11	Payer FRN - Enter the payer's ten-digit FCC Registration Number ("FRN") registered in the Commission Registration System ("CORES").
21	Applicant FRN (Complete only if applicant is different than payer.) – Enter the applicant's ten-digit FRN registered in CORES.
24A	Payment Type Code - Enter "U083"
25A	Quantity - Enter the number "1"
26A	Fee Due - Amount of Upfront Payment
27A	Total Fee - Will be the same amount as 26A.
28A	FCC Code 1 - Enter the number "83" (indicating Auction 83).

## NOTES:

- Do not use Remittance Advice (Continuation Sheet), FCC Form 159-C, for upfront payments.
- If applicant is different from the payer, complete blocks 13 through 21 for the applicant, using the same information shown on FCC Form 175. Otherwise leave them blank.
- Since credit card payments will not be accepted for upfront payments for an auction, leave Section E blank.

**Winning Bidder Requirements, Down Payments and Final Payments**

Specific information regarding down payments and final payments will be included in a post-auction public notice announcing the winning bidders.

**ATTACHMENT D**  
**Cross-Walk of Applicant Names**

Applicant Name Listed in Attachment A (same as name provided on 2003 FCC Form 175)	Applicant Name Listed in <i>Auction 83 Comment PN</i> (name provided on 2003 FCC Form 349 Tech Box)
Capstar TX, Limited Partnership	CAPSTAR TX LIMITED PARTNERSHIP
Conner Media, Inc.	CONNER MEDIA CORPORATION
CORNERSTONE COMMUNITY RADIO, INC	CORNERSTONE COMMUNITY RADIO, INC.
E-String Wireless, Ltd.	E-STRING WIRELESS, LTD
Frank McCoy	FRANK G. MCCOY
HOUSTON CHRISTIAN BROADCASTERS, INC.	HOUSTON CHRISTIAN BROADCASTERS, INC.
Iglesia JesuChristo es mi Refugio	IGLESIA JESUCHRISTO ES MI REFUGIO, INC.
Kaspar Broadcasting Co., Inc.	KASPAR BROADCASTING CO, INC
Larry G. Cushing & Sons, Inc	LARRY G. CUSHING & SONS, INC.
Northwestern College	UNIVERSITY OF NORTHWESTERN-ST. PAUL
Pacifica Foundation	PACIFICA FOUNDATION, INC.
Professional Antenna, Tower and Translator Service	PROFESSIONAL ANTENNA, TOWER AND TRANSLATOR SERVICE (PATTS)
Robins Partners, LLC	ROBBINS PARTNERS, LLC