



# PUBLIC NOTICE

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DA 18-442  
May 1, 2018

## **AUCTION OF CROSS-SERVICE FM TRANSLATOR CONSTRUCTION PERMITS 19 BIDDERS QUALIFIED TO PARTICIPATE IN AUCTION 99**

### **AU Docket No. 17-143**

1. In this Public Notice, the Wireless Telecommunications Bureau (WTB) and Media Bureau (MB) (collectively the Bureaus) identify 19 applicants found to be qualified to bid in the upcoming auction of up to 12 new cross-service FM translator construction permits (Auction 99). Bidding in Auction 99 is scheduled to begin on Tuesday, May 15, 2018.<sup>1</sup> This Public Notice contains bidding instructions and other important information regarding Auction 99. It also addresses the continuing obligations and auction procedures for all Auction 99 applicants, including those that have not qualified to bid.

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

##### **A. Qualified Bidders**

2. Attachment A to this Public Notice lists the name of each of the 19 qualified bidders, each qualified bidder's upfront payment amount, and its maximum eligibility in bidding units.<sup>2</sup> Designation of an applicant as qualified to bid in the auction indicates that the applicant has provided the certifications and information concerning its qualifications for participation in the auction and timely submitted a sufficient upfront payment as required by the Commission's competitive bidding rules.<sup>3</sup>

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<sup>1</sup> See *Auction of Cross-Service FM Translator Construction Permits Scheduled for May 15, 2018; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 99*, AU Docket No. 17-143, Public Notice, DA 18-260, (WTB/MB Mar. 23, 2018) (*Auction 99 Procedures Public Notice*); see also *Auction of Cross-Service FM Translator Construction Permits; Status of FCC Form 175 Short-Form Applications to Participate in Auction 99*, Public Notice, DA 18-350 (WTB/MB April 10, 2018) (*Auction 99 Status Public Notice*).

<sup>2</sup> Concurrent with this Public Notice, the Bureaus waive section 1.2105(c) of the Commission's rules with respect to communications between J.J. & B. Broadcasting, Inc. (JJB) and Macon Media, Inc. (Macon), two jointly-owned Auction 99 applicants. See Letter from Albert Shuldiner, Chief, Audio Division, MB, and Margaret Wiener, Chief, Auctions and Spectrum Access Division, WTB, to John C. Trent, counsel to JJB and Macon, DA 18-447 (May 1, 2018).

<sup>3</sup> See 47 CFR §§ 1.2105, 1.2106, 1.2112, 73.5002. Under the Commission's two-phased auction application process, a winning bidder must submit a long-form application after the close of bidding in an auction to demonstrate its qualifications to hold a Commission license or construction permit. Thus, a determination that a short-form application is complete and complies with the Commission's competitive bidding rules and policies is not determinative of an applicant's qualifications to hold a license or construction permit. See 47 CFR §§ 1.2107 – 1.2109; see also *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Second Report and Order, 9 FCC Rcd 2348, 2376-77, paras. 163-168 (1994) (*Competitive Bidding Second Report and Order*). Commission staff considers an applicant's qualifications after the auction during the long-form application process. In the event that an applicant is found unqualified to be a Commission licensee or ineligible for any claimed bidding

3. In order to participate effectively in the auction, each qualified bidder should again carefully review the auction rules, procedures, and other information described in the *Auction 99 Procedures Public Notice* and subsequent public notices.<sup>4</sup> These public notices and other documents related to Auction 99 are available on the Commission's auctions website at [www.fcc.gov/auction/99](http://www.fcc.gov/auction/99). This Public Notice provides additional guidance.

4. Attachment B to this Public Notice lists the groups of mutually exclusive engineering proposals (MX groups), including locations and channels, for each qualified bidder.<sup>5</sup> Each qualified bidder is eligible to bid only for a construction permit specified for that qualified bidder in Attachment B.

5. 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 B. As explained in the *Auction 99 Procedures Public Notice*, an applicant cannot obtain a construction permit without placing a bid, even if no other applicant for that particular construction permit becomes qualified to bid or in fact places a bid.<sup>6</sup>

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

6. Attachment C to this Public Notice lists each applicant that submitted an FCC Form 175 but did not qualify to bid in Auction 99. All applicants that were listed in the *Auction 99 Procedures Public Notice*,<sup>7</sup> including those who have not qualified to bid, remain subject to the Commission's rules prohibiting certain communications in connection with Commission auctions.<sup>8</sup>

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

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

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

- At least two RSA SecurID® tokens
- A web address and instructions for accessing and logging in to the FCC auction bidding system
- An FCC assigned username (user ID) for each authorized bidder; and
- FCC Auction Bidder Line telephone number

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credit, it will be liable for any obligations incurred as a result of its participation in the auction. *See generally* 47 CFR § 1.2109.

<sup>4</sup> *Auction 99 Procedures Public Notice*, DA 18-260, paras. 7-8; *see also Auction 99 Status Public Notice*, DA 18-350, paras. 6-22.

<sup>5</sup> The *Auction 99 Procedures Public Notice* had identified 12 groups of mutually exclusive construction permit applications (MX groups) for Auction 99. *Auction 99 Procedures Public Notice*, DA 18-260, Attachment A. As shown in Attachments B and D of this Public Notice, bids will be accepted in only 11 of those MX groups because certain Auction 99 applicants failed to qualify to bid. Neither applicant for MX group FMT061 has qualified to bid, so no permit will be awarded for that MX group in Auction 99.

<sup>6</sup> *Id.*, para. 6. Only one applicant is qualified to bid in each of three of the MX groups listed in Attachment A to this Public Notice.

<sup>7</sup> *Auction 99 Procedures Public Notice*, Attachment A.

<sup>8</sup> *See* 47 CFR §§ 1.2105(c) and 73.5002(d), (e); *see also Auction 99 Procedures Public Notice*, DA 18-260, paras. 9-18.

8. A qualified bidder must have the above-referenced registration materials to participate in the mock auction and to bid in Auction 99. Any qualified bidder listed in Attachment A of this Public Notice that has not received the registration mailing **by 12:00 noon Eastern Time (ET) on Wednesday, May 9, 2018**, must contact the Auctions Hotline at (717) 338-2868. Receipt of the registration mailing is critical to participating in the mock auction and the actual auction. Each qualified bidder is responsible for ensuring that it has received all of the registration materials.

9. Each qualified bidder is solely responsible for ensuring the security and functionality of its computer systems, internet connection(s), and its registration materials, in addition to ensuring that only authorized bidders place bids on its behalf. The Commission assumes no responsibility or liability for these matters. **WARNING: Any unauthorized entity accessing or tampering with an FCC or other government computer system will be prosecuted to the full extent of the law.**

**B. Registration Material Replacement**

10. In the event that a qualified bidder's SecurID® tokens are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's FCC Form 175 may request replacements. To request replacement of these items, call the Auction Bidder Line at the telephone number provided in the registration materials or the Auction Hotline at (717) 338-2868.

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

11. The Commission will conduct the mock auction and bidding in Auction 99 electronically over the internet and will provide the option of telephonic bidding using the Auction Bidder Line. Each qualified bidder will receive in its registration materials the web address for accessing the FCC auction bidding system and the phone number for the Auction Bidder Line.

12. Each authorized bidder must have its own SecurID® token to bid electronically or by telephone. An applicant with only one authorized bidder will be issued two SecurID® tokens, while an applicant with two or three authorized bidders will be issued three tokens. For security purposes, the SecurID® tokens and the instructions for using them are sent only to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID® token is tailored to a specific auction and for a specific authorized bidder. SecurID® tokens issued for other auctions or obtained from a source other than the Commission will not work for Auction 99.

13. All bidders should carefully review the FCC Auction Bidding System User Guide. There are minimum system requirements for accessing the FCC auction bidding system. Bidders should note that smartphones and tablets are not supported. Users should test their computer configuration and browser(s) with the FCC auction bidding system in advance of the auction—for example during the mock auction. Any user attempting to access the FCC auction bidding system with a computer configuration or device that does not meet the requirements listed in the user guide is solely responsible for any resulting failure to access the auction bidding system, failure to do so in a timely manner, or failure of the bidding system to process the user's attempted bidding or other actions (even if it appears that such actions were completed properly).

14. In addition to bidding electronically over the internet, a qualified bidder will also have the option of bidding by telephone via the Auction Bidder Line. The Auction Bidder Line telephone number will be supplied in the registration materials sent to each qualified bidder. Any bidder choosing to bid electronically may use the Auction Bidder Line as an alternative method of bidding. When

submitting bids by telephone, the bidder must allow sufficient time to bid by placing its calls well in advance of the close of a bidding round.<sup>9</sup>

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

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

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

17. A qualified bidder should ensure that each of its authorized bidders can access and place bids in the FCC auction bidding system, without relying upon the same computer to do so. Contingency plans will ideally include arrangements for accessing and placing bids in the FCC auction bidding system from one or more alternative locations.

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

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

### **III. BIDDER EDUCATION AND IMPORTANT UPCOMING EVENTS AND DATES**

20. Below we provide information regarding the availability of educational and informational materials, and the opportunity for qualified bidders to participate in a mock auction prior to the start of bidding in Auction 99.

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

21. The FCC Auction Bidding System User Guide, which describes the features and functionality of the bidding system that will be used to bid in Auction 99, will be available in electronic form in the Education section of the Auction 99 website at [www.fcc.gov/auction/99](http://www.fcc.gov/auction/99). We will email a link to access and download the user guide to each authorized bidder and to the contact person listed on the qualified bidder's FCC Form 175. Additionally, the user guide will remain available and accessible on the Auction 99 website for reference. Bidders are encouraged to read the user guide prior to participating in the mock auction in order to familiarize themselves with the bidding system.

#### **B. Auction 99 Online Bidding Tutorial**

22. An online tutorial will provide information about the bidding procedures for the auction as well as how the FCC auction bidding system reflects those procedures. The tutorial will allow viewers

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<sup>9</sup> Because the length of a call to place bids may vary, the bidder should initiate its call a minimum of ten minutes prior to the scheduled end of the bidding round.

to navigate the presentation outline, review written notes, listen to an audio recording of the notes, and search for topics using a text search function. Additional features of this web-based tool include links to auction-specific Commission releases, email links for contacting Commission auction and licensing staff, and screen shots of the FCC auction bidding system. The online tutorial will be accessible from the Auction 99 website by May 4, 2018, through a link in the Education section. Once posted, the tutorial will remain available and accessible on the Auction 99 website for reference.

### C. Mock Auction

23. The Bureaus strongly encourage each qualified bidder to participate in the mock auction that will be conducted on Friday, May 11, 2018. The mock auction will allow a qualified bidder to familiarize itself with the FCC auction bidding system and to ask Commission auction staff and technical support staff questions about the system and auction conduct. The Bureaus will conduct this auction over the internet, and will provide the option of bidding by telephone.

24. A qualified bidder can access the mock auction at the web address provided to qualified bidders in the registration materials. Bidders choosing to bid electronically should review the FCC Auction Bidding System User Guide. Any qualified bidder that wishes to place bids by telephone should use the Auction Bidder Line telephone number supplied in the Auction 99 registration materials.

25. The mock auction will include 5 sample construction permits. Each qualified bidder will be able to bid on only one of the sample construction permits in the mock auction. Each sample construction permit will have 5,000 bidding units, and each bidder in the mock auction will have 5,000 bidding units of eligibility. The mock auction will otherwise follow the rules governing Auction 99. Each bidder will be required to be active on 100 percent of its bidding eligibility. That is, a bidder must either place a bid or be a provisionally winning bidder during each round of the auction. If a bidder does not meet this requirement, an activity rule waiver will be automatically applied (if any waivers are available) or its current eligibility will be permanently reduced (if no waivers remain), possibly eliminating it from further bidding in the mock auction. A bidder should take advantage of the mock auction to practice taking actions it might wish to take during Auction 99.

26. The mock auction bidding schedule for Friday, May 11, 2018, will be as follows:

Round 1	10:00 a.m.	-	11:00 a.m. ET
Round 2	11:30 a.m.	-	12:00 p.m. ET
Round 3	1:30 p.m.	-	2:00 p.m. ET
Round 4	2:30 p.m.	-	3:00 p.m. ET
Round 5	3:30 p.m.	-	3:45 p.m. ET

## IV. AUCTION INFORMATION

### A. Bidding Schedule

27. Bidding in Auction 99 will begin Tuesday, May 15, 2018, with the following schedule:

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

28. The bidding schedule starting on Wednesday, May 16, 2018, and continuing each business day until further notice, will be:

Bidding Round	10:00 a.m.	-	10:30 a.m. ET
Bidding Round	11:15 a.m.	-	11:45 a.m. ET
Bidding Round	12:30 p.m.	-	1:00 p.m. ET
Bidding Round	2:00 p.m.	-	2:30 p.m. ET
Bidding Round	3:15 p.m.	-	3:45 p.m. ET
Bidding Round	4:30 p.m.	-	5:00 p.m. ET

29. The Bureaus will set the pace of the auction based upon their monitoring of the bidding and assessment of the auction's progress. We will provide notice of any and all subsequent schedule changes by announcement in the FCC auction bidding system.

#### **B. Bid Amounts**

30. For each construction permit in Auction 99, the FCC auction bidding system will provide a minimum bid amount, as previously announced, and eight additional bid amounts from which to choose (for a total of nine bid amounts).<sup>10</sup> While a bidder can change the amount of or remove new bids during a round, it cannot do so once a round ends. We caution each bidder to select its bid amounts carefully because each bidder assumes a binding obligation to pay the full bid amount, even if the bid was mistakenly or erroneously made.<sup>11</sup> Moreover, no bidder will be permitted to withdraw any of its bids submitted in a prior round in Auction 99.

31. The Bureaus retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid increment percentage, the additional bid increment percentage, the number of acceptable bid amounts, and the parameters of the formulas used to calculate bid amounts if the Bureaus determine that circumstances so dictate.<sup>12</sup> Further, the Bureaus retain the discretion to do so on a construction permit-by-construction permit basis. The Bureaus also 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. If the Bureaus exercise their discretion to make any of these changes, they will alert bidders by announcement in the FCC auction bidding system.<sup>13</sup>

#### **C. Round Results**

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

33. Two types of reports will be available to qualified bidders during the auction: (1) publicly available information, and (2) bidder-specific information available only to that bidder when logged in to the FCC auction bidding system. The public information will be available on the Public Reporting System at <https://auctiondata.fcc.gov> and from a link in the Results section of the Auction 99 website at [www.fcc.gov/auction/99](http://www.fcc.gov/auction/99). When a bidder is logged in to the FCC auction bidding system, it will have access to a record of the bids it placed by using the *round summary* feature and will have access to the results of its bids by using the *posted results* feature. These features can be accessed using the links in the navigation bar of the FCC auction bidding system.

<sup>10</sup> Attachment A of the *Auction 99 Procedures Public Notice* lists the minimum opening bid amount for each construction permit in Auction 99. *Auction 99 Procedures Public Notice*, DA 18-260, paras. 96-101.

<sup>11</sup> See 47 CFR § 1.2104(g).

<sup>12</sup> *Auction 99 Procedures Public Notice*, DA 18-260, paras. 96-101.

<sup>13</sup> *Id.*

34. Detailed instructions for reviewing and downloading round results are provided in the FCC Auction Bidding System User Guide. The user guide is available in electronic form in the Education section of the Auction 99 website at [www.fcc.gov/auction/99](http://www.fcc.gov/auction/99).

**D. Bidder Questions During Auction 99 and the Mock Auction**

35. Commission auction staff and technical support staff will be available during the auction and the mock auction. Only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the qualified bidder's FCC Form 175 should call on behalf of a bidder. When calling, the person should state that he or she is calling on behalf of a bidder with a time-sensitive auction question. To place bids by telephone or to ask questions during the auction, a bidder must use the FCC Auction Bidder Line telephone number supplied in the registration materials and have his or her login information and RSA token available. Otherwise, a bidder should refer to the contact information provided in Section VIII, Contact Information, below.

**E. Auction Announcements**

36. The Commission will post pertinent auction information as announcements in the FCC auction bidding system. Each bidder should routinely check for announcements each time it enters the auction bidding system and should click on and read each announcement carefully.

**F. Bidder Suggestions**

37. A bidder may submit suggestions to the Commission staff including any suggestions concerning Auction 99 or future auctions—by using the *messages* feature in the FCC auction bidding system.<sup>14</sup> However, this is not an appropriate mechanism for asking time-sensitive questions that may need an immediate response, such as questions about auction procedures or other issues. Any time-sensitive questions should be directed to the Auction Bidder Line or to the appropriate staff contact using the telephone number provided in Section VIII, Contact Information, below. Commission staff considers all suggestions, but may not always provide an individualized response.

**V. APPLICANTS' CONTINUING OBLIGATIONS**

**A. Prohibited Communications**

38. The Bureaus remind applicants that the rules prohibiting certain communications set forth in sections 1.2105(c) and 73.5002(d) and (e) of the Commission's rules apply to each applicant that filed a short-form application in Auction 99.<sup>15</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>16</sup>

39. This prohibition took effect as of the short-form application filing deadline, which for Auction 99 was August 2, 2017, at 6:00 p.m. ET, and ends at the post-auction down payment deadline, which will be announced in a future public notice.<sup>17</sup> **This prohibition applies to all applicants**<sup>18</sup>

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<sup>14</sup> To access the *messages* feature, select the Messages link on the navigation pane of the FCC auction bidding system. For information on how to use this feature, please see the FCC Auction Bidding System User Guide.

<sup>15</sup> 47 CFR §§ 1.2105(c)(1), 73.5002(d), (e).

<sup>16</sup> *Id.* § 1.2105(c).

<sup>17</sup> 47 CFR § 1.2105(c)(1).

regardless of whether such applicants become qualified bidders or actually bid.<sup>19</sup> For further information on the prohibition, applicants should refer to the *Auction 99 Procedures Public Notice*.<sup>20</sup>

40. We also emphasize that, for purposes of this prohibition, an “applicant” includes all controlling interests of the entity submitting a short-form application to participate in the auction — including all officers and directors of that entity and all holders of interests amounting to 10 percent or more of the entity submitting a short-form application.<sup>21</sup> Thus, for example, a violation of section 1.2105(c) of the Commission’s rules could occur when an individual serves as an officer and/or director for two or more Auction 99 applicants.<sup>22</sup> Therefore, applicants should continue to take precautionary steps to prevent prohibited communications between any of the entities or persons described that are covered by the prohibition.<sup>23</sup>

41. In connection with 2015 amendments to the competitive bidding rules, the Commission now prohibits a joint bidding arrangement, including any arrangement relating to the permits or licenses being auctioned that address or communicate, directly or indirectly, bidding at the auction, bidding strategies, including any arrangement regarding price or the specific permits or licenses on which to bid, and any such arrangement relating to the post-auction market structure.<sup>24</sup> The revised rule provides limited exceptions for a communication within the scope of any arrangement consistent with the exclusion from the Commission’s rule prohibiting joint bidding, provided such arrangement is disclosed on the applicant’s auction application.<sup>25</sup> An applicant may continue to communicate pursuant to any pre-existing agreement, arrangement, or understanding that is solely operational or that provides for transfer or assignment of license, provided that such agreement, arrangement, or understanding does not involve

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<sup>18</sup> *But see* footnote 2 (referencing limited waiver for commonly controlled applicants J.J. & B. Broadcasting, Inc. and Macon Media, Inc.).

<sup>19</sup> A party that submits an auction application becomes an “applicant” under the rule at the application filing deadline and that status does not change based on subsequent developments. *See, e.g., Star Wireless, LLC v. FCC*, 522 F.3d 469 (D.C. Cir. 2008) (section 1.2105(c) applies to applicants regardless of whether they are qualified to bid). Thus, an auction applicant that does not correct deficiencies in its application, fails to submit a timely and sufficient upfront payment, or does not otherwise become qualified, remains an “applicant” for purposes of the rule and remains subject to the prohibition on certain communications until the applicable down payment deadline.

<sup>20</sup> *Auction 99 Procedures Public Notice*, DA 18-260, paras. 9-18.

<sup>21</sup> 47 CFR § 1.2105(c)(5)(i).

<sup>22</sup> *See e.g., Lotus Communications Corp.*, Order, 23 FCC Rcd 9107 (WTB 2008) (affirming finding of apparent violation of communication prohibitions of section 1.2105(c) when one individual served as officer for two auction applicants); Letter to Colby M. May, TCCSA, Inc., from Barbara A. Kreisman, Chief, Video Division, and Margaret W. Wiener, Chief, Auctions & Spectrum Access Division, 20 FCC Rcd 14648 (WTB/MB 2005) (finding apparent violation of communication prohibitions of section 1.2105(c) where applicants shared same individual as an officer and director).

<sup>23</sup> *See Application of Nevada Wireless*, Memorandum Opinion and Order, 13 FCC Rcd 11973, 11977-78, paras. 11-13 (WTB 1998). The Bureau cautions, however, that the mere existence of precautionary measures will not outweigh specific evidence of prohibited communications, nor will it preclude the initiation of an investigation when warranted. *Id.* at 11978, para.13.

<sup>24</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 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, 7575-76, para. 195 (2015) (*Updating Part 1 Report and Order*).

<sup>25</sup> *Updating Part 1 Report and Order*, 30 FCC Rcd at 7576-77, paras. 197-99.



the communication or coordination of bids (including amounts), bidding strategies, or the particular permits or licenses on which to bid and provided that such agreement, arrangement, or understanding is disclosed on its application.<sup>26</sup>

**B. Disclosure Obligations and Possible Sanctions**

42. Section 1.2105(c)(4) requires each auction applicant to report a prohibited discussion or disclosure regarding bids or bidding strategy to the Commission in writing immediately, but in no case later than five business days after the communication occurs, even if the communication does not result in an agreement or understanding regarding bids or bidding strategy that must be reported under section 1.65.<sup>27</sup> The Commission has clarified that each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.<sup>28</sup>

**C. Reporting Prohibited Communication**

43. Any party reporting any communication pursuant to sections 1.65, 1.2105(a)(2), or 1.2105(c)(4) must take care to ensure that any such report does not itself give rise to a violation of section 1.2105(c). 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.

44. To minimize the risk of inadvertent dissemination of a report of a potential prohibited communication, section 1.2105(c)(6) requires a party to file only a single report with the Chief of the Auctions and Spectrum Division in the Wireless Telecommunications Bureau.<sup>29</sup> In Auction 99, any such report must be filed according to the instructions set forth in the *Auction 99 Procedures Public Notice*.<sup>30</sup> Any such report must be filed immediately, and in no case later than five business days after the communication occurs, and must either be submitted by email to [auction99@fcc.gov](mailto:auction99@fcc.gov) or delivered to the following address: Margaret Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Washington, DC 20554.<sup>31</sup>

45. Any applicant that is a winning bidder will be required to disclose in its long-form application the specific terms, conditions, and parties involved in any agreement or arrangement entered into relating to the competitive bidding process, including any agreement relating to the post-auction market structure.<sup>32</sup>

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<sup>26</sup> *Id.* See also *Guidance Regarding the Prohibition of Certain Communications During the Incentive Auction, Auction 1000*, Public Notice, 30 FCC Rcd 10794 (WTB 2015).

<sup>27</sup> 47 CFR § 1.2105(b); see also *Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures*, Seventh Report and Order, 16 FCC Rcd 17546, 17553-55, paras. 13-17 (2001).

<sup>28</sup> See *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, Second Report and Order, 22 FCC Rcd 15289, 15395, paras. 285-86 (2007).

<sup>29</sup> 47 CFR § 1.2105(c)(6); *Procedural Amendments to Commission Part 1 Competitive Bidding Rules*, Order, 25 FCC Rcd 521, 522 para. 4 (2010) (*Part 1 Procedural Amendments Order*).

<sup>30</sup> See *Auction 99 Procedures Public Notice*, DA 18-260, paras. 14-16.

<sup>31</sup> *Id.*

<sup>32</sup> See 47 CFR § 1.2107(d).

46. Any applicant found to have violated section 1.2105(c) of the Commission's rules may be subject to sanctions.<sup>33</sup> In addition, we remind each applicant that it is subject to the antitrust laws, which are designed to prevent anti-competitive behavior in the marketplace. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount, and it may be prohibited from participating in future auctions, among other sanctions.<sup>34</sup>

**D. Submission of Auction-Related Filings**

47. An applicant must not submit application-specific material through the Commission's Electronic Comment Filing System (ECFS).

48. A party wishing to submit a request, a complaint, or other information concerning Auction 99 should, in addition to following other procedures prescribed by the Commission's rules, send a copy by email to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at [auction99@fcc.gov](mailto:auction99@fcc.gov). The Commission occasionally receives complaints regarding specific bidders and requests to suspend bidding during an auction. While the Commission reserves the right to take appropriate action during an auction to preserve the integrity of the auction process, it is generally our practice to address any such allegations only after a winning bidder has submitted its long-form application, when there is greater opportunity for investigation of such allegations, if warranted. The Commission will not investigate any complaints or allegations that are not accompanied by full contact information, including name, address, and telephone number, for the complaining party or parties.

49. Finally, parties wishing to make suggestions concerning Auction 99 or future auctions should present such ideas using the messages feature of the FCC auction bidding system. (As mentioned above, this feature is not an appropriate mechanism for asking time-sensitive questions that need an immediate response.) Commission staff considers all suggestions, but may not always provide an individualized response.

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

50. Each applicant must maintain the accuracy and completeness of information furnished in its short-form application (FCC Form 175), including any attachments.<sup>35</sup> Sections 1.65(a) and 1.2105(c) of the rules require an applicant in a competitive bidding proceeding to furnish additional or corrected information within five days of a significant occurrence, or to amend its short-form application no more than five days after the applicant becomes aware of the need for amendment.<sup>36</sup> The Commission has established a five-day reporting requirement to facilitate the auction process, by making the information available promptly to all participants and enabling the Bureaus to act expeditiously on those changes when such action is necessary.<sup>37</sup> Therefore, an applicant must amend its short-form application to furnish additional or corrected information as promptly as possible, and in no case more than five business days

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<sup>33</sup> See *id.* §§ 1.2105(c), 1.2109(d).

<sup>34</sup> See *id.* § 1.2109(d).

<sup>35</sup> See *id.* § 1.65. For more information on making administrative changes to an existing application, see "Submissions of Updates to Short-Form Applications" in the *Auction 99 Procedures Public Notice*, DA 18-260, paras. 34-38. See also *Filing Instructions for Cross-Service FM Translator Auction Filing Window for AM Broadcasters to be Open July 26 - August 2, 2017; Freeze on FM Translator and Low-Power FM Station Minor Change Applications and FM Booster Applications July 19 - August 2, 2017*, Public Notice, 32 FCC Red 4663, 4673-74, paras. 33-34, Attachment B (MB/WTB 2017) (*Auction 99 Filing Instructions Public Notice*).

<sup>36</sup> *Part 1 Procedural Amendments Order*, 25 FCC Red at 523, para. 8.

<sup>37</sup> *Id.*, 25 FCC Red at 523, paras. 7-8.

after the applicant becomes aware of the need for amendment or five business days after the reportable event occurs, whichever is later.<sup>38</sup>

51. An applicant seeking to provide additional or updated information must modify its short-form application electronically and submit a letter summarizing the change by email to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at [auction99@fcc.gov](mailto:auction99@fcc.gov). The email summarizing the change must include a subject or caption referring to Auction 99 and the name of the applicant.<sup>39</sup> Questions about changes should be directed to the Auctions and Spectrum Access Division at (202) 418-0660.

52. As described in the Commission's rules, an applicant may make only minor corrections to its short-form application (e.g., deletion and addition of authorized bidders or change contact information).<sup>40</sup> An applicant should not use the auction application system outside of the initial and resubmission filing windows to make changes to its short-form application for other than administrative changes (e.g., changing certain contact information or authorized bidder information).<sup>41</sup> A major modification includes a construction permit change, newly claimed or increased bidding credit, or changing control of the applicant.<sup>42</sup> Each applicant must clearly state the nature of the change in an amendment to its short-form application and in the summary letter referenced above.<sup>43</sup>

#### F. Ex Parte Rule

53. Applicants should also be aware that the Commission has generally treated mutually exclusive short-form applications as exempt proceedings and, therefore, not subject to the *ex parte* prohibitions that pertain to restricted proceedings.<sup>44</sup>

#### G. Due Diligence

54. We remind each potential bidder that it is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on its valuation of the construction permits in Auction 99. The Commission makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC permittee in a broadcast service, subject to certain conditions and regulations. These conditions include, but are not limited to, the condition that FCC licenses and other

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<sup>38</sup> See 47 CFR § 1.2105(b)(4); see also *Part 1 Procedural Amendments Order*, 25 FCC Red at 521.

<sup>39</sup> The Bureau request that parties format any attachments to email as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

<sup>40</sup> See 47 CFR § 1.2105(b).

<sup>41</sup> During all phases of the application process, an applicant has electronic access to its Form 175 to make certain administrative changes, including updates to: applicant address, responsible party information, contact information, authorized bidders, and bidding option (telephonic or electronic). Auction applicants are not permitted to make a change to the following data fields after the short-form application filing deadline: applicant name, legal classification, certifier, bidding credit, and construction permit designation.

<sup>42</sup> See 47 CFR § 1.2105(b). See also, e.g., Letter to Koch Broadcasting Corp. and Birch Broadcasting Corp. from Margaret W. Wiener, Chief, Auctions and Spectrum Access Div., and Peter H. Doyle, Chief, Audio Div., 21 FCC Red 147 (WTB/MB 2006) (dismissing short-form application filed for AM Auction 84 due to major amendment changing control).

<sup>43</sup> See *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 Red 1583, 1611-14, paras. 57-63 (2010).

<sup>44</sup> See *Commission Announces that Mutually Exclusive "Short Form" Applications (Form 175) to Participate in Competitive Bidding Process ("Auctions") Are Treated as Exempt for Ex Parte Purposes*, Public Notice, 9 FCC Red 6760 (1994). See also 47 CFR § 1.1202(d)(1) Note 1.

authorizations (whether awarded through competitive bidding or otherwise) are subject to the authority of the FCC, under the Communication Act of 1934, as amended, to modification through rulemaking and adjudicative proceedings. The Bureaus strongly encourage each potential bidder to conduct its own research prior to the beginning of bidding in Auction 99 in order to determine the existence of pending proceedings, pleadings, applications, or authorizations that might affect its decisions regarding participation in the auction. Each potential bidder is solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect its ability to bid on, otherwise acquire, or make use of any specific construction permit available in Auction 99. In addition, each potential bidder should perform sufficient technical analyses or refresh their previous analyses to assure itself that, should it be a winning bidder for any Auction 99 construction permit, it will be able to build and operate facilities that will comply fully with the Commission's technical and legal requirements.

55. Each participant should continue such research throughout the auction. For further details regarding due diligence, please refer to the *Auction 99 Procedures Public Notice* under Section I.B.3.<sup>45</sup>

## VI. POST-AUCTION PROCEDURES

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

57. Shortly after bidding has ended, the Commission will release a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments and final payments.<sup>46</sup> Each winning bidder will have ten business days following the release of that public notice to make down payments. Final payments will be due ten business days after the deadline for submitting down payments for this auction.

58. Each winning bidder must electronically file a complete and accurate long-form application (FCC Form 349, Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station), including required exhibits, for each construction permit won through Auction 99 within the time periods announced in the auction closing public notice.<sup>47</sup> Further filing instructions will be provided to auction winners at the close of the auction.<sup>48</sup> Further information regarding these post-auction procedures is contained in the *Auction 99 Procedures Public Notice* and will be provided in the public notice announcing the winning bidders.<sup>49</sup>

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<sup>45</sup> See *Auction 99 Procedures Public Notice*, DA 18-260, paras. 21-25.

<sup>46</sup> For more detail, see *Auction 99 Procedures Public Notice*, DA 18-260, paras. 117-25.

<sup>47</sup> See 47 CFR §§ 1.2107, 73.5005(a). See also *Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, First Report and Order, 13 FCC Rcd 15920, 15984-85, paras. 163-64 (1998). Commission rules also require that a winning bidder in a commercial broadcast spectrum auction submit an application filing fee with its post-auction long-form application. See 47 CFR §§ 1.1104, 1.2107(c).

<sup>48</sup> See 47 CFR §§ 1.2107, 1.2109(a), 73.5003, 73.5005, 73.5006(d), 74.1232-74.1233.

<sup>49</sup> See *Auction 99 Procedures Public Notice*, DA 18-260, paras. 117-125; see also 47 CFR §§ 1.2107, 1.2109(a).

**VII. CONTACT INFORMATION**

59. For further information concerning Auction 99, please contact:

<b>General Auction Information</b> General Auction Questions	<b>FCC Auctions Hotline</b> (888) 225-5322, option two; or (717) 338-2868
<b>Auction 99 Process and Procedures</b> Bidding Procedures Auction Schedule	<b>Auctions and Spectrum Access Division</b> Auctions Hotline 717-338-2868
<b>Auction 99 Legal Information</b> Auction Rules, Policies, Regulations, Including Reports of Section 1.2105(c) Violations and Application Modifications	<b>Auctions and Spectrum Access Division</b> (202) 418-0660 Lynne Milne (Attorney)
<b>Licensing Information</b> Service Rules, Policies, Regulations Licensing Issues, Engineering Issues Due Diligence, Incumbency Issues	<b>Audio Division</b> (202) 418-2700 Lisa Scanlan (Attorney) Tom Nessinger (Attorney) James Bradshaw (Engineer)
<b>Technical Support</b> Hardware/Software Issues with Electronic Filing or FCC Auction System	<b>FCC Auctions Technical Support Hotline</b> (877) 480-3201, option nine; or (202) 414-1250 (202) 414-1255 (TTY) Hours of service: 8:00 a.m. – 6:00 p.m. ET, Monday through Friday
<b>Payment Information</b> Instructions for Wiring Upfront Payments and Completing Form 159	<b>FCC Revenue &amp; Receivables Operations Group/Auctions</b> Gail Glasser (202) 418-0578, or alternatively, Theresa Meeks (202) 418-2945, or (202) 418-2843 (fax)

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

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