



PUBLIC NOTICE

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DA 18-515
May 23, 2018

AUCTION OF FM TRANSLATOR CONSTRUCTION PERMITS

STATUS OF FCC FORM 175 SHORT-FORM APPLICATIONS TO PARTICIPATE IN AUCTION 83

AU Docket No. 17-351

1. By this Public Notice, the Wireless Telecommunications Bureau (WTB) and Media Bureau (MB) (collectively the Bureaus) announce the status of the 55 short-form applications with mutually exclusive (MX) engineering proposals that remain pending in Auction 83.¹ This auction will resolve MX engineering proposals for 43 new FM translator stations.² Bidding in this auction is scheduled to begin on Thursday, June 21, 2018. This Public Notice also provides other important information and reminders relating to the auction.

I. SHORT-FORM APPLICATIONS AND UPFRONT PAYMENTS

A. Status of Short-Form Applications

2. The short-form applications (FCC Forms 175) for Auction 83 have been reviewed for completeness and compliance with the Commission’s rules, and have been classified into the categories listed below.

| | |
|--------------------------------------|------------------------|
| Complete | 19 applications |
| Incomplete | 11 applications |
| Incomplete-Disqualified | 25 applications |

3. **Complete Applications.** Attachment A to this Public Notice lists the applicants for Auction 83 with short-form applications that are accepted for filing and complete. Each of these applicants may become a qualified bidder upon receipt by the Commission of the required upfront

¹ See *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, Public Notice, DA 18-257 (WTB/MB 2018) (*Auction 83 Procedures Public Notice*). A summary of this public notice was published at 83 Fed. Reg. 18441 (Apr. 27, 2018).

² Applications with engineering proposals for FM translator stations that could not all be granted under the Commission’s rules are considered mutually exclusive. *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, 15978-80, paras. 149-53 (1998) (*Broadcast First Report and Order*), Memorandum Opinion and Order, 14 FCC Rcd 8724, Memorandum Opinion and Order, 14 FCC Rcd 12541 (1999), *aff’d*, *Orion Communications Ltd. v. FCC*, 221 F.3d 196, No. 98-1424, slip op. (D.C. Cir. June 13, 2000) (unpublished opinion available at 2000 WL 816046), *aff’d*, *Orion Communications Ltd. v. FCC*, 213 F.3d 761 (D.C. Cir. 2000).

payment by the deadline on May 31, 2018, described below.³ Each applicant must also maintain the accuracy of its short-form application as required by sections 1.65 and 1.2105(b) of the Commission's rules.⁴ Attachment A lists the designated construction permits for each of these applicants. If an applicant claimed a new entrant bidding credit, the applicant's claimed bidding credit percentage for each construction permit is indicated as 35 percent or 25 percent.

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

5. **Incomplete Applications.** Attachment B to this Public Notice lists the applicants for Auction 83 with short-form applications that are accepted for filing but found to be incomplete or otherwise deficient. Each of these applicants will receive a letter identifying the deficiencies in its application. This letter will be sent to the contact person and contact address listed on the incomplete application via overnight delivery, along with a copy of this Public Notice. To become a qualified bidder, each applicant must make the required upfront payment and resubmit its application, having corrected any deficiencies, by the May 31, 2018, deadline.⁷ Each applicant must also maintain the accuracy of its short-form application as required by sections 1.65 and 1.2105(b) of the Commission's rules.⁸

6. **Incomplete-Disqualified Applications.** Attachment C to this Public Notice lists the applicants for Auction 83 with short-form applications that are Incomplete-Disqualified because such applicants did not certify and submit an updated Form 175 during the remedial filing window. In the *Auction 83 Procedures Public Notice*, the Bureau warned all applicants that failure to provide sufficient information in the data fields of the electronic FCC Form 175, thus enabling the applicant to "certify and submit" its auction application during the remedial window as prescribed in that public notice, would result in the Form 175 application being designated as Incomplete-Disqualified. An applicant whose

³ For more information on upfront payments, see section I.B., below; see also 47 CFR § 1.2106 (upfront payment rule).

⁴ 47 CFR §§ 1.65, 1.2105(b). These rules require each applicant in a competitive bidding proceeding to furnish additional or corrected information within five days of a significant occurrence, or to amend its short-form application no more than five days after the applicant becomes aware of the need for amendment. An applicant's obligation to make such a modification or amendment to its pending application continues until it is made. See *Procedural Amendments to Commission Part 1 Competitive Bidding Rules*, Order, 25 FCC Rcd 521, 522-23, paras. 6-8 (2010) (*Part 1 Procedural Amendments Order*). See also 47 CFR § 1.2105(c)(4) (any applicant that makes or receives a prohibited communication must report such communication in writing to the Commission no later than five business days after the communication occurs).

⁵ See 47 CFR §§ 1.2107, 1.2109, 73.5005; 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*).

⁶ See generally 47 CFR § 1.2109.

⁷ See 47 CFR §§ 1.2105(b), 1.2106.

⁸ 47 CFR §§ 1.65, 1.2105(b). See also 47 CFR § 1.2105(c)(4).

Form 175 is so designated will have no further opportunity to update its application and now is disqualified from further participation in Auction 83.⁹ The applicants listed in Attachment C are hereby designated as Incomplete-Disqualified for failure to provide sufficient information in the data fields of their electronic FCC Forms 175 and, thus, failure to “certify and submit” before the closing of the remedial filing window.¹⁰

7. **Changes Reported by Applicants Reflected in this Public Notice.** This Public Notice reflects changes reported by certain Auction 83 applicants during the remedial filing window. The following table lists applicant name changes relative to the applicant name listed in the FCC Form 175 as initially filed.¹¹

| Applicant Name as Listed on FCC Form 175 as Initially Filed | Current Applicant Name on FCC Form 175 |
|---|---|
| Juan Alberto Ayala | Juan A. Ayala |
| Clear Channel Broadcasting Licenses, Inc. | Clear Channel Broadcasting Licenses, Inc., as DIP ¹² |
| Conner Media, Inc. | Conner Media Corporation |
| KSID Radio, Inc. | Dead-Short Broadcasting, LLC |
| Frank McCoy | Frank G. McCoy |
| Pacifica Foundation | Pacifica Foundation, Inc. |
| Radio Broadcasting Services, Inc. | Radio Broadcasting Services, Incorporated |
| Evangel Ministries, Inc. | The Family Radio Network, Inc. |
| Northwestern College | University of Northwestern – St. Paul |

In addition, eight applicants reported changes of control or ownership which fall within the terms of the Bureaus’ waiver of section 1.2105(b)(2)’s bar on major modifications for Auction 83 applicants that had 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.¹³ Finally, for those Auction 83 applicants requesting a bidding credit, this Public Notice reflects certain changes in bidding credit claims reported during the remedial window.¹⁴

⁹ See *Auction 83 Procedures Public Notice*, DA 18-257, paras. 35, 46, Attachment B, B-1 – B-2.

¹⁰ Although such applicants will not be eligible to place bids during this auction, each will retain its status as an applicant in Auction 83 and will remain subject to the Commission’s rules prohibiting certain communications. See 47 CFR §§ 1.2105(c) and 73.5002(d).

¹¹ The Bureaus previously noted inconsistencies between applicant names reported in the FCC Form 175 and Form 349 “tech box” filings for certain applicants. See *Auction 83 Procedures Public Notice*, DA 18-257, n.7, Attachment B at B-4, Attachment D.

¹² The FCC Form 175 application of Clear Channel Broadcasting Licenses, Inc., as DIP, is the consolidation of auction applications initially-filed by the following entities that were each under common ownership and control: Clear Channel Broadcasting Licenses, Inc., Capstar TX Limited Partnership and Cleveland Radio Licenses, LLC. See *Auction 83 Procedures Public Notice*, DA 18-257, para. 9 (allowing Auction 83 applicants subject to common control to consolidate applications into a single application to come into compliance with current competitive bidding rules).

¹³ See *Auction 83 Procedures Public Notice*, DA 18-257, para. 8; see also 47 CFR § 1.2105(b). These applicants are: Bible Broadcasting Network, Inc., Big Broadcasting, Inc., Dead-Short Broadcasting, LLC, Micro Communications, Inc., Miller Communications, Inc., Pacifica Foundation, Inc., University of Northwestern – St. Paul, and Vermont Public Radio.

¹⁴ In particular, four applicants reported that they were no longer eligible for the level of new entrant bidding credit claimed in their Forms 175 as initially filed. Sister Grace, Inc. and The Family Radio Network, Inc. no longer claim

B. Upfront Payments

8. Upfront payments and accompanying FCC Remittance Advice Forms (FCC Form 159, February 2003 edition) for Auction 83 are due in the proper account at JP Morgan Chase **by 6:00 p.m. Eastern Time (ET) on Thursday, May 31, 2018**. In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account by the deadline. **Payments must be made by wire transfer only in accordance with the instructions provided in the Auction 83 Procedures Public Notice.**¹⁵ No other payment method is acceptable for this auction.¹⁶ At least one hour before placing the order for the wire transfer (but on the same business day), each applicant must fax a completed FCC Form 159 to the FCC at (202) 418-2843. Each applicant is reminded to provide its FCC Registration Number (FRN) on the FCC Form 159 and to submit the same FRN with all future payments for Auction 83.

9. 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).¹⁷ An applicant should coordinate with its financial institution well ahead of the due date regarding its wire transfer to allow sufficient time for the wire transfer to be initiated and completed prior to the deadline. The Commission has repeatedly cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer.¹⁸ Each applicant should obtain confirmation from its financial institution that its wire transfer to JP Morgan Chase was successful and from Commission staff that the applicant's payment has been received by the Commission in the proper account before the specified deadline. For confirmation from the Commission, an applicant may 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. Detailed information regarding upfront payments can be found in the *Auction 83 Procedures Public Notice* under section II.F. and section III.D.¹⁹

C. Short-Form Application Changes and Resubmission

10. Each applicant whose application for Auction 83 has been identified as incomplete must

(Continued from previous page) _____

any bidding credit. Harlan Communications Corp. and Katherine Pyeatt reduced their bidding credit claims from 35 percent to 25 percent.

¹⁵ See *Auction 83 Procedures Public Notice*, DA 18-257, paras. 64-76, Attachment C, C-1 – C-2. A wire transfer is a transaction that is initiated through an applicant's bank. The applicant authorizes the bank to wire funds from an applicant's account to the Commission's auction payment lockbox bank account. Different banks have distinct requirements and procedures for a wire transfer, which may vary.

¹⁶ The Commission will not accept checks, credit cards, or automated clearing house (ACH) payments.

¹⁷ Each applicant may access an electronic pre-filled version of the FCC Form 159 through the FCC auction application system. See *Auction 83 Procedures Public Notice*, DA 18-257, para. 70, Attachment C, C-1 – C-2.

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

¹⁹ See *Auction 83 Procedures Public Notice*, DA 18-257, paras. 48-55, 64-76, Attachment C, Auction-Specific Instructions for FCC Remittance Advice (FCC Form 159 – February 2003 edition), C-1 – C-2.

address defects in its application during the resubmission window, which is now open.²⁰ Corrected applications must be filed **prior to 6:00 p.m. ET on Thursday, May 31, 2018**. Any short-form application corrections must be made electronically using the FCC's auction application system. This will be the only opportunity to cure application defects. Late resubmissions will not be accepted. An applicant that filed an application deemed to be incomplete or otherwise deficient, as noted in Attachment B to this Public Notice, must submit a timely and sufficient upfront payment before the Commission will review its resubmitted application. If an application is incomplete or otherwise deficient after the resubmission deadline has passed or if the required upfront payment is not made by the specified deadline, the applicant will not be permitted to participate in bidding.²¹

11. During this resubmission window, all applicants may make minor changes as described below in more detail. We remind applicants that sections 1.65 and 1.2105(b) of the Commission's rules require an applicant to maintain the accuracy and completeness of information furnished in its pending short-form application.²² Each applicant should amend its short-form application to furnish additional or corrected information within five days of a significant occurrence, or no more than five days after the applicant becomes aware of the need for amendment.²³ To the extent that changes may be made directly in the electronic FCC Form 175 at the time of the amendment, an applicant must modify its short-form application electronically.²⁴ An applicant seeking to report changes outside of the resubmission window must submit a letter briefly summarizing the changes by email to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, at auction83@fcc.gov. Questions about changes should be directed to the Auctions and Spectrum Access Division at (202) 418-0660.

12. An applicant's ability to modify its FCC Form 175 directly in the auction application system will be limited between the closing of the remedial filing window and the opening of the resubmission filing window, and again between the closing of the resubmission filing window and the release of the public notice announcing the Auction 83 qualified bidders. During these periods, an applicant will be permitted to modify only the applicant's address, responsible party address, and contact information (e.g., name, address, telephone number, etc.). While changes can be made to ownership and agreement information,²⁵ we remind each applicant that any application changes must comply with the Commission's rules, which prohibit, among other things, changes in ownership that would constitute an assignment or transfer of control, as well as changes in ownership or agreements that would constitute

²⁰ 47 CFR § 1.2105(b)(2). As explained above, if an application is designated as Incomplete-Disqualified, that applicant will have no further opportunity to update its application and now is disqualified from further participation in Auction 83.

²¹ Any applicant that submits a short-form application but fails to become a qualified bidder for any reason, including a failure to timely submit an upfront payment, will retain its status as an applicant in Auction 83 and will remain subject to the Commission's rules prohibiting certain communications, 47 CFR §§ 1.2105(c) and 73.5002(d). Any such unqualified applicant will not be eligible to bid. See *Broadcast First Report and Order*, 13 FCC Red at 15979-80 para. 153.

²² 47 CFR §§ 1.65, 1.2105(b).

²³ *Id.*

²⁴ During the resubmission phase, applicants will have electronic access to update the following application fields: jurisdiction of formation/country of citizenship, applicant address, responsible party information, responsible party address, contact information, contact address, authorized bidder information, bidding option (telephonic or electronic), existing mass media facilities, "same area" broadcast facilities information, agreement information, and ownership information. An applicant seeking to provide information outside of the Form 175 data fields may do so by uploading an attachment.

²⁵ For more information on making administrative changes to an existing application, see "Submission of Updates to Short-Form Applications," in the *Auction 83 Procedures Public Notice*, DA 18-257, paras. 41-45.

violations of section 1.2105(c).²⁶ If any application is changed to effect a major amendment, such as a change in control, the applicant will be ineligible to bid in the auction.²⁷ After the release of the public notice announcing the Auction 83 qualified bidders, an applicant will be permitted to modify only the applicant's address, responsible party address, authorized bidder information (e.g., name, telephone number, and email address) and contact information (e.g., name, address, telephone number, etc.).

II. OTHER IMPORTANT AUCTION 83 INFORMATION

13. **Announcement of Qualified Bidders.** Approximately two weeks after the upfront payment deadline, following Commission review of resubmitted short-form applications and the correlation of payments and applications, a public notice listing all applicants qualified to bid in Auction 83 will be released. The same public notice will also include bidding schedules for both the mock auction and the first day of bidding.

14. Each of the engineering proposals within each MX group in Auction 83 are directly mutually exclusive with one another, therefore no more than one construction permit will be awarded for each MX group previously identified for Auction 83.²⁸ Once mutual exclusivity exists for auction purposes, even if only one applicant becomes qualified to bid for a particular construction permit or in fact places a bid for that construction permit, that applicant is required to submit a bid in order to obtain the construction permit.²⁹

15. **Due Diligence.** Each potential bidder 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 Auction 83. The Commission makes no representations or warranties about the use of these construction permits or this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC permittee in a broadcast service, subject to certain conditions and regulations. These conditions include, but are not limited to, the condition that FCC licenses and other authorizations (whether awarded through competitive bidding or otherwise) are subject to the authority of the FCC, under the Communications Act of 1934, as amended, to modification through rulemaking and adjudicative proceedings. The Bureaus strongly encourage potential bidders to conduct their own research prior to the beginning of bidding in order to determine the existence of pending administrative or judicial proceedings, pleadings, applications, or authorizations that might affect their decisions regarding participation in the auction. Additionally, a potential bidder should perform technical analyses or refresh 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 the Commission's current technical and legal requirements. Participants in this auction should continue such research throughout the auction. For further details regarding due diligence, please refer to the *Auction 83 Procedures Public Notice*, section I.B.3.³⁰

16. **Prohibition of Certain Communications.** The Bureaus remind applicants that the rules

²⁶ See 47 CFR § 1.2105(b) – (c).

²⁷ See 47 CFR § 1.2105(b)(2). See also, e.g., Letter to Koch Broadcasting Corp. and Birch Broadcasting Corp. from Margaret W. Wiener, Chief, Auctions and Spectrum Access Div. and Peter H. Doyle, Chief, Audio Div., 21 FCC Rcd 147 (WTB/MB 2006) (dismissing short-form application filed for AM Auction 84 due to major amendment changing control).

²⁸ See *Broadcast First Report and Order*, 13 FCC Rcd at 15978-80 paras. 149-53.

²⁹ See *Auction 83 Procedures Public Notice*, DA 18-257, para. 6; see also *Auction of FM Translator Construction Permits Scheduled for June 21, 2018; Comment Sought on Competitive Bidding Procedures for Auction 83*, Public Notice, 33 FCC Rcd 23, 25, para. 4, citing 47 U.S.C. § 309(j)(1) (WTB/MB 2018).

³⁰ See *Auction 83 Procedures Public Notice*, DA 18-257, paras. 24-28.

prohibiting certain communications set forth in sections 1.2105(c) and 73.5002(d) and (e) of the Commission's rules continue to apply to each applicant that filed a short-form application in Auction 83.³¹ 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[.]"³²

17. The prohibition of certain communications took effect as of the short-form application filing deadline, which for Auction 83 was March 17, 2003, at 6:00 p.m. ET, and ends at the post-auction down payment deadline, which will be announced in a future public notice.³³ **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.**³⁴

18. We also emphasize that, for purposes of this prohibition, an "applicant" includes all controlling interests of the entity submitting a short-form application to participate in the auction — including all officers and directors of that entity and all holders of interests amounting to 10 percent or more of the entity submitting a short-form application.³⁵ 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 83 applicants.³⁶ 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.³⁷

19. In connection with the 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 addresses or communicates, 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.³⁸ The revised rule on

³¹ 47 CFR §§ 1.2105(c), 73.5002(d), (e).

³² *Id.* § 1.2105(c).

³³ *Id.*

³⁴ A party that submits an 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.

³⁵ 47 CFR § 1.2105(c)(5)(i).

³⁶ *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 Div., and Margaret W. Wiener, Chief, Auctions and Spectrum Access Div., 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).

³⁷ *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.

³⁸ 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

prohibited communications 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.³⁹ 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 the communication or coordination of bids (including amounts), bidding strategies, or the particular permits or licenses on which to bid, and also provided that such agreement, arrangement or understanding has been disclosed on its FCC Form 175 application.⁴⁰

20. **Disclosure Obligations and Possible Sanctions.** Sections 1.2105(c)(4) requires each auction applicant to report a prohibited communication or disclosure regarding bids or bidding strategy to the Commission in writing immediately, but in no case later than five business days after the communication occurs, even if the communication does not result in an agreement or understanding regarding bids or bidding strategy that must be reported under section 1.65.⁴¹ 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.⁴²

21. **Reporting Prohibited Communications.** 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.

22. The Commission amended section 1.2105(c) to minimize the risk of inadvertent dissemination of information by requiring any party to file only a single report concerning a prohibited communication and to file that report with Commission personnel expressly charged with administering the Commission's auctions.⁴³ Pursuant to the rule, any report required by section 1.2105(c) must be filed consistent with the instructions set forth in the *Auction 83 Procedures Public Notice*.⁴⁴

23. A party seeking to report such a prohibited communication is also encouraged to consult with the Auctions and Spectrum Access Division staff if it has any questions about the procedures for submitting such reports.⁴⁵ The *Auction 83 Procedures Public Notice* provides additional guidance on

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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)(modified by Erratum, 30 FCC Rcd 8518 (WTB 2015)).

³⁹ *Id.*, 30 FCC Rcd at 7576-77, paras. 197-99.

⁴⁰ *Id.* See also *Guidance Regarding the Prohibition of Certain Communications During the Incentive Auction, Auction 1000*, Public Notice, 30 FCC Rcd 10794 (WTB 2015).

⁴¹ 47 CFR § 1.2105(c); 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).

⁴² 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).

⁴³ *Part 1 Procedural Amendments Order*, 25 FCC Rcd at 522, para. 4.

⁴⁴ *Auction 83 Procedures Public Notice*, DA 18-257, paras. 18-19.

⁴⁵ See section III, "Contact Information," below.

procedures for submitting application-related information.⁴⁶

24. Each applicant that is a winning bidder will be required to disclose in its long-form application the specific terms, conditions, and parties involved in any bidding consortia, joint ventures, partnerships, or other agreements, understandings or arrangements entered into relating to the competitive bidding process.⁴⁷ Any applicant found to have violated section 1.2105(c) of the Commission's rules may be subject to sanctions.⁴⁸ In addition, we remind applicants that they are subject to the antitrust laws, which are designed to prevent anti-competitive behavior in the marketplace.⁴⁹ 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.⁵⁰

25. **Ex Parte Rule.** Applicants should also be aware that the Commission has generally treated mutually exclusive short-form applications to participate in the auctions process as exempt proceedings and, therefore, not subject to the *ex parte* prohibitions that pertain to restricted proceedings.⁵¹

26. **Mock Auction.** All qualified bidders will be eligible to participate in a mock auction on Tuesday, June 19, 2018. The Bureaus encourage all qualified bidders to take advantage of this opportunity to become familiar with the FCC's auction bidding system. In the public notice announcing the qualified bidders, the Bureaus will announce the bidding schedule for the mock auction. The mock auction will be conducted over the internet, and telephonic bidding will be available as well.

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

28. Bidders can access the FCC auction bidding system over the internet. The minimum software and hardware requirements for using the FCC auction bidding system are as follows:

- Web browser, either of the following is recommended:
 - Microsoft® Internet Explorer® 11 or a recent version of Google Chrome™ (the browser must be configured to accept cookies and JavaScript) with a minimum of TLS 1.2 security
- Operating system:
 - Microsoft® Windows® 7, Windows® 8, or Windows® 10; or Apple® Mac OS X® 10.13

⁴⁶ See *Auction 83 Procedures Public Notice*, DA 18-257, paras. 40-45.

⁴⁷ See 47 CFR § 1.2107(d).

⁴⁸ See 47 CFR §§ 1.2105(c), 1.2109(d).

⁴⁹ See *Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures*, Third Further Notice of Proposed Rulemaking, 14 FCC Rcd 21558, 21560-61, para. 4 & n.17 (1999), quoting *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Memorandum Opinion and Order, 9 FCC Rcd 7684, 7689, para. 12 (1994) (“[W]e wish to emphasize that all applicants and their owners continue to be subject to existing antitrust laws. Applicants should note that conduct that is permissible under the Commission's Rules may be prohibited by the antitrust laws.”); *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Fourth Memorandum Opinion and Order, 9 FCC Rcd 6858, 6869 n. 134 (1994) (“[A]pplicants will also be subject to existing antitrust laws.”).

⁵⁰ See 47 CFR § 1.2109(d); see also *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388, para. 226.

⁵¹ See *Commission Announces that Mutually Exclusive “Short-Form” Applications (Form 175) to Participate in Competitive Bidding Process (“Auctions”) Are Treated as Exempt for Ex Parte Purposes*, Public Notice, 9 FCC Rcd 6760 (1994). See also 47 CFR § 1.1202(d)(1) Note 1.

- Access to the internet
- 1920 x 1080 screen resolution⁵²

Currently, smartphones and tablets are not supported.

29. **Post-Auction Procedures.** Shortly after bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments and final payments.⁵³ By a deadline specified in that public notice, winning bidders must submit electronically 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 required exhibits for each construction permit won through Auction 83.⁵⁴ Further filing instructions will be provided to auction winners at the close of the auction.

III. CONTACT INFORMATION

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

31. For further information concerning Auction 83, contact:

General Auction Information

General Auction Questions

FCC Auctions Hotline

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

Auction 83 Process and Procedures

Bidding Procedures
Auction Schedule

Auctions and Spectrum Access Division

Auctions Hotline 717-338-2868

Auction 83 Legal Information

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

Auctions and Spectrum Access Division

(202) 418-0660
Lynne Milne (Attorney)

⁵² Other screen sizes will work, but the system has been optimized for 1920 x 1080 screens in order to fit all of the information onto a single screen without horizontal scrolling.

⁵³ For more details on these payments and procedures, see *Auction 83 Procedures Public Notice*, DA 18-257, paras. 127-35.

⁵⁴ 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 § 1.1104.

Licensing Information

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

Audio Division

(202) 418-2700
Lisa Scanlan (Attorney)
Tom Nessinger (Attorney)
James Bradshaw (Engineer)

Technical Support

Hardware/Software Issues with Electronic Filing
or FCC Auction System

FCC Auctions Technical Support Hotline

(877) 480-3201, option nine; or (202) 414-1250
(202) 414-1255 (TTY)
Hours of service: 8:00 a.m. – 6:00 p.m. ET,
Monday through Friday

Payment Information

Instructions for Wiring Upfront Payments and
Completing Form 159
Refunds

FCC Revenue & Receivables Operations

Group/Auctions
Gail Glasser (202) 418-0578, or alternatively,
Theresa Meeks (202) 418-2945, or
(202) 418-2843 (fax)

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

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