



PUBLIC NOTICE

Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

News Media Information: 202-418-0500
Internet: www.fcc.gov
TTY: 888-835-5322

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AUCTION OF FM TRANSLATOR CONSTRUCTION PERMITS

27 BIDDERS QUALIFIED TO PARTICIPATE IN AUCTION 83

AU Docket No. 17-351

1. In this Public Notice, the Wireless Telecommunications Bureau (WTB) and Media Bureau (MB) (collectively the Bureaus) identify 27 applicants found to be qualified to bid in the upcoming auction of 33 new FM translator construction permits (Auction 83). Bidding in Auction 83 is scheduled to begin on Thursday, June 21, 2018.¹ This Public Notice contains bidding instructions and other important information regarding Auction 83. It also addresses the continuing obligations and auction procedures for all Auction 83 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 27 qualified bidders, each qualified bidder's upfront payment amount, and its maximum eligibility in bidding units. Designation of an applicant as qualified to bid in the auction indicates that the applicant has provided the certifications and information concerning its qualifications for participation in the auction and timely submitted a sufficient upfront payment as required by the Commission's competitive bidding rules.²

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 83*

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*, Public Notice, 33 FCC Rcd 2292 (WTB/MB 2018) (*Auction 83 Procedures Public Notice*); see also *Auction of FM Translator Construction Permits; Status of FCC Form 175 Short-Form Applications to Participate in Auction 83*, Public Notice, DA 18-515 (WTB/MB May 23, 2018) (*Auction 83 Status Public Notice*).

² 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 and, if a bidding credit is requested, its eligibility for the requested bidding credit. Thus, a determination that a short-form application is complete and complies with the Commission's competitive bidding rules and policies is not determinative of an applicant's qualifications to hold a license or construction permit or entitlement to a bidding credit. See 47 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. 163-68 (1994). Commission staff considers an applicant's qualifications and eligibility for a bidding credit after the auction during the long-form application process. In the event that an applicant is found unqualified to be a Commission licensee or ineligible for any claimed bidding credit, it will be liable for any obligations incurred as a result of its participation in the auction. See generally 47 CFR § 1.2109.

Procedures Public Notice and subsequent public notices.³ These public notices and other documents related to Auction 83 are available on the Commission's auctions website at www.fcc.gov/auction/83. 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.⁴ Each qualified bidder is eligible to bid only for the specified construction permits. For each qualified bidder claiming eligibility for a new entrant bidding credit, Attachment B also describes whether that applicant claims a bidding credit of 35 percent or 25 percent.⁵

5. All of the engineering proposals within each MX group are directly mutually exclusive with each other; therefore, no more than one construction permit will be awarded for each MX group identified in Attachment B. As explained in the *Auction 83 Procedures Public Notice*, a qualified bidder 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.⁶

B. Non-Qualified Bidders

6. Attachment C to this Public Notice designates each applicant listed in Attachment A of the *Auction 83 Comment Public Notice* that did not qualify to bid in Auction 83.⁷ All applicants that were listed in the *Auction 83 Comment Public Notice*,⁸ including those that have not qualified to bid, remain subject to the Commission's rules prohibiting certain communications in connection with Commission auctions.⁹

³ *Auction 83 Procedures Public Notice*, 33 FCC Rcd at 2299-2300, paras. 10-11; *see also Auction 83 Status Public Notice*, DA 18-515, paras. 8-24.

⁴ The *Auction 83 Procedures Public Notice* had identified 43 groups of mutually exclusive engineering proposals for construction permits (MX groups) for Auction 83. *Auction 83 Procedures Public Notice*, 33 FCC Rcd at 2330, Attachment A. As shown in Attachments B and D of this Public Notice, bids will be accepted in only 33 of those MX groups because certain Auction 83 applicants failed to qualify to bid. None of the applicants for MX groups FMT010, FMT011, FMT012, FMT013, FMT014, FMT019, FMT020, FMT026, FMT027, and FMT048 has qualified to bid, so no permit will be awarded for those MX groups in Auction 83. Attachment D of this Public Notice identifies the 33 remaining MX groups.

⁵ If an applicant claims a bidding credit of 25 percent, but is not eligible for such a bidding credit for a specific MX group due to the location of its proposed FM translator, no bidding credit is designated in Attachment B for that applicant in that MX group. The new entrant bidding credit is not available to an applicant if it, and/or any individual or entity with an attributable interest in the applicant, has an attributable interest in more than three media of mass communications or any existing media of mass communications in the "same area" as the Auction 83 FM translator proposed by that applicant. 47 CFR § 73.5007. *See* 47 CFR § 73.5007(b)(1)-(3) for the specific service definitions of "same area."

⁶ *Auction 83 Status Public Notice*, DA 18-515, para. 14; *Auction 83 Procedures Public Notice*, 33 FCC Rcd at 2295, para. 6; *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 (WTB/MB 2018) (*Auction 83 Comment Public Notice*), citing 47 U.S.C. § 309(j)(1). Only one applicant is qualified to bid in each of 15 of the MX groups listed in Attachment D to this Public Notice.

⁷ *Auction 83 Comment Public Notice*, 33 FCC Rcd 23, 44, Attachment A.

⁸ *Id.*

⁹ *See* 47 CFR §§ 1.2105(c) and 73.5002(d), (e); *see also Auction 83 Procedures Public Notice*, 33 FCC Rcd at 2300-03, paras. 12-21.

C. Changes Reported by Applicants Reflected in this Public Notice

7. This Public Notice reflects certain changes reported by specific Auction 83 applicants during the resubmission period. Two Auction 83 applicants reported and explained changes of control or ownership which fall within the terms of the Bureau's 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 was reviewed and approved by the Commission prior to the close of the remedial filing window on April 26, 2018.¹⁰

II. REGISTRATION AND ACCESS TO THE AUCTION BIDDING SYSTEM

A. Registration Materials

8. 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

9. A qualified bidder must have the above-referenced registration materials to participate in the mock auction and to bid in Auction 83. Any qualified bidder listed in Attachment A of this Public Notice that has not received the registration mailing **by 12:00 noon Eastern Time (ET) on Thursday, June 14, 2018**, must contact the Auctions Hotline at (717) 338-2868. Receipt of the registration mailing is crucial to participating in the mock and actual auction bidding. Each qualified bidder is responsible for ensuring that it has received all of the registration materials.

10. 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

11. 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.

¹⁰ See 47 CFR § 1.2105(b)(2); see also *Auction 83 Status Public Notice*, DA 18-515, para. 7 & n.13; *Auction 83 Procedures Public Notice*, 33 FCC Rcd at 2296-98, paras. 7-8. These two applicants are Educational Media Foundation and The Family Radio Network, Inc. In addition, Black Media Works, Inc. asserted during the resubmission period that specified gradual and involuntary changes to its board of directors constitute a minor change for purposes of section 1.2105(b). These changes to the board of directors of Black Media Works, Inc. will be considered separately by the Media Bureau in the context of an Application for Consent to Assignment of Radio Broadcast Station Construction Permit or License or Transfer of Control or Corporation Holding Radio Broadcast Station Construction Permit or License (FCC Form 316).

C. Access to the Auction Bidding System

12. The Commission will conduct the mock auction and bidding in Auction 83 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.

13. Each authorized bidder must have its own SecurID® token to bid electronically or by telephone. An applicant with only one authorized bidder will be issued two SecurID® tokens, while an applicant with two or three authorized bidders will be issued three tokens. For security purposes, the SecurID® tokens and the instructions for using them are 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 83.

14. All bidders should carefully review the FCC Auction Bidding System User Guide, which is available on the Education tab of the Auction 83 webpage at www.fcc.gov/auction/83. 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).

15. 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 a bid by telephone, the bidder must allow sufficient time to bid by placing its call well in advance of the close of a bidding round.¹¹

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

D. Bidding Contingency Plan

17. 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, loss of power, adverse local weather conditions, unavailability of its authorized bidders, or the loss or breach of confidential security codes.

18. 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.

¹¹ 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.

19. We note that bidder 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.

20. 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

21. 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 83.

A. FCC Auction Bidding System User Guide

22. The FCC Auction Bidding System User Guide, which describes the features and functionality of the bidding system that will be used in Auction 83, will be available in the Education section of the Auction 83 website at www.fcc.gov/auction/83. The user guide will remain available and accessible on the Auction 83 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. Mock Auction

23. The Bureaus strongly encourage each qualified bidder to participate in the mock auction that will be conducted on Tuesday, June 19, 2018. The mock auction will allow qualified bidders to familiarize themselves 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 the mock auction over the internet using the FCC auction bidding system, 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 83 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 83. 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 83.

26. The mock auction bidding schedule for Tuesday, June 19, 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 83 will begin Thursday, June 21, 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 Friday June 22, 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 83, the FCC auction bidding system will provide a minimum bid amount, as previously announced, and up to eight additional bid amounts from which to choose (for a typical total of nine bid amounts).¹² While a bidder can change the amount of or remove new bids during a round, it cannot do so once a round ends.¹³ 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.¹⁴ Moreover, no bidder will be permitted to withdraw any of its bids submitted in a prior round in Auction 83.¹⁵

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.¹⁶ 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

¹² Attachment A of the *Auction 83 Procedures Public Notice* lists the minimum opening bid amount for each construction permit in Auction 83. *Auction 83 Procedures Public Notice*, 33 FCC Rcd at 2221-22, paras. 106-111.

¹³ *Id.* at 2224, paras. 122-23.

¹⁴ See 47 CFR § 1.2104(g).

¹⁵ *Auction 83 Procedures Public Notice*, 33 FCC Rcd at 2224, paras. 122-23.

¹⁶ *Id.* at 2221-22, paras. 106-11.

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.¹⁷

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>, for which there is a link in the Results section of the Auction 83 website at www.fcc.gov/auction/83. 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.

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 the Education section of the Auction 83 website at www.fcc.gov/auction/83.

D. Bidder Questions During Auction 83 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 VII, 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 bidding system and should click on and read each announcement carefully.

F. Bidder Suggestions

37. A bidder may submit suggestions to the Commission staff concerning Auction 83 or future auctions by using the *messages* feature in the FCC auction bidding system.¹⁸ However, this is not an appropriate mechanism for asking time-sensitive questions that may need an immediate response, such as questions about auction procedures or placing bids. Any time-sensitive questions should be directed to the Auction Bidder Line. Commission staff considers all suggestions, but may not always provide an individualized response.

¹⁷ *Id.*

¹⁸ 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.

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 83.¹⁹ 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[.]"²⁰

39. This prohibition 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.²¹ **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.**²² For further information on the prohibition, applicants should refer to the *Auction 83 Procedures Public Notice*.²³

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.²⁴ 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.²⁵ 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.²⁶

¹⁹ 47 CFR §§ 1.2105(c)(1), 73.5002(d), (e).

²⁰ *Id.* § 1.2105(c).

²¹ *Id.* § 1.2105(c)(1).

²² 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.

²³ *Auction 83 Procedures Public Notice*, 33 FCC Rcd at 2300-03, paras. 12-21.

²⁴ 47 CFR § 1.2105(c)(5)(i).

²⁵ *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).

²⁶ *See Application of Nevada Wireless*, Memorandum Opinion and Order, 13 FCC Rcd 11973, 11977-78, paras. 11-13 (WTB 1998). The Bureaus caution, 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.

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.²⁷ 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.²⁸ 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,²⁹ 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 provided that such agreement, arrangement, or understanding has been disclosed on its application.³⁰

B. Disclosure Obligations and Possible Sanctions

42. Section 1.2105(c)(4) requires each auction applicant to report a prohibited communication or disclosure regarding bids or bidding strategy to the Commission in writing immediately, but in no case later than five business days after the communication occurs, even if the communication does not result in an agreement or understanding regarding bids or bidding strategy that must be reported under section 1.65.³¹ 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.³²

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). 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

²⁷ 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) (modified by Erratum, 30 FCC Rcd 8518 (WTB 2015) (*Updating Part 1 Order*)).

²⁸ *Updating Part 1 Order*, 30 FCC Rcd at 7576-77, paras. 197-99.

²⁹ 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. *See* 47 CFR § 1.2107(d).

³⁰ *Updating Part 1 Order*, 30 FCC Rcd at 7576-77, paras. 197-99. *See also Guidance Regarding the Prohibition of Certain Communications During the Incentive Auction, Auction 1000*, Public Notice, 30 FCC Rcd 10794 (WTB 2015).

³¹ 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).

³² *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).

Auctions and Spectrum Access Division in the Wireless Telecommunications Bureau.³³ In Auction 83, any such report must be filed according to the instructions set forth in the *Auction 83 Procedures Public Notice*.³⁴ Any such report must be filed immediately, and in no case later than five business days after the communication occurs.

44. Any applicant found to have violated section 1.2105(c) of the Commission's rules may be subject to sanctions.³⁵ 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.³⁶

D. Submission of Auction-Related Filings

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

46. A party wishing to submit a request, a complaint, or other information concerning Auction 83 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 auction83@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.

47. Finally, parties wishing to make suggestions concerning Auction 83 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

48. Each applicant must maintain the accuracy and completeness of information furnished in its short-form application (FCC Form 175), including any attachments.³⁷ Sections 1.65(a) and 1.2105(b)(4), (c)(4) 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.³⁸ The Commission has established a five-day reporting requirement to facilitate the auction process, by

³³ 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*).

³⁴ See *Auction 83 Procedures Public Notice*, 33 FCC Rcd at 2302-03, paras. 17-19.

³⁵ See 47 CFR §§ 1.2105(c), 1.2109(d).

³⁶ See *id.* § 1.2109(d).

³⁷ 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 83 Procedures Public Notice*, 33 FCC Rcd at 2308, paras. 41-45.

³⁸ *Part 1 Procedural Amendments Order*, 25 FCC Rcd at 523, para. 8.

making the information available promptly to all participants and enabling the Bureaus to act expeditiously on those changes when such action is necessary.³⁹ Therefore, an applicant must amend its short-form application to furnish additional or corrected information as promptly as possible, and in no case more than five business days after the applicant becomes aware of the need for amendment or five business days after the reportable event occurs, whichever is later.⁴⁰

49. 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 auction83@fcc.gov. The email summarizing the change must include a subject or caption referring to Auction 83 and the name of the applicant.⁴¹ Each applicant must clearly state the nature of the change in an amendment to its short-form application and in the summary letter referenced in this paragraph. Questions about changes should be directed to the Auctions and Spectrum Access Division at (202) 418-0660.

50. As described in the Commission's rules, an applicant may make only minor corrections to its short-form application (e.g., changing certain contact information or authorized bidder information).⁴² A major modification includes a construction permit change, newly claimed or increased bidding credit, or change in control of the applicant.⁴³ Any change affecting an applicant's eligibility for a new entrant bidding credit, insofar as it results in the reduction or loss of the credit claimed, must be reported immediately, and no later than five business days after the change occurs.⁴⁴ In cases of diminished bidding credit eligibility, the Commission will make appropriate adjustments in the bidding credit percentage prior to the computation of any down and final payment amounts due.

F. Ex Parte Rule

51. 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.⁴⁵

³⁹ *Id.* at 523, paras. 7-8.

⁴⁰ See 47 CFR § 1.2105(b)(4); see also *Part 1 Procedural Amendments Order*, 25 FCC Rcd at 521.

⁴¹ The Bureaus request that parties format any attachments to email as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

⁴² See 47 CFR § 1.2105(b). An applicant should not use the auction application system outside of the initial and resubmission filing windows to make changes to its short-form application for other than administrative changes. During all phases of the application process, an applicant has electronic access to its Form 175 to make certain administrative changes, including updates to: applicant address, responsible party information, contact information, authorized bidders, and bidding option (telephonic or electronic). Auction applicants are not permitted to make a change to the following data fields after the short-form application filing deadline: applicant name, legal classification, certifier, bidding credit, and construction permit designation.

⁴³ 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 Rcd 147 (WTB/MB 2006) (dismissing short-form application filed for AM Auction 84 due to major amendment changing control).

⁴⁴ 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 Rcd 1583, 1611-14, paras. 57-63 (2010). See also 47 CFR § 73.5007(a).

⁴⁵ 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.

G. Due Diligence

52. 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 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 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 83 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 83. 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 83 construction permit, it will be able to build and operate facilities that will comply fully with the Commission's technical and legal requirements.

53. Each participant should continue such research throughout the auction. For further details regarding due diligence, please refer to the *Auction 83 Procedures Public Notice* under Section I.B.3.⁴⁶

VI. POST-AUCTION PROCEDURES

54. 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.

55. 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.⁴⁷ 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.

56. 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 83 by the deadline announced in the auction closing public notice.⁴⁸ Any winning bidder

⁴⁶ See *Auction 83 Procedures Public Notice*, 33 FCC Rcd at 2304-05, paras. 24-28.

⁴⁷ For more detail, see *id.* at 2325-26, paras. 127-135.

⁴⁸ 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).

claiming new entrant status must include an exhibit demonstrating its eligibility for the bidding credit.⁴⁹ 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.⁵⁰ Further filing instructions will be provided to auction winners at the close of the auction.⁵¹ Additional information regarding these post-auction procedures is contained in the *Auction 83 Procedures Public Notice* and will be provided in the public notice announcing the winning bidders.⁵²

VII. CONTACT INFORMATION

57. For further information concerning Auction 83, please 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)

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)

⁴⁹ See 47 CFR §§ 73.5005, 73.5007, 73.5008.

⁵⁰ See *id.* § 1.2107(d).

⁵¹ See *id.* §§ 1.2107, 1.2109(a), 73.5003, 73.5005, 73.5006(d), 74.1232-74.1233.

⁵² See *Auction 83 Procedures Public Notice*, 33 FCC Rcd at 2325-26, paras. 127-135; see also 47 CFR §§ 1.2107, 1.2109(a).

58. 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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