



PUBLIC NOTICE

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DA 19-1256
December 13, 2019

AUCTION OF FM BROADCAST CONSTRUCTION PERMITS SCHEDULED FOR APRIL 28, 2020

NOTICE AND FILING REQUIREMENTS, MINIMUM OPENING BIDS, UPFRONT PAYMENTS, AND OTHER PROCEDURES FOR AUCTION 106

AU Docket No. 19-290

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I. GENERAL INFORMATION

A. Introduction

1. By this Public Notice, the Office of Economics and Analytics (OEA), in conjunction with the Media Bureau (MB), establishes the procedures and minimum opening bid amounts for the upcoming auction of certain FM broadcast construction permits. Bidding in this auction, which is designated as Auction 106, is scheduled to start on April 28, 2020. This Public Notice provides an overview of the procedures, terms, and conditions governing Auction 106 and the post-auction application and payment processes.

2. On October 10, 2019, in accordance with section 309(j)(3) of the Communications Act of 1934, as amended (the Act),¹ OEA, in conjunction with MB, released a public notice seeking comment on competitive bidding procedures to be used in Auction 106.² Five parties submitted comments in response to the *Auction 106 Comment Public Notice*.³

B. Construction Permits in Auction 106

3. Auction 106 will offer 130 construction permits in the FM broadcast service. The construction permits to be auctioned, which are listed in Attachment A,⁴ are for 130 new FM allotments, including 34 construction permits that were offered but not sold or were defaulted upon in prior auctions. These construction permits are for vacant FM allotments, reflecting FM channels added to the Table of FM Allotments (Table),⁵ pursuant to the Commission's established rulemaking procedures, and assigned at the indicated communities.

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

² *Auction of FM Broadcast Construction Permits Scheduled for April 28, 2020; Comment Sought on Competitive Bidding Procedures for Auction 106*, AU Docket No. 19-290, Public Notice, DA 19-1027 (OEA/MB Oct. 10, 2019) (*Auction 106 Comment Public Notice*).

³ Those comments are available under proceeding 19-290 in the Commission's Electronic Comment Filing System (ECFS). The ECFS home page is publicly accessible at: fcc.gov/ecfs. An additional comment was submitted that references a different auction and raises a radiofrequency emission concern that is beyond the scope of this proceeding (as well as that of the separate auction proceeding); accordingly, that comment will not be addressed here. *See* Comments of Cindy Koch, submitted Nov. 12, 2019.

⁴ Attachment A lists the reference coordinates for each FM construction permit offered in Auction 106. In the *Broadcast Competitive Bidding Order*, the Commission gave each applicant in the FM service the opportunity to submit a set of preferred site coordinates as an alternative to these reference coordinates. *See Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, MM Docket No. 97-234, First Report and Order, 13 FCC Rcd 15920, 15974-75, para. 142 & nn.152-53 (1998) (*Broadcast Competitive Bidding Order*), *on recon.*, Memorandum Opinion and Order, 14 FCC Rcd 8724 (1999) (*Broadcast First Reconsideration Order*), *on further recon.*, Memorandum Opinion and Order, 14 FCC Rcd 12541 (1999), *aff'd*, *Orion Communications Ltd. v. FCC*, 221 F.3d 761 (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). Detailed instructions for specifying preferred site coordinates in FCC Form 175 are provided in Attachment B of this Public Notice.

⁵ 47 CFR § 73.202(b).

4. The set of construction permits listed in Attachment A to this Public Notice is unchanged from the list of construction permits that were proposed for this auction in the *Auction 106 Comment Public Notice*. Two commenters requested the addition of specific construction permits in Auction 106. Kenneth W. Kuenzie requests that we offer in Auction 106 construction permits for two allotments, channel 231A at Bourbon, Missouri, and channel 272A at Wheatland, Missouri.⁶ Dimes Media Corporation asks that we offer in Auction 106 a construction permit on channel 275A at King City, California.⁷ We generally offer FM allotments at auction in the order they are added to the Table of Allotments, with older allotments being auctioned before those more recently added, though we may depart from that practice for reasons of administrative convenience. The allotment at Bourbon, Missouri proposed for inclusion by Mr. Kuenzie was originally awarded in Auction 91, and once granted a construction permit was removed from the Table of Allotments.⁸ Subsequently, by letter dated June 15, 2015, the permittee requested that the Commission cancel its authorization.⁹ The Bourbon allotment was added back to the Table of Allotments in August of 2017.¹⁰ Because Bourbon was added back to the Table more recently than those allotments listed in Attachment A of this Public Notice, it will not be offered in Auction 106, but instead will be made available in turn in an upcoming auction of FM broadcast construction permits. Channel 272A at Wheatland, Missouri, and Channel 275A at King City, California, on the other hand, are not currently listed in the Table of Allotments. We are thus unable to grant Mr. Kuenzie's and Dimes's requests to add these channels because we cannot offer an FM construction permit in an auction until the underlying allotment is added to the Table of Allotments, either initially through a rulemaking proceeding or, in the case of these two previously canceled authorizations, reinstated through a Various Locations order. In addition, Elijah Mondy submitted comments requesting removal from the list of construction permits offered in Auction 106 the construction permit for channel 233A at Bruce, Mississippi, as well as the deletion of this allocation from the Table of Allotments.¹¹ The deletion of the specified allocation is beyond the scope of this proceeding. The Commission has held that it will no longer accept proposals involving the reallocation, class down-grade, or deletion of vacant channel allotments, as such proposals are disruptive to the competitive bidding process.¹² For this reason, we cannot grant Mr. Mondy's request. Further, we are unpersuaded by his arguments to remove the Bruce construction permit from Auction 106 so that he can request modification of his existing license on channel 233 at Helena, Arkansas. His request would be better addressed in a separate allotment rulemaking proceeding.

5. Pursuant to the policies established in the *Broadcast Competitive Bidding Order*, applicants may apply for any vacant FM allotment listed in Attachment A.¹³ When two or more short-

⁶ Comments of Kenneth W. Kuenzie at 1, submitted Oct. 16, 2019 (Kuenzie Comments).

⁷ Comments of Dimes Media Corporation at 1-4, submitted Nov. 6, 2019 (Dimes Comments).

⁸ *Amendment of Section 73.202(b), FM Table of Allotments, FM Broadcast Stations (Various Locations)*, Report and Order, 29 FCC Rcd 11263, 11265 (MB 2014).

⁹ *Broadcast Actions*, Public Notice, Report No. 48514 (MB June 19, 2015).

¹⁰ *Amendment of Section 73.202(b), FM Table of Allotments, FM Broadcast Stations (Various Locations)*, Order, 32 FCC Rcd 6518, 6520 (MB 2017).

¹¹ Comments of Elijah Mondy at 1-3, submitted Nov. 15, 2019 (Mondy Comments).

¹² *Enfield, New Hampshire; Hartford and White River Junction, Vermont; and Keeseville and Morrisonville, New York*, Memorandum Opinion and Order, 26 FCC Rcd 798, 798, para. 1, 801, para. 10 (2011). Additionally, the Media Bureau has frozen all changes to the Table of FM Allotments, 47 CFR § 73.202, that would affect any of the vacant, non-reserved band allotments scheduled for Auction 106. See *Auction 106 Freeze Announced for Certain FM Applications and Rulemaking Filings*, Public Notice, DA 19-1035 (MB Oct. 11, 2019).

¹³ See *Broadcast Competitive Bidding Order*, 13 FCC Rcd at 15974, para. 142.

form applications (FCC Form 175) are submitted specifying the same FM allotment in Auction 106, mutual exclusivity exists for auction purposes,¹⁴ and that construction permit must be awarded by competitive bidding procedures.¹⁵ Once mutual exclusivity exists for auction purposes, even if only one applicant is qualified to bid for a particular construction permit, that applicant is required to submit a bid in order to obtain the construction permit.¹⁶

C. Auction Specifics

1. Auction Start Date

6. Bidding in Auction 106 will begin on Tuesday, April 28, 2020. Pre-auction dates and deadlines are listed below.

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

2. Auction Title

8. Auction 106 – FM Broadcast

3. Bidding Methodology and Options

9. The bidding methodology for Auction 106 will be a simultaneous multiple round format.¹⁷ The Commission will conduct this auction over the Internet using the FCC auction bidding system. Qualified bidders are permitted to bid electronically via the Internet or by telephone using the telephonic bidding option. All telephone calls are recorded.

4. Auction Dates and Deadlines

10. The following dates and deadlines apply:

Auction Tutorial Available (via Internet).....	by January 22, 2020
Short-Form Application (FCC Form 175)	
Filing Window Opens	January 29, 2020, 12:00 noon Eastern Time (ET)
Short-Form Application (FCC Form 175)	
Filing Window Deadline	February 11, 2020, 6:00 p.m. ET
Upfront Payments (via wire transfer).....	March 20, 2020, 6:00 p.m. ET
Mock Auction.....	April 24, 2020
Auction Bidding Begins	April 28, 2020

¹⁴ See *Broadcast Competitive Bidding Order*, 13 FCC Rcd at 15974, 15978-80, paras. 142, 149-53, n.166. See also *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, MM Docket No. 97-234, Second Report and Order, 9 FCC Rcd 2348, 2376, para. 165 (1994) (*Competitive Bidding Second Report and Order*).

¹⁵ *Broadcast Competitive Bidding Order*, 13 FCC Rcd at 15923-25, paras. 7-12.

¹⁶ Any applicant that submits a short-form application but fails to timely submit an upfront payment will retain its status as an applicant in Auction 106 and will remain subject to the Commission's rules prohibiting certain communications, 47 CFR §§ 1.2105(c) and 73.5002(d), but, having purchased no bidding eligibility, will not be qualified to bid. See *Broadcast Competitive Bidding Order*, 13 FCC Rcd at 15979-80, para. 153. An applicant that fails to become a qualified bidder for any other reason also will retain its status as an Auction 106 applicant and will remain subject to the rules prohibiting certain communications.

¹⁷ See Section IV.A.1., "Simultaneous Multiple Round Auction," below.

5. Requirements for Participation

11. Those wishing to participate in this auction must:

- Submit a short-form application (FCC Form 175) electronically prior to 6:00 p.m. ET, on February 11, 2020, following the electronic filing procedures set forth in Attachment B to this Public Notice, that complies with the Commission's competitive bidding rules and other requirements set forth in this Public Notice;
- Submit a sufficient upfront payment and a complete and accurate FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, on March 20, 2020, following the procedures and instructions set forth in Attachment C to this Public Notice; and
- Comply with all provisions outlined in this Public Notice and applicable Commission rules.

II. APPLYING TO PARTICIPATE IN AUCTION 106

A. Relevant Authority

12. Auction 106 applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules,¹⁸ including Commission decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees.¹⁹ Broadcasters should also familiarize themselves with the Commission's FM broadcast service and competitive bidding requirements contained in Part 73 of the Commission's rules,²⁰ as well as Commission orders concerning competitive bidding for broadcast construction permits.²¹ Applicants must also be thoroughly familiar with the procedures, terms, and conditions contained in this Public Notice and any future public notices that may be released in this proceeding.

13. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with

¹⁸ 47 CFR pt. 1, subpart Q.

¹⁹ See, e.g., *Updating Part 1 Competitive Bidding Rules*, WT Docket No. 14-170, Report and Order, Order on Reconsideration of the First Report and Order, Third Order on Reconsideration of the Second Report and Order, Third Report and Order, 30 FCC Rcd 7493 (2015) (*Updating Part 1 Order*) (modified by *Erratum*, 30 FCC Rcd 8518 (2015)); *Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures*, WT Docket No. 97-82, Order, Memorandum Opinion and Order and Notice of Proposed Rule Making, 12 FCC Rcd 5686 (1997) (*Auction Procedures Consolidation Order*); Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making, 15 FCC Rcd 15293 (2000) (*Part 1 Fifth Report and Order*) (modified by *Erratum*, 15 FCC Rcd 21520 (2000)); Seventh Report and Order, 16 FCC Rcd 17546 (2001) (*Part 1 Seventh Report and Order*); Eighth Report and Order, 17 FCC Rcd 2962 (2002) (*Part 1 Eighth Report and Order*); Second Order on Reconsideration of the Third Report and Order and Order on Reconsideration of the Fifth Report and Order, 18 FCC Rcd 10180 (2003) (*First Reconsideration of Fifth Report and Order*); Second Order on Reconsideration of the Fifth Report and Order, 20 FCC Rcd 1942 (2005) (*Second Reconsideration of Fifth Report and Order*).

²⁰ 47 CFR §§ 73.201-73.333, 73.501-73.599, 73.1001-73.4280, 73.5000-73.5009.

²¹ See, e.g., *Broadcast Competitive Bidding Order*, 13 FCC Rcd at 15920; *Reexamination of the Comparative Standard for Noncommercial Educational Applicants*, MM Docket No. 95-31, Second Report and Order, 18 FCC Rcd 6691 (2003) (*NCE Second Report and Order*); Memorandum Opinion and Third Order on Reconsideration, 23 FCC Rcd 17423 (2008) (*NCE Third Reconsideration Order*).

all public notices pertaining to this auction. Copies of most auctions-related Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at www.fcc.gov/auctions.²²

B. General Information Regarding Short-Form Applications

14. An application to participate in Auction 106, referred to as a short-form application or FCC Form 175, provides information that the Commission uses to determine whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or permits.²³ The short-form application is the first part of the Commission's two-phased auction application process. In the first phase, parties desiring to participate in the auction must file a streamlined, short-form application in which they certify under penalty of perjury as to their qualifications.²⁴ Eligibility to participate in bidding is based on the applicant's short-form application and certifications, and on its upfront payment, as explained below.²⁵

15. Every entity and individual seeking a construction permit available in Auction 106 must file a short-form application electronically via the Auction Application System prior to 6:00 p.m. ET on February 11, 2020, following the procedures prescribed in Attachment B to this Public Notice. If an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 will be used to determine whether the applicant is eligible for the claimed bidding credit. Applicants filing a short-form application are subject to the Commission's rules against prohibited communications beginning at the deadline for filing, as described below.

16. An applicant bears full responsibility for submitting an accurate, complete, and timely short-form application. An applicant must certify on its short-form application under penalty of perjury that it is legally, technically, financially, and otherwise qualified to hold a license.²⁶ Each applicant should read carefully the instructions set forth in Attachment B to this Public Notice and should consult the Commission's rules to ensure that, in addition to the materials described below, all the information required is included within its short-form application.²⁷

17. Each applicant should note that submission of a short-form application (and any amendments thereto) constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

²² Documents are also available at the Commission's headquarters, Reference Information Center, located at 445 12th Street, SW, Washington, DC 20554, between 8:00 a.m. and 4:30 p.m. ET Monday through Thursday or 8:00 a.m. to 11:30 a.m. ET Fridays.

²³ 47 CFR §§ 1.2105, 73.5002.

²⁴ *Id.*; see also *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2376, para. 165.

²⁵ Section III.E., "Upfront Payments," below.

²⁶ 47 CFR § 1.2105(a)(2)(v).

²⁷ As discussed generally in the *NCE Second Report and Order*, 18 FCC Rcd at 6691, the opening of a window for nonreserved vacant FM allotments provides a filing opportunity for both NCE and commercial applicants. However, as discussed in section II.L., "Noncommercial Educational Status Election," below, while non-mutually exclusive NCE applications will not be resolved through competitive bidding, any application specifying NCE facilities that is mutually exclusive with any application specifying commercial facilities will be returned as unacceptable for filing. 47 CFR § 73.5002(b).

18. The same party may not bid based on more than one auction application, i.e., as more than one applicant.²⁸ If a party submits multiple short-form applications for an auction, only one application may be the basis for that party to become qualified to bid in that auction.²⁹

19. Similarly, and consistent with the Commission's general prohibition of joint bidding agreements, a party is generally permitted to participate in a Commission auction only through a single bidding entity.³⁰ Accordingly, the filing of applications in Auction 106 by multiple entities controlled by the same individual or set of individuals will generally not be permitted.³¹ As noted by the Commission in adopting the prohibition of applications by commonly controlled entities, this rule, in conjunction with the prohibition against joint bidding agreements, protects the competitiveness of our auctions.³²

20. After the initial short-form application filing deadline, Commission staff will review all timely submitted applications for Auction 106 to determine whether each application complies with the application requirements and whether it has provided all required information concerning the applicant's qualifications for bidding. After this review is completed, a public notice will be released announcing the status of applications and identifying the applications that are complete and those that are incomplete because of minor defects that may be corrected. This public notice also will establish an application resubmission filing window, during which an applicant may make permissible minor modifications to its application to address identified deficiencies.³³ The public notice will include the deadline for resubmitting modified applications. To become a qualified bidder, an applicant must have a complete application (i.e., have timely corrected any identified deficiencies) and make a timely and sufficient upfront payment. Qualified bidders will be identified by public notice at least 10 days prior to the mock auction.

21. Below we discuss additional details regarding certain information required to be submitted in the FCC Form 175. An applicant should consult the Commission's rules to ensure that, in addition to the materials described below, all required information is included in its short-form application. To the extent the information in this Public Notice does not address a potential applicant's specific operating structure, or if the applicant needs additional information or guidance concerning the following disclosure requirements, the applicant should review the educational materials for Auction 106 and/or use the contact information provided in this Public Notice to consult with Commission staff to better understand the information it must submit in its short-form application.

C. Authorized Bidders

22. An applicant must designate at least one authorized bidder, and no more than three, in its FCC Form 175. The Commission's rules prohibit an individual from serving as an authorized bidder for more than one auction applicant.³⁴ Accordingly, the same individual may not be listed as an authorized bidder in more than one FCC Form 175 filed in a given auction.

²⁸ 47 CFR § 1.2105(a)(3).

²⁹ *Id.*

³⁰ See *Updating Part 1 Order*, 30 FCC Rcd at 7580-81, paras. 206-08.

³¹ See 47 CFR § 1.2105(a)(3), (a)(4)(i), (b)(1)(ii); *Updating Part 1 Order*, 30 FCC Rcd at 7580-81, paras. 206-08. This restriction applies across all applications, without regard to the geographic areas selected. See *Updating Part 1 Order*, 30 FCC Rcd at 7580, para. 206.

³² See *Updating Part 1 Order*, 30 FCC Rcd at 7580, para. 206.

³³ 47 CFR § 1.2105(b)(2).

³⁴ See 47 CFR § 1.2105(a)(2)(iii); see also *Updating Part 1 Order*, 30 FCC Rcd at 7577, para. 200.

D. Permit Selection

23. An applicant must select on its FCC Form 175 the construction permit or permits, from the list of available permits, on which it wants to bid. An applicant must carefully review and verify its construction permit selections before the deadline for submitting the FCC Form 175, because those selections cannot be changed after the auction application filing deadline.³⁵ The FCC auction bidding system will not accept bids on construction permits that were not selected on the applicant's FCC Form 175.

E. Disclosure of Agreements Relating to Permits Subject to Auction

24. An applicant must provide in its FCC Form 175 a brief description of, and identify each party to, any partnership, joint venture, consortium, or agreement, arrangement, or understanding of any kind relating to the FM construction permits being auctioned, including any agreement that addresses or communicates directly or indirectly bids (including specific prices), bidding strategies (including the specific construction permit(s) or license(s) on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls or is controlled by the applicant, is a party.³⁶ In connection with the agreement disclosure requirements, the applicant must certify under penalty of perjury in its FCC Form 175 that it has described, and identified each party to, any such agreement, arrangement, or understanding into which it has entered.³⁷ An auction applicant that enters into any agreement during an auction that relates to the permits or licenses being auctioned is subject to the same disclosure obligations it would be for agreements existing at the FCC Form 175 filing deadline, and it must maintain the accuracy and completeness of the information in its pending auction application.³⁸

25. The Commission's rules generally prohibit joint bidding and other arrangements involving auction applicants (including any party that controls, or is controlled by, such applicants).³⁹ For purposes of the prohibition on joint bidding arrangements, "joint bidding arrangements" include arrangements relating to the permits being auctioned that address or communicate, directly or indirectly,

³⁵ 47 CFR § 1.2105(b)(2).

³⁶ 47 CFR § 1.2105(a)(2)(viii), (a)(4). As defined for purposes of this rule, a controlling interest includes all individuals or entities with positive or negative *de jure* or *de facto* control of the applicant or licensee. *See id.* § 1.2105(a)(4)(i).

³⁷ 47 CFR § 1.2105(a)(2)(viii). For purposes of making the required agreement disclosures on the FCC Form 175, if parties agree in principle on all material terms prior to the application filing deadline, each party to the agreement that is submitting an auction application must provide a brief description of, and identify the other party or parties to, the agreement on its respective FCC Form 175 pursuant to section 1.2105(a)(2)(viii) and (c)(1), even if the agreement has not been reduced to writing. However, if the parties have not agreed in principle by the FCC Form 175 filing deadline, they should not describe, or include the names of parties to, the discussions on their applications. *See generally Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules*, Public Notice, 11 FCC Rcd 9645, 9646 (WTB 1995) (*Anti-Collusion Public Notice*) (standard for determining when a disclosable agreement exists, discussed in connection with an earlier version of 47 CFR § 1.2105(c)).

³⁸ *See Guidance Regarding the Prohibition of Certain Communications During the Incentive Auction, Auction 1000*, WT Docket No. 12-269, Public Notice, 30 FCC Rcd 10794, 10806-07, para. 34 (WTB 2015) (*Prohibited Communications Guidance Public Notice*); *see also* 47 CFR §§ 1.65, 1.2105(b)(4); *Auction of Advanced Wireless Services (AWS-3) Licenses Scheduled for November 13, 2014; Notice and Filing Requirements, Reserve Prices, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 97*, AU Docket No. 14-78, Public Notice, 29 FCC Rcd 8386, 8418, para. 109 (2014) (*Auction 97 Procedures Public Notice*) (discussing applicants' obligation to maintain accuracy and completeness of information in pending auction applications).

³⁹ *See* 47 CFR § 1.2105(a)(2)(ix); *see also Updating Part 1 Order*, 30 FCC Rcd at 7569-77, paras. 177-98.

bidding at the auction, bidding strategies, including arrangements regarding price or the specific permits on which to bid, and any such arrangements relating to the post-auction market structure.⁴⁰

26. To implement the prohibition on joint bidding arrangements, the Commission's rules require each auction applicant to certify in its short-form application that it has disclosed any arrangements or understandings of any kind relating to the permits or licenses being auctioned to which it (or any party that controls or is controlled by it) is a party.⁴¹ The applicant must also certify that it (or any party that controls or is controlled by it) has not entered and will not enter into any arrangement or understanding of any kind relating directly or indirectly to bidding at auction with, among others, "any other applicant."⁴²

27. Although the Commission's rules do not prohibit auction applicants from communicating about matters that are within the scope of an excepted agreement that has been disclosed in an FCC Form 175,⁴³ the Commission reminds applicants that certain discussions or exchanges could nonetheless touch upon impermissible subject matters,⁴⁴ and that compliance with the Commission's rules will not insulate a party from enforcement of the antitrust laws.⁴⁵

28. Applicants should bear in mind that a winning bidder will be required to disclose in its long-form application (FCC Form 2100, Schedule 301-FM) following the close of the auction the specific terms, conditions, and parties involved in any agreement relating to the permits or licenses being auctioned into which it had entered prior to the time bidding closed.⁴⁶ This applies to any joint venture, partnership, or other agreement, arrangement, or understanding of any kind entered into relating to the competitive bidding process, including any agreements relating to the permits being auctioned that address or communicate directly or indirectly bids (including specific prices), bidding strategies

⁴⁰ See *Updating Part 1 Order*, 30 FCC Red at 7575, para. 195.

⁴¹ 47 CFR § 1.2105(a)(2)(viii).

⁴² "The short-form application must contain . . .

(viii) Certification that the applicant has provided in its application a brief description of, and identified each party to, any partnerships, joint ventures, consortia or other agreements, arrangements or understandings of any kind relating to the licenses being auctioned, including any agreements that address or communicate directly or indirectly bids (including specific prices), bidding strategies (including the specific licenses on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls as defined in paragraph (a)(4) of this Section or is controlled by the applicant, is a party.

(ix) Certification that the applicant (or any party that controls as defined in paragraph (a)(4) of this Section or is controlled by the applicant) has not entered and will not enter into any partnerships, joint ventures, consortia or other agreements, arrangements, or understandings of any kind relating to the licenses being auctioned that address or communicate, directly or indirectly, bidding at auction (including specific prices to be bid) or bidding strategies (including the specific licenses on which to bid or not to bid), or post-auction market structure with: any other applicant (or any party that controls or is controlled by another applicant); with a nationwide provider that is not an applicant (or any party that controls or is controlled by such a nationwide provider); or, if the applicant is a nationwide provider, with any non-nationwide provider that is not an applicant (or with any party that controls or is controlled by such a non-nationwide provider), other than:

(A) Agreements, arrangements, or understandings of any kind that are solely operational as defined under paragraph (a)(4) of this Section;

(continued....)

(including the specific permits on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls or is controlled by the applicant, is a party.⁴⁷

F. Ownership Disclosure Requirements

29. Each applicant must comply with the ownership and control disclosure requirements and provide information required by sections 1.2105 and 1.2112 and, where applicable, section 1.2110 of the Commission's rules.⁴⁸ Specifically, in completing the FCC Form 175, an applicant will be required to fully disclose information on the real party(ies)-in-interest and the ownership structure of the applicant, including both direct and indirect ownership interests of 10% or more, as prescribed in sections 1.2105 and 1.2112 and, where applicable, section 1.2110 of the Commission's rules.⁴⁹

30. In certain circumstances, an applicant may have previously filed an FCC Form 175 short-form auction application for a previous auction or an FCC Form 602 (FCC Ownership Disclosure Information for the Wireless Telecommunications Services) in which ownership information was disclosed. The most current ownership information contained in any previous FCC Form 175 or FCC Form 602 on file with the Commission that used the same FRN the applicant is using to submit its FCC Form 175 in this auction will automatically be pre-filled into certain ownership sections on the applicant's FCC Form 175,⁵⁰ if such information is in an electronic format compatible with FCC Form 175. Each applicant must carefully review any ownership information automatically entered into its FCC Form 175, including any ownership attachments, to confirm that all information supplied on the FCC Form 175 is complete and accurate as of the application filing deadline in this auction. Any information that needs to be corrected or updated must be changed directly in the FCC Form 175 for this auction.

G. Foreign Ownership Disclosure Requirements

31. Section 310 of the Communications Act of 1934, as amended, requires the Commission to review foreign investment in radio station licenses and imposes specific restrictions on who may hold

(Continued from previous page) _____

(B) Agreements, arrangements, or understandings of any kind to form consortia or joint ventures as defined under paragraph (a)(4) of this Section;

(C) Agreements, arrangements or understandings of any kind with respect to the transfer or assignment of licenses, provided that such agreements, arrangements or understandings do not both relate to the licenses at auction and address or communicate, directly or indirectly, bidding at auction (including specific prices to be bid), or bidding strategies (including the specific licenses on which to bid or not to bid), or post-auction market structure.”

47 CFR § 1.2105(a)(2)(viii)-(ix); *see also Updating Part 1 Order*, 30 FCC Rcd at 7570-78, paras. 180-201.

⁴³ 47 CFR § 1.2105(a)(2)(viii), (a)(2)(ix)(A)-(C), (a)(2)(viii), (c)(1); *see also* note 42, above.

⁴⁴ *See Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures*, WT Docket No. 97-81, Third Report and Order and Second Further Notice of Proposed Rule Making, 13 FCC Rcd 374, 467-68, para. 163 (1997) (*Part 1 Third Report and Order*); *see generally Prohibited Communications Guidance Public Notice*, 30 FCC Rcd at 10794. Each potential bidder is encouraged to review the discussion concerning antitrust laws in section II.H.9. of this Public Notice, below.

⁴⁵ 47 CFR § 1.2105(a)(2)(ix)(A)-(C), (a)(2)(viii); *see also Updating Part 1 Order*, 30 FCC Rcd at 7571, para. 181; *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd at 10809, para. 43.

⁴⁶ 47 CFR § 1.2107(d); *see also id.* § 1.2105(a)(2)(viii), (a)(2)(ix)(A)-(C).

⁴⁷ *Id.* § 1.2107(d); *see also id.* § 1.2105(a)(2)(viii), (a)(2)(ix)(A)-(C).

⁴⁸ Section 1.2105 requires the disclosure on the FCC Form 175 of the applicant's ownership and control information as set forth in sections 1.2105 and 1.2112. *See* 47 CFR § 1.2105. In addition, each applicant should ensure that its disclosures comply with the ownership and control disclosure requirements in the Part 1 rules as amended in 2015. *See generally Updating Part 1 Order*, 30 FCC Rcd at 7493.

certain types of radio licenses.⁵¹ In its FCC Form 175, an applicant must report citizenship or jurisdiction of formation for the applicant and for each disclosable interest holder (DIH). In completing the FCC Form 175, an applicant also will be required to certify that it is in compliance with the foreign ownership provisions contained in section 310 of the Communications Act of 1934, as amended.⁵²

H. Prohibited Communication and Compliance with Antitrust Laws

32. The rules prohibiting certain communications set forth in sections 1.2105(c) and 73.5002(d) and (e) of the rules apply to each applicant that files an FCC Form 175 in Auction 106.⁵³ 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 applicant's bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after the down payment deadline.⁵⁴

1. Entities Subject to Section 1.2105

33. An "applicant" for purposes of this rule includes the officers and directors of the applicant, all "controlling interests" in the entity submitting the FCC Form 175, as well as all holders of interests amounting to 10% or more of that entity.⁵⁵ 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 later developments.⁵⁶

2. Scope of Prohibition on Communications; Prohibition on Joint Bidding Agreements

34. The Commission has updated and revised section 1.2105(c)'s prohibition on communications by auction applicants in recent years.⁵⁷ Significantly, the Commission in 2015 amended section 1.2105(c) to extend the prohibition on communications to cover all applicants for an auction regardless of whether the applicants seek permits or licenses in the same geographic area, or market.⁵⁸ (Continued from previous page) _____

⁴⁹ 47 CFR §§ 1.2105, 1.2110, 1.2112.

⁵⁰ The FCC Form 175 instructions provide additional details on pre-filled information.

⁵¹ 47 U.S.C. § 310(a), (b); *see also Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, GN Docket No. 15-236, Report and Order, 31 FCC Rcd 11272 (2016).

⁵² *See* 47 U.S.C § 310; *see also* 47 CFR § 1.2105(a)(2)(vi). Section 1.2105(a)(2)(vi) specifies that the Commission will accept an auction application certifying that a request for waiver or other relief from the requirements of section 310 is pending. If such a request concerning section 310 is pending or was granted previously, this information needs to be reported in an attachment to the applicant's FCC Form 175.

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

⁵⁴ 47 CFR § 1.2105(c)(1).

⁵⁵ 47 CFR § 1.2105(c)(5)(i).

⁵⁶ *See Star Wireless, LLC v. FCC*, 522 F.3d 469 (D.C. Cir. 2008). 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.

⁵⁷ *See, generally Updating Part 1 Report and Order*, 30 FCC Rcd at 7493; *Procedural Amendments to Commission Part 1 Competitive Bidding Rules*, WT Docket No. 10-18, Order, 25 FCC Rcd 521 (2010) (*Part 1 Procedural Amendments Order*).

⁵⁸ *See Updating Part 1 Report and Order*, 30 FCC Rcd at 7577, para. 199; *see also* 47 CFR § 1.2105(a)(2)(ix), (c)(1).

The Commission's rules now prohibit any "joint bidding arrangement," including arrangements relating to the permits being auctioned that address or communicate, directly or indirectly, bidding at the auction, bidding strategies, including arrangements regarding price or the specific permits on which to bid, and any such arrangements relating to the post-auction market structure.⁵⁹ 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.⁶⁰ An applicant may continue to communicate pursuant to any pre-existing agreements, arrangements, or understandings that are solely operational or that provide for transfer or assignment of licenses, provided that such agreements, arrangements, or understandings are disclosed on its application and do not both relate to the permits at auction and address or communicate bids (including amounts), bidding strategies, or the particular permits or licenses on which to bid or the post-auction market structure.⁶¹

35. In addition to express statements of bids and bidding strategies, the prohibition against communicating "in any manner" includes public disclosures as well as private communications and indirect or implicit communications.⁶² Consequently, an applicant must take care to determine whether its auction-related communications may reach another applicant.⁶³

36. Parties subject to section 1.2105(c) should take special care in circumstances where their officers, directors, and employees may receive information directly or indirectly relating to any applicant's bids or bidding strategies. Such information may be deemed to have been received by the applicant under certain circumstances. For example, Commission staff have determined that, where an individual serves as an officer or director for two or more applicants, the bids and bidding strategies of one applicant are presumed conveyed to the other applicant through the shared officer or director, which creates an apparent violation of the rule.⁶⁴

37. Subject to the exception described above, section 1.2105(c)(1) prohibits applicants from communicating with specified other parties only with respect to "their own, or each other's, or any other applicant's bids or bidding strategies."⁶⁵ Moreover, as the Commission has previously explained, a communication conveying "bids or bidding strategies (including post-auction market structure)" must also relate to the "licenses being auctioned" in order to be covered by the prohibition.⁶⁶ Thus, the

⁵⁹ 47 CFR § 1.2105(a)(2)(ix). Joint bidding arrangements include arrangements relating to the construction permits or 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 Order*, 30 FCC Rcd at 7575-76, para. 195.

⁶⁰ *Updating Part 1 Order*, 30 FCC Rcd at 7576-77, paras. 197-99.

⁶¹ *Id.* See also *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd at 10794.

⁶² See generally *Updating Part 1 Order*, 30 FCC Rcd at 7577, para. 199; *Cascade Access, LLC*, Forfeiture Order, 28 FCC Rcd 141, 144, para. 7 (EB 2013) (rejecting argument that the communication was not prohibited because it did not reveal the "substance" of Cascade's bids or bidding strategies).

⁶³ We remind applicants that they must determine whether their communications with other parties are permissible under the rule once the prohibition begins at the deadline for submitting applications, even before the public notice identifying applicants is released.

⁶⁴ See, e.g., *Trinity Broadcasting Network*, Letter Order, 20 FCC Rcd 14648, 14648-49 (MB/WTB 2005) (finding apparent violation of communication prohibitions of section 1.2105(c) where applicants with mutually exclusive applications reported sharing same individual as an officer and director and reported having no bidding agreement, which under the rule then in effect would have made an exception to the prohibition applicable).

⁶⁵ 47 CFR § 1.2105(c)(1).

⁶⁶ *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd at 10806, para. 32.

prohibition is limited in scope and does not apply to all communications between or among the specified parties. The Commission consistently has made clear that application of the rule prohibiting communications has never required total suspension of essential ongoing business.⁶⁷ Entities subject to the prohibition may negotiate agreements during the prohibition period, provided that the communications involved do not relate both (1) to the licenses being auctioned and (2) to bids or bidding strategies or post-auction market structure.⁶⁸

38. Accordingly, business discussions and negotiations that are *unrelated* to bidding in Auction 106 and that do not convey information about the bids or bidding strategies of an applicant, including the post-auction market structure, are not prohibited by the rule.⁶⁹ While section 1.2105(c) does not prohibit business discussions and negotiations among auction applicants that are not auction related, each applicant must remain vigilant not to communicate, directly or indirectly, information that affects, or could affect, bids or bidding strategies. Certain discussions might touch upon subject matters that could convey price or geographic information related to bidding strategies. Such subject areas include, but are not limited to, management, sales, local marketing agreements, and other transactional agreements.

3. Communicating with Third Parties

39. Section 1.2105(c) does not prohibit an applicant from communicating bids or bidding strategies to a third-party, such as a consultant or consulting firm, counsel, or lender. The applicant should take appropriate steps, however, to ensure that any third party it employs for advice pertaining to its bids or bidding strategies does not become a conduit for prohibited communications to other specified parties, as that would violate the rule.⁷⁰ For example, an applicant might require a third party, such as a lender, to sign a non-disclosure agreement before the applicant communicates any information regarding bids or bidding strategy to the third party.⁷¹ Within third-party firms, separate individual employees, such as attorneys or auction consultants, may advise individual applicants on bids or bidding strategies, so long as such firms implement firewalls and other compliance procedures that prevent such individuals from communicating the bids or bidding strategies of one applicant to other individuals representing separate applicants.⁷² Although firewalls and/or other procedures should be used, their existence is not an absolute defense to liability if a violation of the rule has occurred.⁷³

⁶⁷ See, e.g., *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6770-71, para. 492 (2014) (citing *Application of Todd Stuart Noordyk for a New FM Station on Channel 260A at Manistique, Michigan*, Memorandum Opinion and Order, 16 FCC Rcd 18113, 18116-17, para. 12 (2001) (“Our rules do not require the suspension of all relations among auction participants while an auction is pending.”)).

⁶⁸ *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd at 10806, paras. 33-34.

⁶⁹ *Id.*

⁷⁰ See, e.g., *id.*, 30 FCC Rcd at 10798, para. 13 (describing the use of non-disclosure agreements and, for third parties that may be advising multiple applicants, firewalls).

⁷¹ *Id.*

⁷² *Id.*; see also *Application of Nevada Wireless for a License to Provide 800 MHz Specialized Mobile Radio Service in the Farmington, NM-CO Economic Area (EA 155) Frequency Band A*, Memorandum Opinion and Order, 13 FCC Rcd 11973, 11978, para. 12 (WTB 1998) (*Nevada Wireless Order*) (strongly encouraging applicants to implement any firewall procedures necessary and to provide information in their auction applications regarding the procedures).

⁷³ See *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd at 10799, para. 14; *Nevada Wireless Order*, 13 FCC Rcd at 11978, para. 13. In the case of an individual, the objective precautionary measure of a firewall is not available. *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd at 10800, para. 15. As a result, an individual that is privy to bids or bidding information of more than one applicant presents a greater risk of becoming a conduit for a prohibited communication. *Id.* We emphasize that whether a prohibited (continued....)

40. We remind potential applicants that they may discuss the short-form application or bids for specific permits with their counsel, consultant, or expert of their choice *before* the short-form application deadline. Furthermore, the same third-party individual could continue to give advice regarding the application after the short-form application deadline, provided that no information pertaining to bids or bidding strategies is conveyed to that individual. To the extent potential applicants can develop bidding instructions prior to the short-form deadline that a third party could implement without changes during bidding, the third party could follow such instructions for multiple applicants provided that those applicants do not communicate with the third party during the prohibition period.⁷⁴

41. Applicants also should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become conduits for the communication of prohibited bidding information. For example, even though communicating that it has applied to participate in this auction will not violate the rule, an applicant's statement to the press that it intends to stop bidding in an auction could give rise to a finding of a section 1.2105 violation.⁷⁵ Similarly, an FCC Form 175 applicant's public statement of intent not to place bids during bidding in Auction 106 could also violate the rule.

4. Section 1.2105(c) Certification

42. By electronically submitting its FCC Form 175, each applicant in Auction 106 certifies its compliance with sections 1.2105(c) and 73.5002(d) of the rules.⁷⁶ However, the mere filing of a certifying statement as part of an application will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted.⁷⁷ Any applicant found to have violated these communication prohibitions may be subject to sanctions.⁷⁸

5. Duty to Report Prohibited Communications

43. Section 1.2105(c)(4) requires that any applicant that makes or receives a communication that appears to violate section 1.2105(c) must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs.⁷⁹ 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.⁸⁰

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communication has taken place in a given case will depend on all the facts pertaining to the case, including who possessed what information, what information was conveyed to whom, and the course of bidding in the auction.

⁷⁴ *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd at 10802, para. 20.

⁷⁵ *Cf. Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction*, Public Notice, 13 FCC Rcd 341, 347-48 (WTB 1998) ("Public statements can give rise to collusion concerns. This has occurred in the antitrust context, where certain public statements can support other evidence which tends to indicate the existence of a conspiracy.").

⁷⁶ 47 CFR § 1.2105(a)(2)(ix).

⁷⁷ *See Nevada Wireless Order*, 13 FCC Rcd at 11978, para. 13. *See also Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Memorandum Opinion and Order, 9 FCC Rcd 7684, 7689, para. 12 (1994) (*Competitive Bidding Memorandum Opinion and Order*).

⁷⁸ *See* 47 CFR §§ 1.2105(c), 1.2107(d), 1.2109(d).

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

⁸⁰ *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150, Second Report and Order, 22 FCC Rcd 15289, 15395, paras. 285-86 (2007); *see Part 1 Procedural Amendments Order*, 25 FCC Rcd at 523, para. 8; *see also* 47 CFR § 1.65; *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17550-51, para. 9.

6. Procedures for Reporting Prohibited Communications

44. Section 1.2105(c) requires parties to file only a single report concerning a prohibited communication and to file that report with Commission personnel expressly charged with administering the Commission's auctions.⁸¹ This rule is designed to minimize the risk of inadvertent dissemination of information in such reports. Any reports required by section 1.2105(c) must be filed consistent with the instructions set forth in this Public Notice.⁸² For Auction 106, such reports must be filed with the Chief of the Auctions Division, OEA, by the most expeditious means available. Any such report should be submitted by email to Margaret W. Wiener at the following email address: auction106@fcc.gov. If you choose instead to submit a report in hard copy, any such report must be delivered only to: Margaret W. Wiener, Chief, Auctions Division, OEA, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

45. A party reporting any communication pursuant to sections 1.65, 1.2105(a)(2), or 1.2105(c)(4) must take care to ensure that any report of a prohibited communication does not itself give rise to a violation of section 1.2105(c). For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection. A party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by following the procedures specified in section 0.459 of the Commission's rules.⁸³ Such parties also are encouraged to coordinate with the Auctions Division staff about the procedures for submitting such reports.⁸⁴ This Public Notice provides additional guidance on procedures for submitting application-related information below.⁸⁵

7. Winning Bidders Must Disclose Terms of Agreements

46. Each applicant that is a winning bidder will be required to disclose in its long-form application the specific terms, conditions, and parties involved in any agreement it has entered into.⁸⁶ This applies to any bidding consortia, joint venture, partnership, or agreement, understanding, or other arrangement entered into relating to the competitive bidding process, including any agreement relating to the post-auction market structure.⁸⁷ Failure to comply with the Commission's rules can result in enforcement action.

⁸¹ *Part 1 Procedural Amendments Order*, 25 FCC Rcd at 522, para. 4. This process differs from filing procedures used in connection with other Commission rules and processes which may call for submission of filings to the Commission's Office of the Secretary or Electronic Comment Filing System (ECFS). Filing through the Office of Secretary or ECFS could allow the report to become publicly available and might result in the communication of prohibited information to other auction applicants.

⁸² *Id.*

⁸³ See 47 CFR § 0.459 (requests that materials or information submitted to the Commission be withheld from public inspection). Filers requesting confidential treatment of documents must be sure that the cover page of the filing prominently displays that the documents seek confidential treatment. For example, a filing might include a cover page stamped with "Request for Confidential Treatment Attached" or "Not for Public Inspection." Any such request must cover all of the material to which the request applies. See 47 CFR § 0.459(a).

⁸⁴ See section VII., "Contact Information," below.

⁸⁵ See section II.B., "General Information Regarding Short-Form Applications," below.

⁸⁶ 47 CFR § 1.2107(d); see also section V.C., "Post Auction Procedures – Long Form Applications," below. Such agreements must have been entered into prior to the filing of short-form applications pursuant to section 1.2105. 47 CFR § 1.2107(d); see *id.* § 1.2105.

⁸⁷ 47 CFR § 1.2107(d).

8. Additional Information Concerning Rule Prohibiting Certain Communications

47. A summary listing of documents addressing the application of section 1.2105(c) is available on the Commission's auction web page at <https://www.fcc.gov/summary-listing-documents-addressing-application-rule-prohibiting-certain-communications>.

9. Antitrust Laws

48. Regardless of compliance with the Commission's rules, applicants remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace.⁸⁸ Compliance with the disclosure requirements of section 1.2105(c) will not insulate a party from enforcement of the antitrust laws.⁸⁹ To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation.⁹⁰ 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.⁹¹

I. New Entrant Bidding Credit

49. To promote the objectives of section 309(j) of the Act and further its long-standing commitment to the diversification of broadcast facility ownership, the Commission in a 1998 rulemaking proceeding adopted a tiered new entrant bidding credit for broadcast auction applicants with no, or very few, other media interests.⁹²

50. Two commenters observed that the *Auction 106 Comment Public Notice* did not invite comments on the use of new entrant bidding credits in this auction,⁹³ and seek confirmation that new

⁸⁸ See *Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures*, WT Docket No. 97-82, Third Further Notice of Proposed Rulemaking, 14 FCC Rcd 21558, 21560-61, para. 4 & n.17 (1999) (quoting *Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689, para. 12) (“[W]e wish to emphasize that all applicants and their owners continue to be subject to existing antitrust laws. Applicants should note that conduct that is permissible under the Commission's Rules may be prohibited by the antitrust laws.”); *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Fourth Memorandum Opinion and Order, 9 FCC Rcd 6858, 6869, n.134 (1994) (*Fourth Memorandum Opinion and Order*) (“[A]pplicants will also be subject to existing antitrust laws.”).

⁸⁹ See *Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689, para. 12. See also “Justice Department Sues Three Firms Over FCC Auction Practices,” *Press Release* 98-536 (DOJ Nov. 10, 1998). For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submitted a short-form application. See, e.g., *Fourth Memorandum Opinion and Order*, 9 FCC Rcd at 6869, n.124. The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws. For example, actual or potential competitors may not agree to divide territories in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another market for the other. *Id.* Similarly, the Wireless Telecommunications Bureau previously reminded potential applicants and others that “[e]ven where the applicant discloses parties with whom it has reached an agreement on the short-form application, thereby permitting discussions with those parties, the applicant is nevertheless subject to existing antitrust laws.” *Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules*, Public Notice, 11 FCC Rcd 9645, 9646 (WTB 1995) (*Anti-Collusion Public Notice*).

⁹⁰ See *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, MM Docket No. 97-234, Second Report and Order, 9 FCC Rcd 2348, 2388, para. 226 (1994) (*Competitive Bidding Second Report and Order*).

entrant bidding credits will be available to eligible applicants in this auction.⁹⁴ This proceeding concerning procedures for conducting Auction 106 does not alter the applicability of the Commission's rules for broadcast auctions; thus, a new entrant bidding credit will be available, as has generally been the case in broadcast auctions since 1998.

51. Applicants that qualify for the new entrant bidding credit, as specified in the applicable rule,⁹⁵ are eligible for a bidding credit in this auction that represents the amount by which a bidder's winning bid is discounted. The size of a new entrant bidding credit depends on the number of ownership interests in other media of mass communications that are attributable to the bidder-entity and its attributable interest-holders:

- A 35% bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has no attributable interest in any other media of mass communications, as defined in section 73.5008;
- A 25% bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has an attributable interest in no more than three mass media facilities, as defined in section 73.5008;
- No bidding credit will be given if any of the commonly owned mass media facilities serve the "same area" as the broadcast permit proposed in the auction, as defined in section 73.5007(b), or if the winning bidder, and/or any individual or entity with an attributable interest in the winning bidder, has attributable interests in more than three mass media facilities. For purposes of determining whether a broadcast permit offered in this auction is in the "same area" as an applicant's existing mass media facilities, the coverage area of the to-be-auctioned facility is calculated using maximum class facilities at the allotment reference coordinates, **not** any applicant-specified preferred site coordinates.⁹⁶

52. Bidding credits are not cumulative; qualifying applicants receive either the 25% or the 35% bidding credit, but not both.

53. The interests of the applicant, and of any individuals or entities with an attributable interest in the applicant, in other media of mass communications are considered when determining an applicant's eligibility for the New Entrant Bidding Credit.⁹⁷ Attributable interests are defined in section 73.3555 and note 2 of that section.⁹⁸ In Auction 106, the bidder's attributable interests and, thus, its maximum new entrant bidding credit eligibility are determined as of the short-form application filing

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⁹¹ See 47 CFR § 1.2109(d); see also *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388, para. 226.

⁹² *Broadcast Competitive Bidding Order*, 13 FCC Rcd at 15994-95, para. 189 (adopting new entrant bidding credit to implement statutory provisions regarding opportunities for small, minority-owned and women-owned businesses).

⁹³ *Auction 106 Comment Public Notice*, DA 19-1027.

⁹⁴ Comments of Robert Lee at 1, submitted Nov. 11, 2019; Comments of Jacob Wood at 1, submitted Nov. 13, 2019.

⁹⁵ See 47 CFR § 73.5007.

⁹⁶ *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, MB Docket No. 09-52, First Report and Order and Further Notice of Proposed Rule Making, 25 FCC Rcd 1583, 1609, para. 52 (2010) (*Rural First Report and Order*). See 47 CFR § 73.5007.

⁹⁷ "Media of mass communications" include both commercial and noncommercial educational (NCE) full-power broadcast stations. See 47 CFR § 73.5008. See also 47 CFR § 73.3555 n.2.

⁹⁸ See 47 CFR § 73.5008.

deadline.⁹⁹ Each prospective bidder is reminded, however, that events occurring after the short-form application filing deadline, such as the acquisition of attributable interests in media of mass communications, may cause diminishment or loss of the bidding credit, and must be reported immediately.¹⁰⁰

54. Under broadcast attribution rules, those entities or individuals with an attributable interest in a bidder include:

- all officers and directors of a corporate bidder;
- any owner of 5% or more of the voting stock of a corporate bidder;
- all partners and limited partners of a partnership bidder, unless the limited partners are sufficiently insulated; and
- all members of a limited liability company, unless sufficiently insulated.¹⁰¹

55. In cases where an applicant's spouse or close family member holds other media interests, such interests are not automatically attributable to the bidder. The Commission decides attribution issues in this context based on certain factors traditionally considered relevant.¹⁰²

56. In the *New Entrant Bidding Credit Reconsideration Order*,¹⁰³ the Commission further refined the eligibility standards for the New Entrant Bidding Credit, judging it appropriate to attribute the media interests held by very substantial investors in, or creditors of, an applicant claiming new entrant status. Specifically, the attributable mass media interests held by an individual or entity with an equity and/or debt interest in an applicant shall be attributed to that bidder for purposes of determining its eligibility for the New Entrant Bidding Credit, if the equity and debt interests, in the aggregate, exceed 33% of the total asset value of the applicant, even if such an interest is non-voting.¹⁰⁴

⁹⁹ See 47 CFR § 73.5007(a). An applicant intending to divest a media interest or make any other ownership change, such as resignation of positional interests (officer or director), in order to avoid attribution for purposes of qualifying for the New Entrant Bidding Credit must have consummated such divestment transactions or have completed such ownership changes by no later than the FCC Form 175 filing deadline. If, for example, on February 11, 2019, an auction applicant has a pending or granted application to assign or transfer control of a media interest, the applicant will not avoid attribution with respect to that interest. To avoid attribution, an applicant must have consummated the transaction before the FCC Form 175 filing deadline. Thus, an applicant could not qualify for a bidding credit, nor upgrade a previously claimed bidding credit, based upon ownership or officer/director positional changes occurring after the short-form filing deadline. See 47 CFR § 73.5007(a).

¹⁰⁰ 47 CFR § 73.5007(a). We remind each applicant of its duty to continuously maintain the accuracy of information submitted in its auction application. 47 CFR § 1.65. See, e.g., *Vermont Tel. Co., Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 14130 (EB 2011) (*Vermont Telephone Co.*) (finding auction applicant apparently liable for forfeiture in the amount of \$34,000 for failing to submit accurate bidding credit information and failing to maintain the continuing accuracy of bidding credit information in its application for Broadband Radio Service Auction 86).

¹⁰¹ See 47 CFR § 73.3555 n.2.

¹⁰² See *Clarification of Commission Policies Regarding Spousal Attribution*, MM Docket No. 91-122, Policy Statement, 7 FCC Rcd 1920 (1992). For a discussion of media attribution rules generally, see also *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, MM Docket No. 94-150, Report and Order, 14 FCC Rcd 12559 (1999) (revising media attribution policies, prior history omitted).

¹⁰³ *Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, MM Docket No. 97-234, Memorandum Opinion and Order, 14 FCC Rcd 12541 (1999) (*New Entrant Bidding Credit Reconsideration Order*).

¹⁰⁴ See 47 CFR § 73.5008(c).

57. In the *Diversity Order*, the Commission relaxed the equity/debt plus (EDP) attribution standard, to allow for higher investment opportunities in entities meeting the definition of “eligible entities.”¹⁰⁵ An “eligible entity” is defined in Note 2(i) of section 73.3555.¹⁰⁶ On September 23, 2019, the United States Court of Appeals for the Third Circuit issued a decision¹⁰⁷ vacating the Commission’s “eligible entity” definition, and remanding those provisions of the *Quadrennial Second R&O*¹⁰⁸ that rely on the “eligible entity” definition. As a result of this ongoing litigation, the relaxed EDP rule for eligible entities as the basis for the New Entrant Bidding Credit will be unavailable in Auction 106.

58. Generally, media interests will be attributable for purposes of the New Entrant Bidding Credit to the same extent that such other media interests are considered attributable for purposes of the broadcast multiple ownership rules.¹⁰⁹ However, attributable interests held by a winning bidder in existing low power television, television translator or FM translator facilities will not be counted among the applicant’s other mass media interests in determining its eligibility for a New Entrant Bidding Credit.¹¹⁰ A medium of mass communications is defined in section 73.5008(b).¹¹¹ **Full service noncommercial educational stations, on both reserved and non-reserved channels, are included among “media of mass communications” as defined in section 73.5008(b).**¹¹²

1. Application Requirements

59. In addition to the ownership information required pursuant to sections 1.2105 and 1.2112, applicants seeking a New Entrant Bidding Credit are required to establish on their short-form applications that they satisfy the eligibility requirements to qualify for the bidding credit.¹¹³ In those cases, a certification under penalty of perjury must be provided in completing the short-form application. An applicant claiming that it qualifies for a 35% New Entrant Bidding Credit must certify that neither it nor any of its attributable interest holders has any attributable interests in any other media of mass communications. An applicant claiming that it qualifies for a 25% New Entrant Bidding Credit must

¹⁰⁵ *Promoting Diversification of Ownership in the Broadcasting Services*, MM Docket No. 07-294, Report and Order and Third Further Notice of Proposed Rule Making, 23 FCC Rcd 5922, 5931, para. 17 (2008) (*Diversity Order*).

¹⁰⁶ 47 CFR § 73.3555 n.2(i). An “eligible entity” shall include any entity that qualifies as a small business under the Small Business Administration’s size standards for its industry grouping, as set forth in 13 CFR § 121.201, and holds (i) 30% or more of the stock or partnership interests and more than 50% of the voting power of the corporation or partnership that will own the media outlet; (ii) 15% or more of the stock or partnership interests and more than 50% of the voting power of the corporation or partnership that will own the media outlet, provided that no other person or entity owns or controls more than 25% of the outstanding stock or partnership interests; or (iii) more than 50% of the voting power of the corporation that will own the media outlet if such corporation is a publicly traded company. *Id.* See also *2014 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 14-50, Second Report and Order, 31 FCC Rcd 9864, 9982-83, para. 285 & n.858 (2016) (*Quadrennial Second Report and Order*) (re-adopting the eligible entity standard for the media attribution rules and New Entrant Bidding Credit after remand by the court).

¹⁰⁷ *Prometheus Radio Project v. FCC*, 939 F.3d 567 (3d Cir. 2019), *petition for rehearing en banc denied* (3d Cir. Nov. 20, 2019).

¹⁰⁸ *Id.* at 587. See *Quadrennial Second Report and Order*, 31 FCC Rcd at 9982-3, para. 285 & n.858.

¹⁰⁹ Further, any bidder asserting new entrant status must have *de facto* as well as *de jure* control of the entity claiming the bidding credit. 47 CFR § 73.5007. Typically, *de jure* control is evidenced by ownership of at least 50.1% of an entity’s voting stock or equivalent level of interest in cases where the bidder is not a corporate entity. *De facto* control is determined on a case-by-case basis.

¹¹⁰ *Broadcast First Reconsideration Order*, 14 FCC Rcd at 8764, para. 75; 47 CFR § 73.5007.

¹¹¹ See 47 CFR § 73.5008(b).

certify that neither it nor any of its attributable interest holders has any attributable interests in more than three media of mass communications, and must identify and describe such media of mass communications.¹¹⁴

2. Unjust Enrichment

60. Applicants should note that unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license or construction permit to an entity not qualifying for the same level of bidding credit.¹¹⁵

J. Provisions Regarding Former and Current Defaulters

61. Pursuant to the rules governing competitive bidding, each applicant must make certifications regarding whether it is a current or former defaulter or delinquent. A current defaulter or delinquent is not eligible to participate in Auction 106.¹¹⁶ Accordingly, each applicant must certify under penalty of perjury on its FCC Form 175 that the applicant, any of its affiliates,¹¹⁷ any of its controlling interests,¹¹⁸ and any of the affiliates of its controlling interests are not in default on any payment for a Commission construction permit or license (including down payments), and that they are not delinquent on any non-tax debt owed to any Federal agency.¹¹⁹

62. Under the Commission's revised rule regarding applications filed by former defaulters, an applicant is considered a "former defaulter" or a "former delinquent" when, as of the FCC Form 175 filing deadline, it or any of its controlling interests has defaulted on any Commission construction permit or license or has been delinquent on any non-tax debt owed to any Federal agency, but has since remedied all such defaults and cured all of the outstanding non-tax delinquencies.¹²⁰ A former defaulter or delinquent who has remedied all such defaults and cured all of the outstanding non-tax delinquencies prior to the FCC Form 175 filing deadline in this auction may participate so long as it is otherwise qualified, if the applicant makes an upfront payment that is 50% more than would otherwise be

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¹¹² *Id.* See *Minnesota Christian Broadcasters, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 614 (2003), *aff'd sub nom. Carol DeLaHunt v. FCC*, No. 03-1029, slip op. (D.C. Cir. Feb. 4, 2004) (unpublished opinion available at 2004 WL 288606) (*Minnesota Christian Broadcasters*); *Minnesota Christian Broadcasters, Inc. v. FCC*, 411 F.3d 283 (D.C. Cir. 2005).

¹¹³ See 47 CFR §§ 1.2105(a), 73.3555 & note 2, 73.5007, 73.5008.

¹¹⁴ See 47 CFR §§ 73.5007, 73.5008.

¹¹⁵ See 47 CFR § 73.5007(c).

¹¹⁶ An applicant is considered a "current defaulter" or a "current delinquent" when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests is in default on any payment for any Commission construction permit or license (including a down payment) or is delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for auction applications. See *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317, para. 42 & n.142; *Wireless Telecommunications Bureau Reminds Prospective Broadband PCS Spectrum Auction Applicants of Default and Delinquency Disclosure Requirements*, Public Notice, 19 FCC Rcd 21920 (WTB 2004) (*Auction Default Disclosure Public Notice*).

¹¹⁷ For purposes of making this certification, the term "affiliate" is defined in 47 CFR § 1.2110.

¹¹⁸ For purposes of making this certification, the term "controlling interest" is defined in 47 CFR § 1.2105(a)(4)(i).

¹¹⁹ See 47 CFR § 1.2105(a)(2)(xi); *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317, para. 42 & n.142 ("If any one of an applicant's controlling interests or their affiliates . . . is in default on any Commission licenses or is delinquent on any non-tax debt owed to any Federal agency at the time the applicant files it[s] FCC Form 175, the applicant will not be able to make the certification required by section 1.2105(a)(2)(xi) . . . and will not be eligible to participate in Commission auctions.")

¹²⁰ The Commission recently narrowed the scope of the delinquencies and defaults to be considered for purposes of (continued....)

required.¹²¹ For this reason, an applicant must certify under penalty of perjury whether it (along with any of its controlling interests) has ever been in default on any payment for a Commission construction permit or license (including a down payment) or has ever been delinquent on any non-tax debt owed to any Federal agency, subject to the exclusions described in section 1.2105(a)(2)(xii) of our rules.¹²²

63. We encourage applicants to review previous guidance provided on default and delinquency disclosure requirements in the context of the auction short-form application process.¹²³ Applicants also are advised to consult with Auctions Division staff if they have questions about delinquency or default disclosure requirements.

64. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the “red light rule” that implement its obligations under the Debt Collection Improvement Act of 1996, which governs the collection of debts owed to the United States.¹²⁴ Under the red light rule, applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission will not be processed. When adopting that rule, the Commission explicitly declared, however, that its competitive bidding rules “are not affected” by the red light rule.¹²⁵ As a consequence, the Commission’s adoption of the red light rule does not alter the applicability of any of its competitive bidding rules, including the provisions and certifications of sections 1.2105 and 1.2106, with regard to current and former defaults or delinquencies.

65. We remind each applicant, however, that its Red Light Display System, which provides information regarding debts currently owed to the Commission, may not be determinative of an auction applicant’s ability to comply with the default and delinquency disclosure requirements of section 1.2105.¹²⁶ Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant’s lack of current “red light” status is not necessarily determinative of its eligibility to participate in an auction (or whether it may be subject to an increased

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the former defaulter rule. See 47 CFR § 1.2105(a)(2)(xii), (a)(4); see also *Updating Part 1 Order*, 30 FCC Rcd at 7566-68, paras. 173-75. For purposes of the certification under section 1.2105(a)(2)(xii), the applicant may exclude from consideration any cured default on a Commission construction permit or license as well as any cured delinquency on a non-tax debt owed to a Federal agency for which any of the following criteria are met: (1) the notice of the final payment deadline or delinquency was received more than seven years before the FCC Form 175 filing deadline; (2) the default or delinquency amounted to less than \$100,000; (3) the default or delinquency was paid within six months after receiving the notice of the final payment deadline or delinquency; or (4) the default or delinquency was the subject of a legal or arbitration proceeding and was cured upon resolution of the proceeding.

¹²¹ 47 CFR §§ 1.2105(a)(2)(xii), 1.2105(b)(1), and 1.2106(a). For purposes of evaluating the certifications under section 1.2105(a)(2)(xi) and (xii), “non-tax debt owed to any Federal agency” includes, within the meaning of the rule, all amounts owed under Federal programs, including contributions to the Universal Service Fund (USF), Telecommunications Relay Services Fund, and the North American Numbering Plan Administration, notwithstanding that the administrator of any such fund may not be considered a Federal “agency” under the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996) (codified in relevant parts at 31 U.S.C. §§ 3716 (administrative offset) and 3717 (interest and penalty on claims)); see also 47 CFR §§ 1.1901, 1.1911, 1.1912, 1.1940. For example, an applicant with a past due USF contribution as of the auction application filing deadline would be disqualified from auction participation under the Commission’s rules. 47 CFR § 1.2105(a)(2)(xi) and (b)(1). If, however, the applicant cures the overdue debt prior to the auction application filing deadline, it may be able to become eligible to participate in this auction as a former defaulter under the Commission’s rules. 47 CFR §§ 1.2105(a)(2)(xii), 1.2106(a).

¹²² 47 CFR § 1.2105(a)(2)(xii). For purposes of making these certifications, the term “controlling interest” is defined in 47 CFR § 1.2105(a)(4)(i).

¹²³ *Auction Default Disclosure Public Notice*, 19 FCC Rcd at 21910. See also *Debt Clarification Letter*, Letter Order, 19 FCC Rcd 22907 (WTB 2004) (clarifying the term debt or non-tax debt as referenced in 47 CFR §§ 1.2105(a) and 1.2106(a)).

upfront payment obligation). Moreover, a prospective applicant in Auction 106 should note that any long-form applications filed after the close of bidding will be reviewed for compliance with the Commission's red light rule,¹²⁷ and such review may result in the dismissal of a winning bidder's long-form application.¹²⁸ We encourage each applicant to carefully review all records and other available Federal agency databases and information sources to determine whether the applicant, or any of its affiliates, or any of its controlling interests, or any of the affiliates of its controlling interests, owes or was ever delinquent in the payment of non-tax debt owed to any Federal agency.

K. Optional Applicant Status Identification

66. An applicant owned by members of minority groups and/or women, as defined in section 1.2110(c)(3),¹²⁹ or that is a rural telephone company, as defined in section 1.2110(c)(4),¹³⁰ may identify itself as such in filling out its FCC Form 175. This applicant status information is optional and collected for statistical purposes only because it assists the Commission in monitoring the participation of various groups in its auctions.

L. Noncommercial Educational Status Election

67. In the *NCE Second Report and Order*, the Commission held that applications for noncommercial educational (NCE) FM stations on non-reserved spectrum, filed during an FM filing window, will be returned as unacceptable for filing if mutually exclusive with any application for a commercial station.¹³¹ Accordingly, if an FCC Form 175 filed during the Auction 106 filing window identifying the application's proposed station as noncommercial educational is mutually exclusive with any application filed during that window for a commercial station,¹³² the NCE application will be returned as unacceptable for filing.¹³³ For this reason, each prospective applicant in this auction should consider carefully whether it wishes to propose NCE operation for any FM station acquired in this auction. This NCE election cannot be reversed after the initial application filing deadline.¹³⁴

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¹²⁴ *Amendment of Parts 0 and 1 of the Commission's Rules; Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors*, Report and Order, 19 FCC Rcd 6540 (2004) (*Debt Collection Report and Order*).

¹²⁵ *Id.* at 6541, para. 3 n.11 (specifically noting the current defaulter and former defaulter certifications of 47 CFR § 1.2105(a)(2)(x) and (xi) and stating that "[t]hese rules are not affected by the red light rule").

¹²⁶ *Auction Default Disclosure Public Notice*, 19 FCC Rcd at 21920 (addressing relationship between Commission's Red Light Display System and short-form application default and delinquency disclosure requirements for auction applicants). To access the Commission's Red Light Display System, go to: <https://apps.fcc.gov/redlight/login.cfm>.

¹²⁷ *Debt Collection Report and Order*, 19 FCC Rcd at 6540-42, paras. 1, 3-5; *see also* 47 CFR § 1.1114.

¹²⁸ Applicants that have their long-form applications dismissed will be deemed to have defaulted and will be subject to default payments under 47 CFR §§ 1.2104(g) and 1.2109(c).

¹²⁹ 47 CFR § 1.2110(c)(3).

¹³⁰ *Id.* § 1.2110(c)(4).

¹³¹ *NCE Second Report and Order*, 18 FCC Rcd at 6699-6701, paras. 21-24. *See also* 47 CFR § 73.5002(b). Auction applications specifying the same FM station construction permit are considered mutually exclusive. *Broadcast Competitive Bidding Order*, 13 FCC Rcd at 15979 n.166.

¹³² In the *NCE Second Report and Order*, the Commission determined that short-form applications that do not identify the facilities proposed in the FCC Form 175 as "noncommercial educational" will be considered, as a matter of law, applications for commercial broadcast stations. *NCE Second Report and Order*, 18 FCC Rcd at 6700, para. 22.

¹³³ 47 CFR § 73.5002(b). *See also NCE Second Report and Order*, 18 FCC Rcd at 6699-6701, paras. 21-24.

¹³⁴ 47 CFR § 1.2105(b); *see also NCE Second Report and Order*, 18 FCC Rcd at 6700, para. 22.

M. Modifications to FCC Form 175**1. Only Minor Modifications Allowed**

68. After the initial application filing deadline, an applicant will be permitted to make only minor modifications to its short-form application. Examples of minor changes include the deletion or addition of authorized bidders (to a maximum of three), revision of addresses and telephone numbers of the applicant, its responsible party, and its contact person, or change in the applicant's selected bidding option (electronic or telephonic). A major modification to an FCC Form 175 (e.g., change of construction permit selection, change in the required certifications, change in control of the applicant such as any change in ownership or control that would constitute an assignment or transfer of control of the applicant,¹³⁵ claim of eligibility for a higher percentage of bidding credit, or change of the identification of the application's proposed facilities as noncommercial educational) will not be permitted after the initial FCC Form 175 filing deadline.¹³⁶ If an applicant makes a "major amendment," as defined by section 1.2105(b)(2), the major amendment may result in the disqualification of the applicant from participating in bidding.¹³⁷ Questions about FCC Form 175 amendments should be directed to the Auctions Division at (202) 418-0660.

2. Maintaining Current Information in Short-Form Applications

69. Each applicant has a continuing obligation to maintain the accuracy and completeness of information furnished in its pending application in a competitive bidding proceeding.¹³⁸ An auction applicant must furnish additional or corrected information to the Commission within five days after a significant occurrence,¹³⁹ or amend its FCC Form 175 no more than five days after the applicant becomes aware of the need for the amendment.¹⁴⁰ In accordance with the Commission's rules, an applicant's obligation to make modifications to a pending auction application in order to provide additional or corrected information continues beyond the five-day period, even if the report is not made within the five-day period.¹⁴¹ An applicant is obligated to amend its pending application even if a reported change is considered to be a major modification that may result in the dismissal of its application.

3. Modifying an FCC Form 175

70. As noted above, a party seeking to participate in Auction 106 must file an FCC Form 175 electronically via the FCC's Auction Application System. During the initial filing window, an applicant will be able to make any necessary modifications to its FCC Form 175 in the Auction Application System. An applicant that has certified and submitted its FCC Form 175 before the close of the initial filing window may continue to make modifications as often as necessary until the close of that window;

¹³⁵ Any change in control of the applicant will be considered a major amendment, and consequently the application will be dismissed. 47 CFR § 1.2105(b). Even if an applicant's FCC Form 175 is dismissed, the applicant would remain subject to the prohibitions on certain communications of 47 CFR § 1.2105(c) until the down payment deadline for this auction.

¹³⁶ See 47 CFR § 1.2105(b)(2).

¹³⁷ See *id.* § 1.2105(b); see also *Two Way Radio of Carolina, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 12035 (1999) (*Two Way Radio*).

¹³⁸ See 47 CFR §§ 1.65, 1.2105(b)(4).

¹³⁹ See, e.g., *Vermont Telephone Co.*, 26 FCC Rcd at 14130.

¹⁴⁰ 47 CFR §§ 1.65, 1.2105(b)(4). See also *Part 1 Procedural Amendments Order*, 25 FCC Rcd at 523, para. 8. Changes that cause a loss of or reduction in the percentage of bidding credit specified on the originally submitted application must be reported immediately, and no later than five business days after the change occurs. *Id.*

¹⁴¹ See Attachment B for information about submitting modifications to an FCC Form 175 after the initial application filing deadline.

however, the applicant must re-certify and re-submit its FCC Form 175 before the close of the initial filing window to confirm and effect its latest application changes. After each submission, a confirmation page will be displayed stating the submission time and submission date.¹⁴² Additional information on the procedures for modifying an FCC Form 175 appear in Attachment B to this Public Notice.

71. As with filing the FCC Form 175, any amendment(s) to the application and related statements of fact must be certified by an authorized representative of the applicant with authority to bind the applicant. Applicants should note that submission of any such amendment or related statement of fact constitutes a representation by the person certifying that he or she is an authorized representative with such authority and that the contents of the amendment or statement of fact are true and correct.

III. PREPARING FOR BIDDING

A. Due Diligence

72. We remind each potential bidder that it is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the construction permit(s) it is seeking in this auction. **The FCC makes no representations or warranties about the use of this spectrum or these construction permits for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC permittee in a broadcast service, subject to certain conditions and regulations. This includes the established authority of the Commission to alter the terms of existing licenses by rulemaking, which is equally applicable to licenses awarded by auction.¹⁴³ An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success.**

73. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. In particular, we strongly encourage each potential bidder to perform technical analyses and/or refresh its previous analyses to assure itself that, should it become a winning bidder for any Auction 106 construction permit, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements. We strongly encourage each applicant to inspect any prospective transmitter sites located in, or near, the service area for which it plans to bid, to confirm the availability of such sites, and to familiarize itself with the Commission's rules regarding any applicable federal, state, and local requirements.¹⁴⁴

74. We strongly encourage each applicant to continue to conduct its own research throughout Auction 106 in order to determine the existence of pending or future administrative or judicial proceedings that might affect its decision on continued participation in the auction. Each Auction 106 applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on construction permits available in this auction. The due diligence considerations mentioned in this Public Notice do not comprise an exhaustive list of steps that should be undertaken prior to participating in this auction. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon specific facts and circumstances related to its interests.

75. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the construction permits available in Auction 106. Each potential bidder is responsible for undertaking research to ensure that any permits won in this auction will be suitable for its business plans

¹⁴² We advise applicants to retain a copy of this confirmation page.

¹⁴³ See, e.g., *Cellco P'ship v. FCC*, 700 F.3d 534, 542 (D.C. Cir. 2012); *Celtronix Telemetry, Inc. v. FCC*, 272 F.3d 585, 589 (D.C. Cir. 2001) (citing 47 U.S.C. § 309(j)(6)(D)).

¹⁴⁴ 47 CFR pt. 1, subpart I.

and needs. Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

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

B. Bidder Education – Online Tutorial on Auction Process

77. An educational auction tutorial will be available on the Auction 106 web page by Tuesday, January 22, 2020. This online tutorial will provide information about pre-auction procedures, the FCC auction application system, completing short-form applications, auction conduct, the FCC auction bidding system, auction rules, and broadcast services rules. The tutorial will also provide an avenue to ask FCC staff questions about the auction, auction procedures, filing requirements, and other matters related to this auction.

78. The tutorial will allow viewers to navigate the presentation outline, review written notes, listen to audio recordings of the notes, and search for topics using a text search function. Additional features of this web-based tool include links to auction-specific Commission releases, email links for contacting Commission licensing and auctions staff, a timeline with deadlines for auction preparation, and screen shots of the online application and FCC auction bidding system. The tutorial will be accessible through a web browser with Adobe Flash Player.¹⁴⁵

79. The online auction tutorial will be accessible on the “Education” tab of the Auction 106 website at www.fcc.gov/auction/106. Once posted, this tutorial will remain available and accessible anytime for reference in connection with the procedures outlined in this Public Notice.

C. Short-Form Applications – Due Before 6:00 p.m. ET on February 11, 2020

80. In order to be eligible to bid in Auction 106, in addition to other requirements, an applicant must first follow the procedures to submit a short-form application (FCC Form 175) for the relevant auction electronically via the FCC Auction Application System, following the instructions set forth in Attachment B to this Public Notice. The short-form application will become available with the opening of the initial filing window and must be submitted **prior to 6:00 p.m. ET on February 11, 2020. Late applications will not be accepted.** No application fee is required.

81. Applications may be filed at any time beginning at noon ET on January 29, 2020, until the filing window closes at 6:00 p.m. ET on February 11, 2020. Applicants are strongly encouraged to file early and are responsible for allowing adequate time to file their applications. There are no limits or restrictions on the number of times an application can be updated or amended until the initial filing deadline on February 11, 2020.

82. An applicant must always click on the CERTIFY & SUBMIT button on the “Certify & Submit” screen to successfully submit its FCC Form 175 and any modifications; otherwise, the application or changes to the application will not be received or reviewed by Commission staff. Additional information about accessing, completing, and viewing the FCC Form 175 is included in Attachment B. Applicants requiring technical assistance should contact FCC Auctions Technical Support at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (text telephony (TTY)); hours of

¹⁴⁵ Most users will already have the Flash Player browser plug-in, which can be downloaded from <http://get.adobe.com/flashplayer/>.

service are Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET.¹⁴⁶ In order to provide better service to the public, all calls to Technical Support are recorded.

D. Application Processing and Correction of Deficiencies

1. Public Notice of Applicant's Initial Application Status and Opportunity for Minor Modifications

83. After the deadline for filing auction applications, Commission staff will process all timely submitted applications to determine whether each applicant has complied with the application requirements and provided all information concerning its qualifications for bidding. We will issue a public notice with applicants' initial application status identifying (1) those that are complete; (2) those that are rejected;¹⁴⁷ or (3) those that are incomplete or deficient because of minor defects that may be corrected. The public notice will include the deadline for resubmitting corrected applications, and a paper copy will be sent by overnight delivery to the contact address listed in the FCC Form 175 for each applicant. In addition, each applicant with an incomplete application will be sent information on the nature of the deficiencies in its application, along with the name and phone number of a Commission staff member who can answer questions specific to the application.

84. Non-mutually exclusive applications will be listed in a subsequent public notice to be released by OEA and MB. Such applications will not proceed to auction, but will proceed in accordance with instructions set forth in that public notice.¹⁴⁸ All mutually exclusive applications will be considered under the relevant procedures for conflict resolution. Mutually exclusive applications proposing commercial stations will proceed to auction.

85. As described above, after the application filing deadline on February 11, 2020, applicants can make only minor corrections to their applications.¹⁴⁹ They will not be permitted to make major modifications (e.g., change construction permit selection, change control of the applicant, change the certifying official, claim eligibility for a higher percentage of bidding credit, or change identification of the application's proposed facilities as NCE).¹⁵⁰

86. Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the short-form application, unless the applicant's certifying official or contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on behalf of the applicant.¹⁵¹ Authorizations may be sent by email to auction106@fcc.gov.

¹⁴⁶ We caution applicants that the Commission periodically performs scheduled maintenance of its IT systems. During scheduled maintenance activities, which typically occur over the weekends, every effort is made to minimize any downtime to auction-related systems, including the auction application system. However, there are occasions when auction-related systems may be temporarily unavailable.

¹⁴⁷ One reason that an application may be rejected in this auction is if an FCC Form 175 filed during the Auction 106 filing window identifying the application's proposed FM station as noncommercial educational is mutually exclusive with any application filed during the window for a commercial FM station. See section II.L., "Noncommercial Educational Status Election," above. In the *NCE Second Report and Order*, the Commission determined that short-form applications that do not identify the facilities proposed in the FCC Form 175 as "noncommercial educational" will be considered, as a matter of law, applications for commercial broadcast stations. *NCE Second Report and Order*, 18 FCC Rcd at 6700, para. 22.

¹⁴⁸ See 47 CFR § 73.3573(f)(4).

¹⁴⁹ See section II.M., "Modifications to FCC Form 175," above.

¹⁵⁰ 47 CFR § 1.2105(b); see also *Two Way Radio*, 14 FCC Rcd at 12035.

¹⁵¹ In no event, however, will the FCC send auction registration materials to anyone other than the contact person listed on the applicant's FCC Form 175 or respond to a request for replacement registration materials from anyone (continued....)

2. Public Notice of Applicant's Final Application Status After Upfront Payment Deadline

87. After Commission staff review resubmitted applications for Auction 106, Commission staff will release a public notice identifying applicants that have become qualified bidders. A *Qualified Bidders Public Notice* will be issued before bidding in the auction begins. Qualified bidders are those applicants with submitted FCC Forms 175 that are deemed timely filed and complete, and which have made a timely and sufficient upfront payment (as described below).

E. Upfront Payments

88. In order to be eligible to bid in this auction, a sufficient upfront payment and a complete and accurate FCC Remittance Advice Form (FCC Form 159, February 2003 edition) must be submitted before 6:00 p.m. ET on March 20, 2020, **following the procedures outlined below and the instructions in Attachment C to this Public Notice**. After completing its short-form application, an applicant will have access to an electronic version of the FCC Form 159. This FCC Form 159 can be printed and **the completed form must be sent by fax to the FCC at (202) 418-2843, or by email to RROGWireFaxes@fcc.gov**.

1. Making Upfront Payments by Wire Transfer

89. All upfront payments must be made by wire transfer.¹⁵² No other payment method is acceptable.¹⁵³ All payments must be made in U.S. dollars. Upfront payments for Auction 106 go to a U.S. Treasury account number different from the accounts used in previous FCC auctions. The following information will be needed:

ABA Routing Number: 021030004

Receiving Bank: TREAS NYC

33 Liberty Street

New York, NY 10045

BENEFICIARY: FCC

445 12th Street, SW

Washington, DC 20554

ACCOUNT NUMBER: 827000001002

Originating Bank Information (OBI Field): (Skip one space between each information item)

“AUCTIONPAY”

APPLICANT FCC REGISTRATION NUMBER (FRN): (use the same FRN as used on the applicant's FCC Form 159, block 21)

PAYMENT TYPE CODE: (same as FCC Form 159, block 24A: “U106”)

NOTE: The beneficiary account number is specific to the upfront payments for Auction 106. Do not use a beneficiary account number from a previous auction.

90. Each applicant is responsible for ensuring timely submission of its upfront payment and for timely filing of an accurate and complete Form 159. To avoid untimely payments, an applicant should discuss arrangements and deadlines with its financial institution (including that financial institution's specific wire transfer requirements) several days before they plan to make the wire transfer, and well

(Continued from previous page) _____
other than the authorized bidder, contact person, or certifying official listed on the applicant's FCC Form 175. See section III.F., “Auction Registration,” below.

¹⁵² An applicant must initiate the wire transfer through its bank, authorizing the bank to wire funds from the applicant's account to the Commission's account at the U.S. Treasury.

¹⁵³ The Commission will not accept checks, credit cards, or automated clearing house (ACH) payments.

ahead of the due date, as well as allowing sufficient time for the wire transfer to be initiated and completed prior to the deadline. The Commission repeatedly has cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer.¹⁵⁴ **Each applicant is responsible for obtaining confirmation from its financial institution that its wire transfer to U.S. Treasury was successful and from Commission staff that its upfront payment was timely received and that it was deposited into the proper account.** To receive confirmation from Commission staff, contact Scott Radcliffe of the Office of Managing Director's Revenue & Receivables Operations Group/Auctions at (202) 418-7518, or Theresa Meeks at (202) 418-2945.

91. Failure to deliver a sufficient upfront payment as instructed herein by the March 20, 2020, deadline will result in dismissal of the short-form application and disqualification from participation in the auction.

2. Completing and Submitting FCC Form 159

92. An accurate and complete Form 159 (February 2003 edition) must be sent to the FCC to accompany each upfront payment. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must fax a completed Form 159 to the FCC at (202) 418-2843. Alternatively, the completed form can be scanned and sent as an attachment to an email to RROGWireFaxes@fcc.gov. On the fax cover sheet, write "Wire Transfer – Auction Payment for Auction 106."

3. Upfront Payments and Bidding Eligibility

93. Upfront payments that are related to the specific construction permits being auctioned protect against frivolous or insincere bidding, and provide the Commission with a source of funds from which to collect payments owed at the close of bidding.¹⁵⁵ In the *Auction 106 Comment Public Notice*,¹⁵⁶ we proposed an upfront payment amount for each construction permit, taking into account various factors related to the efficiency of the auction process and the potential value of similar construction permits, and sought comment on the upfront payment amounts.¹⁵⁷

94. The sole commenter on this issue, Gene Koprowski suggests that we reduce to zero the upfront payments for allotments at Essex, California; Yakutat, Alaska; San Isidro, Texas (two allotments); and Wamsutter, Wyoming.¹⁵⁸ Citing only the example of Essex, California, which he describes as a "ghost town" on Route 66 about three hours east of Los Angeles, Mr. Koprowski suggests that eliminating the upfront payment for these allotments would "encourage the development of these small markets by making the cost of entry lower for entrepreneurs."¹⁵⁹ We decline to eliminate the

¹⁵⁴ See, e.g., *Four Corners Broadcasting, LLC*, Letter Order, 25 FCC Rcd 9046 (WTB 2010) (denying waiver request of upfront payment deadline); *Spectrum Acquisition, Inc.*, Letter Order, 23 FCC Rcd 4765 (WTB 2008) (denying waiver request of upfront payment deadline); *Lynch 3G Communications Corp.*, Letter Order, 18 FCC Rcd 11552 (WTB 2003) (finding that upfront payment was not timely submitted).

¹⁵⁵ See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2377-79, paras. 169-76.

¹⁵⁶ *Auction 106 Comment Public Notice*, DA 19-1027, paras. 12-14.

¹⁵⁷ See *Auction Procedures Consolidation Order*, 12 FCC Rcd at 5697-98, para 16. See also *Part 1 Third Report and Order*, 13 FCC Rcd at 425, para. 86; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2377-79, paras. 169-75.

¹⁵⁸ This comment was not properly filed consistent with the filing procedures set out in *Auction 106 Comment Public Notice*, but was instead e-mailed to the help desk of the Commission's Electronic Comment Filing System (ECFS), resulting in a delay in posting the comment to the ECFS. See Comment of Gene Koprowski, e-mailed to ECFShelp@fcc.gov Nov. 2, 2019.

¹⁵⁹ *Id.*

upfront payments for these allotments. The lowest upfront payment amount in this auction is a \$750 amount for these and two other allotments.¹⁶⁰ That amount reflects the relative size of each of these communities. Moreover, Mr. Koprowski fails to recognize that the refundable upfront payments not only establish each qualified bidder's bidding eligibility and ensure that the pace of bidding is managed appropriately,¹⁶¹ but they also "protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the bidding."¹⁶² Therefore, we reject Mr. Koprowski's proposal, and adopt the upfront payment amounts proposed in the *Auction 106 Comment Public Notice*. The specific upfront payment amounts and bidding units for each construction permit are set forth in Attachment A of this Public Notice.

95. An applicant must make an upfront payments sufficient to obtain bidding eligibility on the construction permits on which it will bid. We proposed, in the *Auction 106 Comment Public Notice*, that the amount of the upfront payment would determine a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids in any single round.¹⁶³ Under that proposal, in order to bid on a particular construction permit, a qualified bidder must have selected the construction permit on its FCC Form 175 and must have a current eligibility level that meets or exceeds the number of bidding units assigned to that construction permit. **At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits selected on its FCC Form 175, or else the applicant will not be qualified to participate in the auction.** An applicant does not have to make an upfront payment to cover all construction permits the applicant selected on its FCC Form 175, but only enough to cover the maximum number of bidding units that are associated with construction permits on which they wish to place bids and hold provisionally winning bids in any given round.¹⁶⁴ The total upfront payment does not affect the total dollar amount the bidder may bid on any given construction permit.

96. We received no comments on the proposal that the upfront payment amount would determine a bidder's initial eligibility. Therefore, we adopt this proposal. Each applicant's upfront payment amount will determine that bidder's initial bidding eligibility.

97. In calculating its upfront payment amount, an applicant should determine the **maximum** number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units.¹⁶⁵ In order to make this calculation, an applicant should add together the bidding units for all construction permits on which it seeks to be active in any given round. **Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline.**

¹⁶⁰ In addition to the five allotments specified by Mr. Koprowski, the allotments at both Lusk and Medicine Bow, Wyoming, have \$750 upfront payment amounts.

¹⁶¹ *Auction 106 Comment Public Notice*, DA 19-1027, paras. 7, 12.

¹⁶² *See Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2377-79, paras. 169-76; *see also id.* para. 12.

¹⁶³ *Auction 106 Comment Public Notice*, DA 19-1027, paras. 12-14.

¹⁶⁴ Provisionally winning bids are bids that would become final winning bids if the auction were to close after the given round. *See* section IV.B.2., "Provisionally Winning Bids," below.

¹⁶⁵ A qualified bidder's maximum eligibility will not exceed the sum of the bidding units associated with the total number of construction permits selected on its FCC Form 175. In some cases a qualified bidder's maximum eligibility may be less than the amount of its upfront payment because the qualified bidder has either previously been in default on a Commission construction permit or license or delinquent on non-tax debt owed to a Federal agency, *see* 47 CFR § 1.2106(a), or has submitted an upfront payment that exceeds the total amount of bidding units associated with the construction permits it selected on its FCC Form 175.

Example: Upfront Payments, Bidding Eligibility, and Bidding Flexibility			
Construction Permit	Market Name	Bidding Units	Upfront Payment
MM-FM1067-C	First Mesa, AZ	15,000	\$15,000
MM-FM1069-A	Cottonwood, CA	35,000	\$35,000

If a bidder wishes to bid on both construction permits in a round, it must have selected both on its FCC Form 175 and purchased at least 50,000 bidding units (15,000 + 35,000) of bidding eligibility. If it only wishes to bid on one, but not both, purchasing 35,000 bidding units would meet the eligibility requirement for either construction permit. The bidder would be able to bid on either construction permit, but not both at the same time. If the bidder purchased only 15,000 bidding units, the bidder would have enough eligibility for the First Mesa, AZ construction permit but not for the Cottonwood, CA construction permit.

98. An applicant that is a former defaulter, as described above, must pay an upfront payments 50% greater than that required of an applicant that is not a former defaulter.¹⁶⁶ For purposes of this rule, defaults and delinquencies of the applicant itself and its controlling interests are included.¹⁶⁷ If an applicant is a former defaulter, it must calculate its upfront payment for all of its selected construction permits by multiplying the number of bidding units on which it wishes to be active by 1.5.¹⁶⁸ In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.¹⁶⁹

F. Auction Registration

99. All qualified bidders for Auction 106 are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID® tokens that will be required to place bids, the web address and instructions for accessing and logging in to the auction bidding system, FCC assigned username (User ID) for each authorized bidder, and the Auction Bidder Line phone number.

100. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, if this mailing is not received by the contact representative for a qualified bidder by noon on Wednesday, April 22, 2020, call the Auctions Hotline at (717) 338-2868. Receipt of this registration mailing is critical to participating in the auction, and each qualified bidder is responsible for ensuring it has received all of the registration materials.

¹⁶⁶ *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15316-18, paras. 40-43; *see also* 47 CFR § 1.2106(a); section II.J., “Provisions Regarding Former and Current Defaulters,” above.

¹⁶⁷ For this purpose, the term “controlling interest” is defined in 47 CFR § 1.2105(a)(4)(i).

¹⁶⁸ 47 CFR § 1.2106(a).

¹⁶⁹ If a former defaulter fails to submit a sufficient upfront payment to establish eligibility to bid on at least one of the construction permits selected on its FCC Form 175, the applicant will not be eligible to participate in bidding in the auction. *Broadcast Competitive Bidding Order*, 13 FCC Rcd at 15979-80, para. 153. This applicant will retain its status as an applicant in Auction 106 and will remain subject to 47 CFR §§ 1.2105(c), 73.5002(d). *See Star Wireless, LLC*, Forfeiture Order, 19 FCC Rcd 18626, 18627-28, para. 4 & n.19 (EB 2004), *order granted in part sub nom, Star Wireless, LLC and Northeast Communications of Wis., Inc.*, Order on Review, 22 FCC Rcd 8943 (2007), *petition for review denied, Star Wireless, LLC v. FCC*, 522 F.3d 469 (D.C. Cir. 2008).

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

G. Remote Electronic Bidding via the FCC Auction Bidding System

102. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Only qualified bidders are permitted to bid. Each applicant should indicate its bidding preference — electronic or telephonic — on its FCC Form 175. In either case, each authorized bidder must have its own SecurID® token, which the Commission will provide at no charge. Each qualified bidder with one authorized bidder will be issued two SecurID® tokens, while qualified bidders with two or three authorized bidders will be issued three tokens. **For security purposes, the SecurID® tokens, bidding system web address, FCC assigned username, and the telephonic bidding telephone number are only mailed to the contact person at the contact address listed on the FCC Form 175.** Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 106.

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

104. To the extent an issue arises with the auction bidding system itself, the Commission will take all appropriate measures to resolve such issues quickly and equitably.¹⁷⁰ Should an issue arise that is outside the auction bidding system or attributable to a bidder, including, but not limited to, a bidder's hardware, software, or Internet access problem that prevents the bidder from submitting a bid prior to the end of a round, the Commission shall have no obligation to resolve or remedy such an issue on behalf of the bidder. Similarly, if an issue arises due to bidder error using the auction bidding system, the Commission shall have no obligation to resolve or remedy such an issue on behalf of the bidder. Accordingly, after the close of a bidding round, the results of bid processing will not be altered absent evidence of any failure in the auction bidding system.

H. Mock Auction

105. All qualified bidders will be eligible to participate in a mock auction on Friday, April 24, 2020. The mock auction will enable bidders to become familiar with the FCC auction bidding system prior to the auction. We strongly recommend that all bidders participate in the mock auction. Details will be announced by public notice.

I. Fraud Alert

106. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction 106 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

¹⁷⁰ We caution applicants that the Commission periodically performs scheduled maintenance of its IT systems. During scheduled maintenance activities, which typically occur over the weekends, every effort is made to minimize any downtime to auction-related systems, including the Commission's bidding system. However, there are occasions when auction-related systems may be temporarily unavailable.

- The first contact is a “cold call” from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of investment is less than \$25,000.
- The sales representative makes verbal representations that: (a) the Internal Revenue Service, Federal Trade Commission (FTC), Securities and Exchange Commission (SEC), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

107. Information about deceptive telemarketing investment schemes is available from the FCC as well as the FTC and SEC. Additional sources of information for potential bidders and investors may be obtained from the following sources:

- the FCC’s Consumer Call Center at (888) 225-5322 or by visiting www.fcc.gov/general/frauds-scams-and-alerts-guides
- the FTC at (877) FTC-HELP ((877) 382-4357) or by visiting www.consumer.ftc.gov/articles/0238-investment-risks
- the SEC at (202) 942-7040 or by visiting www.sec.gov/investor.

Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (202) 835-0618.

J. Environmental Review Requirements

108. Permittees or licensees must comply with the Commission’s rules for environmental review under the National Environmental Policy Act,¹⁷¹ the National Historic Preservation Act,¹⁷² and other federal environmental statutes.¹⁷³ The construction of a broadcast facility is a federal action, and the permittee or licensee must comply with the Commission’s environmental rules for each such facility.¹⁷⁴ These environmental rules require, among other things, that the permittee or licensee consult with expert agencies having environmental responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the U.S. Army Corps of Engineers, and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). In assessing the effect of facility construction on historic properties, the permittee or licensee must follow the provisions of the FCC’s Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process.¹⁷⁵ The permittee or licensee must prepare environmental assessments for any facility that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species, or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. In addition, the permittee or licensee must prepare environmental

¹⁷¹ 42 U.S.C. § 4321 *et seq.*

¹⁷² 54 U.S.C. § 300101 *et seq.*

¹⁷³ 47 CFR pt. 1, subpart I.

¹⁷⁴ 47 CFR §§ 1.1301-1.1319.

¹⁷⁵ 47 CFR pt. 1, Appendix C.

assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

IV. BIDDING

109. The first round of bidding for Auction 106 will begin on Tuesday, April 28, 2020. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released at least one week before the start of bidding in the auction.

A. Auction Structure

1. Simultaneous Multiple Round Auction

110. In the *Auction 106 Comment Public Notice*, we proposed to auction all construction permits listed in Attachment A of this Public Notice in a single auction using the Commission's standard simultaneous multiple-round auction format.¹⁷⁶ This type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which qualified bidders may place bids on individual construction permits. We received no comment on this proposal, and this proposal is adopted. Unless otherwise announced, bids will be accepted on all construction permits in each round of the auction until bidding stops on every construction permit.

2. FCC Auction Bidding System

111. All bidding will take place remotely either through the FCC auction bidding system or by telephonic bidding. There will be no on-site bidding during Auction 106. Please note that telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of ten minutes.

112. An Auction 106 bidder's ability to bid on specific construction permits is determined by two factors: (1) the construction permits selected by that applicant in its FCC Form 175 and (2) the bidder's bidding eligibility measured in bidding units. The FCC auction bidding system will allow bidders to submit bids on only those construction permits the bidder selected on its FCC Form 175.

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

3. Round Structure

114. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders in the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted each day.

115. In the *Auction 106 Comment Public Notice*, we proposed to retain the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. We received no comment on these proposals, and we adopt them for Auction 106. We may change the amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors, by prior announcement.

¹⁷⁶ *Auction 106 Comment Public Notice*, DA 19-1027, para. 4.

4. Eligibility and Activity Rules

116. As discussed above, we will use upfront payments to determine initial (maximum) bidding eligibility (as measured in bidding units) for Auction 106.¹⁷⁷ The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. As noted earlier, each construction permit is assigned a specific number of bidding units as listed in Attachment A. Bidding units assigned to each construction permit do not change as prices rise during the auction. Upfront payments are not attributed to specific construction permits. Rather, a bidder may place bids on any of the construction permits selected on its FCC Form 175 as long as the total number of bidding units associated with those construction permits does not exceed the bidder's current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. At a minimum, an applicant's upfront payment must cover the bidding units for at least one of the construction permits it selected on its short-form application. The total upfront payment does not affect the total dollar amount a bidder may bid on any given construction permit. We received no comments on the bidding eligibility proposals, and these proposals are adopted.

117. To ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. A bidder's activity level in a round is the sum of the bidding units associated with construction permits covered by the bidder's new bids in the current round¹⁷⁸ and provisionally winning bids from the previous round.¹⁷⁹

118. The minimum required activity is expressed as a percentage of the bidder's current eligibility, and it increases by stage as the auction progresses. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.¹⁸⁰

119. In order to provide bidders with flexibility to pursue backup strategies if they so desire, we adopt a more flexible activity requirement than that proposed in the *Auction 106 Comment Public Notice*. Specifically, we had proposed that a bidder desiring to maintain its current bidding eligibility would be required to be active on 100% of its bidding eligibility. While a 100% requirement has been effective in regulating the pace of certain recent broadcast auctions, such as Auctions 99 and 100,¹⁸¹ where bidders had no ability to adopt backup strategies, we conclude that a more flexible activity rule is more appropriate for this auction of well over 100 permits in which applicants are not limited in their license selections and may seek to implement backup plans as price information is made available during

¹⁷⁷ See section III.E.3., "Upfront Payments and Bidding Eligibility," above.

¹⁷⁸ Bidding units associated with construction permits for which the bidder has removed bids do not count towards current activity.

¹⁷⁹ Provisionally winning bids are bids that would become final winning bids if the auction were to close after the given round. See section IV.B.2., "Provisionally Winning Bids," below.

¹⁸⁰ See section IV.A.7., "Activity Rule Waivers," below.

¹⁸¹ See, e.g., *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*, Public Notice, 33 FCC Rcd 1763, 2783, para. 79 (WTB/MB 2018); see also *Auction of Cross-Service FM Translator Construction Permits Scheduled for June 25, 2019; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 100*, Public Notice, 34 FCC Rcd 2231, 2250, para. 74 (OEA/MB 2019).

bidding rounds. Accordingly, we initially adopt two activity requirements: an 80% requirement for the beginning of the auction and a 95% requirement that will be used later in the auction. These requirements will be implemented using “auction stages,” as described below.

5. Auction Stages

120. Rather than use a single stage as proposed in the *Auction 106 Comment Public Notice*, we will conduct the auction in at least two stages. Under this approach, a bidder desiring to maintain its current bidding eligibility will be required to be active on construction permits representing at least 80 percent of its current eligibility during each round of Stage One, and on at least 95 percent of its current bidding eligibility in Stage Two.

121. We have the discretion to further alter the activity requirements before and/or during the auction as circumstances warrant, and we also have other mechanisms by which we may influence the speed of the auction. We find, for now, that an activity requirement consisting of two stages adequately balances the desire to conclude the auction quickly with the need to give sufficient time for bidders to consider the status of the bidding and to place bids. Therefore, we adopt the two stages as described below.

122. **Stage One:** During the first stage of the auction, a bidder desiring to maintain its current bidding eligibility will be required to be active on construction permits representing at least 80 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in the use of an activity rule waiver or, if the bidder has no activity rule waivers remaining, a reduction in the bidder’s bidding eligibility in the next round. During Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder’s current round activity (the sum of bidding units of the bidder’s provisionally winning bids and bids during the current round) by five-fourths (5/4).

123. **Stage Two:** During the second stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the required activity level will result in the use of an activity rule waiver or, if the bidder has no activity rule waivers remaining, a reduction in the bidder’s bidding eligibility in the next round. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder’s current round activity (the sum of bidding units of the bidder’s provisionally winning bids and bids during the current round) by twenty-nineteenths (20/19).

CAUTION: Since activity requirements increase in Stage Two, bidders must carefully check their activity during the first round following a stage transition to ensure that they are meeting the increased activity requirement. This is especially critical for bidders that have provisionally winning bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required activity level by logging into the FCC Auction System.

124. Prior to any move from Stage One to Stage Two, we will alert bidders by announcement in the bidding system.

6. Stage Transitions

125. We intend to advance the auction from Stage One to Stage Two after considering a variety of measures of auction activity, including, but not limited to, the percentages of construction permits (as measured in bidding units) on which there are new bids, the number of new bids, and the increase in revenue.

126. The auction will start in Stage One.¹⁸² We will regulate the pace of the auction by announcement. We retain the discretion to change the activity requirements during the auction. For example, we may decide not to transition to Stage Two if we believe the auction is progressing satisfactorily under the Stage One activity requirement, or to transition to Stage Two with an activity requirement that is higher or lower than the 95 percent.¹⁸³ As mentioned above, bidders will be alerted in advance of stage advancements by announcement during the auction.

127. We retain the discretion to transition the auction to Stage Two, to add an additional stage with a higher activity requirement, not to transition to Stage Two, and to transition to Stage Two with an activity requirement that is higher or lower than 95 percent. This determination will be based on a variety of measures of auction activity, including, but not limited to, the number of new bids and the percentages of construction permits (as measured in bidding units) on which there are new bids.¹⁸⁴

7. Activity Rule Waivers

128. In the *Auction 106 Comment Public Notice*, we proposed that each bidder in the auction be provided with three activity rule waivers, which are principally a mechanism for a bidder to avoid the loss of bidding eligibility in the event that exigent circumstances prevent it from bidding in a particular round.¹⁸⁵ We received no comments on this issue.

129. Therefore, we adopt this proposal to provide bidders with three activity rule waivers. Use of an activity rule waiver preserves the bidder's eligibility despite its activity in the current round being below the required minimum activity level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit. A bidder may use an activity rule waiver in any round of the auction as long as the bidder has not used all of its waivers.

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

131. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the *reduce eligibility* function in the FCC auction bidding system. In this case, the bidder's eligibility would be permanently reduced to bring it into compliance with the

¹⁸² The stage of the auction does not affect the auction stopping rules; the auction may conclude in Stage One. See section V.A.8., "Auction Stopping Rules," below

¹⁸³ If we implement a stage with an activity requirement other than 80 or 95 percent, a bidder's reduced eligibility for the next round will be calculated by multiplying that bidder's current round activity by the reciprocal of the activity requirement. For example, if there is a 98 percent activity requirement, the bidder's current round activity would be multiplied by 50/49; if there is a 100 percent activity requirement, the bidder's current round activity would become its bidding eligibility (current round activity would be multiplied by 1/1).

¹⁸⁴ For example, when monitoring activity to determine when to change stages, we may consider the percentage of bidding units of the construction permits receiving new provisionally winning bids, excluding any FCC-held permits. In past auctions, Commission staff has generally, but not always, changed stages when this measure was approximately twenty percent or below for three consecutive rounds of bidding.

¹⁸⁵ *Auction 106 Comment Public Notice*, DA 19-1027, para. 20.

activity rule described above. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder cannot regain its lost bidding eligibility.

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

8. Auction Stopping Rules

133. For Auction 106, we proposed to employ a simultaneous stopping rule approach, which means all construction permits remain available for bidding until bidding stops on every construction permit.¹⁸⁶ Specifically, bidding will close on all construction permits after the first round in which no bidder submits any new bid or applies a proactive waiver.¹⁸⁷

134. We also sought comment on alternative versions of the simultaneous stopping rule for Auction 106:

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

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

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

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

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

135. We proposed to exercise these options only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely.¹⁸⁸ Before exercising these options, we are likely to attempt to change the pace of the

¹⁸⁶ *Auction 106 Comment Public Notice*, DA 19-1027, paras. 8-10.

¹⁸⁷ Provisionally winning bids are bids that would become final winning bids if the auction were to close after the given round. See section IV.B.2., "Provisionally Winning Bids," below. Proactive waivers are described in section IV.A.7., "Activity Rule Waivers," above.

¹⁸⁸ *Auction 106 Comment Public Notice*, DA 19-1027, para. 10.

auction. For example, we may adjust the pace of bidding by changing the number of bidding rounds per day and/or the minimum acceptable bids.¹⁸⁹ We proposed to retain the discretion to exercise any of these options with or without prior announcement during the auction.¹⁹⁰ We received no comment on these proposals and adopt them for Auction 106.

9. Auction Delay, Suspension, or Cancellation

136. In the *Auction 106 Comment Public Notice*, we proposed that, by public notice or by announcement through the FCC auction bidding system, we may delay, suspend, or cancel bidding in the auction in the event of natural disaster, technical obstacle, network interruption, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding.¹⁹¹ We received no comment on this issue.

137. Because this approach has proven effective in resolving exigent circumstances in previous auctions, we adopt these proposals regarding auction delay, suspension, or cancellation. By public notice or by announcement through the FCC auction bidding system, we may delay, suspend, or cancel bidding in the auction in the event of natural disaster, technical obstacle, network interruption, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, OEA and MB, in their sole discretion, may elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. We emphasize that we will exercise this authority solely at our discretion, and not as a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

1. Bid Amounts

138. In the *Auction 106 Comment Public Notice*, we proposed that in each round a qualified bidder will be able to place a bid on a given construction permit in any of up to nine different amounts.¹⁹² Under the proposal, the FCC auction bidding system interface will list the nine acceptable bid amounts for each construction permit. We received no comments on this proposal, and adopt it as proposed.

139. In the *Auction 106 Comment Public Notice*, in calculating the first of the acceptable bid amounts, we proposed to use a *minimum acceptable bid increment percentage* of 10%. This means that the minimum acceptable bid amount for a construction permit will be approximately 10% greater than the provisionally winning bid amount for the construction permit. To calculate the eight additional acceptable bid amounts, we proposed in the *Auction 106 Comment Public Notice* to use an *additional bid increment percentage* of 5%. We did not receive any comments on these proposals to use 10% and 5% respectively in our calculation of nine acceptable bid amounts for each construction permit. Our experience in previous broadcast auctions assures us that a minimum acceptable bid increment percentage of 10% and an additional bid increment percentage of 5% are sufficient to ensure active bidding. Therefore, we will begin the auction with a minimum acceptable bid increment percentage of 10% and an additional bid increment percentage of 5%.

140. In Auction 106, the minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid for the construction

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.* at para. 11.

¹⁹² A bidder must have sufficient eligibility to place a bid on the particular construction permit. See section III.E.3., “Upfront Payments and Bidding Eligibility,” above.

permit. After there is a provisionally winning bid for a construction permit, the minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount by one plus the minimum acceptable bid percentage—i.e., provisionally winning bid amount * 1.10, rounded.¹⁹³

141. In Auction 106, the FCC auction bidding system will calculate the eight additional bid amounts by multiplying the minimum acceptable bid amount by the additional bid increment percentage of 5%, and that result (rounded¹⁹⁴) is the additional increment amount. The first additional acceptable bid amount equals the minimum acceptable bid amount plus the additional increment amount. The second additional acceptable bid amount equals the minimum acceptable bid amount plus two times the additional increment amount; the third additional acceptable bid amount is the minimum acceptable bid amount plus three times the additional increment amount; etc. Because the additional bid increment percentage is 5%, the calculation of the additional increment amount is (minimum acceptable bid amount) * (0.05), rounded. The first additional acceptable bid amount equals (minimum acceptable bid amount) + (additional increment amount); the second additional acceptable bid amount equals (minimum acceptable bid amount) + (2*(additional increment amount)); the third additional acceptable bid amount equals (minimum acceptable bid amount) + (3*(additional increment amount)); etc.

142. We proposed to retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid increment percentage, the additional bid increment percentage, and the number of acceptable bid amounts if we determine that circumstances so dictate, consistent with past practice.¹⁹⁵ We also proposed to retain the discretion to do so on a construction permit-by-construction permit basis. We also proposed to retain the discretion to limit (a) the amount by which a minimum acceptable bid for a construction permit may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, we could set a \$1,000 limit on increases in minimum acceptable bid amounts over provisionally winning bids. Thus, if calculating a minimum acceptable bid using the minimum acceptable bid increment percentage results in a minimum acceptable bid amount that is \$1,200 higher than the provisionally winning bid on a construction permit, the minimum acceptable bid amount would instead be capped at \$1,000 above the provisionally winning bid.

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

2. Provisionally Winning Bids

144. Consistent with practice in past auctions,¹⁹⁶ the FCC auction bidding system at the end of each bidding round will determine a *provisionally winning bid* for each construction permit based on the

¹⁹³ As explained in the *Auction 106 Comment Public Notice*, the result of that calculation is subject to a minimum of \$100. *Auction 106 Comment Public Notice*, DA 19-1027, n.23. Under the Commission's standard rounding procedure for auctions, results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1000 are rounded to the nearest \$10.

¹⁹⁴ See note 193 (auction standard rounding procedure), above.

¹⁹⁵ See, e.g., *Auction of FM Broadcast Construction Permits Scheduled for July 23, 2015; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 98*, AU Docket No. 15-3, Public Notice, 30 FCC Rcd 3544, 3581, paras. 147-48 (WTB/MB 2015) (*Auction 98 Procedures Public Notice*); see also 47 CFR § 1.2104(d) ("The Commission may, by announcement before or during an auction, require minimum bid increments in dollar or percentage terms.").

¹⁹⁶ See, e.g., *Auction of FM Broadcast Construction Permits Scheduled for July 23, 2015; Comment Sought on Competitive Bidding Procedures for Auction 98*, AU Docket No. 15-3, Public Notice, 30 FCC Rcd 1755, 1764-65, para. 37 (WTB/MB 2015) (*Auction 98 Comment Public Notice*).

highest bid amount received for that permit. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids.

145. In the *Auction 106 Comment Public Notice*, we proposed to use a pseudo-random number generator to select a single provisionally winning bid in the event of identical high bid amounts being submitted on a construction permit in a given round (i.e., tied bids).¹⁹⁷ No comments were received on this proposal, and we adopt it as proposed.

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

147. As a reminder, provisionally winning bids count toward activity for purposes of the activity rule.¹⁹⁸

3. Bid Removal and Bid Withdrawal

148. In the *Auction 106 Comment Public Notice*, we explained bid removal procedures in the FCC auction bidding system.¹⁹⁹ Each qualified bidder has the option of removing any bids placed in a round provided that such bids are removed before the close of that bidding round. By removing a bid within a round, a bidder effectively “unsubmits” the bid. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder’s activity because a removed bid no longer counts toward bidding activity for the round. Once a round closes, a bidder may no longer remove a bid.

149. In the *Auction 106 Comment Public Notice*, we proposed to prohibit bidders from withdrawing any bid after close of the round in which that bid was placed.²⁰⁰ This proposal was made in recognition of the site-specific nature and wide geographic dispersion of the permits available in this auction, as well as experience with past auctions of broadcast construction permits. We received no comments on this issue of bid withdrawal. Accordingly, we will prohibit bid withdrawals in Auction 106. Bidders are cautioned to select bid amounts carefully because no bid withdrawals will be allowed, even if a bid was mistakenly or erroneously made.

4. Bidding Results

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

¹⁹⁷ *Auction 106 Comment Public Notice*, DA 19-1027, para. 33.

¹⁹⁸ See section IV.A.4., “Eligibility and Activity Rules,” above.

¹⁹⁹ *Auction 106 Comment Public Notice*, DA 19-1027, paras. 34-37.

²⁰⁰ *Id.*

5. Auction Announcements

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

V. POST-AUCTION PROCEDURES

152. Shortly after bidding has closed, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, final payments, and the long-form applications (FCC Forms 2100, Schedule 301-FM).

A. Down Payments

153. Within ten business days after release of the auction closing public notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 106 to 20% of the net amount of its winning bid(s) (gross bid(s) less any applicable new entrant bidding credit(s)).²⁰¹

B. Final Payments

154. Each winning bidder will be required to submit the balance of the net amount of its winning bid(s) within ten business days after the applicable deadline for submitting down payments.²⁰²

C. Long-Form Applications

155. The Commission's rules currently provide that within thirty days following the close of bidding and notification to the winning bidders, unless a longer period is specified by public notice,²⁰³ winning bidders must electronically submit a properly completed long-form application (FCC Form 2100, Schedule 301-FM, Commercial FM Station Construction Permit Application), and required exhibits for each construction permit won through Auction 106.²⁰⁴ Winning bidders claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit.²⁰⁵ Further instructions on these and other filing requirements will be provided to winning bidders in the auction closing public notice.

D. Default and Disqualification

156. Any winning bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full and timely final payment, or is otherwise disqualified) is liable for a default payment as described in section 1.2104(g)(2).²⁰⁶ This default payment consists of a deficiency payment, equal to the difference between the amount of the Auction 106 bidder's winning bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an

²⁰¹ 47 CFR § 1.2107(b).

²⁰² 47 CFR § 1.2109(a); *see Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures*, WT Docket No. 05-211, Report and Order, 21 FCC Rcd 891, 907-09, paras. 43-46 (2006) (*CSEA/Part 1 Report and Order*).

²⁰³ 47 CFR § 73.5005(a).

²⁰⁴ 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. 47 CFR § 1.2107(c); *see* 47 CFR § 1.1104. When an application filing fee is due by Auction 106 winning bidders, the amount may be higher or lower than the \$3,975 currently reported at section 1.1104. *See also* Application Fee Filing Guide for Media Bureau (Sept. 4, 2018).

²⁰⁵ 47 CFR §§ 1.2112(b), 73.5005.

²⁰⁶ *Id.* § 1.2104(g)(2).

auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

157. The percentage of the applicable bid to be assessed as an additional payment for defaults in a particular auction is established in advance of the auction. Accordingly, in the *Auction 106 Comment Public Notice*, we proposed to set the additional default payment for this auction at 20% of the applicable bid. We received no comments on this proposal, and it is therefore adopted.

158. Finally, in the event of a default, the Commission has the discretion to re-auction the construction permit or offer it to the next highest bidder (in descending order) at its final bid amount.²⁰⁷ In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing authorizations held by the applicant.²⁰⁸

E. Refund of Remaining Upfront Payment Balance

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

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

Name, address, contact and phone number of Bank
ACH (Automated Clearing House) ABA Number (Please contact your
Financial Institution to make sure you are using the correct number)
Account Number to Credit
Name of Account Holder
FCC Registration Number (FRN)

The refund request must be submitted by fax to the Revenue & Receivables Operations Group/Auctions at (202) 418-2843, emailed to RROGWireFaxes@fcc.gov or by mail to:

Federal Communications Commission
Financial Operations
Revenue & Receivables Operations Group/Auctions
Scott Radcliffe
445 12th Street, SW, Room 1-C848
Washington, DC 20554

NOTE: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Scott Radcliffe at (202) 418-7518 or Theresa Meeks at (202) 418-2945.

²⁰⁷ *Id.* § 1.2109(b), (c).

²⁰⁸ *Id.* § 1.2109(d).

VI. PROCEDURAL MATTERS

A. Paperwork Reduction Act

161. The Office of Management and Budget (OMB) has approved the information collections in the Application to Participate in an FCC Auction, FCC Form 175.²⁰⁹ This Public Notice does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. Therefore, it does not contain any new or modified information burden for small business concerns with fewer than 25 employees pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.²¹⁰

B. Congressional Review Act

162. The Commission will submit this Public Notice to the Administrator of OMB's Office of Information and Regulatory Affairs for concurrence as to whether these procedures are "major" or "non-major" under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this *Auction 106 Procedures Public Notice* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

C. Supplemental Final Regulatory Flexibility Analysis

163. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),²¹¹ the Commission prepared Initial Regulatory Flexibility Analyses (IRFAs) in connection with the *Broadcast Competitive Bidding Notice of Proposed Rulemaking* (NPRM),²¹² and other Commission NPRMs (collectively, *Competitive Bidding NPRMs*) pursuant to which Auction 106 will be conducted.²¹³ Final Regulatory Flexibility Analyses (FRFAs) likewise were prepared in the *Broadcast Competitive Bidding Order* and other Commission orders (collectively, *Competitive Bidding Orders*) pursuant to which Auction 106 will be conducted.²¹⁴ In this proceeding, a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) was incorporated in the *Auction 106 Comment Public Notice*.²¹⁵ The Commission sought written public comment on the proposals in the *Auction 106 Comment Public Notice*, including comments on the Supplemental IRFA. This Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) supplements the FRFAs in the *Competitive Bidding Orders* to reflect the actions taken in this Public Notice and conforms to the RFA.

²⁰⁹ OMB Control No. 3060-0600.

²¹⁰ See 44 U.S.C. § 3506(c)(4).

²¹¹ See *id.* § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

²¹² *Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, MM Docket No. 97-234, Notice of Proposed Rulemaking, 12 FCC Rcd 22363, 22416-22, Appendix B (1997) (*Broadcast Competitive Bidding Notice*).

²¹³ See *Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures*, WT Docket No. 05-211, Declaratory Ruling and Notice of Proposed Rule Making, 20 FCC Rcd 11268, 11301-07, Appendix B (2005) (*CSEA Declaratory Ruling*); *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, MM Docket No. 97-234, Notice of Proposed Rule Making, 8 FCC Rcd 7635, 7666, Appendix (1993) (*Competitive Bidding Notice*).

²¹⁴ See *Broadcast Competitive Bidding Order*, 13 FCC Rcd at 16015-27, Appendix B; *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 927-34, Appendix C; *Part 1 Third Report and Order*, 13 FCC Rcd at 492-503, Appendix B; *Auction Procedures Consolidation Order*, 12 FCC Rcd at 5749-53, Appendix C; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2400, paras. 299-302.

²¹⁵ *Auction 106 Comment Public Notice*, DA 19-1027, paras. 45-60. A summary of this public notice was published at 84 Fed. Reg. 59605 (Nov. 5, 2019).

164. *Need for, and Objectives of, the Public Notice.* The procedures for the conduct of Auction 106 as described in the *Auction 106 Procedures Public Notice* implement the Commission's competitive bidding rules, which have been adopted by the Commission in multiple notice-and-comment rulemaking proceedings.²¹⁶ More specifically, the *Auction 106 Procedures Public Notice* provides an overview of the procedures, terms, and conditions governing Auction 106, and the post-auction application and payment processes, as well as setting the minimum opening bid amount for each of the FM broadcast construction permits that are subject to being assigned by competitive bidding.

165. To promote the efficient and fair administration of the competitive bidding process for all Auction 106 participants, including small businesses, in this *Auction 106 Procedures Public Notice* we announce the following procedures: (1) use of a simultaneous multiple-round auction format, consisting of sequential bidding rounds with a simultaneous stopping procedure; (2) a specific upfront payment amount for each construction permit; (3) a specific minimum opening bid amount for each construction permit; (4) a specific number of bidding units for each construction permit; (5) a bidder's initial bidding eligibility will be based on the amount of that bidder's upfront payment; (6) a two-stage auction with an activity requirement in which a bidder is required to be active on 80% of its bidding eligibility in stage one and 95% of its bidding eligibility in stage two; (7) provision of three activity waivers for each qualified bidder to allow it to preserve bidding eligibility during the course of the auction; (8) use of minimum acceptable bid amounts and additional acceptable increments, along with the methodology for calculating such amounts; (9) a procedure for breaking ties if identical high bid amounts are submitted on one permit in a given round; (10) a prohibition on bid withdrawals; and (11) establishment of an additional default payment percentage of 20% of the applicable bid in the event that a winning bidder defaults or is disqualified after the auction.

166. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* There were no comments filed that specifically addressed the procedures and policies proposed in the Supplemental IRFA.

167. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.* Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comment filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed procedures as a result of those comments.²¹⁷ The Chief Counsel did not file any comments in response to the procedures that were proposed in the *Auction 106 Comment Public Notice*.

168. *Description and Estimate of the Number of Small Entities to Which the Procedures Will Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.²¹⁸ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."²¹⁹ In addition, the term "small business" has the same meaning as

²¹⁶ See, e.g., *Updating Part 1 Order*, 30 FCC Rcd at 7493; *Auction Procedures Consolidation Order*, 12 FCC Rcd at 5686; *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15293; *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17546; *Part 1 Eighth Report and Order*, 17 FCC Rcd at 2962; *First Reconsideration of Fifth Report and Order*, 18 FCC Rcd at 10180; *Second Reconsideration of Fifth Report and Order*, 20 FCC Rcd at 1942; see also *Broadcast Competitive Bidding Order*, 13 FCC Rcd at 15920, *NCE Second Report and Order*, 18 FCC Rcd at 6691; *NCE Third Reconsideration Order*, 23 FCC Rcd at 17423.

²¹⁷ 5 U.S.C. § 604(a)(3).

²¹⁸ *Id.*

²¹⁹ *Id.* § 601(6).

the term “small business concern” under the Small Business Act.²²⁰ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.²²¹

169. The specific competitive bidding procedures and minimum opening bid amounts described in the *Auction 106 Procedures Public Notice* will affect all applicants participating in Auction 106. The number of entities that may apply to participate in Auction 106 is unknown. Based on the number of applicants in prior FM auctions, we estimate that the number of applicants for Auction 106 may range from approximately 175 to 260. This estimate is based on the number of applicants who filed short-form applications to participate in previous auctions of FM construction permits held to date, an average of 1.98 short-form applications were filed per construction permit offered, with a median of 1.365 applications per permit.²²² The actual number of applicants for Auction 106 could vary significantly as any individual’s or entity’s decision to participate may be affected by a number of factors beyond the Commission’s knowledge.

170. *Radio Stations.* This Economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.”²²³ The SBA has established a small business size standard for this category as firms having \$41.5 million or less in annual receipts.²²⁴ Economic Census data for 2012 shows that 2,849 radio station firms operated during that year.²²⁵ Of that number, 2,806 firms operated with annual receipts of less than \$25 million per year, 17 with annual receipts between \$25 million and \$49,999,999 and 26 with annual receipts of \$50 million or more.²²⁶ Therefore, based on the SBA’s size standard the majority of such entities are small entities.

171. According to Commission staff review of the BIA/Kelsey, LLC’s Media Access Pro Radio Database as of September 17, 2019, about 11,033 (or about 99.95%) of 11,039 commercial radio stations had revenues of \$41.5 million or less and thus qualify as small entities under the SBA definition.²²⁷ We note, however, that the SBA size standard data does not enable us to make a meaningful estimate of the number of small entities who may participate in Auction 106.

²²⁰ *Id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration (SBA) and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

²²¹ 15 U.S.C. § 632(a)(1), (a)(2)(A).

²²² The number of applicants and permits in open FM auctions held to date are as follows: Auction 37 – 697 applicants for 288 permits; Auction 62 – 339 applicants for 171 permits; Auction 68 – 51 applicants for 9 permits; Auction 70 – 181 applicants for 120 permits; Auction 79 – 121 applicants for 122 permits; Auction 91 – 161 applicants for 144 permits; Auction 93 – 145 applicants for 119 permits; Auction 94 – 109 applicants for 112 permits; Auction 98 – 112 applicants for 131 permits.

²²³ U.S. Census Bureau, 2017 North American Industry Classification System (NAICS) Definitions, “515112 Radio Stations,” <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=515112&search=2017+NAICS+Search&search=2017>.

²²⁴ 13 CFR § 121.201 (NAICS code 515112).

²²⁵ U.S. Census Bureau, Table No. EC0751SSSZ4, *Information: Subject Series – Establishment and Firm Size: Receipts Size of Firms for the United States: 2012 NAICS Code 515112*, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4/naics~515112.

²²⁶ *Id.*

²²⁷ BIA/Kelsey, MEDIA Access Pro Database (viewed Sept. 17, 2019).

172. Also, in assessing whether a business entity qualifies as small under the SBA definition, business control affiliations must be included.²²⁸ Our estimate therefore likely overstates the number of small entities that might be affected by this auction because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. Moreover, the definition of small business also requires that an entity not be dominant in its field of operation and that the entity be independently owned and operated. The estimate of small businesses to which Auction 106 competitive bidding rules may apply does not exclude any radio station from the definition of a small business on these bases and is therefore over-inclusive to that extent. Furthermore, we are unable at this time to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. In addition, we note that it is difficult to assess these criteria in the context of media entities and therefore our estimates of small businesses to which they apply may be over-inclusive to this extent.

173. We also note that we are unable to accurately develop an estimate of how many of the entities in this auction would be small businesses based on the number of small entities that applied to participate in prior broadcast auctions, because that information is not collected from applicants for broadcast auctions in which bidding credits are not based on an applicant's size (as is the case in auctions of licenses for wireless services).

174. According to the SBA, a radio station is a small business concern if it has annual revenue of \$41.5 million or less.²²⁹ Based on Commission staff review of the BIA/Kelsey, LLC's Media Access Pro Radio Database, 6,739 (99.91%) of 6,745 FM radio stations fall at or under that revenue threshold.²³⁰ Accordingly, based on this data, we estimate that the majority of Auction 106 applicants would likely meet the SBA's definition of a small business concern.

175. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* The Commission designed the auction application process itself to minimize reporting and compliance requirements for applicants, including small business applicants.²³¹ For all spectrum auctions, in the first part of the Commission's two-phased auction application process, parties desiring to participate in an auction file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on an applicant's short-form application and certifications, as well as its upfront payment. In the second phase of the auction application process, there are additional compliance requirements for winning bidders.

176. Auction 106 applicants, including small entities, will become qualified to bid in Auction 106 only if they comply with the following: (1) submission of a short-form application that is timely and is found to be substantially complete, and (2) timely submission of a sufficient upfront payment for at least one of the construction permits that the applicant selected on its FCC Form 175.²³² In accordance with the terms of 47 CFR § 1.2105(b)(2), an applicant whose application is found to contain deficiencies will have a limited opportunity to bring its application into compliance with the Commission's

²²⁸ Business concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both. 13 CFR § 121.103(a)(1).

²²⁹ 13 CFR § 121.201 (NAICS code 515112).

²³⁰ BIA/Kelsey, MEDIA Access Pro Database (viewed Sept. 17, 2019).

²³¹ This Commission policy was articulated in a 1994 rulemaking order. See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2375-76, paras. 162-63, 165.

²³² Each upfront payment must be accompanied by a complete and accurate FCC Remittance Advice Form (FCC Form 159), following the procedures and instructions set forth in this Public Notice. 47 CFR § 1.1111 specifies that FCC Form 159 must accompany each such payment submission.

competitive bidding rules during a resubmission window.²³³ In addition, each Auction 106 applicant must maintain the accuracy of its previously filed short-form application electronically using the FCC auction application system.

177. In the second phase of the process, there are additional compliance requirements only applicable to winning bidders. As with other winning bidders, any small entity that is a winning bidder will be required to comply with the terms of the following rules, among others: (1) 47 CFR § 1.2107(b), by submitting as a down payment within 10 business days after release of the auction closing public notice sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 106 to 20% of the amount of its winning bid or bids;²³⁴ (2) 47 CFR § 1.2109(a), by submitting within 10 business days after the down payment deadline the balance of the amount for each of its winning bids;²³⁵ and (3) 47 CFR § 73.5005(a), by electronically filing a properly completed long-form application (FCC Form 2100, Schedule 301-FM, Commercial FM Station Construction Permit Application) and required exhibits for each construction permit won through Auction 106, within 30 days following release of a closing public notice for Auction 106, unless a longer period is specified by public notice.²³⁶

178. Further, as required by 47 CFR § 1.2105(c), reports concerning prohibited communications must be filed with the Chief of the Auctions Division, as detailed in this Public Notice.²³⁷

179. *Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.²³⁸

180. OEA and MB anticipate that the steps taken to make numerous resources available to small entities and other auction participants at no cost should minimize any economic impact of the auction processes and procedures on small entities and should result in both operational and administrative cost savings for small entities and other auction participants. For example, prior to the beginning of bidding in this auction, the Commission will hold a mock auction to allow qualified bidders the opportunity to familiarize themselves with both the processes and systems that will be utilized in Auction 106. During the auction, participants will be able to access and participate in bidding via the Internet using a web-based system, or telephonically, providing two cost effective methods of

²³³ The resubmission opportunity for auction applicants with certain application deficiencies was established by the Commission in a 1994 rulemaking order. *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2377, 2408, paras. 167-68.

²³⁴ This down payment requirement was adopted by the Commission in the 1994 *Competitive Bidding Second Report and Order*. See *id.*, 9 FCC Rcd at 2381-82, 2409, paras. 189-92.

²³⁵ This final payment requirement was established by the Commission in the 1994 *Competitive Bidding Second Report and Order*. See *id.*, 9 FCC Rcd at 2382, 2409, para. 194.

²³⁶ This long-form application requirement was applied to winning bidders in broadcast auctions in a 1998 rulemaking order. See *Broadcast Competitive Bidding Order*, 13 FCC Rcd at 15984-85, paras. 163-64.

²³⁷ This specific reporting requirement was adopted first by the Commission in a 2001 rulemaking order. See *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17546.

²³⁸ 5 U.S.C. § 603(c)(1)-(4).

participation and avoiding the cost of travel for in-person participation. Further, small entities as well as other auction participants will be able to avail themselves of a telephone hotline for assistance with auction processes and procedures as well as a technical support telephone hotline to assist with issues such as access to or navigation within the electronic FCC Form 175 and use of the FCC's auction bidding system. In addition, all auction participants, including small business entities, will have access to various other sources of information and databases through the Commission that will aid in both their understanding and participation in the process. These resources, coupled with the description and communication of the bidding procedures before bidding begins in Auction 106, should ensure that the auction will be administered predictably, efficiently and fairly, thus providing certainty for small entities as well as other auction participants.

181. *Notice to SBA.* The Commission will send a copy of the *Auctions 106 Procedures Public Notice*, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA. A summary of the *Auctions 106 Procedures Public Notice*, including this Supplemental FRFA, will also be published in the Federal Register.²³⁹

VII. CONTACT INFORMATION

182. For further information concerning this proceeding, contact:

General Auction 106 Information

General Auction Questions
Auction Process and Procedures

FCC Auctions Hotline

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

Auction 106 Legal Information

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

Auctions Division, OEA

(202) 418-0660
Lynne Milne (Attorney)
Daniel Habib (Attorney)

Licensing Information

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

Audio Division, MB

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

Technical Support

Electronic Filing
FCC Auction System (Hardware/Software
Issues)

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

Wire Transfers
Refunds

FCC Revenue & Receivables Operations Group/Auctions

Scott Radcliffe at (202) 418-7518,
or Theresa Meeks at (202) 418-2945, or
(fax) (202) 418-2980, or email to
RROGWireFaxes@fcc.gov

²³⁹ *Id.* § 604(b).

Auction Bidder Line	Will be furnished only to qualified bidders
Press Information	Janice Wise (202) 418-8165
FCC Forms	(800) 418-3676 (outside Washington, DC) (202) 418-3676 (in the Washington area) www.fcc.gov/formpage.html
Accessible Formats Braille, large print, electronic files, or audio format for people with disabilities	Consumer and Governmental Affairs Bureau (202) 418-0530 or (202) 418-0432 (TTY) fcc504@fcc.gov
Small Businesses Additional information for small and disadvantaged businesses	Office of Communications Business Opportunities (202) 418-0990 www.fcc.gov/ocbo/
FCC Internet Sites	www.fcc.gov www.fcc.gov/auction/106 www.fcc.gov/media

- FCC -

ATTACHMENT A: AUCTION 106 - CONSTRUCTION PERMITS

This page was intentionally inserted as a placeholder for Attachment A, which is available as a separate file.

ATTACHMENT B: SHORT-FORM APPLICATION (FCC FORM 175) FILING INSTRUCTIONS

1. This attachment provides instructions on completing and submitting a short-form application (FCC Form 175) to participate in Auction 106.

I. APPLICATION PREPARATION

2. An applicant must have an FCC Registration Number (FRN) and password in order to log in to the FCC's Auction Application System and complete an FCC Form 175 to be eligible to participate in this auction of FM Broadcast construction permits (Auction 106). You must be prepared to provide, among other things, basic information about the applicant's legal classification, contact information, and at least one authorized bidder; indicate whether the applicant is seeking a new entrant bidding credit; disclose information about the applicant's ownership and control structure; and make certain certifications. Additional information about these requirements can be found in the preceding sections of this public notice.

1. Each applicant to participate in this auction must submit a single short-form application (FCC Form 175) electronically via the FCC's Auction Application System.¹ **Short-form applications must be submitted and confirmed prior to 6:00 p.m. ET on Tuesday, February 11, 2020.** Late applications or unconfirmed submissions of electronic data will not be accepted.²

2. There is no application fee required when filing FCC Form 175.

3. All information that is required to be submitted as part of a short-form application to participate in an auction is necessary to determine each applicant's qualifications and, as such, will be available for public inspection consistent with the information disclosure procedures in effect for this auction. An applicant should take care not to include any unnecessary sensitive information, such as Taxpayer Identification Numbers or Social Security Numbers, in its application. An applicant may also request that information submitted not be made routinely available for public inspection following the procedures set forth in section 0.459 of the Commission's rules.³ Such a request must be included as an attachment to the applicant's FCC Form 175 and must identify the specific information to which the request applies.⁴ Because the required information bears on each applicant's qualifications, requests for confidential treatment will not be routinely granted.⁵

4. You may make as many changes to an application as necessary from the time the initial application filing window opens at 12:00 noon ET on January 29, 2020, until the close of the initial filing window at 6:00 p.m. ET on February 11, 2020. Information in an application will not be considered by the Commission unless you click on the **Certify & Submit** button on the *Certify & Submit* screen in the Auction Application System after providing or updating the information required in the FCC Form 175. To reduce the risk of technical complications, do not click the **Certify & Submit** button more than once while waiting for your application submission to be completed. Applicants are also cautioned that the Commission periodically performs scheduled maintenance of its IT systems. During scheduled maintenance activities, which typically occur over the weekends, every effort is made to minimize any

¹ This filing window will open on January 29, 2020 at 12:00 noon ET, and will remain open on a 24-hour basis during the filing period.

² Applicants are strongly encouraged to file early during this filing window, and applicants are responsible for allowing adequate time for preparing, reviewing, and filing their applications prior to the application filing deadline.

³ 47 CFR § 0.459.

⁴ The procedure for uploading application attachments is described below in section II.G. of this attachment.

⁵ 47 CFR § 0.459(a).

downtime to the auctions systems. However, there are occasions when auction-related systems may be temporarily unavailable.

A. Minimum Software Requirements

5. You must complete and submit an application via the Internet using a personal computer or equivalent device. Currently, devices that use Apple® Mac OS® are not supported. Smart phones and tablets are also not currently supported.

6. A web browser must be used to access the FCC's Auction Application System. The following web browsers are compatible with the Auction Application System:

- Mozilla® Firefox®;
- Google Chrome® 46.0.2490.80 or higher⁶

7. A PDF viewer is also required. Adobe Acrobat Reader 5.0 or higher is recommended (available at no cost at www.adobe.com). The minimum screen resolution for the Auction Application System is 1024 x 768.

B. Logging In

8. You must use the applicant's FRN and associated password to log into the Auction Application System and complete an FCC Form 175.⁷ The applicant name and FRN used in the Form 175 must precisely match the name listed in CORES (FCC Registration System) for that FRN.⁸ To submit an FCC Form 175 electronically via the Internet, open a web browser and navigate to: auctions.fcc.gov (primary location) or auctions2.fcc.gov (secondary location).

9. On the *FCC Auction System* screen, you may log in by entering the applicant's FRN and associated password and then clicking on the **LOG IN** button, which will take you to the *My Auctions Page* screen. On this screen, you may create a new or modify an existing short-form application for Auction 106, by clicking on the **Click here for FCC Form 175** link under the "Wireless/Broadcast" heading. This will take you to the *Auction Application Manager* screen. Select the **Auction 106** link to begin, review, modify, or withdraw an application for Auction 106. To avoid technical complications, do not click the link more than once while waiting for the application to load.

II. APPLICATION FILING INSTRUCTIONS

10. The FCC Form 175 requests information needed to determine whether an applicant qualifies to participate in competitive bidding for Commission licenses or construction permits.⁹ An applicant must submit required information as entries in the data fields of FCC Form 175 whenever a data

⁶ In the past we have recommended using Mozilla® Firefox® or Google Chrome® but also supported Microsoft® Internet Explorer 9.0 or higher (with compatibility mode turned off). Please note that after January 31, 2020, Microsoft will no longer support any version of Internet Explorer prior to version 11. Microsoft recommends using the Microsoft Edge browser instead. At this time, the Commission has not fully tested the Auction Application System with Edge and therefore does not yet support it.

⁷ You may obtain an FRN by registering through the Commission Registration System (CORES), which can be accessed on the Commission's website at apps.fcc.gov/cores. Upon registration, you will be assigned an FRN.

⁸ If the applicant name on the FCC Form 175 is not identical to the name that appears in CORES for that FCC Registration Number (FRN), processing of the FCC Form 175 may be delayed and the applicant may be disqualified from participating in the bidding. If you wish to apply for Auction 106 using a different name than is listed for a particular FRN in CORES, you may register for a different FRN in CORES using that different name prior to completing your FCC Form 175 application.

⁹ See generally 47 CFR § 1.2105.

field is available for that information. An attachment should not be used to provide information that can be supplied within the data fields of FCC Form 175.

11. The FCC Form 175 consists of seven sections, each requesting separate types of information: (1) *Applicant Information*; (2) *Permit Selection*; (3) *New Entrant Eligibility*; (4) *Agreements*; (5) *Ownership*; (6) *Summary*, and (7) *Certify & Submit*. On the *Applicant Information* screens, you will provide information about the applicant, including its legal classification, contact information, responsible party (if applicable), authorized bidders, and method of bidding. The *Permit Selection* screens will display a list of the construction permits on which the applicant can select to bid upon in this auction. The *New Entrant Eligibility* screens are where an applicant can indicate whether they are claiming a New Entrant Bidding Credit and, if so, whether they are claiming a 25% or 35% New Entrant Bidding Credit. The *Agreements* screens are where you will identify each other party and provide a brief description of each agreement that is required to be disclosed under the Commission's rules. The *Ownership* screens are where you will provide information regarding parties with ownership or controlling interests in the applicant, in addition to reporting ownership interests in FCC applicants or FCC regulated entities by the applicant or each disclosable interest holder. The *Summary* screen provides an overview of an applicant's FCC Form 175 that facilitates reviewing and modifying specific information, and also provides an automated check for certain inconsistencies and omissions in information in the application. Finally, the *Certify & Submit* screens allow you to provide the required certifications and submit the application to the Commission. You may access any of these screens by clicking on the relevant section in the right window pane titled "Application Sections." To expand a group of screens, click on the sideward-pointing triangle to the right of the section title. By clicking on the relevant section, you will be redirected to that section of the application. Items are shown as clickable in the application when the cursor turns into a hand icon as the mouse indicator passes over a particular area.

12. An applicant is required to complete certain sections of the form that will display automatically as it navigates through the application depending on the information it provided in earlier portions of the form. For example, a corporate applicant, unlike an individual applicant, must identify a corporate officer or director and report the title for that officer or director.¹⁰ If the applicant is a corporation, subsequent screens in the FCC Form 175 will ask for responsible party information which allows the reporting of a name and title of an officer or director. However, if the applicant is an individual, no additional information is needed regarding an additional responsible party, and screens requesting responsible party information will not appear. Also, if a partner is not a natural person, then the name and title of a natural person responsible for the partnership (called a responsible party) must be reported.¹¹

13. No individual or entity may file more than one FCC Form 175 in a single auction.¹² No individual or entity may have a controlling interest in more than one short-form application for a single auction.¹³

14. You must follow the instructions below when completing the FCC Form 175. Additional help in filling out FCC Form 175 is available in two ways through the Auction Application System itself: (1) by clicking on the **Help** link located in each section of the application and in the upper right corner of each screen, which will open Auction Application Online Filing Help; or (2) by clicking on the text of any **Common Questions** link appearing on the right side of the screen. The common questions displayed

¹⁰ 47 CFR § 1.2105(a)(1)(ii).

¹¹ *Id.*

¹² See 47 CFR § 1.2105(a)(3). See also section II.B., "General Information Regarding Short-Form Applications," above.

¹³ *Id.*

relate to the screen being viewed and may differ from screen to screen because the common questions are intended to be relevant to each specific screen. In the event that you need further information or guidance beyond what is provided by these sources, use the contact information provided in this public notice to obtain additional assistance.

A. Applicant Information

15. The Applicant Information screens are the first series of screens in FCC Form 175, in which an applicant must provide basic information including:

1. Applicant Legal Classification

16. You must indicate the applicant's legal classification on the Applicant Legal Classification screen before continuing to subsequent screens because the selected legal classification will determine which subsequent screens will appear. For example, an applicant registering as an "Individual" will enter information that is different from the information that an applicant registering as a "Corporation" will enter. If you select "Other" as the applicants legal classification, a text box will open in which you must describe the applicant's legal classification.¹⁴

2. Applicant Status Information

17. You may, but are not required to, check boxes on the FCC Form 175 indicating whether the applicant is a minority- or woman-owned business or a rural telephone company. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of various groups in its auctions.

3. Noncommercial Educational Election

18. You are required to check yes or no on the FCC Form 175 indicating whether the applicant identifies its FM station(s) proposed in this Form 175 as a noncommercial educational (NCE) radio broadcast station. Any application identifying its proposed FM station as an NCE station that is mutually exclusive with any commercial FM radio station proposed in this auction will be returned as unacceptable for filing.¹⁵ This NCE election cannot be reversed after the initial application filing deadline.¹⁶ For these reasons, each prospective applicant should consider carefully if it wishes to propose NCE operation for any FM station acquired in this auction.

19. After completing all of the information requested on the *Applicant Legal Classification* screen, click the **Save & Continue** button. Please note that if the applicant later changes its legal classification, some of its previously entered applicant information will be deleted as a result of the change and will need to be reentered.

4. Applicant Name and Applicant Address

20. On the *Applicant Name/Applicant Address* screen, the data entry fields will depend on which legal classification you selected on the *Applicant Legal Classification* screen. An individual

¹⁴ For any text box in which the applicant can or is required to enter information, you should not use any non-ASCII characters.

¹⁵ Any application for a noncommercial educational station that is mutually exclusive with any application for a commercial station will be returned as unacceptable for filing. See *NCE Second Report and Order*, 18 FCC Rcd at 6699-6701, paras. 21-24. Auction applications specifying the same FM station construction permit are considered mutually exclusive. *Broadcast Competitive Bidding Order*, 13 FCC Rcd at 15979 n.166. In the *NCE Second Report and Order*, the Commission determined that a short-form application that does not identify the facilities proposed in the FCC Form 175 as NCE will be considered, as a matter of law, an application for a commercial broadcast station. *NCE Second Report and Order*, 18 FCC Rcd at 6700, para. 22.

¹⁶ 47 CFR § 1.2105(b).

applicant will be required to complete the First Name, Last Name, and Citizenship fields. The Middle Initial and suffix fields are optional. If you selected “Corporation,” “General Partnership,” “Limited Partnership,” or “Limited Liability Company” on the *Applicant Legal Classification* screen, you will be required to complete the Entity Name and Jurisdiction of Formation fields. The name entered will be used as the Bidder Name for the auction process.¹⁷ You must also provide a street address for the applicant. A post office box may not be used. After completing the applicant’s name and address information, click the **Save & Continue** button.

5. Responsible Party and Contact Information

21. The screen that appears after the *Applicant Name/Applicant Address* screen will depend on which legal classification you selected on the *Applicant Legal Classification* screen. For example, if you selected “Individual” or “General Partnership” on the *Applicant Legal Classification* screen, you will be directed to the *Contact Information/Contact Address* screen, where you will be required to provide contact information for an individual who will be sent all correspondence concerning the application. If you selected “Corporation” on the *Applicant Legal Classification* screen, you will first be directed to the *Responsible Party* screen, where you will be required to provide information for an individual deemed to be the responsible party for the application, including the name, title, and email address, but not street address, for the applicant’s responsible party. After completing the *Responsible Party* screen, you will be directed to the *Contact Information/Contact Address* screen.

22. To simplify filling out the FCC Form 175, an applicant that has the same address as its contact person can click on the **Copy Applicant Address** button to automatically fill in the contact person’s or responsible party’s address. A post office box may **not** be used. After entering the contact person’s or responsible party’s name, address, and other required information, click the **Save & Continue** button.

23. Commission staff will communicate only with an applicant’s contact person or certifying official, as designated on the applicant’s FCC Form 175, unless the applicant’s certifying official or contact person notifies the Commission in writing that the applicant’s counsel or other representative is authorized to speak on behalf of the applicant. Authorizations may be sent by email to auction106@fcc.gov.

6. Authorized Bidders

24. You must provide the name, phone number, and email address for each individual authorized to place bids for the applicant in the auction. You must identify at least one authorized bidder for the applicant, and no more than three. Applicants are encouraged to identify more than one authorized bidder to account for unforeseen circumstances that may result in an authorized bidder being unable to participate in the bidding.

25. An individual may not serve as an authorized bidder for more than one applicant in the same auction.¹⁸

26. After completing the necessary information for each authorized bidder, click the **Add** button to save the authorized bidder’s information you have entered.¹⁹ While an applicant may change its authorized bidder(s) at a later date, only those bidders listed on the FCC Form 175 will be authorized to place bids for the applicant during bidding in the auction.

¹⁷ The applicant name and FRN used in the Form 175 must precisely match the name listed in CORES (FCC Registration System) for that FRN. See note 8, above.

¹⁸ 47 CFR § 1.2105(a)(2)(iii).

¹⁹ Click the **Add** button only once when adding an authorized bidder to reduce the risk of technical complications.

7. Electronic or Telephonic Bidding

27. The FCC Form 175 also requires you to specify whether the applicant primarily intends to place bids electronically or telephonically during the particular auction. Any qualified bidder may bid either electronically (via the Internet) or telephonically during the auction and may change methods as needed or desired. Specifying a preference for electronic or telephonic bidding assists the Commission in determining the staff required in this auction for telephonic bidding.

28. When all the Applicant Information has been completed, click the **Save & Continue** button.

B. Permit Selection

29. The *Permit Selection* screens make up the second series of screens in a FCC Form 175. These screens display every construction permit offered in this auction. In these screens, the applicant will identify the construction permits on which it may wish to bid during the auction. The *View Selected Permits* area on the *Permit Selection* screen displays a list of the permits selected by the applicant to facilitate review.

30. While an applicant is not obligated to bid on all construction permits that it selects, it will not be able to bid on construction permits that it has not selected on its FCC Form 175.²⁰ Be advised that there is no opportunity to change this list after the short-form application filing deadline.

31. To participate in an auction, applicants must select at least one construction permit. Until at least one construction permit is selected and saved, the applicant cannot submit the FCC Form 175. An applicant's permit selections cannot be changed after the initial filing window has closed. Therefore, during the initial filing window it is important to carefully review the construction permit selections to make sure all permits on which the applicant may wish to bid have been selected.

1. Select Permits

32. The *Select Permits* screen contains a list of all available construction permits in Auction 106. You can navigate within this screen by selecting the individual page links or the **Previous** and **Next** links below the list of available permits. To display construction permits matching specific search criteria, you can use the **Search** text box to narrow down the available construction permits displayed. You can use the search function to narrow down the available construction permits based on the permit name, permit description, station class, state or bidding units. In addition, pre-defined filters can be used to narrow down the list of construction permits to be selected and saved by selecting the appropriate filter and clicking the **Apply** button. To clear any filters that currently are in use, click the **Clear Filters** link. To display more or fewer construction permits, click the **Show Entries** dropdown box displayed above the available permits list and select the number of permits to show per page.

33. Construction permits can be selected and saved by (1) selecting a construction permit and clicking the check box next to the permit name; or (2) clicking the **Select All Items** button, which will select and save all available construction permits; or clicking the **Select All Filtered Items** button to select all permits matching specific filter criteria. Permit selections are saved once selected. Once you have successfully saved a selected construction permit, the word "Saved" will appear in the status column next to the corresponding construction permit as an indication that the applicant's selection has been saved.

34. Saved construction permits can be removed by (1) clicking the check box (to uncheck) next to a previously saved construction permit and then clicking the **Save** button; or (2) clicking the **Unselect All Items** button, which will remove all previously saved construction permits; or (3) clicking the **Unselect All Filtered Items** button to unselect every item matching specific filter criteria. A

²⁰ 47 CFR § 1.2105(a)(2)(i).

removed construction permit will no longer have the word “Saved” next to the corresponding permit name.

35. You may view all saved construction permits by selecting the individual page links or the **Previous** and **Next** links at the bottom of the screen below the list of available construction permits. Once you have saved the construction permit you have selected, click the **Save & Continue** button.

2. View Selected Permits

36. After the construction permits have been selected and saved, you will be directed to the *View Selected Permits* screen. This screen lists all the construction permits that have been selected and saved in this FCC Form 175 for the auction. You may narrow down the list of construction permits to be viewed using pre-defined filters by selecting the appropriate filter and clicking the **Apply** button. To clear any filters applied, click the **Clear Filters** link. You may print the list of selected construction permits by clicking the **Print** button or view the list in .pdf format by clicking the **PDF** button. After the applicant has confirmed the accuracy of the information on the *View Selected Permits* screen, click the **Continue** button.

37. **On this screen, the reference coordinates are displayed for each listed FM allotment. After an applicant has selected and saved any permits and continues to the *View Selected Permits* screen, the reference coordinates are followed by an “Edit” button. Clicking this button produces a screen on which the applicant can change the reference coordinate values to preferred site coordinates.²¹**

38. When the information on the *View Selected Permits* screen has been viewed, click the **Continue** button at the bottom of the page to advance to the next series of screens.

C. New Entrant Bidding Credit Eligibility

39. *New Entrant Eligibility* is the third section in FCC Form 175. The *New Entrant Eligibility* screen provides you with the sole opportunity to indicate whether you intend to seek a New Entrant Bidding Credit. There is no opportunity for the applicant to change the selection once the initial application filing deadline passes.

40. After selecting “No” and then clicking on the **Save & Continue** button, an applicant not seeking a New Entrant Bidding Credit will continue to the *Agreements* section of FCC Form 175.

41. An applicant seeking a 35% New Entrant Bidding Credit does not need to provide any additional information in the FCC Form 175 regarding its claimed New Entrant Bidding Credit, and will continue to the *Agreements* section of FCC Form 175.

42. An applicant claiming a 25% New Entrant Bidding Credit must provide additional information regarding existing mass media facilities in which the applicant, or any individual or entity with an attributable interest in the applicant, has an attributable interest.²² Such an applicant must identify:

- the existing mass media facility or facilities;
- any individual or entity with an attributable interest in the existing mass media facility;
- the attributable interest in the facility; and

²¹ See *Broadcast Competitive Bidding Order*, 13 FCC Rcd at 15974-75, para. 142 & n.153.

²² Full-service noncommercial educational (NCE) stations, on both reserved and nonreserved channels, are included among “media of mass communications” as defined in section 73.5008(b). See *Minnesota Christian Broadcasters*, 18 FCC Rcd at 618, para. 8.

- whether any proposed broadcast facilities selected by the applicant for this auction are in the “same area” as existing mass media facilities, as defined by applicable Commission rules.²³

43. In the event that the applicant indicates that any of the broadcast facilities listed in its application for this auction are in the “same area” as the identified existing mass media facility, the applicant must continue to an additional screen where the applicant must indicate which proposed broadcast facility in this auction is in the “same area” as the identified existing mass media facility.²⁴ For purposes of determining whether a broadcast facility identified for bidding in the auction is in the “same area” as an applicant’s existing mass media facilities, the coverage area of the auction facility is calculated using maximum class facilities at the allotment reference coordinates, not any applicant-specified preferred site coordinates.²⁵

44. Once the applicant has identified all relevant existing mass media facilities, and all broadcast facilities listed in its auction application that are located in the “same area” as each relevant existing mass media facility, it will continue to the *View/Edit All Facilities* screen. This screen lists the applicant’s claimed New Entrant Bidding Credit of 25%, the relevant existing mass media facilities, and the broadcast facilities for this auction identified by the applicant as being in the “same area” as each relevant existing mass media facility. From this screen, options include:

- Clicking the **Back to New Entrant Bidding Credit Section** button or the **Modify Bidding Credit Selection** link to return to the initial *New Entrant Bidding Credit* screen.
- Modifying information about existing mass media facilities by clicking on them.
- Clicking the **Delete** button next to the name of an existing mass media facility to delete a facility and identified broadcast facility in the “same area.”
- Clicking the **Add Existing Mass Media Facility** button to add additional mass media facilities.
- Clicking the **Add/Remove Proposed “Same Area” Facilities** button under the name of an existing mass media facility, which takes you to the *Add Proposed “Same Area” Facilities to Existing Mass Media Facility* screen for an existing mass media facility.
 - After clicking on the *Add Proposed “Same Area” Facilities to Existing Mass Media Facility* screen, an applicant may select a broadcast facility available in this auction from the drop-down menu and then click the **Add** button to add a new “same area” facility.
 - After clicking on the *Add Proposed “Same Area” Facilities to Existing Mass Media Facility* screen, an applicant may click the **Remove** button next to a Proposed Broadcast Facility to delete it as a “same area” facility.

45. When the applicant has identified, in the *View/Edit All Facilities* screen, all relevant existing mass media facilities, as well as all proposed broadcast facilities available in this auction in the “same area” as each relevant existing mass media facility, clicking the **Save & Continue to Agreements** button will navigate to the *Agreements* section of FCC Form 175.

²³ See 47 CFR §§ 73.5007, 73.5008.

²⁴ Any existing media of mass communications will be considered in the “same area” as a proposed broadcast or secondary broadcast facility if the relevant defined service areas of the existing mass media facilities partially overlap, or are partially overlapped by, the proposed broadcast or secondary broadcast facility’s relevant contour. See 47 CFR § 73.5007(b).

²⁵ *Rural First Report and Order*, 25 FCC Rcd at 1609, para. 52. For purposes of determining whether a proposed broadcast facility is in the “same area” as an existing mass media facility, the relevant contour of the proposed broadcast or secondary broadcast facility is defined in 47 CFR § 73.5007(b)(3).

D. Agreements

46. *Agreements* is the fourth section in FCC Form 175. In these screens, you must provide information regarding the auction-related agreements subject to disclosure under the Commission's rules.²⁶

47. Specifically, on the *Agreements with Other Parties and Joint Bidding Arrangements* screen, you must indicate, by responding "Yes" or "No," whether the applicant has entered into any partnerships, joint ventures, consortia, or other agreements, arrangements, or understandings of any kind relating to the construction permits being auctioned, including any agreements that address or communicate directly or indirectly bids (including specific prices), bidding strategies (including the specific construction permit(s) on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls or is controlled by the applicant, is a party.²⁷

48. If you select "No" and then click the **Save & Continue** button, you will continue to the *Ownership* section, described below in section II.E.

49. If you select "Yes" and then click the **Save & Continue** button, you will continue to the *View/Edit Agreements* screen. On the *View/Edit Agreements* screen, you must make an entry for each agreement you need to disclose by clicking the **Create New Agreement** button. On the *Create New Agreement* screen, you must provide an identifying name for the agreement or may use the default name assigned by the FCC's Auction Application System (e.g., Agreement 1). The agreement identifier can be a brief description of the agreement or a simple reference name; however, each agreement identifier must be unique. Next, select an Agreement Type from the drop-down menu. If the agreement type is not listed as an option under the drop-down list, select "Other" and enter a description in the Specify field that subsequently appears. Neither the name of the agreement nor its description should potentially reveal an applicant's bidding strategy.

50. You must also identify each party, other than the applicant, to each agreement required to be disclosed on the application, and indicate the type of party (i.e., entity or individual). You may provide an FRN for the other party to the agreement, if available.²⁸ After completing the required information for each party, you must click the **Add Party** button to save the information.

51. Additional parties for that agreement can be added by selecting the type of party, entering the applicable information, and clicking the **Add Party** button. The **Clear** link can be used to cancel a party type selection clicked in error. You may then re-select the **Entity** or **Individual** button, or click the **Cancel** button. After adding a particular party, the name of that party and its associated FRN can be edited by clicking the **Edit** button or be deleted from the FCC Form 175 by clicking on the **Remove** button. After identifying all parties to a particular agreement, click the **Save & Continue** button to return to the *View/Edit Agreements* screen.

²⁶ 47 CFR § 1.2105(a)(2)(viii). The Commission's rules now generally prohibit joint bidding and other arrangements involving auction applicants (including any party that controls, or is controlled by, such applicants). *See id.* § 1.2105(a)(2)(ix). *See also* section II.E., "Disclosure of Agreements Relating to Permits Subject to Auction" and section II.H.2., "Scope of Prohibition on Communications; Prohibition on Joint Bidding Agreements" of this public notice, above. An applicant has the option of explaining in an attachment why a particular agreement, understanding, or arrangement is not prohibited by Commission rules.

²⁷ For more information regarding agreement disclosure requirements and joint bidding arrangements/agreements, applicants should review section II.E., "Disclosure of Agreements Relating to Permits Subject to Auction" above. *See generally Prohibited Communications Guidance Public Notice*, 30 FCC Rcd at 10794. *See also Updating Part 1 Order*, 30 FCC Rcd at 7493.

²⁸ While providing the FRN is optional, including that information may prevent identification errors resulting from parties having similar names or a single party using multiple names.

52. The *View/Edit Agreements* screen lists the agreements and parties to each agreement that already have been entered. From this screen, the following options are available:

- Click the **Edit** button to modify agreement information;
- Click the **Delete Agreement** button to delete an agreement and associated parties;
- To add an additional agreement, click the **Create New Agreement** button; and
- Click the **Back** button or the **Agreements** link in the “Application Sections” box to return to the initial *Agreements with Other Parties and Joint Bidding Arrangements* screen, where the applicant indicates whether it has any agreements.

53. An applicant that has entered into any agreement(s) that is subject to disclosure under the Commission’s rules must also upload an attachment that briefly describes each such agreement. You must select “Agreement” as the Attachment Type when uploading the document. The procedures for uploading this required attachment are described below in section II.G. of this attachment.

54. When all agreements and all of the parties to each agreement have been identified, the applicant should click the **Continue** button to move to the *Ownership* section of FCC Form 175.

E. Ownership

55. The *Ownership* screens are the fifth series of screens in the FCC Form 175. On these screens, you must provide information regarding parties with ownership or controlling interests in the applicant that must be disclosed pursuant to Commission Part 1 competitive bidding rules.²⁹

1. Ownership Disclosures Required of All Applicants

56. Sections 1.2105 and 1.2112 of the Commission’s rules list the disclosable interest holders (DIHs) in the applicant that must be reported in FCC Form 175.³⁰ These DIHs in the applicant include any individual or entity that directly or indirectly owns and/or controls the applicant, such as:

- any party holding 10% or more of stock in the applicant, whether voting or non-voting, common or preferred, including the specific amount of the interest or percentage held;
- in the case of a limited partnership, each general partner, as well as each limited partner whose interest in the applicant is 10% or greater;
- in the case of a general partnership, each partner and its share in the partnership;
- in the case of a limited liability company, each member whose interest in the applicant is 10% or greater; and
- all parties holding an indirect ownership interest in the applicant that equals 10% or more of the applicant as discussed below.

57. The Commission’s rules require that holders of both direct and indirect interests must be reported, which may include insulated interest holders and holders of non-voting stock/equity in the applicant.

58. Section 1.2112 lists the FCC-regulated business entities or applicants for an FCC license (FRBs) that must be disclosed in FCC Form 175.³¹

²⁹ 47 CFR §§ 1.2105(a)(2)(ii)(A)-(B), 1.2110, 1.2112.

³⁰ Section 73.5002(b) requires, among other things, that each applicant for a broadcast auction must comply with the disclosure requirements of section 1.2105(a) and any Commission public notices. Section 1.2105(a) incorporates the ownership disclosure requirements set forth in section 1.2112. 47 CFR §§ 1.2105, 1.2112(a), 73.5002(b).

³¹ See *id.* § 1.2112(a)(7), (b)(1)(ii).

59. Each applicant, regardless of whether it is seeking a bidding credit, must provide information in its FCC Form 175 application concerning its DIHs and FRBs.³²

2. Adding a Disclosable Interest Holder (DIH)

60. To add a DIH, click on the **Add** button on the *View/Edit Ownership Disclosure Information* screen, which will direct you to the *Add Disclosable Interest Holder* screen. You must make a DIH entry for any individual or entity required to be disclosed under sections 1.2105 or 1.2112 of the Commission's rules.³³ On this screen and subsequent screens, you must provide information about the type of DIH (i.e., entity or individual), contact information for the DIH, type of interest the DIH has in the applicant,³⁴ percent of interest held in the applicant, and the DIH's jurisdiction of formation (for an entity) or citizenship (for an individual). You have the option of providing the FRN of a DIH but an FRN entry is not required.

61. If you enter one or more DIHs with indirect ownership interest(s) in the applicant on the *Add Disclosure Interest Holder Type* screen,³⁵ you must include an attachment describing the relationship between all indirect interest holder(s) and the applicant. The attachment should provide an overview of the ownership chain that links the indirect owner(s) to the applicant, e.g., indirect owners X and Z own 50% of holding company Y and holding company Y directly owns 100% of the applicant.³⁶ You should provide only one attachment connecting all indirect owners to the applicant. The information in the attachment should be consistent with the information already provided in the data fields of the FCC Form 175. Select "Indirect Ownership" as the attachment "Type" when uploading this attachment. The procedures for uploading this required attachment are described below in section II.G. of this attachment.

62. The "Percent of Interest Held in Applicant" should reflect the DIH's aggregate ownership interests in the applicant (both direct and indirect). In some cases, e.g., circumstances where there is joint ownership or indirect ownership resulting in different owners sharing the same ownership interests, the sum of the percentages held by DIHs collectively may exceed 100%. In other cases (e.g., a director with no ownership in the applicant), a DIH may have a 0% ownership interest in the applicant.³⁷

63. After completing the necessary information for a DIH, click the **Save & Continue** button. This will direct you to the *Information for DIH* screen, which will summarize the information you submitted for a particular DIH. To edit any information entered for a DIH on the *Information for DIH* screen, click the **Open** button next to the section in which you need to make changes. This *Information for DIH* screen also provides a button that will enable you to add an FRB entry directly to an existing DIH, without needing to reenter the DIH's information. After you have made any necessary FRB entries for each DIH and have confirmed the accuracy of all of the information on the *Information for DIH* screen, click the **Continue** button to save the information.

³² See *id.* §§ 1.2105(a)(2)(ii)(A)-(B), 1.2112.

³³ *Id.* § 1.2112(a)(7).

³⁴ If the DIH holds an ownership or control interest that is not listed on the screen (e.g., another type of option or debt securities), select "Other" and enter the DIH's interest(s) in the "Specify" field accordingly.

³⁵ 47 CFR § 1.2112(a)(6).

³⁶ *Id.*

³⁷ For example, as controlling interests, officers and directors of an applicant would be DIHs but may not have an ownership interest in the applicant.

3. Adding a FCC Regulated Business (FRB) for the Applicant

64. As required by section 1.2112(a)(7), you must report in the FCC Form 175 any applicant for a FCC permit or license (including an auction applicant) or any FCC-regulated entity (collectively known as FRBs) in which the applicant has a direct ownership interest of 10% or more.³⁸

65. To add an FRB of the applicant,³⁹ click on the **Add** button in the *View/Edit Ownership Disclosure Information* screen, which will direct you to the *Add FCC Regulated Business of Applicant* screen. The *Add FCC Regulated Business of Applicant* screen asks you to provide the name of the FRB, its principal business, and percent of interest held. “Percent of Interest Held” refers to the percentage of interest held by the applicant in the FRB. You have the option of providing the FRN of a FRB, but an FRN entry is not required.

66. To simplify filling out the FCC Form 175, you can click on the **Select Entities Already Entered** link on the *Add FCC Regulated Business of Applicant* screen when disclosing an FRB previously entered as an FRB for the applicant or a DIH in this FCC Form 175. When doing so, be sure to enter the “Percent of Interest Held” in the FRB by this auction applicant.

67. When you click the **Select Entities Already Entered** link on the *Add FCC Regulated Business of Applicant* screen, you will be redirected to the *Copy FCC Regulated Business of Applicant* screen or the *Copy FCC Regulated Business of DIH* screen, as applicable. On these screens, you can select each previously entered entity you want to copy. Please note that the only names that will appear in the list displayed on these screens are previously entered entities that are FRBs of the applicant or entities that are FRBs of previously entered DIHs, but not previously entered individuals. After you are finished copying any FRB(s) of the applicant or DIHs to the applicable screens, be sure to enter the “Percent of Interest Held” in the FRB by this auction applicant.

68. After entering the necessary information for a particular FRB, you must click the **Add** button to save the information. Once you have entered all of the necessary FRB information for this auction applicant, click the **Save & Continue** button.

4. Adding an FCC Regulated Business (FRB) of a DIH

69. As required by section 1.2112(a)(7), you must report in the FCC Form 175 any applicant for an FCC license or any FCC-regulated entity (collectively known as FRBs) in which any disclosable interest holder (DIH) has a direct ownership interest of 10% or more.⁴⁰ In addition to other potential FRBs, it is useful to ask if any DIH has a direct ownership interest in this auction applicant of 10% or more. If so, the auction applicant must be reported as an FRB of that DIH.

70. To add an FRB for a DIH,⁴¹ click the **Add Business** button under the DIH’s name in the **Disclosable Interest Holders of this Applicant** section of the *View/Edit Ownership Disclosure Information* screen. (The **Add Business** button becomes visible if you scroll down on this screen.) The *Add FCC Regulated Business of DIH* screen asks you to provide the name of the FRB, its principal

³⁸ Note that this rule requires the reporting of an FRB when there is an ownership interest only. If there is not an ownership interest, it is not an FRB of the applicant. Further, this rule excludes reporting of FRBs based on indirect ownership interests. 47 CFR § 1.2112(a)(7).

³⁹ FRBs of each disclosable interest holder (DIH) also must be reported in this FCC Form 175. Instructions for adding an FRB of a DIH are provided at section II.E.4. of this attachment, below.

⁴⁰ Note that this rule requires the reporting of an FRB when there is an ownership interest only. If there is not an ownership interest, it is not an FRB of the DIH. Further, this rule excludes reporting of FRBs based on indirect ownership interests. 47 CFR § 1.2112(a)(7).

⁴¹ FRBs of an applicant also must be reported in this FCC Form 175. Instructions for adding an FRB of this auction applicant are provided at section II.E.3. of this attachment, above.

business, and percent of interest held. “Percent of Interest Held” refers to the percentage of interest held by the DIH in the FRB.

71. To simplify filling out the FCC Form 175, you can click on the **Select Entities Already Entered** link on the *Add FCC Regulated Business of Applicant* or *Add FCC Regulated Business of DIH* screens, respectively, when disclosing an FRB previously entered as an FRB for the applicant or another DIH. When doing so, be sure to enter the “Percent of Interest Held” in the FRB by the current DIH being disclosed.

72. When you click the **Select Entities Already Entered** link on the *Add FCC Regulated Business of Applicant* or *Add FCC Regulated Business of DIH* screen, you will be redirected to the *Copy FCC Regulated Business of Applicant* screen or the *Copy FCC Regulated Business of DIH* screen, as applicable. On these screens, you can select each previously entered entity you want to copy. Please note that the only names that will appear in the list displayed on these screens are previously entered entities that are FRBs of the applicant or entities that are FRBs of previously entered DIHs, but not previously entered individuals. Once finished copying any FRB(s) of the applicant or DIHs to the applicable screens, be sure to enter the “Percent of Interest Held” in the FRB by the current DIH being disclosed.

73. After entering the necessary information for a particular FRB, you must click the **Add** button to save the information. Once you have entered all of the necessary FRB information for each DIH, click the **Save & Continue** button.

5. View/Edit Ownership Disclosure Information

74. The *View/Edit Ownership Disclosure Information* screen summarizes ownership or controlling interest information already entered in the FCC Form 175, and provides links enabling existing information to be revised and additional information to be added.

75. To view the detailed information that has been pre-filled or otherwise already submitted regarding a DIH or FRB, click on the relevant party’s name. To delete existing information in one of these categories, click on the relevant party’s name and then click the **Delete** button next to the name.

76. To edit information already submitted regarding a DIH or FRB, click on the relevant party’s name. Locate the section of information to be updated and click the **Open** button. Once the information has been updated, click the **Save and Continue** button.

77. To add a new DIH or FRB, click on the relevant **Add** button. Each screen will specify the information that the applicant must provide. Once all ownership information that has been entered and has been confirmed as accurate and complete on the *View/Edit Ownership Disclosure Information* screen, click the **Continue** button.

F. Summary

78. The sixth section of the FCC Form 175 is the *Summary* screen, which offers an overview of an applicant’s FCC Form 175. This screen will appear prior to the *Certify & Submit* screen, and allows you to review all the information entered on previous screens and to provide you with an opportunity to check for certain inconsistencies or omissions in the information within the FCC Form 175.

79. The *Error Summary* lists the previous sections of the application and displays any error or warning messages in those sections. If errors are detected, you can click on the **Application Section** link and section name, and then make any necessary corrections. An error message will be removed once it is corrected. When all errors have been corrected, click the **Continue to Certify** button. You will not be able to proceed to the *Certify & Submit* screen if any error messages appear on the *Error Summary* screen.

80. Each applicant is solely responsible for providing complete and accurate information in its FCC Form 175. The automated check for errors is provided to assist applicants in completing the FCC Form 175. However, the automated check may not catch all errors, and an applicant cannot rely on

the automated check to determine the completeness or the accuracy of submitted information. In addition, although you will be able to proceed to the *Certify & Submit* screen even if you receive a warning message, you should try to address or correct any issues identified in a warning before submitting your application, if possible. You should not assume that the ability to certify and submit the FCC Form 175 with a warning message indicates that the subject of the warning will not affect whether that applicant will be deemed qualified to participate in the auction.

81. If the automated check does not encounter certain inconsistencies or omissions, each application section will display the message “No errors” with a green checkmark. Once this happens, you may then click the **Continue to Certify** button.

G. Attaching Additional Information

82. If an applicant is required or otherwise needs to provide additional information not requested or able to be entered directly on the FCC Form 175 screens (e.g., a description of the relationships among indirect owners of the applicant), such information should be provided in an attachment. You can add an attachment to FCC Form 175 via the *Application Attachments* screen by clicking the **Attachments** link in the upper right of any screen. This screen requests information regarding the type of attachment to be added, the file to be attached, and a brief description of the attachment.

83. Answering “Yes” to any of the following FCC Form 175 questions requires the submission of an attachment associated with the particular question (i.e., indirect ownership or agreements). If you do not select the appropriate attachment type, an error message will appear on the *Error Summary* screen and the application will not be able to be certified and submitted.

- To submit the required description of any agreements or arrangements that must be disclosed pursuant to section 1.2105(a)(2)(viii) of the Commission’s rules, select “Agreement” as the “Type” of attachment in the drop-down list and upload the required attachment.⁴²
- If you indicate on the *Add Disclosable Interest Holder Type* screen that a DIH has an indirect ownership interest in the applicant, select “Indirect Ownership” as the “Type” of attachment in the drop-down list and upload the required attachment describing the indirect ownership interest held by that DIH and all other DIHs with an indirect ownership interest in the applicant.⁴³

84. If an attachment that is a request for a waiver or exemption of any of the Commission’s rules or procedures needs to be submitted, identify the attachment as such by selecting “Waiver” as the Attachment Type in the drop-down list to help facilitate prompt processing of the request. A request for confidential treatment of information submitted with this application should be identified as such by selecting “Confidential Treatment” as the Attachment Type in the drop-down list. For any other attachments that the applicant needs or wishes to submit in support of its application, select the appropriate Attachment Type.

85. Once the required or otherwise necessary identification information is selected, you can add the attachment to the application by clicking on the **Upload File** button. A list of any attachments already uploaded to the FCC Form 175 will appear at the bottom of the screen.

86. When uploading attachments, you may use a variety of file formats, including Word (.doc and .docx), Adobe PDF (.pdf), and text files (.txt and .odt).⁴⁴ You must, however, verify that the files contain all attachment information. Any uploaded files may be no larger than 10 MB each and must not

⁴² 47 CFR § 1.2105(a)(2)(vii).

⁴³ This topic is discussed in section II.E.2. of this attachment.

⁴⁴ Any files uploaded will be automatically converted to a .pdf format.

be password-protected. Graphics files (e.g., .bmp, .tiff, .jpg) are not supported. Spreadsheets (.xls, .xlsx, and .csv) are supported but are not recommended. Once all attachments are uploaded, click the **CONTINUE** button. After the FCC Form 175 filing deadline, an application attachment may not be deleted or withdrawn. If an applicant needs to modify information provided in an attachment after the initial filing deadline, it must submit a new attachment with the modified/updated information and indicate that the new attachment supplements the previous attachment.

H. Certify and Submit

87. The *Certify & Submit* screens are the seventh and final series of screens in FCC Form 175. On these screens, an applicant provides several certifications required of all auction applicants.⁴⁵

88. The first *Certify & Submit* screen asks whether the applicant or any of its controlling interests have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency within the meaning of section 1.2105(a)(2)(xii) of the Commission's rules.⁴⁶

89. The second *Certify & Submit* screen lists the certifications required of any applicant in the Commission's competitive bidding processes and requests that the applicant's certifying official be identified by name and title and sign the application.

90. An FCC Form 175 must be certified by a person with the authority to bind the applicant.⁴⁷ In the event that changes are made to any of the information in the FCC Form 175 after the application filing deadline, the person originally certifying the application will have to certify the changes as well. The person certifying the application cannot be changed in the Auction Application System after the initial application filing deadline.

91. Each applicant must certify on its FCC Form 175 under penalty of perjury that it is legally, technically, financially, and otherwise qualified to hold a Commission license.⁴⁸ Submission of an FCC Form 175 constitutes a representation by the person certifying that he or she is an authorized representative of the applicant with the authority to bind the applicant, has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true, complete, and correct.

92. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

93. Once the two *Certify & Submit* screens have been filled out, click on the **Certify & Submit** button on the second *Certify & Submit* screen to submit the application.⁴⁹ Information in an application will not be considered by the Commission for Auction 106 unless the applicant's certifying

⁴⁵ These certifications are made under penalty of perjury and generally confirm that the applicant is legally, technically, financially, and otherwise qualified to hold a Commission license, including applicant compliance with the foreign ownership provisions of the Communications Act of 1934, as amended. *See* 47 CFR § 1.2105(a)(2).

⁴⁶ *Id.* § 1.2105(a)(2)(xii).

⁴⁷ *See id.* § 1.917; *see also id.* § 73.3513.

⁴⁸ *Id.* § 1.2105(a)(2)(v).

⁴⁹ Please allow up to several minutes for processing once you click the **Certify & Submit** button, particularly if the applicant has a large number of ownership entries. To avoid technical complications, do not click the **Certify & Submit** button more than once while waiting for the system to process your submission.

official clicks the **Certify & Submit** button on this screen after the required information has been provided in the FCC Form 175. You are advised to print and retain a copy of the FCC Form 175 as filed.

94. After the application has been submitted, a confirmation screen will be displayed that states the submission time and date, along with a unique file number. The applicant is strongly encouraged to print or save a copy of the confirmation page for its records. The applicant may view and print copies of its submitted application by clicking the **Print** link under the file number or by using the **Print** link in the upper right of the screen. A confirmation email will be sent to the email address provided in the FCC Form 175 for the contact. The applicant's contact person should print and retain a copy of the confirmation email for the benefit of the applicant.

95. FCC Forms 175 for Auction 106 must be submitted and confirmed **prior to 6:00 p.m. ET on February 11, 2020**. Late applications or unconfirmed submissions of electronic data will not be accepted.

I. Withdrawing an Auction Application Before the Filing Deadline

96. An applicant may withdraw its previously submitted application only during the initial application filing window. To withdraw a submitted application before the initial auction application filing deadline, click on the **Withdraw Application** icon on the *Review or Modify Existing Short-Form Auction Applications* section of the *Auction Application Manager* screen. The entire FCC Form 175, including all previously-submitted data and any uploaded attachments, will be deleted. **An application may not be withdrawn after the initial auction application filing deadline of 6:00 p.m. ET on February 11, 2020.**

97. Each applicant that submits an FCC Form 175 to participate in Auction 106 becomes subject to the Commission's prohibition on certain communications as of the application filing deadline. The prohibition applies to applicants until the Auction 106 post-auction down payment deadline, regardless of whether an applicant has an application that has been deemed to be complete, becomes a qualified bidder, places a bid, or is no longer bidding in the auction.

J. Updating an Existing Auction Application

98. An applicant will be allowed to modify its FCC Form 175 in the Auction Application System, except for certain fields,⁵⁰ during the resubmission filing window and after the release of the public notice announcing the qualified bidders for an auction. During these times, if an applicant needs to make permissible minor changes to its FCC Form 175 or must make changes in order to maintain the accuracy and completeness of its application pursuant to sections 1.65 and 1.2105(b)(4), it must make the change(s) in the Auction Application System and then re-certify and re-submit its application to confirm and effect the change(s).

99. The *Review or Modify Existing Short-Form Applications* section of the *Auction Application Manager* screen displays any application created or submitted within an auction application filing window. This screen shows which auction the application was filed for, the application status, the date and time the application was last modified, and the date and time the application was last submitted. It may be used as a reference to confirm the date and time of the most recent submission of the application.

100. To review or continue working on an existing short-form application, click the auction number for the application you want to review or modify, which will display the application's *Summary* screen in a view/edit mode. To submit any changes made to the FCC Form 175, go to the second *Certify & Submit* screen and click the **Certify & Submit** button.

⁵⁰ Specifically, an applicant will not be allowed to modify electronically in the Auction Application System the applicant's legal classification, the applicant's name, or the certifying official.

101. An applicant's ability to modify its FCC Form 175 directly in the Auction Application System will be limited between the closing of the initial filing window and the opening of the application resubmission filing window, and again between the closing of the resubmission filing window and the release of the public notice announcing qualified bidders for the auction. During these periods, an applicant will be able to view its submitted application, but will be permitted to modify only applicant's address, responsible party address, contact information (e.g., name, address, telephone number, etc.), and bidding preference (telephonic or electronic) in the Auction Application System. If, during these periods, an applicant needs to make other permissible minor changes to its FCC Form 175, or changes to maintain the accuracy and completeness of its application,⁵¹ the applicant must submit a letter briefly summarizing the changes to its FCC Form 175 via email to auction106@fcc.gov. The email summarizing the changes must include a subject or caption referring to Auction 106 and the name of the applicant, for example, "Re: Changes to Auction 106 Application of XYZ Corp." Any attachments to this email must be formatted as Adobe® Acrobat® (pdf) or Microsoft® Word documents. An applicant that submits its change(s) by letter in this manner must subsequently update its FCC Form 175 in the FCC's Auction Application System once it is open and available to applicants.

102. Moreover, after the initial application filing window has closed, the Auction Application System will not permit an applicant to make certain changes itself (e.g., correcting a misstatement of the applicant's legal classification or reducing the applicant's claimed bidding credit level). If an applicant needs to make a permissible minor change that cannot be made using the FCC's Auction Application System, it must submit a written request by email to the electronic mailbox at auction106@fcc.gov requesting that the Commission staff manually make the change on the applicant's behalf. After this change is made to the FCC Form 175 by Commission staff, the applicant must then recertify and resubmit its application by clicking on the **Submit** button to confirm the requested change.

III. UPFRONT PAYMENTS; REQUEST FOR REFUND OF UPFRONT PAYMENT

A. Upfront Payment Calculator and FCC Form 159

103. In order to be eligible to bid in Auction 106, a sufficient upfront payment and a complete and accurate FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be submitted before 6:00 p.m. ET on March 20, 2020. You may access the **Upfront Payment Calculator and Form 159** icon or link from the *Review or Modify Existing Short-Form Applications* section of the *Auction Application Manager* screen and the *Confirmation of Submission* screens, respectively. Clicking the **Upfront Payment Calculator and Form 159** link or icon will provide a calculator to determine the appropriate upfront payment amount to submit with the FCC Form 159. From the *Calculate Upfront Payment* screen, click the **Form 159** button to obtain the FCC Form 159. Additional information about upfront payments may be found in section III.E., "Upfront Payments" of this Public Notice above.

B. Refund of Upfront Payment

104. You can use the **Refund Form** icon found on the *Review or Modify Existing Short-Form Applications* section of the *Auction Application Manager* screen or the **Refund Form** link available on the *Confirmation of Submission* screen in the Auction Application System to access the form required for refunds of upfront payments. The Commission will use this information to refund excess funds on deposit. Additional information on how to submit the Refund Form may be found in section V.E., "Refund of Remaining Upfront Payment Balance" of this Public Notice, above.

⁵¹ See section II.M., "Modifications to FCC Form 175."

IV. MISCELLANEOUS**A. Access to View Short-Form Applications**

105. After the deadline for filing short-form applications, the Commission will process all timely submitted applications and subsequently issue a public notice for this auction identifying those applications that are (1) complete, (2) rejected, or (3) incomplete or deficient because of minor defects that may be corrected. Following the release of that public notice for Auction 106, any interested parties may view the short-form applications by searching for them in the FCC database.

106. To start a search, go to either auctions.fcc.gov (primary location) or auctions2.fcc.gov (secondary location) and click the **Auction Application Search** link in the “Public Access” area on the Auction Application System screen.

B. FCC Form 175 Technical Support

Technical support for FCC Form 175 is available at (202) 414-1250 (voice) or (202) 414-1255 (text telephony (TTY)). The hours of service are 8 a.m. – 6 p.m. ET, Monday – Friday. All calls to the FCC Technical Support Hotline are recorded.

**ATTACHMENT C:
AUCTION-SPECIFIC INSTRUCTIONS FOR FCC REMITTANCE ADVICE
(FCC FORM 159-FEBRUARY 2003 EDITION)**

Upfront Payments

The following information supplements the standard instructions for FCC Form 159 (February 2003 edition), and is provided to help ensure correct completion of FCC Form 159 for upfront payments for Auction 106. Applicants need to complete FCC Form 159 carefully, because:

- **Mistakes may affect bidding eligibility; and**
- **Lack of consistency between information provided in FCC Form 159 (February 2003 edition), FCC Form 175, and correspondence about an application may cause processing delays.**

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

Block Number	Required Information
1	LOCKBOX # - Enter "Leave Blank."
2	Payer Name - Enter the name of the person or company making the payment. If the applicant itself is the payer, this entry would be the same as the name in FCC Form 175.
3	Total Amount Paid - Enter the amount of the upfront payment associated with the FCC Form 159 (February 2003 edition).
4-8	Street Address, City, State, ZIP Code - Enter the street mailing address (not Post Office box number) where mail should be sent to the payer. If the applicant is the payer, these entries would be the same as FCC Form 175 from the Applicant Information section.
9	Daytime Telephone Number - Enter the telephone number of a person knowledgeable about this upfront payment.
10	Country Code - For addresses outside the United States, enter the appropriate postal country code (available from the Mailing Requirements Department of the U.S. Postal Service).
11	Payer FRN - Enter the payer's ten-digit FCC Registration Number (FRN) registered in the Commission Registration System (CORES).
21	Applicant FRN (Complete only if applicant is different than payer.) – Enter the applicant's ten-digit FRN registered in CORES.
24A	Payment Type Code - Enter "U106."
25A	Quantity - Enter the number "1."
26A	Fee Due - Amount of Upfront Payment.
27A	Total Fee - Will be the same amount as 26A.
28A	FCC Code 1 - Enter the number "106" (indicating Auction 106).

NOTES:

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

Winning Bidder Requirements, Down Payments and Final Payments

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