



# PUBLIC NOTICE

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**June 6, 2019**

## **AUCTION OF CONSTRUCTION PERMITS FOR LOW POWER TELEVISION AND TV TRANSLATOR STATIONS SCHEDULED FOR SEPTEMBER 10, 2019**

### **NOTICE AND FILING REQUIREMENTS, MINIMUM OPENING BIDS, UPFRONT PAYMENTS, AND OTHER PROCEDURES FOR AUCTION 104**

AU Docket No. 19-61  
GN Docket No. 12-268  
MB Docket No. 16-306

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ATTACHMENT A: Auction 104 -Construction Permits To Be Auctioned  
ATTACHMENT B: Short-Form Application (FCC Form 175) Filing Instructions  
ATTACHMENT C: Auction-Specific Instructions For FCC Remittance Advice (FCC Form 159-February 2003 Edition)

## I. GENERAL INFORMATION

### A. Introduction

1. By this Public Notice, the Incentive Auction Task Force (IATF) and Media Bureau (MB), in conjunction with the Office of Economics and Analytics (OEA), establish the procedures, terms and conditions, together with the minimum opening bid amounts, for the upcoming auction of construction permits for low power television (LPTV) stations and TV translator stations (collectively referred to as “LPTV/translator stations.”) This Public Notice also provides an overview of the post-auction application and payment processes governing Auction 104. Bidding in this auction is scheduled to start on September 10, 2019. Auction 104 is a closed auction; only those individuals or entities listed in Attachment A to this Public Notice are eligible to complete the remaining steps to become applicants qualified to bid in this auction for the construction permit for which each is listed.

### B. Background and Relevant Authority

2. Certain LPTV/translator stations were displaced by the broadcast incentive auction (Auction 1000), which repurposed 84 megahertz of the 600 MHz band spectrum that had been allocated for broadcast television use and which resulted in the channel reassignments of certain full power and Class A television stations.<sup>1</sup> As a result of the repurposing of the 600 MHz band and the channel reassignments, a number of LPTV/translator stations, which are secondary in nature and are not entitled to protection from primary services under our current rules, were displaced from their channels.<sup>2</sup> The Commission adopted procedures for LPTV/translator stations to apply for new channels and took other steps to mitigate the impact of this displacement.<sup>3</sup>

3. On February 9, 2018, IATF and MB announced a special displacement application filing window for eligible LPTV/translator stations (Special Displacement Window).<sup>4</sup> The filing window was open from April 10, 2018, through June 1, 2018.<sup>5</sup> A displacement applicant was required to file Schedule

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<sup>1</sup> The incentive auction and subsequent transition has been conducted pursuant to the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402 (codified at 47 U.S.C. § 309(j)(8)(G)), 6403 (codified at 47 U.S.C. § 1452), 126 Stat. 156 (2012) (the Spectrum Act).

<sup>2</sup> See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6672-6, paras. 236-44 (2014) (*Incentive Auction R&O*), *aff'd*, *Nat'l Assoc. of Broadcasters, et al v. FCC*, 789 F.3d 165 (D.C. Cir. 2015).

<sup>3</sup> *Incentive Auction Task Force and Media Bureau Announce Post-Incentive Auction Special Displacement Window April 10, 2018, Through May 15, 2018, and Make Location and Channel Data Available*, Public Notice, 33 FCC Rcd 1234 (IATF/MB 2018) (*Special Displacement Filing Public Notice*); see also, *Incentive Auction R&O*, 29 FCC Rcd 6567; *Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, Public Notice, 32 FCC Rcd 2786 (2017); *The Incentive Auction Task Force and Media Bureau Announce Procedures for Low Power Television, Television Translator and Replacement Translator Stations During the Post-Incentive Auction Transition*, Public Notice, 32 FCC Rcd 3860 (IATF/MB 2017); *Incentive Auction Task Force and Media Bureau Set Forth Tools Available to LPTV/Translator Stations Displaced Prior to the Special Displacement Window*, Public Notice, 32 FCC Rcd 4943 (IATF/MB 2017).

<sup>4</sup> *Special Displacement Filing Public Notice*, 33 FCC Rcd at 1234.

<sup>5</sup> *Id.*; *Incentive Auction Task Force and Media Bureau Extend Post-Incentive Auction Special Displacement Window Through June 1, 2018*, Public Notice, 33 FCC Rcd 3794 (IATF/MB 2018).

C (Schedule for a Construction Permit for a LPTV or TV Translator Broadcast Station) of FCC Form 2100 (Application for Media Bureau Video Service Authorization). Those filings enabled staff to determine which of applicants' engineering proposals were mutually exclusive with other applicants' proposals. The Commission received over 2,160 applications during the Special Displacement Window.<sup>6</sup> Upon review of the applications, staff determined that there were 71 MX groups of applications, consisting of 170 applications that were mutually exclusive (MX) with at least one other application. Absent a resolution by applicants of the mutual exclusivity of their applications, MX station applications are subject to the Commission's competitive bidding rules and procedures.<sup>7</sup> Accordingly, on October 30, 2018, IATF and MB opened a settlement window to afford an opportunity for the 170 applicants with MX applications to resolve such mutual exclusivity by settlement or technical modification of their engineering proposals (Settlement Window).<sup>8</sup> The Settlement Window closed on January 10, 2019.

4. On March 29, 2019, IATF, MB, and OEA released a public notice seeking comment on competitive bidding procedures to be used in Auction 104 to resolve the then-remaining MX applications, which consisted of six MX groups.<sup>9</sup> Five entities with pending MX LPTV applications filed six comments and/or reply comments in response to the *Auction 104 Comment Public Notice*.<sup>10</sup>

5. Several commenters request that the Commission resolve outstanding pleadings that were filed against applicants in the MX groups prior to the start of the auction to provide potential bidders with greater certainty and to encourage settlements.<sup>11</sup> On April 26, 2019, the Media Bureau issued rulings denying the outstanding pleadings.<sup>12</sup> In light of those actions, comments seeking action on the informal objections are now moot. In addition, Venture argues that the Commission should allow those decisions, and any subsequent petitions for reconsideration or applications for review, to become final before the auction begins.<sup>13</sup> Media Bureau has acted on all outstanding pleadings and settlement proposals that involve parties that can become eligible to bid in Auction 104. It is well settled that the Commission does not routinely delay the offering of spectrum licenses or construction permits while it resolves all pending administrative challenges and such challenges, and even judicial appeals, may often be associated with

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<sup>6</sup> See *Incentive Auction Task Force and Media Bureau Announce Settlement Opportunity for Mutually Exclusive Displacement Applications Filed During the Special Displacement Window: October 30, 2018 to January 10, 2019*, Public Notice, 33 FCC Rcd 10478 (IATF/MB 2018) (*Settlement Public Notice*).

<sup>7</sup> See 47 CFR § Part 1, Subpart Q; see also 47 CFR §§ 73.5000, 73.5002-73.5003, 73.5005-73.5009.

<sup>8</sup> See *Settlement Public Notice*, 33 FCC Rcd at 10478.

<sup>9</sup> *Auction of Construction Permits for Low Power Television and TV Translator Scheduled for September 10, 2019; Comment Sought on Competitive Bidding Procedures for Auction 104*, Public Notice, DA 19-229 (IATF/MB/OEA 2019) (*Auction 104 Comment Public Notice*). A summary of this public notice was published at 84 Fed. Reg. 15167 (Apr. 15, 2019).

<sup>10</sup> See Comments of One Ministries, Inc., AU Docket No. 19-61, filed April 1, 2019 (OMI Comments); Comments of New York Spectrum Holdings Company, AU Docket No. 19-61, filed April 3, 2019 (NYSHC Comments); Comments of TVC NY License LLC, AU Docket No. 19-61, filed April 15, 2019 (TNL Comments); Reply Comments of One Ministries, Inc., AU Docket No. 19-61, filed April 16, 2019 (OMI Reply); Reply Comments of Venture Technologies Group, LLC (Venture), AU Docket No. 19-61, filed April 29, 2019 (Venture Reply); Reply Comments of Word of God Fellowship, Inc., AU Docket No. 19-61, filed April 29, 2019 (WOG Reply).

<sup>11</sup> See OMI Comments at 1; NYSHC Comments at 1; TNL Comments at 8; NYSHC Comments; OMI Reply at 1; Venture Reply at 2.

<sup>12</sup> See Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to Venture Technologies Group, LLC (April 26, 2019), LMS File Nos. 0000054804, 0000054811 and 0000054813; Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to One Ministries, Inc. (April 26, 2019), LMS File No. 0000054596. In addition, we note that a petition for reconsideration filed by Diya TV, Inc., an applicant in MX Group 8, seeking reconsideration of the dismissal of its application, was withdrawn and the dismissal of its application became final. Diya's application was removed from MX Group 8. See LMS File No. 0000054935. On June 3, 2019, the Media Bureau granted a settlement of the remaining applications in MX Group 8. See Letter from Hossein Hashemzadeh, (continued...)

licenses offered at auction.<sup>14</sup> In order to promptly resolve these mutually exclusive applications for LPTV/translator stations facing displacement and the loss of service to viewers, we deny Venture's request and will not delay bidding to await final resolution of any such legal challenges.

6. Media Bureau announced on March 19, 2019, that a freeze was lifted on the filing of displacement and digital companion channel applications related to LPTV/translator stations effective April 18, 2019.<sup>15</sup> Applicants listed in Attachment A may continue to enter into and submit settlement agreements for their MX Groups until the July 22, 2019 at 6 p.m., short-form application deadline for Auction 104 announced herein.<sup>16</sup> At that point, the prohibition on certain communications between auction applicants will apply and no further discussions with other Auction 104 applicants regarding the auction, including settlements and bids or bidding strategies, will be permitted until after the close of the auction when the prohibition no longer applies.<sup>17</sup> Thus, after 6 p.m. on July 22, 2019, applicants listed in Attachment A will not be able to resolve their application's mutual exclusivity except through the competitive bidding process described herein, including payment of the applicable minimum opening bid. Venture appears to misunderstand the scope of the rule prohibiting certain communications when it cites 47 CFR § 1.2105(c) in support of its assertion that the Commission should restrict certain parties from entering into a pre-auction settlement agreement because that rule does not take effect until the short-form application filing deadline.<sup>18</sup> In regard to Venture's request that the Commission "verify that the license of each applicant is valid and in good standing before proceeding with the auction,"<sup>19</sup> we observe, as mentioned above, that Media Bureau has acted on all outstanding pleadings and settlement proposals that involve Auction 104 applicants

7. Auction 104 will proceed pursuant to the procedures described in this Public Notice, which have been adopted in accordance with section 309(j)(3) of the Communications Act of 1934, as amended (the Act).<sup>20</sup>

8. Other Commission rules and decisions provide the underlying authority for the procedures we establish in this Public Notice for Auction 104. Among other things, Auction 104 applicants should familiarize themselves thoroughly with the Commission's general competitive bidding rules,<sup>21</sup> including recent amendments and clarifications, as well as Commission decisions in proceedings (Continued from previous page) \_\_\_\_\_

Deputy Chief, Video Division, Media Bureau to New York Spectrum Holding Company, LLC, Word of God Fellowship, Inc., and One Ministries, Inc. (June 3, 2019), LMS File Nos. 0000053901, 0000052106 and 0000054596. MX Group 8 has been removed from Auction 104.

<sup>13</sup> Venture Comments at 3.

<sup>14</sup> *MetroPCS Communications, Inc.*, 25 FCC Rcd 2209, 2214-15, para. 17 (WTB 2010); *see also Closed Auction of AM Broadcast Construction Permits Scheduled for May 6, 2014; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 84*, Public Notice, 29 FCC Rcd 354, 359-60 (MB/WTB 2014) ("As a matter of policy, if we were to refrain from offering at auction licenses or permits that remain subject to administrative or judicial review, we would risk delay of future auctions for review by the Commission and courts of the myriad issues parties could raise in attempts to circumvent auctions for their individual purposes.").

<sup>15</sup> *See Media Bureau Lifts LPTV and TV Translator Application Filing Freezes Effective April 18, 2019*, Public Notice, DA 19-193 (MB Mar. 19, 2019).

<sup>16</sup> 47 CFR § 1.2105(c)(1).

<sup>17</sup> *Id.*

<sup>18</sup> Venture Reply at 5-6.

<sup>19</sup> Venture Comments at 4.

<sup>20</sup> 47 U.S.C. § 309(j)(3)(E)(i) (requirement to seek comment on proposed auction procedures); *see also* 47 U.S.C. § 309(j)(4)(F) (authorization to prescribe reserve price or minimum bid); 47 CFR §§ 1.2104(c) and (d).

<sup>21</sup> 47 CFR Part 1, Subpart Q.

regarding competitive bidding procedures, application requirements, and obligations of Commission licensees.<sup>22</sup> Applicants should also familiarize themselves with the Commission's rules relating to the television broadcast service, as well as Commission orders concerning competitive bidding for broadcast construction permits.<sup>23</sup> Applicants must also be thoroughly familiar with the procedures, terms and conditions contained in this Public Notice and any future public notices that may be released in this proceeding.

9. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most auctions-related Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at [www.fcc.gov/auctions](http://www.fcc.gov/auctions).<sup>24</sup> Documents are also available at the Commission's headquarters, located at 445 12<sup>th</sup> Street, SW, Washington, DC 20554, during normal business hours.

### C. Construction Permits and Entities Eligible to Participate in Auction 104

10. Now that the processing of submissions made during the Settlement Window is complete, we will proceed to resolve by competitive bidding the MX LPTV/translator station proposals that remain.<sup>25</sup> An applicant listed in Attachment A may become qualified to bid only if it complies with the competitive bidding filing, qualification, and payment requirements, and otherwise conforms to applicable rules, policies, and procedures. Each listed applicant may become a qualified bidder only for the construction permit(s) specified for that applicant in Attachment A of this Public Notice. As we noted in the *Auction 104 Comment Public Notice*, each of the engineering proposals within each MX group are directly mutually exclusive with one another; therefore, no more than one construction permit will be awarded for each MX group identified in Attachment A.<sup>26</sup> As noted in the *Auction 104 Comment Public Notice*, the Commission's established precedent provides that, once mutually exclusive applications are

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<sup>22</sup> See, e.g., *Updating Part 1 Competitive Bidding Rules*, Report and Order, Order on Reconsideration of the First Report and Order, Third Order on Reconsideration of the Second Report and Order, Third Report and Order, 30 FCC Rcd 7493 (2015) (*Updating Part 1 Report and Order*) (modified by Erratum, 30 FCC Rcd 8518 (2015)); *Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures*, Order, Memorandum Opinion and Order and Notice of Proposed Rule Making, 12 FCC Rcd 5686 (1997) (*Auction Procedures Consolidation Order*); Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making, 15 FCC Rcd 15293 (2000) (*Part 1 Fifth Report and Order*) (modified by Erratum, 15 FCC Rcd 21520 (2000)); Seventh Report and Order, 16 FCC Rcd 17546 (2001) (*Part 1 Seventh Report and Order*); Eighth Report and Order, 17 FCC Rcd 2962 (2002); Second Order on Reconsideration of the Third Report and Order and Order on Reconsideration of the Fifth Report and Order, 18 FCC Rcd 10180 (2003); Second Order on Reconsideration of the Fifth Report and Order, 20 FCC Rcd 1942 (2005).

<sup>23</sup> See 47 CFR §§ 73.601 – 73.699, 73.801 – 73.881, 73.1001 – 73.4280, and 74.1201 – 74.1290; see also, e.g., *Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, First Report and Order, 13 FCC Rcd 15920 (1998) (*Broadcast Competitive Bidding Order*), on recon., Memorandum Opinion and Order, 14 FCC Rcd 8724, on further recon., Memorandum Opinion and Order, 14 FCC Rcd 12541 (1999).

<sup>24</sup> Additionally, documents are available in the Reference Information Center at the Commission's headquarters, located at 445 12<sup>th</sup> Street, SW, Washington, DC 20554, between 8:00 a.m. and 4:30 p.m. Eastern Time (ET) Monday through Thursday or 8:00 a.m. to 11:30 a.m. ET Fridays.

<sup>25</sup> Attachment A lists, for each engineering proposal in each MX group, the licensee name, facility identification number, call sign, community of license, and the channel requested in the displacement application. Attachment A also sets forth a proposed minimum opening bid amount and a proposed upfront payment amount for each construction permit.

<sup>26</sup> See *Auction 104 Comment Public Notice*, DA 19-229, para. 6.

accepted and mutual exclusivity thereby exists for auction purposes,<sup>27</sup> an applicant cannot obtain a construction permit without placing a bid, even if no other applicant for that particular construction permit becomes qualified to bid or in fact places a bid.<sup>28</sup> We confirm, as requested by one party,<sup>29</sup> that if parties enter into and submit before the short-form application deadline (i.e. by 6:00 p.m. on July 22, 2019), a settlement agreement and supporting documentation that is determined to be fully in accordance with the Commission's rules<sup>30</sup> and which completely resolves the mutual exclusivity, that MX group will be removed from the auction and any remaining engineering proposals will be processed under standard licensing procedures.

#### **D. Auction Specifics**

##### **1. Auction Start Date**

11. Bidding in Auction 104 will begin on Tuesday, September 10, 2019. Pre-auction dates and deadlines are listed below.

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

##### **2. Auction Title**

13. Auction 104 – LPTV/Translator stations

##### **3. Bidding Methodology and Options**

14. The bidding methodology for Auction 104 will be a simultaneous multiple round format.<sup>31</sup> The Commission will conduct this auction over the Internet using the FCC auction bidding system. Qualified bidders are permitted to bid electronically via the Internet or by telephone using the telephonic bidding option. All telephone calls are recorded.

##### **4. Auction Dates and Deadlines**

15. The following dates and deadlines apply:

Auction Tutorial Available (via Internet).....	by July 8, 2019
Short-Form Application (FCC Form 175)	
Initial Filing Window Opens .....	July 16, 2019, 12:00 noon Eastern Time (ET)
Short-Form Application (FCC Form 175)	
Initial Filing Deadline.....	July 22, 2019, prior to 6:00 p.m. ET

<sup>27</sup> See *id.*, citing 47 U.S.C. § 309(j)(1).

<sup>28</sup> See, e.g., *Auction of FM Broadcast Construction Permits Scheduled for July 23, 2015; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 98*, Public Notice, 30 FCC Rcd 3544, 3547, para. 5 (WTB/MB 2015) (*Auction 98 Procedures Public Notice*); *Auction of FM Broadcast Construction Permits Scheduled for July 23, 2015; Comment Sought on Competitive Bidding Procedures for Auction 98*, Public Notice, 30 FCC Rcd 1755, 1756, para. 2 & n.5 (WTB/MB 2015) (*Auction 98 Comment Public Notice*). See also *Request for Refund of Upfront Payment*, Letter Order, 16 FCC Rcd 2181 (WTB 2001); *Vodafone AirTouch Licenses LLC Request for Refund*, Letter Order, 16 FCC Rcd 22358 (WTB 2001); *Closed Broadcast Auction; Notice and Filing Requirements for Auction of AM, FM, TV, LPTV, and FM and TV Translator Construction Permits Scheduled for September 28, 1999; Minimum Opening Bids and Other Procedural Issues*, Public Notice, 14 FCC Rcd 10632, 10646-47 (MMB/WTB 1999).

<sup>29</sup> WOG Reply at 3.

<sup>30</sup> See 47 U.S.C. § 311(c); 47 CFR 73.3525.

<sup>31</sup> See section IV.A.1. "Simultaneous Multiple Round Auction," below.

Upfront Payments (via wire transfer) .....	August 14, 2019, 6:00 p.m. ET
Mock Auction .....	September 6, 2019
Auction Bidding Begins .....	September 10, 2019

## 5. Requirements for Participation

16. A party whose application is listed on Attachment A of this Public Notice who wishes to participate in the bidding in Auction 104 must:

- Submit a short-form application (FCC Form 175) electronically prior to 6:00 p.m. ET, on July 22, 2019, 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 August 14, 2019, 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 104

### A. General Information Regarding Short-Form Applications

17. An application to participate in Auction 104, 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.<sup>32</sup> 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.<sup>33</sup> Eligibility to participate in bidding is based on the applicant’s short-form application and certifications, and on its upfront payment, as explained below.<sup>34</sup>

18. Every entity and individual seeking a construction permit available in Auction 104 must file a short-form application electronically via the Auction Application System prior to 6:00 p.m. ET on July 22, 2019, 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 above.

19. An applicant bears full responsibility for submitting an accurate, complete and timely short-form application. Each 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.<sup>35</sup> 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.

<sup>32</sup> 47 CFR §§ 1.2105, 73.5002.

<sup>33</sup> *Id.*; see also *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2376, para. 165.

<sup>34</sup> Section III.E. “Upfront Payments,” below.

<sup>35</sup> 47 CFR § 1.2105(a)(2)(v).



20. An individual or entity may not submit more than one short-form application for a single auction. If a party submits multiple short-form applications, only one application may be accepted for filing.

21. 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. Applicants are not permitted to make major modifications to their applications; such impermissible changes include a change of the certifying official to the application.<sup>36</sup> 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.

#### **B. 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.<sup>37</sup> Accordingly, the same individual may not be listed as an authorized bidder in more than one FCC Form 175.

#### **C. Construction Permits in Short-Form Application**

23. Auction 104 will resolve pending closed groups of mutually exclusive applications. Participation in this auction is limited to those applicants and engineering proposals identified in Attachment A to this Public Notice. Qualifying bidders will be eligible to bid only on those construction permits for which the applicant's application is designated in the particular MX group specified in Attachment A to this Public Notice. Therefore, applicants will not select permits when filing the FCC Form 175; the permits on which the applicant is eligible to bid will automatically display on the FCC Form 175.

#### **D. 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 LPTV/translator station permits that may be subject to auction, 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.<sup>38</sup> 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.<sup>39</sup> An auction applicant that

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<sup>36</sup> See 47 CFR § 1.2105(b).

<sup>37</sup> See 47 CFR § 1.2105(a)(2)(iii); see also *Updating Part 1 Report and Order*, 30 FCC Rcd at 7577, para. 200.

<sup>38</sup> 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).

<sup>39</sup> 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*, (continued...)

enters into any agreement relating to the licenses being auctioned during an auction 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.<sup>40</sup>

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).<sup>41</sup> 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, 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.<sup>42</sup>

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 licenses being auctioned to which it (or any party that controls or is controlled by it) is a party. 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."<sup>43</sup>

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,<sup>44</sup> the Commission reminds applicants that certain discussions or exchanges could nonetheless touch upon impermissible subject matters.<sup>45</sup>

28. Applicants should bear in mind that a winning bidder will be required to amend its application following the close of the auction to disclose the specific terms, conditions, and parties involved in any agreement relating to the licenses being auctioned into which it had entered prior to the

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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)).

<sup>40</sup> See *Guidance Regarding the Prohibition of Certain Communications During the Incentive Auction, Auction 1000*, 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*, 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).

<sup>41</sup> See 47 CFR § 1.2105(a)(2)(ix); see also *Updating Part 1 Report and Order*, 30 FCC Rcd at 7569-77, paras. 177-98.

<sup>42</sup> See *Updating Part 1 Report and Order*, 30 FCC Rcd at 7575, para. 195.

<sup>43</sup> "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

(continued...)

time bidding was completed.<sup>46</sup> 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 (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.<sup>47</sup>

#### **E. Ownership Disclosure Requirements**

29. Each applicant must comply with the uniform Part 1 ownership disclosure requirements and provide information required by sections 1.2105 and 1.2112, and, where applicable, section 1.2110, of the Commission's rules.<sup>48</sup> 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.<sup>49</sup>

#### **F. Foreign Ownership Disclosure Requirements**

30. 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 certain types of radio licenses.<sup>50</sup> In completing the FCC Form 175, an applicant 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.<sup>51</sup>

#### **G. Prohibited Communications and Compliance with Antitrust Laws**

31. 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 a short-form application (FCC Form 175) in Auction 104.<sup>52</sup> Section 1.2105(c)(1) of the Commission's rules provides that, subject to specified

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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;

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

44 47 CFR § 1.2105(a)(2)(viii), (a)(2)(ix)(A)-(C), (a)(2)(viii), (c)(1); *see also* note 43, above.

45 *See Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures*, 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 10794. Each potential bidder is encouraged to review the discussion concerning antitrust laws in section I.G.9. of this Public (continued....)

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.<sup>53</sup>

### 1. Entities Subject to Section 1.2105

32. 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.<sup>54</sup> 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.<sup>55</sup>

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

33. The Commission updated and revised section 1.2105(c)'s prohibition on communications by auction applicants in recent years.<sup>56</sup> Significantly, the Commission in 2015 amended section 1.2105(c) to extend the prohibition on communications to cover all applicants for an auction regardless of whether the applicants seek permits or licenses in the same geographic area, or market.<sup>57</sup> In connection with those 2015 amendments to the competitive bidding rules, the Commission now prohibits 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.<sup>58</sup> The revised rule provides limited exceptions for a communication within the scope of any arrangement consistent with the exclusion from our rule prohibiting joint bidding, provided

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Notice, below.

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

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

<sup>48</sup> Section 1.2105 requires the disclosure on the FCC Form 175 of the applicant's ownership 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 disclosure requirements in the recently amended Part 1 rules. *See generally Updating Part 1 Report and Order*, 30 FCC Rcd at 7493.

<sup>49</sup> 47 CFR §§ 1.2105, 1.2110, 1.2112.

<sup>50</sup> 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*, Report and Order, 31 FCC Rcd 11272 (2016).

<sup>51</sup> *See* 47 U.S.C § 310; *see also* 47 CFR § 1.2105(a)(2)(vi).

<sup>52</sup> 47 CFR §§ 1.2105(c), 73.5002(d), (e).

<sup>53</sup> 47 CFR § 1.2105(c)(1).

<sup>54</sup> 47 CFR § 1.2105(c)(5)(i).

<sup>55</sup> *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.

such arrangement is disclosed on the applicant's auction application.<sup>59</sup> 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.<sup>60</sup>

34. 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.<sup>61</sup> Consequently, an applicant must take care to determine whether its auction-related communications may reach another applicant.<sup>62</sup>

35. 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 found that, where an individual serves as an officer and 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, which creates an apparent violation of the rule.<sup>63</sup>

36. 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."<sup>64</sup> Moreover, as the Commission explained in the *Prohibited Communications Guidance Public Notice*, a communication conveying "bids or bidding strategies (including post-auction market structure)" must also relate to the "licenses being auctioned" in order to be

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<sup>56</sup> See, e.g., *Updating Part 1 Report and Order*, 30 FCC Rcd at 7493; *Procedural Amendments to Commission Part 1 Competitive Bidding Rules*, Order, 25 FCC Rcd 521 (2010) (*Part 1 Procedural Amendments Order*).

<sup>57</sup> See *Updating Part 1 Report and Order*, 30 FCC Rcd at 7577, para. 199; see also 47 CFR § 1.2105(a)(2)(ix), (c)(1).

<sup>58</sup> 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 Report and Order*, 30 FCC Rcd at 7575-76, para. 195.

<sup>59</sup> *Updating Part 1 Report and Order*, 30 FCC Rcd at 7576-7, para. 197-99.

<sup>60</sup> *Id.* See also *Guidance Regarding the Prohibition of Certain Communications During the Incentive Auction, Auction 1000*, Public Notice, 30 FCC Rcd 10794 (WTB 2015) (*Prohibited Communications Public Notice*).

<sup>61</sup> See generally *2015 Part 1 Report and 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).

<sup>62</sup> 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.

<sup>63</sup> See, e.g., Letter from Barbara A. Kreisman, Chief, Video Division, FCC Media Bureau, and Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, FCC Wireless Telecommunications Bureau, to Colby M. May, TCCSA, Inc., d/b/a Trinity Broadcasting Network, 20 FCC Rcd 14648, 14648-49 (2005) (finding apparent violation of communication prohibitions of section 1.2105(c) where applicants with mutually exclusive applications reported (continued....))

covered by the prohibition.<sup>65</sup> Thus, the prohibition is limited in scope and does not apply to all communications between or among the specified parties.<sup>66</sup>

37. Business discussions and negotiations that are *unrelated* to bidding in Auction 104 and that do not convey information about the bids or bidding strategies, including the post-auction market structure, of an applicant in either auction, are not prohibited by the rule.<sup>67</sup> 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

38. 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.<sup>68</sup> 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.<sup>69</sup> 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.<sup>70</sup> 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.<sup>71</sup>

39. In the case of an individual, the objective precautionary measure of a firewall is not available.<sup>72</sup> 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.<sup>73</sup> We emphasize that whether a prohibited communication has taken place in a given case will depend on all the facts

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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).

<sup>64</sup> 47 CFR § 1.2105(c)(1).

<sup>65</sup> *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd at 10806, para. 32; *see also* CCA Comments at 7.

<sup>66</sup> *Cf.* CCA Comments at 6.

<sup>67</sup> *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd at 10806, para. 32; *cf.* CCA Comments at 9.

<sup>68</sup> *See, e.g., Prohibited Communications Guidance Public Notice*, 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).

<sup>69</sup> *Id.*

<sup>70</sup> *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 (1998) (*Nevada Wireless Order*) (strongly encouraging applicants to implement any firewall procedures necessary and to provide information in their auction applications regarding the procedures).

<sup>71</sup> *See Prohibited Communications Guidance Public Notice*, 30 FCC Rcd at 10799, para. 14; *Nevada Wireless Order*, 13 FCC Rcd at 11978, para. 13.

<sup>72</sup> *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd at 10800, para. 15.

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

pertaining to the case, including who possessed what information, what information was conveyed to whom, and the course of bidding in the auction.<sup>74</sup>

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 after the short-form deadline regarding the application, 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.<sup>75</sup>

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.<sup>76</sup> Similarly, an FCC Form 175 applicant's public statement of intent not to place bids during bidding could also violate the rule.

#### 4. Section 1.2105(c) Certification

42. By electronically submitting its FCC Form 175, each applicant in Auction 104 certifies its compliance with sections 1.2105(c) and 73.5002(d) of the rules.<sup>77</sup> However, the mere filing of a certifying statement as part of an application will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted.<sup>78</sup> Any applicant found to have violated these communication prohibitions may be subject to sanctions.<sup>79</sup>

#### 5. Reporting Requirements

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.<sup>80</sup> Each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.<sup>81</sup>

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<sup>74</sup> See *id.*

<sup>75</sup> *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd at 10802, para. 20.

<sup>76</sup> 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.").

<sup>77</sup> 47 CFR § 1.2105(a)(2)(ix).

<sup>78</sup> See *Application of Nevada Wireless*, Memorandum Opinion and Order, 13 FCC Rcd 11973, 11978, para. 13 (WTB 1998). See also *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Memorandum Opinion and Order, 9 FCC Rcd 7684, 7689, para. 12 (1994) (*Competitive Bidding Memorandum Opinion and Order*).

<sup>79</sup> See 47 CFR §§ 1.2105(c), 1.2107(d), 1.2109(d).

<sup>80</sup> 47 CFR § 1.2105(c)(4); see also *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17553-55, paras. 13-17.

<sup>81</sup> *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, Second Report and Order, 22 FCC Rcd 15289, 15395, paras. 285-86 (2007); 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.<sup>82</sup> This rule is designed to minimize the risk of inadvertent dissemination of information in such reports. Any reports required by section 1.2105(c) must be filed consistent with the instructions set forth in this Public Notice.<sup>83</sup> For Auction 104, 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 e-mail to Margaret W. Wiener at the following e-mail address: [auction104@fcc.gov](mailto:auction104@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 12<sup>th</sup> Street, SW, Washington, DC 20554. A party reporting any communication pursuant to sections 1.65, 1.2105(a)(2), or 1.2105(c)(4) must take care to ensure that any report of a prohibited communication does not itself give rise to a violation of section 1.2105(c). For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection. A party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by following the procedures specified in section 0.459 of the Commission's rules.<sup>84</sup> Such parties also are encouraged to coordinate with the Auctions Division staff about the procedures for submitting such reports.<sup>85</sup> This Public Notice provides additional guidance on procedures for submitting application-related information below.<sup>86</sup>

## 7. Winning Bidders Must Disclose Terms of Agreements

45. Each applicant that is a winning bidder will be required to disclose in an amendment to its displacement application the specific terms, conditions, and parties involved in any agreement it has entered into.<sup>87</sup> This applies to any bidding consortia, joint venture, partnership, or agreement, understanding, or other arrangement entered into relating to the competitive bidding process, including any agreement relating to the post-auction market structure.<sup>88</sup> Failure to comply with the Commission's rules can result in enforcement action.

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<sup>82</sup> *Part 1 Procedural Amendments Order*, 25 FCC Rcd at 522, para. 4. This process differs from filing procedures used in connection with other Commission rules and processes which may call for submission of filings to the Commission's Office of the Secretary or 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.

<sup>83</sup> *Id.*

<sup>84</sup> See 47 CFR § 0.459 (requests that materials or information submitted to the Commission be withheld from public inspection). Filers requesting confidential treatment of documents must be sure that the cover page of the filing prominently displays that the documents seek confidential treatment. For example, a filing might include a cover page stamped with "Request for Confidential Treatment Attached" or "Not for Public Inspection." Any such request must cover all of the material to which the request applies. See 47 CFR § 0.459(a).

<sup>85</sup> See section VII. "Contact Information," below.

<sup>86</sup> See section II. A. "General Information Regarding Short-Form Application," below.

<sup>87</sup> See *Prohibited Communications Public Notice*, 30 FCC Rcd at 10794. . See also section V. C. – Post Auction Procedures – Long Form Application, *infra* para. 131.

<sup>88</sup> 47 CFR § 1.2107(d).



## 8. Additional Information Concerning Rule Prohibiting Certain Communications

46. 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

47. Regardless of compliance with the Commission's rules, applicants remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace.<sup>89</sup> Compliance with the disclosure requirements of section 1.2105(c) will not insulate a party from enforcement of the antitrust laws.<sup>90</sup> To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation.<sup>91</sup> If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.<sup>92</sup>

### H. New Entrant Bidding Credit

48. To promote the objectives of section 309(j) and further its long-standing commitment to the diversification of broadcast facility ownership, the Commission adopted a tiered New Entrant Bidding Credit for broadcast auction applicants with no, or very few, other media interests.<sup>93</sup> A medium of mass communications is defined in 47 CFR § 73.5008(b).

49. 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.<sup>94</sup> In Auction 104, the bidder's attributable

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<sup>89</sup> See *Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures*, Third Further Notice of Proposed Rulemaking, 14 FCC Rcd 21558, 21560-61, para. 4 & n.17 (1999) quoting *Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689, para. 12 (“[W]e wish to emphasize that all applicants and their owners continue to be subject to existing antitrust laws. Applicants should note that conduct that is permissible under the Commission's Rules may be prohibited by the antitrust laws.”); *Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Fourth Memorandum Opinion and Order, 9 FCC Rcd 6858, 6869 n.134 (1994) (*Fourth Memorandum Opinion and Order*) (“[A]pplicants will also be subject to existing antitrust laws.”).

<sup>90</sup> See *Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689, para. 12. See also “Justice Department Sues Three Firms Over FCC Auction Practices,” *Press Release* 98-536 (DOJ Nov. 10, 1998). 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.134. The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws. For example, actual or potential competitors may not agree to divide territories in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another market for the other. *Id.* 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*).

<sup>91</sup> See *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Second Report and Order, 9 FCC Rcd 2348, 2388, para. 226 (1994) (*Competitive Bidding Second Report and Order*).

<sup>92</sup> See 47 CFR § 1.2109(d); see also *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388, para. 226.

<sup>93</sup> *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).

interests and, thus, its maximum new entrant bidding credit eligibility are determined as of the short-form application filing deadline.<sup>95</sup> Each prospective bidder is reminded, however, that events occurring after the short-form 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.<sup>96</sup>

50. In the *New Entrant Bidding Credit Reconsideration Order*,<sup>97</sup> 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.<sup>98</sup>

51. 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.”<sup>99</sup> An “eligible entity” is defined in Note 2(i) of section 73.3555.<sup>100</sup> Pursuant to the *Diversity Order*, the Commission will allow the holder of an equity or debt interest in the applicant to exceed the above-noted 33% threshold without triggering attribution provided (1) the combined equity and debt in the “eligible entity” is less than 50%; or (2) the total debt in the “eligible entity” does not exceed 80% of the asset value, and the interest holder does not hold any equity interest, option, or promise to acquire an equity interest in the “eligible entity” or any related entity.<sup>101</sup>

### 1. Application Requirements

52. 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

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<sup>94</sup> “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 Note 2.

<sup>95</sup> 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 July 22, 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 positional changes occurring after the short-form filing deadline. See 47 CFR § 73.5007(a).

<sup>96</sup> 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 *Vermont Tel. Co., Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 14130 (EB 2011) (*Vermont Telephone Company*) (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).

<sup>97</sup> *Implementation of Section 309(j) of the Communications Act—Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, Memorandum Opinion and Order, 14 FCC Rcd 12541 (1999) (*New Entrant Bidding Credit Reconsideration Order*).

<sup>98</sup> See 47 CFR § 73.5008(c).

<sup>99</sup> *Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order and Third Further Notice of Proposed Rule Making, 23 FCC Rcd 5922 (2008) (*Diversity Order*).

that they satisfy the eligibility requirements to qualify for the bidding credit.<sup>102</sup> 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 have any attributable interests in any other media of mass communications. An applicant claiming that it qualifies for a 25% New Entrant Bidding Credit must 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.<sup>103</sup>

## 2. Bidding Credits

53. Applicants that qualify for the New Entrant Bidding Credit, as specified in the applicable rule,<sup>104</sup> are eligible for a bidding credit 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 construction permit proposed in this 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 construction 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 applicant-specified site coordinates.<sup>105</sup>

54. Bidding credits are not cumulative; qualifying applicants receive either the 25% or the 35% bidding credit, but not both. Attributable interests are defined in section 73.3555 and note 2 of that (Continued from previous page)

<sup>100</sup> 47 CFR § 73.3555 Note 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. 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, Second Report and Order, 31 FCC Rcd 9864, 9982-83, para. 285 & n.858 (2016) (re-adopting the eligible entity standard for the media attribution rules and New Entrant Bidding Credit after remand by the court).

<sup>101</sup> See 47 CFR § 73.5008(c).

<sup>102</sup> See 47 CFR §§ 1.2105(a), 73.3555 & Note 2, 73.5007, 73.5008.

<sup>103</sup> See 47 CFR §§ 73.5007, 73.5008.

<sup>104</sup> See 47 CFR § 73.5007.

<sup>105</sup> Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures, *First Report and Order and Further Notice of Proposed Rule Making*, 25 FCC Rcd 1583, 1609, para. 52 (2010) (*Rural First Report and Order*). See 47 CFR § 73.5007.

section.<sup>106</sup> 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.<sup>107</sup>

### I. Provisions Regarding Former and Current Defaulters

55. 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 104.<sup>108</sup> Accordingly, each applicant must certify under penalty of perjury on its FCC Form 175 that the applicant, any of its affiliates,<sup>109</sup> any of its controlling interests,<sup>110</sup> 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 are not delinquent on any non-tax debt owed to any Federal agency.<sup>111</sup>

56. 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.<sup>112</sup> 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 required.<sup>113</sup> 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 47 CFR § 1.2105(a)(2)(xii).<sup>114</sup>

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<sup>106</sup> See 47 CFR § 73.5008.

<sup>107</sup> See 47 CFR § 73.5007(c).

<sup>108</sup> An applicant is considered a "current defaulter" or a "current delinquent" when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, is in default on any payment for any Commission construction permit or license (including a down payment) or is delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for auction applications. See *Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures*, 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, 15317, para. 42 & n.142 (2000) (*Part 1 Fifth Report and Order*) (modified by Erratum, DA 00-2475 (rel. Nov. 3, 2000)); *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*).

<sup>109</sup> For purposes of making this certification, the term affiliate is defined in 47 CFR § 1.2110.

<sup>110</sup> For purposes of making this certification, the term controlling interest is defined in 47 CFR § 1.2105(a)(4)(i).

<sup>111</sup> 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.").

<sup>112</sup> The Commission recently narrowed the scope of the delinquencies and defaults to be considered for purposes of the former defaulter rule. See 47 CFR § 1.2105(a)(2)(xii), (a)(4); see also *Updating Part 1 Report and Order*, 30 FCC Rcd at 7566-68, paras. 173-75. 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) (continued....)

57. We encourage applicants to review previous guidance provided on default and delinquency disclosure requirements in the context of the auction short-form application process.<sup>115</sup> Applicants also are advised to consult with Auctions Division staff if they have questions about delinquency or default disclosure requirements.

**J. Optional Applicant Status Identification**

58. An applicant owned by members of minority groups and/or women, as defined in section 1.2110(c)(3),<sup>116</sup> or rural telephone companies, as defined in section 1.2110(c)(4),<sup>117</sup> may identify itself regarding this status in filling out its FCC Form 175. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of various groups in its auctions.

**K. Minor Modifications to Short-Form Applications**

59. 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 application (*e.g.*, change the engineering proposal(s), change the certifying official, change control of the applicant such as any change in ownership or control that would constitute an assignment or transfer of control of the applicant,<sup>118</sup> or claim eligibility for a higher percentage of bidding credit) will not be permitted after the initial FCC Form 175 filing deadline.<sup>119</sup> If an applicant makes a "major amendment," as defined by section 1.2105(b)(2), the major amendment and may result in the disqualification of the applicant from

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the notice of the final payment deadline or delinquency was received more than seven years before the FCC Form 175 filing deadline; (2) the default or delinquency amounted to less than \$100,000; (3) the default or delinquency was paid within six months after receiving the notice of the final payment deadline or delinquency; or (4) the default or delinquency was the subject of a legal or arbitration proceeding and was cured upon resolution of the proceeding.

<sup>113</sup> 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).

<sup>114</sup> 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).

<sup>115</sup> *Auction Default Disclosure Public Notice*, 19 FCC Rcd at 21910. *See also Debt Clarification Letter*, 19 FCC Rcd 22907 (WTB 2004) (clarifying the term debt or non-tax debt as referenced in 47 CFR §§ 1.2105(a) and 1.2106(a)).

<sup>116</sup> 47 CFR § 1.2110(c)(3).

participating in the bidding.<sup>120</sup> Questions about FCC Form 175 amendments should be directed to the Auctions Division at (202) 418-0660.

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

60. Each applicant has a continuing obligation to maintain the accuracy and completeness of information furnished in its pending application in a competitive bidding proceeding.<sup>121</sup> An auction applicant must furnish additional or corrected information to the Commission within five days after a significant occurrence,<sup>122</sup> or amend its FCC Form 175 no more than five days after the applicant becomes aware of the need for the amendment.<sup>123</sup> An applicant's obligation to make modifications to a pending auction application in order to provide additional or corrected information continues in accordance with the Commission's rules.<sup>124</sup> We note that 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.

### III. PREPARING FOR BIDDING

#### A. Due Diligence

61. 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. 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.**

62. 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 104 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

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<sup>117</sup> *Id.* § 1.2110(c)(4).

<sup>118</sup> 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.

<sup>119</sup> *See* 47 CFR § 1.2105(b)(2).

<sup>120</sup> *See id.* § 1.2105(b); *see also Two Way Radio of Carolina, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 12035 (1999).

<sup>121</sup> *See* 47 CFR §§ 1.65 and 1.2105(b)(4).

<sup>122</sup> *See, e.g., Vermont Telephone Company*, 26 FCC Rcd at 14130.

<sup>123</sup> 47 CFR §§ 1.65, 1.2105(b)(4). *See also Procedural Amendments to Commission Part 1 Competitive Bidding Rules*, Order, 25 FCC Rcd 521, 523, para. 8 (2010) (*Part 1 Procedural Amendments Order*). 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.

<sup>124</sup> *See* Attachment B for information about submitting modifications to an FCC Form 175 after the initial application filing deadline.

to bid, confirm the availability of such sites, and to familiarize itself with the Commission's rules regarding the National Environmental Policy Act.<sup>125</sup>

63. We strongly encourage each applicant to continue to conduct its own research throughout Auction 104 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 104 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.

64. **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 104.** Each potential bidder is responsible for undertaking research to ensure that any permits won in this auction will be suitable for its business plans and needs. Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

65. 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**

66. An educational auction tutorial will be available on the Auction 104 web page by Monday, July 8, 2019. 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.

67. The tutorial will allow viewers to navigate the presentation outline, review written notes, listen to audio recordings of the notes, and search for topics using a text search function. Additional features of this web-based tool include links to auction-specific Commission releases, e-mail links for contacting Commission licensing and auctions staff, a timeline with deadlines for auction preparation, and screen shots of the online application and FCC auction bidding system. The tutorial will be accessible through a web browser with Adobe Flash Player.<sup>126</sup>

68. The online auction tutorial will be accessible on the "Education" tab of the Auction 104 website at [www.fcc.gov/auction/104](http://www.fcc.gov/auction/104). 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 July 22, 2019**

69. In order to be eligible to bid in Auction 104, an applicant must first follow the procedures to submit a short-form application (FCC Form 175) for the relevant auction electronically via the Auction

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<sup>125</sup> 47 CFR Part 1, Subpart I.

<sup>126</sup> Most users will already have the Flash Player browser plug-in, which can be downloaded from <http://get.adobe.com/flashplayer/>.

Application System, following the instructions set forth in Attachment B to this Public Notice (FCC Form 175 Instructions).

70. Applications may be filed for Auction 104 at any time beginning at noon ET on July 16, 2019, until the filing window closes at 6:00 p.m. ET on July 22, 2019. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing 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 for each auction on July 22, 2019.

71. 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 provided in the FCC Form 175 Instructions. Applicants requiring technical assistance should contact FCC Auctions Technical Support at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET.<sup>127</sup> In order to provide better service to the public, all calls to Technical Support are recorded.

#### **D. Application Processing and Corrections of Deficiencies**

##### **1. Public Notice of Applicant’s Initial Application Status and Opportunity for Minor Modifications**

72. 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; and (2) 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 to the contact address listed in the FCC Form 175 for each applicant by overnight delivery. 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.

73. Commission staff will communicate only with an applicant’s contact person or certifying official, as designated on the short-form application, unless the applicant’s certifying official or contact person notifies the Commission in writing that applicant’s counsel or other representative is authorized to speak on its behalf.<sup>128</sup> Authorizations may be sent by e-mail to [auction104@fcc.gov](mailto:auction104@fcc.gov).

##### **2. Public Notice of Applicant’s Final Application Status After Upfront Payment Deadline**

74. After Commission staff review resubmitted applications for Auction 104, 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 Form 175 applications that are deemed timely filed and complete, and which have made a timely and sufficient upfront payment (as described below).

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<sup>127</sup> 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.

<sup>128</sup> In no event, however, will the FCC send auction registration materials to anyone other than the contact person listed on the applicant’s FCC Form 175 or respond to a request for replacement registration materials from anyone other than the authorized bidder, contact person, or certifying official listed on the applicant’s FCC Form 175. See section III.F. “Auction Registration,” below.



## E. Upfront Payments

75. 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 August 14, 2019, **following the procedures outlined below and the instructions in Attachment C to this Public Notice.** After completing its short-form application, an applicant will have access to an electronic version of the FCC Form 159. This Form 159 can be printed, and **the completed form must be sent by fax to the FCC at (202) 418-2843, or by email to [RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov).**

### 1. Making Upfront Payments by Wire Transfer

76. All upfront payments must be made by wire transfer.<sup>129</sup> No other payment method is acceptable.<sup>130</sup> All payments must be made in U.S. dollars. Upfront payments for Auction 104 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 12<sup>th</sup> 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: “U104”)

NOTE: The beneficiary account number is specific to the upfront payments for Auction 104. Do not use a beneficiary account number from a previous auction.

77. 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 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.<sup>131</sup> **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 Gail Glasser of the Office of Managing Director’s Revenue

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<sup>129</sup> An applicant must initiate the wire transfer through its bank, authorizing the bank to wire funds from the applicant’s account to the Commission’s account at the U.S. Treasury.

<sup>130</sup> The Commission will not accept checks, credit cards, or automated clearing house (ACH) payments.

<sup>131</sup> 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).

& Receivables Operations Group/Auctions at (202) 418-0578, Scott Radcliffe at (202) 418-7518 or Theresa Meeks at (202) 418-2945.

78. Failure to deliver a sufficient upfront payment as instructed herein by the August 14, 2019, deadline will result in dismissal of the short-form application and disqualification from participation in the auction.

## 2. Completing and Submitting FCC Form 159

79. 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](mailto:RROGWireFaxes@fcc.gov). On the fax cover sheet, write “Wire Transfer – Auction Payment for Auction 104.”

80. In order to meet the upfront payment deadline, an applicant’s payment must be credited to the Commission’s account for Auction 104 at the U.S. Treasury before the deadline. Proper completion of this form is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment C. An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payers using the pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate.

## 3. Upfront Payments and Bidding Eligibility

81. Upfront payments that are related to the specific construction permits being auctioned protect against frivolous or insincere bidding, and provide the Commission with a source of funds from which to collect payments owed at the close of bidding.<sup>132</sup> In the *Auction 104 Comment Public Notice*, we proposed an upfront payment amount for each construction, 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.<sup>133</sup> We received no comment on the proposed amounts. Therefore, we adopt the proposed upfront payment amounts. The specific upfront payment amounts and bidding units for each construction permit are set forth in Attachment A of this Public Notice.

82. Applicants must make upfront payments sufficient to obtain bidding eligibility on the construction permits on which they will bid. We proposed, in the *Auction 104 Comment Public Notice*, that the amount of the upfront payment would determine a bidder’s initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids in any single round.<sup>134</sup> Under that proposal, in order to bid on a particular construction permit, otherwise qualified bidders that are designated in Attachment A of this Public Notice for that construction permit must have a current eligibility level that meets or exceeds the number of bidding units assigned to that construction permit. **At a minimum, therefore, an applicant’s total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits designated for that applicant in Attachment A of this Public Notice, or else the applicant will not be eligible to participate in the auction.** An applicant does not have to make an upfront payment to cover all construction permits designated for that applicant in Attachment A of this Public Notice, but only enough to cover the maximum number of bidding units that are associated with construction permits on which they wish to

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<sup>132</sup> See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2377-79, paras. 169-76.

<sup>133</sup> See *Auction Procedures Consolidation Order*, 12 FCC Rcd at 5697-98, para 16. See also *Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures*, Third Report and Order and Second Further Notice of Proposed Rule Making, 13 FCC Rcd 374, 425, para. 86 (1997) (*Part 1 Third Report and Order*); *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2377-79, paras. 169-75.

<sup>134</sup> *Auction 104 Comment Public Notice*, DA 19-229, paras. 16-17.

place bids and hold provisionally winning bids in any given round.<sup>135</sup> The total upfront payment does not affect the total dollar amount the bidder may bid on any given construction permit. We received no comments on the proposal that the upfront payment amount would determine a bidder's initial bidding eligibility, and this proposal is adopted.

83. In calculating its upfront payment amount, an applicant should determine the **maximum** number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units.<sup>136</sup> In order to make this calculation, an applicant should add together the bidding units for all construction permits on which it seeks to be active in any given round. **Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline.**

84. Applicants that are former defaulters, as described above, must pay upfront payments 50% greater than non-former defaulters.<sup>137</sup> For purposes of this classification as a former defaulter or a former delinquent, defaults and delinquencies of the applicant itself and its controlling interests are included.<sup>138</sup> Accordingly, if an applicant is a former defaulter, it must calculate its upfront payment for all of its identified construction permits by multiplying the number of bidding units on which it wishes to be active by 1.5.<sup>139</sup> 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.<sup>140</sup>

#### **F. Auction Registration**

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

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<sup>135</sup> Provisionally winning bids are bids that would become final winning bids if the auction were to close after the given round. *See* section IV.B.2. "Provisionally Winning Bids," below.

<sup>136</sup> A qualified bidder's maximum eligibility will not exceed the sum of the bidding units associated with the total number of construction permits identified for that applicant in Attachment A of this Public Notice. In some cases, a qualified bidder's maximum eligibility may be less than the amount of its upfront payment because the qualified bidder has either previously been in default on a Commission construction permit or license or delinquent on non-tax debt owed to a Federal agency (*see* 47 CFR § 1.2106(a)), or has submitted an upfront payment that exceeds the total amount of bidding units associated with the construction permits designated for that bidder.

<sup>137</sup> *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15316-18, paras. 40-43; *see also* 47 CFR § 1.2106(a); section III.I. "Provisions Regarding Former and Current Defaulters," above.

<sup>138</sup> For this purpose, the term controlling interest is defined in 47 CFR § 1.2105(a)(4)(i).

<sup>139</sup> 47 CFR § 1.2106(a).

<sup>140</sup> If a former defaulter fails to submit a sufficient upfront payment to establish eligibility to bid on at least one of the construction permits designated for that applicant in Attachment A of this Public Notice, the applicant will not be eligible to participate in the auction. *Broadcast Competitive Bidding Order*, 13 FCC Rcd at 15979-80, para. 153. This applicant will retain its status as an applicant in Auction 104 and will remain subject to 47 CFR §§ 1.2105(c) and 73.5002(d). *See Star Wireless, LLC*, Forfeiture Order, 19 FCC Rcd 18626, 18628, para. 4 & n.19 (EB 2004), *order granted in part sub nom, Star Wireless, LLC and Northeast Communications of Wisconsin, Inc.*, Order on Review, 22 FCC Rcd 8943 (2007), *petition for review denied, Star Wireless, LLC v. FCC*, 522 F.3d 469 (D.C. Cir. 2008).

86. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, if this mailing is not received by noon on Wednesday, September 4, 2019, call the Auctions Hotline at (717) 338-2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

87. 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**

88. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Only qualified bidders are permitted to bid. Each applicant should indicate its bidding preference — electronic or telephonic — on its FCC Form 175. In either case, each authorized bidder must have its own SecurID® token, which the Commission will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. **For security purposes, the SecurID® tokens, bidding system web address, FCC assigned username, and the telephonic bidding telephone number are only mailed to the contact person at the contact address listed on the FCC Form 175.** Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 104.

89. Qualified bidders will be able to place bids in Auction 104 over the Internet using the FCC auction bidding system. 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.

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

91. To the extent an issue arises with the Auction System itself, the Commission will take all appropriate measures to resolve such issues quickly and equitably.<sup>141</sup> Should an issue arise that is outside the Auction 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 remediate such an issue on behalf of the bidder. Similarly, if an issue arises due to bidder error using the Auction System, the Commission shall have no obligation to resolve or remediate 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 System.

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<sup>141</sup> 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.

## H. Mock Auction

92. All qualified bidders will be eligible to participate in a mock auction on Friday, September 6, 2019. The mock auction will enable qualified 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.

## IV. BIDDING

93. The first round of bidding for Auction 104 will begin on Tuesday, September 10, 2019. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released at least one week before the start of the auction.

### A. Auction Structure

#### 1. Simultaneous Multiple Round Auction

94. In the *Auction 104 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.<sup>142</sup> This type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which qualified bidders may place bids on individual construction permits. 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. Auction Bidding System

95. 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 104. 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.

96. An Auction 104 bidder's ability to bid on specific construction permits is determined by two factors: (1) the construction permits designated for that applicant in Attachment A of this Public Notice and (2) the bidder's bidding eligibility measured in bidding units. The FCC auction bidding system will allow bidders to submit bids on only those construction permits designated for that applicant in Attachment A of this Public Notice.

97. 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

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

99. In the *Auction 104 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 104. We may change the amount of time for the bidding

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<sup>142</sup> *Auction 104 Comment Public Notice*, DA 19-229, para. 8.

rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors, by prior announcement.

#### 4. Eligibility and Activity Rules

100. As discussed above, we will use upfront payments to determine initial (maximum) bidding eligibility (as measured in bidding units) for Auction 104.<sup>143</sup> The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. As noted earlier, each construction permit is assigned a specific number of bidding units as listed in Attachment A. Bidding units assigned to each construction permit do not change as prices rise during the auction. Upfront payments are not attributed to specific construction permits. Rather, a bidder may place bids on any of the construction permits for which it is designated an applicant in Attachment A of this Public Notice as long as the total number of bidding units associated with those construction permits does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount and therefore its initial bidding eligibility, an applicant must determine the maximum number of bidding units on which it may wish to bid or hold provisionally winning bids in any single round, and submit an upfront payment amount covering that total number of bidding units. At a minimum, an applicant's upfront payment must cover the bidding units for at least one of the construction permits for which it is designated an applicant in Attachment A of this Public Notice. The total upfront payment does not affect the total dollar amount a bidder may bid on any given construction permit. We received no comments on the bidding eligibility proposals, and these proposals are adopted.

101. 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 round<sup>144</sup> and provisionally winning bids from the previous round.<sup>145</sup>

102. We received no comments on the eligibility and activity rules proposal. Therefore, in order to ensure that the auction closes within a reasonable period of time, we adopt the following activity requirement as proposed: a bidder is required to be active on 100% of its current eligibility during each round of the auction. That is, a bidder must either place a bid or be a provisionally winning bidder during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.<sup>146</sup>

#### 5. Activity Rule Waivers

103. In the *Auction 104 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.<sup>147</sup> We received no comments on this issue.

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<sup>143</sup> See section III.E.3. "Upfront Payments and Bidding Eligibility," above.

<sup>144</sup> Bidding units associated with construction permits for which the bidder has removed bids do not count towards current activity.

<sup>145</sup> Provisionally winning bids are bids that would become final winning bids if the auction were to close after the given round. See section IV.B.2. "Provisionally Winning Bids," below.

<sup>146</sup> See section IV.A.5. "Activity Rule Waivers," below.

<sup>147</sup> *Auction 104 Comment Public Notice*, DA 19-229, paras. 19-23.

104. 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, 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.

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

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

107. 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 are no new bids or a proactive waiver will not keep the auction open.

## 6. Auction Stopping Rule

108. For Auction 104, 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.<sup>148</sup> Specifically, bidding will close on all construction permits after the first round in which no bidder submits any new bid or applies a proactive waiver.<sup>149</sup>

109. We also sought comment on alternative versions of the simultaneous stopping rule for Auction 104:

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

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

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<sup>148</sup> *Auction 104 Comment Public Notice*, DA 19-229, paras. 12-14.

<sup>149</sup> Provisionally winning bids are bids that would become final winning bids if the auction were to close after the given round. See section IV.B.2. "Provisionally Winning Bids," below. Proactive waivers are described in section IV.A.5. "Activity Rule Waivers," above.

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. If we invoke this special stopping rule, they will accept bids in the specified final round(s), after which the auction will close.

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

110. 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.<sup>150</sup> Before exercising these options, we are likely to attempt to change the pace of the 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.<sup>151</sup> We proposed to retain the discretion to exercise any of these options with or without prior announcement during the auction.<sup>152</sup> We received no comment on these proposals and adopt them for Auction 104.

## 7. Auction Delay, Suspension, or Cancellation

111. In the *Auction 104 Comment Public Notice*, we proposed that, by public notice and/or by announcement through the FCC auction bidding system, they may delay, suspend, or cancel bidding in the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding.<sup>153</sup> We received no comment on this issue.

112. 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 and/or by announcement through the FCC auction bidding system, we may delay, suspend, or cancel bidding in the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, IATF, MB and OEA, in their sole discretion, may elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. Network interruption may cause us to delay or suspend the auction. 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. Bid Collection and Winner Determination Procedures

113. In each round, eligible bidders will be able to place bids on a given construction permit in any of up to nine pre-defined bid amounts.<sup>154</sup> For each construction permit, the FCC auction bidding

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<sup>150</sup> *Auction 104 Comment Public Notice*, DA 19-229, para. 14.

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> See *Auction Procedures Consolidation Order*, 12 FCC Rcd at 5697-98, para. 16. See also *Part 1 Third Report and Order*, 13 FCC Rcd at 425, para. 86; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2377-79, paras. 169-76.

<sup>154</sup> 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.



system will list the acceptable bid amounts in a drop-down box.<sup>155</sup> Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC auction bidding system also includes an *upload* function that allows bidders to upload text files containing bid information.

114. Until a bid has been placed on a construction permit, the minimum acceptable bid amount for that permit will be equal to its minimum opening bid amount. Once there are bids on a permit, minimum acceptable bids for the following round will be determined as described in section IV.B.1., below.

115. During a round, an eligible bidder may submit bids for construction permits (providing that it is eligible to bid on the specific permits), remove bids placed in the current bidding round, or permanently reduce eligibility. If multiple bids are submitted for the same construction permit in the same round, the system takes the last bid entered as that bidder's bid for the round.

### **1. Bid Amounts**

116. In the *Auction 104 Comment Public Notice*, we proposed that in each round, an eligible bidder will be able to place a bid on a given construction permit in any of up to nine different amounts.<sup>156</sup> 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; therefore, it is adopted.

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

117. Section 309(j) of the Act calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid amount established when applications for FCC licenses or construction permits are subject to auction (i.e., because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest.<sup>157</sup> Consistent with this mandate, we sought comment on the use of a minimum opening bid and/or reserve price prior to the start of Auction 104.<sup>158</sup> Among other factors, we considered the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on the spectrum being auctioned.<sup>159</sup>

118. In the *Auction 104 Comment Public Notice*, we proposed not to establish reserve prices for specific construction permits.<sup>160</sup> This is consistent with policy applied in earlier broadcast spectrum auctions. We did not receive comment on this proposal and adopt it.

119. In the *Auction 104 Comment Public Notice*, however, we sought comment on specifically proposed minimum opening amounts for each construction permit listed in Attachment A to this Public Notice, reasoning that a minimum opening bid,<sup>161</sup> which has been used in other auctions, is an effective

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<sup>155</sup> See section IV.B.1. "Bid Amounts," below.

<sup>156</sup> See 47 U.S.C. § 309(j)(4)(F); 47 CFR § 1.2104(d) (minimum bid increments, minimum opening bids and maximum bid increments). A bidder must have sufficient eligibility to place a bid on the particular construction permit. See section III.E.3. "Upfront Payments and Bidding Eligibility," above.

<sup>157</sup> 47 U.S.C. § 309(j)(4)(F).

<sup>158</sup> See *Part 1 Third Report and Order*, 13 FCC Rcd at 455-56, para 141.

<sup>159</sup> *Id.*

<sup>160</sup> *Auction 104 Comment Public Notice*, DA 19-229, paras. 24-28. Normally, a reserve price is an absolute minimum price below which a construction permit or license will not be sold in a specific auction.

<sup>161</sup> A minimum opening bid, in contrast to a reserve price, is the minimum bid price set at the beginning of the auction below which no bids are accepted.

tool for accelerating the competitive bidding process.<sup>162</sup> Specifically, a minimum opening bid was proposed for each construction permit by taking into account various factors relating to the efficiency of the auction and the potential value of the spectrum, including the type of service and class of facility offered, market size, population covered by the proposed broadcast facility, industry cash flow data, and recent broadcast transactions.

120. We received no comments on the proposed minimum opening bids, and therefore we adopt the minimum opening bid amounts proposed in the *Auction 104 Comment Public Notice*. The specific minimum opening bid amounts for each of the construction permits in Auction 104 are specified in Attachment A to this Public Notice.

#### **b. Minimum Acceptable Bids**

121. In the *Auction 104 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 104 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%.

122. In Auction 104, the minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid for the construction permit. After there is a provisionally winning bid for a construction permit, the minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount by one plus the minimum acceptable bid percentage—e.g., provisionally winning bid amount \* 1.10, rounded.<sup>163</sup>

#### **c. Additional Bid Amounts**

123. In Auction 104, 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 (rounded<sup>164</sup>) is the additional increment amount. The first additional acceptable bid amount equals the minimum acceptable bid amount plus the additional increment amount. The second additional acceptable bid amount equals the minimum acceptable bid amount plus two times the additional increment amount; the third additional acceptable bid amount is the minimum acceptable bid amount plus three times the additional increment amount; etc. With an additional bid increment percentage of 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.

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<sup>162</sup> *Auction 104 Comment Public Notice*, DA 19-229, paras. 29-33.

<sup>163</sup> Under the Commission's standard rounding procedure for auctions, results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1000 are rounded to the nearest \$10.

<sup>164</sup> See note 163 (concerning rounding), above.

#### d. Bid Amount Changes

124. We proposed to retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the additional bid increment percentage, and the number of acceptable bid amounts if we determine that circumstances so dictate, consistent with past practice.<sup>165</sup> Further, we 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 percentage results in a minimum acceptable bid amount that is \$1,200 higher than the provisionally winning bid on a construction permit, then the minimum acceptable bid amount would instead be capped at \$1,000 above the provisionally winning bid.

125. 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

126. Consistent with practice in past auctions,<sup>166</sup> the FCC auction bidding system at the end of each bidding round will determine a *provisionally winning bid* for each construction permit based on the highest bid amount received for that permit. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids.

127. In the *Auction 104 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).<sup>167</sup> No comments were received on this proposal. Hence, we adopt this tied bids proposal.

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

129. A provisionally winning bid will be retained until there is a higher bid on the construction permit at the close of a subsequent round. As a reminder, provisionally winning bids count toward activity for purposes of the activity rule.<sup>168</sup>

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<sup>165</sup> See, e.g., *Auction 98 Procedures Public Notice*, 30 FCC Rcd at 3588, paras. 147-48; see also 47 CFR § 1.2104(d) (“The Commission may, by announcement before or during an auction, require minimum bid increments in dollar or percentage terms.”).

<sup>166</sup> See, e.g., *Auction 98 Comment Public Notice*, 30 FCC Rcd at 1764-65, para. 37.

<sup>167</sup> *Auction 104 Comment Public Notice*, DA 19-226, para. 35.

<sup>168</sup> See section IV.A.4. “Eligibility and Activity Rules,” above.

### 3. Bid Removal and Bid Withdrawal

130. In the *Auction 104 Comment Public Notice*, we explained bid removal procedures in the FCC auction bidding system.<sup>169</sup> Each qualified bidder has the option of removing any bids placed in a round provided that such bids are removed before the close of that bidding round. By removing a bid within a round, a bidder effectively “unsubmits” the bid. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder’s activity because a removed bid no longer counts toward bidding activity for the round. Once a round closes, a bidder may no longer remove a bid.

131. In the *Auction 104 Comment Public Notice*, we proposed to prohibit bidders from withdrawing any bid after close of the round in which that bid was placed.<sup>170</sup> This proposal was made in recognition of the site-specific nature and wide geographic dispersion of the permits available in this auction, as well as experience with past auctions of broadcast construction permits. We received no comments on this issue of bid withdrawal. Accordingly, we will not provide for bid withdrawals in Auction 104. 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. Auction Results

132. The bidding system will determine winning bids as described in section IV.B.2. (Provisionally Winning Bids) above. After the auction results are announced, Commission staff will provide a means for the public to view and download bidding and results data.

### 5. Auction Announcements

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

## V. POST-AUCTION PROCEDURES

134. Shortly after bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, final payments, and minor amendments to that winning bidder’s pending displacement application filed initially in the Special Displacement Window.<sup>171</sup>

### A. Down Payments

135. 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 104 to 20% of the net amount of its winning bids (gross bid(s) less any applicable new entrant bidding credit(s)).<sup>172</sup>

### B. Final Payments

136. Each winning bidder will be required to submit the balance of the net amount for each of its winning bids within ten business days after the applicable deadline for submitting down payments.<sup>173</sup>

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<sup>169</sup> *Auction 104 Comment Public Notice*, DA 19-229, para. 37-40.

<sup>170</sup> *Id.*

<sup>171</sup> See *Special Displacement Filing Public Notice*, 33 FCC Rcd at 1234.

<sup>172</sup> 47 CFR § 1.2107(b).

<sup>173</sup> 47 CFR § 1.2109(a); see *Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Bidding Rules and Procedures*, Report and Order, 21 FCC Rcd 891, 907-09, paras. 43-46 (2006).

### C. Long-Form Applications

137. Because each party eligible to apply for Auction 104 has already filed a displacement application (FCC Form 2100, Schedule C (Schedule for a Construction Permit for a LPTV or TV Translator Broadcast Station) of FCC Form 2100 (Application for Media Bureau Video Service Authorization)) during the Media Bureau's Special Displacement Window,<sup>174</sup> a winning bidder will not be required to submit a separate long-form application following close of bidding in Auction 104. A winning bidder, however, will be required to submit minor amendments to their previously filed displacement application by a deadline to be determined after the close of the auction. Amendments must be filed electronically in the Media Bureau's Licensing and Management System (LMS) available at <https://enterpriseefiling.fcc.gov/dataentry/login.html>.<sup>175</sup> Winning bidders' applications, as amended, will be placed on public notice, triggering the appropriate period for the filing of petitions to deny.<sup>176</sup> Further instructions will be provided to winning bidders in the auction closing public notice.

### D. Default and Disqualification

138. Any winning bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment by the specified deadline, fails to make a full and timely final payment, fails to timely amend its pending displacement application, or is otherwise disqualified) is liable for default payments as described in section 1.2104(g)(2).<sup>177</sup> This payment consists of a deficiency payment, equal to the difference between the amount of the Auction 104 bidder's winning bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

139. 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 104 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.

140. Finally, in the event of a default, the Commission has the discretion to re-auction the construction permit or offer it to the next highest bidder (in descending order) at its final bid amount.<sup>178</sup> In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing authorizations held by the applicant.<sup>179</sup>

### E. Refund of Remaining Upfront Payment Balance

141. 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 should be printed, signed, and submitted to the Commission by mail or fax as instructed below.

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<sup>174</sup> See *Special Displacement Filing Public Notice*, *supra* n.2.

<sup>175</sup> For more information and help using the LMS system, contact: (877) 480-3201 TTY: (717) 333-2824.

<sup>176</sup> See 47 CFR § 73.5006.

<sup>177</sup> 47 CFR § 1.2104(g)(2).

<sup>178</sup> 47 CFR §§ 1.2109(b) and (c).

<sup>179</sup> 47 CFR § 1.2109(d).

142. 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](mailto: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, Theresa Meeks at (202) 418-2945, or Gail Glasser at (202) 418-0578.

## VI. PROCEDURAL MATTERS

### A. Paperwork Reduction Act

143. This document 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.<sup>180</sup>

### B. Congressional Review Act

144. The Commission will send a copy of this *Auction 104 Procedures Public Notice* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>181</sup>

### C. Supplemental Final Regulatory Flexibility Analysis

145. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>182</sup> the Commission prepared Initial Regulatory Flexibility Analyses (IRFAs) in connection with the *Broadcast Competitive Bidding Notice of Proposed Rulemaking* (NPRM),<sup>183</sup> and other Commission NPRMs (collectively *Competitive Bidding NPRMs*) pursuant to which Auction 104 will be conducted.<sup>184</sup> Final

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<sup>180</sup> See 44 U.S.C. § 3506(c)(4).

<sup>181</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>182</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>183</sup> See *Implementation of Section 309(j) of the Communications Act—Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, Notice of Proposed Rulemaking, 12 FCC Rcd 22363, 22416-22, Appendix B (1997) (*Broadcast Competitive Bidding Notice*).

<sup>184</sup> See *Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures*, Declaratory Ruling and Notice of Proposed Rule Making, 20 FCC Rcd (continued....)

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 104 will be conducted.<sup>185</sup> In this proceeding, a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) was incorporated in the *Auction 104 Comment Public Notice*.<sup>186</sup> The Commission sought written public comment on the proposals in the *Auction 104 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.<sup>187</sup>

146. *Need for, and Objectives of, the Public Notice.* The *Auction 104 Procedures Public Notice* implements competitive bidding rules adopted by the Commission in multiple notice-and-comment rulemaking proceedings.<sup>188</sup> More specifically, the *Auction 104 Procedures Public Notice* provides an overview of the procedures, terms and conditions governing Auction 104 and the post-auction application and payment processes, as well as setting the minimum opening bid amount for the 6 construction permits for LPTV or TV translator stations to be offered in Auction 104.

147. To promote the efficient and fair administration of the competitive bidding process for all Auction 104 participants, this *Auction 104 Procedures Public Notice* announces the following policies: (1) Use of a simultaneous multiple-round auction format, consisting of sequential bidding rounds with a simultaneous stopping rule (with discretion to exercise alternative stopping rules under certain circumstances); (2) A specific minimum opening bid amount for each construction permit available in Auction 104; (3) A specific number of bidding units for each construction permit; (4) A specific upfront payment amount for each construction permit; (5) Establishment of a bidder's initial bidding eligibility in bidding units based on that bidder's upfront payment through assignment of a specific number of bidding units for each construction permit; (6) Use of an activity requirement in which a bidder is required to be active on 100% of its bidding eligibility in each round of the auction so that bidders must bid actively during the auction rather than waiting until late in the auction before participating; (7) Provision of three activity waivers for each qualified bidder to allow it to preserve bidding eligibility during the course of

(Continued from previous page)

11268, 11301-07, Appendix B (2005) (*CSEA Declaratory Ruling*); *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Notice of Proposed Rule Making, 8 FCC Rcd 7635, 7666, Appendix (1993) (*Competitive Bidding Notice*).

<sup>185</sup> 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; *Part 1 Order*, 12 FCC Rcd at 5749-53, Appendix C; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2400, para. 299-302.

<sup>186</sup> *Auction of Construction Permits for Low Power Television and TV Translator Stations Scheduled for September 10, 2019; Comment Sought on Competitive Bidding Procedures for Auction 104*, Public Notice, DA 19-229, paras. 49-65 (IATF/MB/OEA Mar. 29, 2019) (*Auction 104 Comment Public Notice*). A summary of this public notice was published at 84 Fed. Reg. 15167 (Apr. 15, 2019).

<sup>187</sup> See 5 U.S.C. § 604.

<sup>188</sup> See, e.g., *Updating Part 1 Competitive Bidding Rules*, Report and Order, Order on Reconsideration of the First Report and Order, Third Order on Reconsideration of the Second Report and Order, Third Report and Order, 30 FCC Rcd 7493 (2015) (modified by Erratum, DA 15-959 (rel. Aug. 25, 2015)); *Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures*, Order, Memorandum Opinion and Order and Notice of Proposed Rule Making, 12 FCC Rcd 5686 (1997); Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making, 15 FCC Rcd 15293 (2000) (modified by Erratum, DA 00-2475 (rel. Nov. 3, 2000)); Seventh Report and Order, 16 FCC Rcd 17546 (2001); Eighth Report and Order, 17 FCC Rcd 2962 (2002); Second Order on Reconsideration of the Third Report and Order and Order on Reconsideration of the Fifth Report and Order, 18 FCC Rcd 10180 (2003); Second Order on Reconsideration of the Fifth Report and Order, 20 FCC Rcd 1942 (2005); see also *Broadcast Competitive Bidding Order*, 13 FCC Rcd at 15920, *on recon.*, Memorandum Opinion and Order, 14 FCC Rcd 8724, *on further recon.*, Memorandum Opinion and Order, 14 FCC Rcd 12541 (1999).

the auction; (8) Use of minimum acceptable bid amounts and additional acceptable increments, along with a proposed methodology for calculating such amounts, with IATF, MB and OEA retaining discretion to change the methodology if circumstances dictate; (9) A procedure for breaking ties if identical high bid amounts are submitted on one permit in a given round; (10) No allowance for bid withdrawals in Auction 104; and (11) Establishment of an additional default payment of 20% under 47 CFR 1.2104(g)(2) in the event that a winning bidder defaults or is disqualified after the auction.

148. *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 IFRA.

149. *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.<sup>189</sup> The Chief Counsel did not file any comments in response to the procedures that were proposed in the *Auction 104 Comment Public Notice*.

150. *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.<sup>190</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>191</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>192</sup> A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>193</sup>

151. Auction 104 is a “closed” auction. The specific competitive bidding procedures and minimum opening bid amounts described in the *Auction 104 Procedures Public Notice* will affect only the 10 individuals or entities listed in Attachment A to this Public Notice who are the only parties eligible to complete the remaining steps to become qualified to bid in this auction.<sup>194</sup> These 10 individuals or entities for Auction 104 include firms of all sizes.

152. *Television Broadcasting.* This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.<sup>195</sup> These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources.” The SBA has created the following small business size standard for such businesses: those having \$38.5 million or less in

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<sup>189</sup> 5 U.S.C. § 604(a)(3).

<sup>190</sup> 5 U.S.C. § 604(a)(3).

<sup>191</sup> 5 U.S.C. § 601(6).

<sup>192</sup> 5 U.S.C. § 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 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.”

<sup>193</sup> 15 U.S.C. § 632.

<sup>194</sup> *Auction 104 Comment Public Notice*, DA 19-229 (IATF/MB/OEA Mar. 29, 2019).

<sup>195</sup> *Id.*



annual receipts.<sup>196</sup> The 2012 Economic Census reports that 751 firms in this category operated in that year.<sup>197</sup> Of that number, 656 had annual receipts of \$25 million or less, 25 had annual receipts between \$25 million and \$49,999,999 and 70 had annual receipts of \$50 million or more.<sup>198</sup> Based on this data, we estimate that the majority of commercial television broadcast stations are small entities under the applicable size standard.

153. The Commission has estimated the number of licensed commercial television stations to be 1,373.<sup>199</sup> Of this total, 1,270 stations (or about 92.5%) had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey, Inc. Media Access Pro Television Database in November of 2018, therefore qualify as small entities under the SBA definition.<sup>200</sup> In addition, the Commission has estimated the number of licensed noncommercial (NCE) television stations to be 388.<sup>201</sup> These stations are non-profit, and therefore are considered to be small entities.<sup>202</sup> There are also 2,295 LPTV stations, including Class A stations, and 3,654 TV translators.<sup>203</sup> Given the nature of these services, we presume that all of these entities qualify as small entities under the SBA small business size standard.

154. 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 104. There are a maximum of 10 individuals or entities that may become qualified bidders in Auction 104, in which applicant eligibility is closed. The specific procedures and minimum opening bid amounts announced in the *Auction 104 Procedures Public Notice* will affect directly all applicants participating in Auction 104.

155. In assessing whether a business entity qualifies as small under the SBA definition, business control affiliations must be included.<sup>204</sup> 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 104 competitive bidding procedures may apply does not exclude any LPTV or TV translator 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 LPTV station or TV translator 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 estimates of small businesses to which they apply may be over-inclusive to this extent.

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<sup>196</sup> 13 CFR § 121.201; 2012 NAICS code 515120.

<sup>197</sup> U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515120 Television Broadcasting).  
[https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ4//naics~515120](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4//naics~515120)

<sup>198</sup> *Id.*

<sup>199</sup> Broadcast Station Totals as of December 31, 2018, FCC News Release (MB Jan. 2, 2019) (December 31, 2018 Broadcast Station Totals available at [www.fcc.gov/document/broadcast-station-totals-december-31-2018](http://www.fcc.gov/document/broadcast-station-totals-december-31-2018).) While the Commission also reports the number of licensed noncommercial educational (NCE) broadcast stations, it does not compile and does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities. Further, the Local Radio Ownership Rule, the Local Television Ownership Rule and the Dual Network Rule apply only to combinations of commercial entities.

<sup>200</sup> BIA/Kelsey, MEDIA Access Pro Database (viewed Jan. 26, 2018).

<sup>201</sup> *See* Broadcast Station Totals as of December 31, 2018, FCC News Release (MB Jan. 2, 2019).

<sup>202</sup> *See generally* 5 U.S.C. § 601(4), (6).

<sup>203</sup> *See* Broadcast Station Totals as of December 31, 2018, FCC News Release (MB Jan. 2, 2019).

<sup>204</sup> 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).

156. We also note that we are unable to accurately develop an estimate of how many of these 10 individuals or entities are 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). We conclude, however, that the majority of Auction 104 eligible bidders would likely meet the SBA's definition of a small business concern.

157. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* The Commission has designed the auction application process itself to minimize reporting and compliance requirements for applicants, including small business applicants. In the first part of the Commission's two-phased application process for all spectrum auctions, 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. More specifically as mentioned above, small entities and other Auction 104 applicants will be qualified to bid in the auction 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 for which it is designated as an applicant on Attachment A to this Public Notice.<sup>205</sup> 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 their application into compliance with the Commission's competitive bidding rules during a resubmission window.<sup>206</sup> All qualified bidders will automatically be registered for the auction and mailed the necessary registration materials.

158. In the second phase of the process, there are additional compliance requirements for winning bidders. As with other winning bidders, any small entity that is a winning bidder will be required to comply with the terms of: (1) 47 CFR § 1.2107(b) by submitting within 10 business days of release of the auction closing public notice as a down payment sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 104 to 20% of the net amount of its winning bids;<sup>207</sup> and (2) 47 CFR § 1.2109(a) by submitting within 10 business days after the down payment deadline the balance of the net amount for each of its winning bids.<sup>208</sup> Further, as required by 47 CFR § 1.2105(c), reports concerning a prohibited communication must be filed with the Chief of the Auctions Division as detailed in 47 CFR § 1.2105(c)(4).

159. We expect that the processes and procedures adopted in the *Auction 104 Procedures Public Notice* will minimize the need for small entities to hire attorneys, engineers, consultants, or other professionals. While we are unable to quantify the cost of compliance with the requirements, we do not believe that such costs of compliance will unduly burden small entities. The processes and procedures are consistent with existing Commission policies and requirements used in prior auctions for broadcast construction permits. Thus, some small entities may already be familiar with such policies and requirements and have the processes and procedures in place to facilitate compliance resulting in minimal incremental costs to comply. For those small entities that may be new to the Commission's auction process, the various resources that have been made available including but not limited to the availability of a mock auction, remote electronic or telephonic bidding and access to hotlines for both technical and

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<sup>205</sup> 47 CFR § 1.111 specifies that an FCC Form 159 must accompany each such payment submission.

<sup>206</sup> The resubmission opportunity for auction applicants was established by the Commission in the 1994 *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2377, paras. 167-68, at 2408.

<sup>207</sup> This down payment requirement was adopted by the Commission in the 1994 *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2381-82, paras. 189-92, at 2409.

<sup>208</sup> This final payment requirement was adopted by the Commission in the 1994 *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2382, para. 194, at 2409.

auction assistance should help facilitate participation while minimizing the need to rely on assistance from outside professionals and consultants.

160. *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.<sup>209</sup>

161. We believe that the steps described below to facilitate participation in Auction 104 will result in both operational and administrative cost savings for small entities and other auction participants. In light of the numerous resources that will be available from the Commission at no cost, the processes and procedures adopted for Auction 104 should result in minimal economic impact on small entities. For example, prior to the auction, the Commission will hold a mock auction to allow eligible bidders the opportunity to familiarize themselves with both the processes and systems that will be utilized in Auction 104. During the auction, participants will be able to access and participate in the auction via the Internet using a web-based system, or telephonically, providing two cost effective methods of participation 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 an auctions hotline for assistance with auction processes and procedures as well as a technical support hotline to assist with issues such as access to or navigation within the electronic FCC Form 175 and use of the FCC's auction system. In addition, small business entities as well as other auction participants, 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.

162. Another step implemented in the *Auction 104 Procedures Public Notice* that can minimize the economic impact for small entities is the inclusion of the New Entrant Bidding Credits adopted in the 1998 *Broadcast Competitive Bidding Order* to implement the statutory provisions of section 309(j) regarding opportunities for small, minority- and women-owned businesses.<sup>210</sup> Applicants that qualify for the New Entrant Bidding Credit are eligible to discount the amount of a winning bidder's total bids. The size of a New Entrant Bidding Credit will depend on the number of ownership interests in other media of mass communications that are attributable to the bidder entity and its attributable interest holders.<sup>211</sup> An applicant can qualify for a 35% New Entrant Bidding Credit if it can certify that neither it nor any of its attributable interest holders have any attributable interests in any other media of mass communications or a 25% New Entrant Bidding Credit if it can 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. Because eligibility for a New Entrant Bidding Credit is not based on the size of the individual or entity requesting the bidding credit, some applicants for Auction 104 that claim eligibility for a New Entrant Bidding Credit may meet the definition of "small entity" or "small business," as defined above.

163. The above mechanisms are made available to facilitate participation in Auction 104 by all qualified bidders and may result in significant cost savings for small business entities that use these mechanisms. These steps, coupled with the advance description of the bidding procedures in Auction

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<sup>209</sup> 5 U.S.C. § 603(c)(1)-(4).

<sup>210</sup> See *Broadcast Competitive Bidding Order*, 13 FCC Rcd 15920, 15993-96, paras. 186-90.

<sup>211</sup> 47 CFR §§ 73.5007, 73.5008.

104, should ensure that the auction will be administered predictably, efficiently and fairly, thus providing certainty for small entities as well as other auction participants.

164. *Notice to Chief Counsel for Advocacy of SBA.* The Commission will send a copy of the *Auction 104 Procedures Public Notice*, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA. A summary of the *Auction 104 Procedures Public Notice*, and Supplemental FRFA, will also be published in the Federal Register.<sup>212</sup>

## VII. CONTACT INFORMATION

165. Contact Information Table:

### General Auction 104 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 104 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)

### Licensing Information

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

### Video Division, MB

**(202) 418-1600**  
Shaun Maher (Attorney)  
Hossein Hashemzadeh (Engineer)

### Technical Support - Licensing and Management System (LMS)

(877) 480-3201 TTY: (717) 333-2824

### 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 (202) 418-7518,  
Theresa Meeks (202) 418-2945,  
Gail Glasser (202) 418-0578,  
(fax) (202) 418-2843 or email to  
[RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov)

### Auction Bidder Line

Will be furnished only to qualified bidders

### Press Information

Janice Wise (202) 418-8165

<sup>212</sup> See 5 U.S.C. § 604(b).

**FCC Forms**

(800) 418-3676 (outside Washington, DC)

(202) 418-3676 (in the Washington area)

[www.fcc.gov/formpage.html](http://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](mailto:fcc504@fcc.gov)**Small Businesses**Additional information for small and disadvantaged  
businesses**Office of Communications Business****Opportunities**

(202) 418-0990

[www.fcc.gov/ocbo](http://www.fcc.gov/ocbo)**FCC Internet Sites**[www.fcc.gov](http://www.fcc.gov)[www.fcc.gov/auction/104](http://www.fcc.gov/auction/104)[www.fcc.gov/media](http://www.fcc.gov/media)

– FCC –

**ATTACHMENT A:  
AUCTION 104 -CONSTRUCTION PERMITS TO BE AUCTIONED**

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 104.

### 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 the auction of LPTV/translators stations (Auction 104). 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 structure; and make certain certifications. Additional information about these requirements can be found in the preceding sections of this public notice.

3. 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.<sup>213</sup> **Short-form applications must be submitted and confirmed prior to 6:00 p.m. ET on Monday, July 22, 2019.** Late applications or unconfirmed submissions of electronic data will not be accepted.<sup>214</sup>

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

5. 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.<sup>215</sup> 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.<sup>216</sup> Because the required information bears on each applicant's qualifications, requests for confidential treatment will not be routinely granted.<sup>217</sup>

6. 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 July 16, 2019, until the close of the initial filing window at 6:00 p.m. ET on July 22, 2019. 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 go through. 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 downtime to the auctions systems. However, there are occasions when auction-related systems may be temporarily unavailable.

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<sup>213</sup> This filing window will open on July 16, 2019 at 12:00 noon ET, and will remain open on a 24-hour basis during the filing period.

<sup>214</sup> 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.

<sup>215</sup> 47 CFR § 0.459.

<sup>216</sup> The procedure for uploading application attachments is described below in section II.7. of this attachment.

<sup>217</sup> 47 CFR § 0.459(a).

### A. Minimum Software Requirements

7. 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.

8. 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 higher; or
- Microsoft® Internet Explorer 9.0 or higher (compatibility mode is not supported; if you use an Internet Explorer browser, you must turn off compatibility mode in your browser's settings).

However, for optimal performance, Commission staff recommends the use of either Mozilla® Firefox® or Google Chrome®.

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

### B. Logging In

10. You must use the applicant's FRN and associated password to log into the Auction Application System and complete an FCC Form 175. To submit an FCC Form 175 electronically via the Internet, open a web browser and navigate to: [auctions.fcc.gov](http://auctions.fcc.gov) (primary location) or [auctions2.fcc.gov](http://auctions2.fcc.gov) (secondary location).

11. 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 104, 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 104** link to begin, review, modify, or withdraw an application for Auction 104. To avoid technical complications, do not click the link more than once while waiting for the application to load.

## II. APPLICATION FILING INSTRUCTIONS

12. The FCC Form 175 requests information needed to determine whether an applicant qualifies to participate in competitive bidding for Commission licenses or construction permits.<sup>218</sup> An applicant must submit required information as entries in the data fields of FCC Form 175 whenever a data 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.

13. The FCC Form 175 consists of seven sections, each requesting separate types of information: (1) *Applicant Information*; (2) *Construction Permits*; (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 *Construction Permits* screen will only display the construction permits on which the applicant may become eligible to bid upon in this auction. An applicant will not select permits on an FCC Form 175 for Auction 104. 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 and provide a brief description of

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<sup>218</sup> See generally 47 CFR § 1.2105.



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. 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.

14. 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 responsible for the application (called a responsible party). If the applicant is a corporation, subsequent screens in the FCC Form 175 will ask for responsible party information. 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.

15. No individual or entity may file more than one FCC Form 175.<sup>219</sup>

16. 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 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.

### **1. Applicant Information**

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

#### **a. Applicant Legal Classification**

18. 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.<sup>220</sup>

#### **b. Applicant Status Information**

19. 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

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<sup>219</sup> See 47 CFR § 1.2105(a)(3). See also section II.A., of the public notice above (Each Applicant May File Only One FCC Form 175).

<sup>220</sup> For any text box in which the applicant can or is required to enter information, you should not use any non-ASCII characters or select ASCII characters

information is collected for statistical purposes only and assists the Commission in monitoring the participation of various groups in its auctions.

20. After completing 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.

**c. Applicant Name and Applicant Address**

21. 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 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” 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. For this auction, the applicant name must be identical with the name of the licensee or permittee on the LPTV/translator displacement application. 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.

**d. Responsible Party and Contact Information**

22. 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. If you selected “Corporation” on the *Applicant Legal Classification* screen, you will be required to provide 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.

23. 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.

24. 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 its behalf. Authorizations may be sent by email to [auction104@fcc.gov](mailto:auction104@fcc.gov).

**e. Authorized Bidders**

25. 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.<sup>221</sup> 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. An individual may not serve as an authorized bidder for more than one application in the same auction.<sup>222</sup> While an applicant may change its authorized bidder(s) at a later

<sup>221</sup> See *Auctions 104 Procedures Public Notice* para. 38.

<sup>222</sup> See *id.*; 47 CFR § 1.2105(a)(2)(iii).

date, only those bidders listed on the FCC Form 175 will be authorized to place bids for the applicant during bidding in the auction.

**f. Electronic or Telephonic Bidding**

26. 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.

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

**2. Construction Permits**

28. The *Construction Permits* screen makes up the second series of screens in a FCC Form 175. The *View Permits* area on the *Construction Permits* screen displays a list of the construction permits on which the applicant will be allowed to bid during the auction, assuming that it is determined to be a qualified bidder. Be advised that this list cannot be changed by the applicant. When the information on the *View Permits* screen has been viewed, click the **Continue** button at the bottom of the page to advance to the next series of screens.

**3. New Entrant Bidding Credit Eligibility**

29. *New Entrant Eligibility* is the third section in FCC Form 175. Initially, an applicant indicates whether it is claiming the New Entrant Bidding Credit and, if so, whether it is claiming a 25% or 35% New Entrant Bidding Credit.

30. An applicant not seeking a New Entrant Bidding Credit will continue to the *Agreements* section of FCC Form 175.

31. If an applicant seeks a bidding credit, it is asked to indicate whether it claims to be an “Eligible Entity” as defined in section 73.5008(c) of the rules for purposes of claiming eligibility for the New Entrant Bidding Credit.<sup>223</sup> The applicant must click “Yes” or “No,” as appropriate.

32. 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.

33. 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.<sup>224</sup> 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
- whether any broadcast facilities listed for the applicant in this auction are in the “same area” as existing mass media facilities, as defined by applicable Commission rules.<sup>225</sup>

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<sup>223</sup> 47 CFR § 73.5008(c).

<sup>224</sup> 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, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 614, 618, para. 8 (2003).

<sup>225</sup> See 47 CFR §§ 73.5007, 73.5008.

34. 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 broadcast facility in this auction is in the “same area” as the identified existing mass media facility.<sup>226</sup> 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 the facilities specified in the referenced broadcast facility.<sup>227</sup>

35. Once the applicant has identified all relevant existing mass media facilities, and all broadcast facilities listed in its 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 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.

36. When the applicant has identified, in the *View/Edit All Facilities* screen, all relevant existing mass media facilities, as well as all broadcast facilities 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.

#### 4. Agreements

37. *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.<sup>228</sup>

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<sup>226</sup> 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).

<sup>227</sup> For purposes of determining whether a 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).

<sup>228</sup> 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.D. “Disclosure of Agreements Relating to Permits Subject to Auction” and section II.G.2. “Scope of Prohibition on Communications, Prohibition on Joint Bidding Agreements” of the 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.

38. 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.<sup>229</sup>

39. If you select “No” and then click the **Save & Continue** button, you will continue to the *Ownership* section, described below in section II.5.

40. 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.

41. 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.<sup>230</sup> After completing the required information for each party, you must click the **Add Party** button to save the information.

42. Additional parties 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.

43. 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.

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<sup>229</sup> See *id.* § 1.2105(a)(2)(viii). 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). See *id.* § 1.2105(a)(2)(ix). See also section II.D. “Disclosure of Agreements Relating to Permits Subject to Auction” and section II.G.2. “Scope of Prohibition on Communications, Prohibition on Joint Bidding Agreements” of the 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.

<sup>230</sup> 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.

44. An applicant that has entered into any agreement(s) that are 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.7. of this attachment.

45. 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.

## 5. Ownership

46. 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.<sup>231</sup>

### a. Ownership Disclosures Required of All Applicants

47. 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.<sup>232</sup> 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 limited partner whose interest in the applicant is 10% or greater as well as each general partner;
- 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.

48. 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.

49. Section 1.2112 lists the FCC-regulated business entities or applicants for an FCC license (FRBs) that must be disclosed in FCC Form 175.<sup>233</sup>

50. 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.<sup>234</sup>

### b. Adding a Disclosable Interest Holder (DIH)

51. 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.<sup>235</sup> On this screen and subsequent screens, you must provide information about the

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<sup>231</sup> 47 CFR §§ 1.2105(a)(2)(ii)(A)-(B), 1.2110, 1.2112.

<sup>232</sup> 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).

<sup>233</sup> See *id.* § 1.2112(a)(7), (b)(1)(ii).

<sup>234</sup> See *id.* §§ 1.2105(a)(2)(ii)(A)-(B), 1.2112.

<sup>235</sup> *Id.* § 1.2112(a)(7).

type of DIH (i.e., entity or individual), contact information for the DIH, type of interest the DIH has in the applicant, percent of interest held in the applicant,<sup>236</sup> 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.

52. If you enter one or more DIHs with indirect ownership interest(s) in the applicant on the *Add Disclosure Interest Holder Type* screen,<sup>237</sup> 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.<sup>238</sup> 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.7. of this attachment.

53. 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.<sup>239</sup>

54. 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.

### c. Adding a FCC Regulated Business (FRB)

55. To add an FRB of the applicant, 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 percent 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.

56. To add an FRB for a DIH, 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 business, and percent of interest held. "Percent of Interest Held" refers to the percent of interest held by the DIH in the FRB.

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<sup>236</sup> If the DIH holds an ownership 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.

<sup>237</sup> 47 CFR § 1.2112(a)(6).

<sup>238</sup> *Id.*

<sup>239</sup> For example, as controlling interests, officers and directors of an applicant would be DIHs but may not have an ownership interest in the applicant.

57. 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 applicable party (either the applicant or the DIH).

58. 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 FRBs of the applicant and previously entered DIHs that are entities. 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 applicable party (either the applicant or the DIH).

59. 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, click the **Save & Continue** button.

#### d. View/Edit Ownership Disclosure Information

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

61. 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.

62. 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.

63. 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 has been confirmed as accurate on the *View/Edit Ownership Disclosure Information* screen, click the **Continue** button.

#### 6. Summary

64. 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.

65. 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.

66. 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.

67. 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.

## 7. Attaching Additional Information

68. 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.

69. 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.<sup>240</sup>
- 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 one attachment describing the indirect ownership interest held by that DIH and all other DIHs with an indirect ownership interest in the applicant.<sup>241</sup>

70. 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 its application should be identified as such by selecting “Confidential Treatment” as the Attachment Type in the drop-down list. For any other attachments that applicant needs or wishes to submit in support of its application, select the appropriate Attachment Type.

71. 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.

72. When uploading attachments, you may use a variety of file formats, including Word (.doc and .docx), Adobe PDF (.pdf), and text files (.txt and .odt).<sup>242</sup> You must, however, verify that the files contain all attachment information. Any uploaded files may be no larger than 10 MB each and must not be password-protected. Graphics files (e.g., .bmp, .tiff, .jpg) are not supported. Spreadsheets (.xls, .xlsx, and .csv) are supported but are not recommended. Once all attachments are uploaded, click the **CONTINUE** button. After the FCC Form 175 filing deadline, an application attachment may not be

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<sup>240</sup> 47 CFR § 1.2105(a)(2)(vii).

<sup>241</sup> This topic is discussed in section II.5.b. of this Attachment.

<sup>242</sup> Any files uploaded will be automatically converted to a .pdf format.

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.

## 8. Certify and Submit

73. 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.<sup>243</sup>

74. 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.<sup>244</sup>

75. 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.

76. An FCC Form 175 must be certified by a person with the authority to bind the applicant.<sup>245</sup> 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 after the initial application filing deadline.

77. 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.<sup>246</sup> 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.

78. 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.

79. 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.<sup>247</sup> Information in an application will not be considered by the Commission unless the applicant's certifying 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.

80. 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

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<sup>243</sup> 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).

<sup>244</sup> *Id.* § 1.2105(a)(2)(xii).

<sup>245</sup> See *id.* § 1.917; see also *id.* § 73.3513.

<sup>246</sup> *Id.* § 1.2105(a)(2)(v).

<sup>247</sup> 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.

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.

81. FCC Form 175 applications for Auction 104 must be submitted and confirmed **prior to 6:00 p.m. ET on July 22, 2019**. Late applications or unconfirmed submissions of electronic data will not be accepted.

#### **B. Withdrawing an Auction Application Before the Filing Deadline**

82. 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 (i.e., 6:00 p.m. ET on July 22, 2019).**

83. Each applicant that submits an FCC Form 175 to participate in Auction 104 becomes subject to the Commission's prohibition on certain communications as of the application filing deadline. The prohibition applies to applicants until the Auction 104 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.

#### **C. Updating an Existing Auction Application**

84. After the initial FCC Form 175 filing deadline, an applicant may make only minor changes to its application. Major modifications will not be permitted.<sup>248</sup> If an applicant needs to make a permissible minor change to its FCC Form 175 or must make a change in order to maintain the accuracy and completeness of its application pursuant to sections 1.65 and 1.2105(b)(4) of the rules, during a time when the FCC's Auction Application System is available to the applicant for purposes of making the type of change(s) required, such a change must be made electronically to its FCC Form 175 using the FCC's Auction Application System.

85. 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.

86. 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.

87. 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

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<sup>248</sup> 47 CFR § 1.2105(b). See section II.K. of the public notice, above "Minor Modifications to Short-Form Applications".

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,<sup>249</sup> the applicant must submit a letter briefly summarizing the changes to its FCC Form 175 via email to [auCTION104@fcc.gov](mailto:auCTION104@fcc.gov). The email summarizing the changes must include a subject or caption referring to Auction 104 and the name of the applicant, for example, “Re: Changes to Auction 104 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.

88. 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 [auCTION104@fcc.gov](mailto:auCTION104@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.

#### **D. FCC Form 175 Technical Support**

89. 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.

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<sup>249</sup> See section II.K. “Minor Modifications to Short-Form Applications” and section II.L. “Maintaining Current Information in Short-Form Applications”.

**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 104. 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:

<b>Block Number</b>	<b>Required Information</b>
1	LOCKBOX # - Enter "Leave Blank"
2	Payer Name - Enter the name of the person or company making the payment. If the applicant itself is the payer, this entry would be the same as FCC Form 175.
3	Total Amount Paid - Enter the amount of the upfront payment associated with the FCC Form 159 (February 2003 edition).
4-8	Street Address, City, State, ZIP Code - Enter the street mailing address ( <b>not Post Office box number</b> ) where mail should be sent to the payer. If the applicant is the payer, these entries would be the same as FCC Form 175 from the Applicant Information section.
9	Daytime Telephone Number - Enter the telephone number of a person knowledgeable about this upfront payment.
10	Country Code - For addresses outside the United States, enter the appropriate postal country code (available from the Mailing Requirements Department of the U.S. Postal Service).
11	Payer FRN - Enter the payer's ten-digit FCC Registration Number (FRN) registered in the Commission Registration System (CORES).
21	Applicant FRN (Complete only if applicant is different than payer.) – Enter the applicant's ten-digit FRN registered in CORES.
24A	Payment Type Code - Enter "U104"
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 "104" (indicating Auction 104).

## 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.