



PUBLIC NOTICE

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

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

DA 20-591
June 8, 2020

AUCTION OF PRIORITY ACCESS LICENSES FOR THE 3550-3650 MHz BAND STATUS OF SHORT-FORM APPLICATIONS TO PARTICIPATE IN AUCTION 105

AU Docket No. 19-244

1. By this Public Notice, the Office of Economics and Analytics (OEA), in conjunction with the Wireless Telecommunications Bureau (WTB), announces the status of 348 short-form applications received for Auction 105.¹ Auction 105, which is scheduled to begin July 23, 2020, will offer Priority Access Licenses (PALs) in the Citizens Broadband Radio Service in the 3550-3650 MHz band (3.5 GHz).² This Public Notice also provides important information regarding the modification and resubmission of short-form applications and reminds applicants of deadlines and certain procedures the Commission adopted for Auction 105.

I. SHORT-FORM APPLICATIONS AND UPFRONT PAYMENTS

A. Status of Short-Form Applications

2. The short-form applications to participate in Auction 105 (FCC Forms 175) have been reviewed for completeness and compliance with the Commission's rules. The applications have been classified into the two categories set forth below:

¹ A copy of this Public Notice will be sent by email to the contact person listed on the FCC Form 175 for each Auction 105 applicant rather than by overnight delivery as had been previously announced. WTB and OEA announce this change of procedure to protect the health and safety of Commission staff given the COVID-19 pandemic. This action is taken pursuant to delegated authority in sections 0.271 and 0.331 of the Commission's rules. 47 CFR §§ 0.271, 0.331. The Commission recently revised the delegated authority for OEA. See *Establishing a 5G Fund for Rural America; Universal Service Reform – Mobility Fund*, Notice of Proposed Rulemaking and Order, FCC 20-52, para. 206 and Appendix B (Apr. 24, 2020) (modified 47 CFR § 0.271(m) pending publication in the Federal Register).

² See *Auction of Priority Access Licenses for the 3550-3650 MHz Band; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 105; Bidding in Auction 105 Scheduled to Begin June 25, 2020*, AU Docket No. 19-244, Public Notice, 35 FCC Rcd 2140 (2020) (*Auction 105 Procedures Public Notice*). Certain dates and deadlines for Auction 105 were postponed due to the COVID-19 pandemic by a Public Notice released on March 25, 2020. *Auction of Priority Access Licenses for the 3550-3650 MHz Band Rescheduled to Begin July 23, 2020; Auction 105 Short-Form Application Deadline Postponed to May 7, 2020*, AU Docket No. 19-244, Public Notice, 35 FCC Rcd 2891 (2020) (*Auction Postponement Public Notice*). OEA and WTB recently announced updated population data for U.S. Territories and four other counties and the availability of an updated Attachment A file listing the bidding units, upfront payment amount, and minimum opening bid amount for each license for Auction 105. See *Updated Population Data for 95 License Areas for the Auction of Priority Access Licenses in the 3550-3650 MHz Band; Availability of File with Recalculated Bidding Units and Upfront Payment and Minimum Opening Bid Amounts for Auction 105*, Public Notice, DA 20-520 (rel. May 18, 2020) (*Updated Population Data Public Notice*).

Complete106 applications
Incomplete242 applications

3. **Complete Applications.** Attachment A to this Public Notice lists the short-form applications for Auction 105 that have been accepted for filing and designated as complete. Each of these applicants will become a qualified bidder upon receipt by the Commission of the required upfront payment by the June 19, 2020, deadline described below.³ Each applicant must maintain the accuracy of its short-form application as required by sections 1.65 and 1.2105(b) of the Commission's rules.⁴

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

5. **Incomplete Applications.** Attachment B to this Public Notice lists the short-form applications for Auction 105 that have been accepted for filing but were found to be incomplete or otherwise deficient. Each of these applicants will receive a letter identifying each deficiency in its application. This letter will be sent via email to the contact person at the contact email address listed on the application, along with a copy of this Public Notice. To become a qualified bidder for Auction 105, each applicant must resubmit its application, having corrected any deficiencies, and make the required upfront payment by the June 19, 2020, deadline. Each applicant must also maintain the accuracy of its application as required by sections 1.65 and 1.2105(b) of the Commission's rules.⁷

6. As a reminder, 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 Commission staff in writing that another representative is authorized to speak on the applicant's behalf.⁸ Authorizations may be sent by email to auction105@fcc.gov.

³ See *infra* Section I.B; see also 47 CFR § 1.2106 (upfront payment rule).

⁴ 47 CFR §§ 1.65, 1.2105(b). These rules require each applicant in a competitive bidding proceeding to furnish additional or corrected information within five days of a significant occurrence, or to amend its short-form application no more than five days after the applicant becomes aware of the need for amendment. An applicant's obligation to make such a modification or amendment to its pending application continues until it is made. See *Procedural Amendments to Commission Part 1 Competitive Bidding Rules*, WT Docket No. 10-18, Order, 25 FCC Rcd 521, 522-23, paras. 6-8 (2010) (*Part 1 Procedural Amendments Order*); see also 47 CFR § 1.2105(c)(6) (any applicant that makes or receives a prohibited communication must report such communication in writing to the Commission no later than five business days after the communication occurs).

⁵ 47 CFR §§ 1.2107, 1.2109; see also *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Second Report and Order, 9 FCC Rcd 2348, 2376-77, paras. 163-68 (1994).

⁶ See generally 47 CFR § 1.2109.

⁷ 47 CFR §§ 1.65, 1.2105(b).

⁸ In no event, however, will the Commission 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 (continued....)

B. Calculating Upfront Payments

7. When making upfront payments applicants are reminded to check their calculations carefully because there are no provisions for increasing a bidder's eligibility after the upfront payment deadline. Applicants should be sure to use the file that includes updated population figures for certain license areas. The updated file was made available on the Auction 105 webpage at www.fcc.gov/auction/105 at the "Updated (5/18/2020)" link under the "Attachment A Files" heading.⁹ The changes affected 95 license areas in American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Puerto Rico and the U.S. Virgin Islands as well as for three areas in Alaska and one area in Virginia.¹⁰ These updates are also reflected in the FCC Form 175 and the Upfront Payment Calculator. Applicants are encouraged to reprint their applications and FCC Form 159 if they selected any of the updated 95 license areas.

C. Upfront Payments

8. Upfront payments for Auction 105 are due in the proper account at the U.S. Treasury by **6:00 p.m. Eastern Time (ET) on Friday, June 19, 2020**. In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account by the deadline. **Payments must be made by wire transfer in accordance with the instructions provided in the Auction 105 Procedures Public Notice.**¹¹ No other payment method is acceptable for this auction.¹² Each applicant is reminded to provide its FCC Registration Number (FRN) on the Form 159 and to submit the same FRN with all future payments for Auction 105. At least one hour before placing the order for the wire transfer (but on the same business day), each applicant must submit a completed FCC Form 159 to the Commission by fax to (202) 418-2843, or by email to RROGWireFaxes@fcc.gov.

9. Each applicant is responsible for timely submitting its upfront payment and filing an accurate and complete FCC Remittance Advice Form (FCC Form 159).¹³ An applicant should coordinate with its financial institution well ahead of the due date regarding its wire transfer and allow sufficient time for the wire transfer to be initiated and completed prior to the deadline. The Commission has repeatedly cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer.¹⁴ **Each applicant should obtain confirmation from its financial institution that its wire transfer to the U.S. Treasury was successful and from Commission staff that its upfront payment was timely received and was deposited into the proper account.** For confirmation from the Commission, an applicant may contact Scott Radcliffe or Theresa Meeks of the Office of Managing Director's Revenue & Receivables Operations Group/Auctions using

(Continued from previous page) _____
175. See *infra* Part III.G (Auction Registration).

⁹ See *Updated Population Data Public Notice*, DA 20-520.

¹⁰ The affected areas in Alaska and Virginia are Hoonah-Angoon Census Area, Petersburg Borough, and Prince of Wales-Hyder Census Area, Alaska, and Bedford County, Virginia.

¹¹ See *Auction 105 Procedures Public Notice*, 35 FCC Rcd at 2182-84, paras. 131-39.

¹² The Commission will not accept checks, credit cards, or automated clearing house (ACH) payments.

¹³ Each applicant may access an electronic pre-filled version of the FCC Form 159 through the FCC auction application system. See *Auction 105 Procedures Public Notice*, 35 FCC Rcd at 2182, para. 131. Alternatively, applicants can find detailed instructions for completing FCC Form 159 in connection with Auction 105 upfront payments in the *Auction 105 Procedures Public Notice*. See *id.* at 2183-84, paras. 138-39.

¹⁴ 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).

the contact information listed at the end of this Public Notice. Detailed information regarding upfront payments can be found in Section III.F of the *Auction 105 Procedures Public Notice*.¹⁵

D. Short-Form Application Changes and Resubmission

10. Each applicant whose application for Auction 105 has been identified as incomplete must address each defect in its application during the resubmission window, which is now open.¹⁶ Any short-form application corrections must be made electronically using the FCC's auction application system. Corrected applications must be submitted **prior to 6:00 p.m. ET on Friday, June 19, 2019**. This will be the only opportunity to cure application defects, and late resubmissions will not be accepted. An applicant that filed an application deemed to be incomplete, as noted in Attachment B to this Public Notice, must submit a timely and sufficient upfront payment before the Commission will review its resubmitted application. If an application is incomplete or otherwise deficient after the resubmission deadline has passed, or if the required upfront payment is not made by the specified deadline, the applicant will not be permitted to bid in Auction 105.

11. During the resubmission window, applicants may log into the FCC's auction application system and make certain changes to its application(s).¹⁷ An applicant can view all the contents of its application, but the electronic FCC Form 175 will not permit an applicant to make changes to its license area selections or to the following data fields: applicant name, legal classification, certifier, or bidding credit. Administrative and minor changes can be made, including, for example, deletion and addition of authorized bidders (to a maximum of three), revision of addresses and telephone numbers of the applicant and its contact person, and changes to responsible party. While changes can be made to ownership and agreement information,¹⁸ we remind each applicant that any application changes must comply with the Commission's rules, which prohibit, among other things, changes in ownership that would constitute an assignment or transfer of control, as well as agreements that would constitute violations of section 1.2105(c).¹⁹ If any application is changed to effect a major amendment, such as a change in control, the applicant will be ineligible to bid in Auction 105.²⁰

II. OTHER IMPORTANT AUCTION 105 INFORMATION

A. Announcement of Qualified Bidders

12. Following Commission review of resubmitted short-form applications and the correlation of upfront payments and applications, a public notice listing all applicants qualified to bid in Auction 105

¹⁵ See *Auction 105 Procedures Public Notice*, 35 FCC Rcd at 2182-86, paras. 131-45.

¹⁶ 47 CFR § 1.2105(b)(2).

¹⁷ During the resubmission phase, applicants will have electronic access to update the following application fields: jurisdiction of formation/country of citizenship, applicant address, responsible party information, responsible party address, contact information, contact address, authorized bidder information, agreement information, and ownership information. During the resubmission period, some required updates in an FCC Form 175 may need to be submitted by uploading an attachment. During all phases of the application process, applicants have electronic access to make certain administrative changes including updates to: applicant address, responsible party address, contact information, and contact address.

¹⁸ For more information on making administrative changes to an existing application, see *Auction 105 Procedures Public Notice*, 35 FCC Rcd at 2174-75, paras. 97-103. See also *Short-Form Application (FCC Form 175) Filing Instructions for Auction 105* (Apr. 9, 2020), which is available under the Education section of the Auction 105 website at www.fcc.gov/auction/105.

¹⁹ See 47 CFR § 1.2105(b)-(c).

²⁰ *Id.* § 1.2105(b)(2).

will be released. This same public notice will also include bidding schedules for the mock auction and the first day of bidding in the auction.

B. Mock Auction Start Date Change

13. Please note that the mock auction will begin Friday, July 17, 2020, which is earlier than the date provided in the public notice announcing the postponement of certain dates and deadlines for Auction 105.²¹

C. Delivery of Registration Materials to Qualified Bidders

14. All qualified bidders are automatically registered for the auction.²² Registration materials will be sent by overnight delivery to the contact person listed on each qualified bidder's FCC Form 175. Due to COVID-19 restrictions, we ask all applicants to make sure that the contact address provided in their short-form application is accurate and is able to accept packages that will require a signature. The package will include an RSA token issued by the Commission specifically assigned to each of the authorized bidders identified on the qualified bidder's FCC Form 175. The RSA token will allow each authorized bidder to log in and access the FCC auction bidding system in order to participate in the mock auction and place bids in Auction 105. For security purposes, the RSA tokens, the Auction Bidder Line telephone number, and other auction-related materials will be sent only to the applicant's contact person at the contact address listed on its application.

III. APPLICANTS' CONTINUING OBLIGATIONS

A. Duty to Maintain Accurate Information in Short-Form Applications

15. We remind applicants that sections 1.65 and 1.2105(b) of the Commission's rules require an applicant to maintain the accuracy and completeness of information furnished in its pending short-form application to participate in Auction 105.²³ Each applicant should amend its short-form application to furnish additional or corrected information within five days of a significant occurrence, or no more than five days after the applicant becomes aware of the need for amendment.²⁴ All changes are subject to review by Commission staff.

16. An applicant that needs to make permissible minor changes to its FCC Form 175 or that must make changes in order to maintain the accuracy and completeness of its short-form application during a time when the FCC auction application system is available to the applicant for purposes of making the type of change(s) required²⁵ should make such changes to its FCC Form 175 electronically using the FCC auction application system. Between the closing of the resubmission filing window and the release of the public notice announcing qualified bidders for Auction 105, the only changes an applicant can make using the FCC auction application system are changes to its address, responsible party

²¹ See *Auction Postponement Public Notice*, 35 FCC Rcd 2891.

²² *Auction 105 Procedures Public Notice*, 35 FCC Rcd at 2186, para. 146.

²³ 47 CFR §§ 1.65, 1.2105(b).

²⁴ *Id.*

²⁵ As described in the Commission's rules, an applicant may make only minor corrections to its short-form application (e.g., changing certain contact information or authorized bidder information). See 47 CFR § 1.2105(b). A major modification includes a change in license area selection, newly claimed or increased bidding credit, or change in control of the applicant. *Id.*; see also, e.g., Koch Broadcasting Corp., Letter Order, 21 FCC Rcd 147 (WTB/MB 2006) (dismissing short-form application due to major amendment reporting change of control of applicant).

information, and contact information.²⁶ For all other application changes prior to the release of the public notice announcing qualified bidders for Auction 105, an applicant must submit a letter briefly summarizing the changes to its FCC Form 175 by email to auktion105@fcc.gov to the attention of the Auctions Division Chief, Office of Economics and Analytics.²⁷ An applicant must not submit application-specific material through the Commission's Electronic Comment Filing System.

17. For more information on an applicant's continuing obligation to maintain the accuracy and completeness of information furnished in its application to participate in Auction 105, applicants should refer to previous Auction 105 public notices, including the *Auction 105 Procedures Public Notice*.²⁸

B. Due Diligence

18. We remind each potential bidder that it is solely responsible for investigating and evaluating all legal, technical, and marketplace factors and risks associated with the licenses that it is seeking in Auction 105; evaluating the degree to which those factors and risks may have a bearing on the value of the licenses being offered and/or affect the bidder's ability to bid on, otherwise acquire, or make use of such licenses; and conducting any technical analyses necessary to assure itself that, if it wins any license(s), it will be able to build and operate facilities in accordance with the Commission's rules.²⁹ In addition, each potential bidder's due diligence efforts should include, among other things: (1) reviewing all Commission orders and public notices establishing rules and policies for the Priority Access Licenses in the 3550-3650 MHz band; (2) conducting research to determine the existence of any pending administrative or judicial proceedings that might affect its decision to participate in the auction;³⁰ (3) performing (or refreshing previous) technical analyses; and (4) inspecting any prospective transmitter sites located in, or near, the service area for which it plans to bid and confirming the availability of such sites and their conformance with applicable federal, state, and local land use requirements.³¹ Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts. Participants in Auction 105 should continue such due diligence throughout the auction.

²⁶ An applicant should not use the auction application system outside of the initial and resubmission filing windows to make changes to its short-form application for other than administrative changes. Auction applicants are not permitted to make a change to the following data fields after the short-form application filing deadline: applicant name, legal classification, certifier, bidding credit, and license area selection.

²⁷ The letter summarizing the changes must include a subject or caption referring to Auction 105 and the name of the applicant, for example, "Re: Changes to Auction 105 Application of XYZ Corp." Any attachments to email must be formatted as Adobe® Acrobat® (PDF) or Microsoft® Word documents. An applicant that submits its changes in this manner must subsequently update its short-form application in the FCC auction application system once it is open and available to applicants again.

²⁸ See *Auction 105 Procedures Public Notice*, 35 FCC Rcd at 2174, para. 96; see also 47 CFR §§ 1.65, 1.2105(b). Questions about FCC Form 175 amendments should be directed to the Auctions Division at (202) 418-0660 or by email to auktion105@fcc.gov.

²⁹ See *Auction 105 Procedures Public Notice*, 35 FCC Rcd at 2175-76, paras. 104-07.

³⁰ The Commission's statutory authority under the Communications Act of 1934, as amended, to add, modify, and eliminate rules governing spectrum use, as the public interest warrants, applies equally to all licenses, whether acquired through the competitive bidding process or otherwise. See 47 U.S.C. § 309(j)(6)(C)-(D); *Celtronix Telemetry, Inc. v. FCC*, 272 F.3d 585 (D.C. Cir. 2001).

³¹ See, e.g., 47 U.S.C. §§ 332(c)(7), 1455(a); see also *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket Nos. 13-238 and 32, WC Docket No. 11-54, Report and Order, 29 FCC Rcd 12865 (2014).

19. The Commission makes no representations or warranties about the use of this spectrum or these licenses for particular services. Each applicant should be aware that a Commission auction represents an opportunity to become a Commission licensee, subject to certain conditions and regulations. A Commission auction does not constitute an endorsement by the Commission of any particular service, technology, or product, nor does a Commission license constitute a guarantee of business success. For further details regarding due diligence, please refer to Section III.A of the *Auction 105 Procedures Public Notice*.³²

20. Additionally, we remind applicants of the four-PAL aggregation limit imposed by section 96.31 of the Commission's rules.³³ Priority Access Licensees may hold up to four PALs in any county license area at any given time. For purposes of applying this spectrum aggregation limit, the criteria in section 20.22(b) will apply in order to attribute partial ownership and other interests.³⁴ Controlling interests, non-controlling interest of more than 10%, and certain interests in spectrum are deemed to create an affiliation for purposes of section 20.22(b).³⁵

C. Prohibition of Certain Communications

21. We remind applicants that the rules prohibiting certain communications set forth in section 1.2105(c) of the Commission's rules apply to each applicant that filed a short-form application (FCC Form 175) in Auction 105.³⁶ Section 1.2105(c)(1) provides that, subject to specified exceptions, after the deadline for filing a short-form application, "all applicants are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other or any nationwide provider [of communications services] that is not an applicant, or, if the applicant is a nationwide provider, any non-nationwide provider that is not an applicant, in any manner the substance of their own, or each other's, or any other applicants' bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after the down payment deadline[.]"³⁷ An "applicant" for purposes of this rule includes all "controlling interests" in the entity submitting the FCC Form 175, as well as all holders of interests amounting to 10% or more of the entity, and all officers and directors of that entity.³⁸ AT&T, T-Mobile, and Verizon Wireless are the "nationwide providers" for purposes of this rule in Auction 105.³⁹

22. This prohibition took effect as of the short-form application filing deadline, which for Auction 105 was Thursday, May 7, at 6:00 p.m. ET, and ends at the post-auction down payment deadline for Auction 105, which will be announced in a future public notice.⁴⁰ **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid in**

³² See *Auction 105 Procedures Public Notice*, 35 FCC Rcd at 2175-76, paras. 104-08.

³³ 47 CFR § 96.31(a).

³⁴ *Id.* § 96.31(b); see also *id.* § 20.22(b).

³⁵ *Id.* § 20.22(b).

³⁶ 47 CFR § 1.2105(c)(1); see also *Auction 105 Procedures Public Notice*, 35 FCC Rcd at 2154-55, paras. 42-43.

³⁷ 47 CFR § 1.2105(c).

³⁸ 47 CFR § 1.2105(c)(5)(i); *Auction 105 Procedures Public Notice*, 35 FCC Rcd at 2155, para. 43.

³⁹ *Auction 105 Procedures Public Notice*, 35 FCC Rcd at 2155, para. 44.

⁴⁰ *Id.* at 2155, para. 45; see also 47 CFR § 1.2105(c)(1).

Auction 105.⁴¹ For further information on the prohibition, applicants should refer to the *Auction 105 Procedures Public Notice*.⁴²

23. *Disclosure Obligations.* Section 1.2105(c)(4) requires each auction applicant that makes or receives a communication that appears to violate section 1.2105(c) to report the communication in writing to the Commission immediately, but in no case later than five business days after the communication occurs, even if the communication does not result in an agreement or understanding regarding bids or bidding strategy that must be reported under section 1.65.⁴³ 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.⁴⁴

24. *Reporting Prohibited Communication.* Any party reporting any communication pursuant to sections 1.65, 1.2105(a)(2), or 1.2105(c)(4) must take care to ensure that the report does not itself give rise to a violation of section 1.2105(c). To minimize the risk of inadvertent dissemination of a report of a potential prohibited communication, section 1.2105(c)(6) requires a party to file only a single report with the Chief of the Auctions Division in OEA.⁴⁵ For Auction 105, any such report must be filed according to the instructions set forth in the *Auction 105 Procedures Public Notice*.⁴⁶

25. *Possible Sanctions.* Any applicant found to have violated section 1.2105(c) of the Commission's rules may be subject to sanctions.⁴⁷ In addition, we remind each applicant that it is subject to the antitrust laws, which are designed to prevent anti-competitive behavior in the marketplace. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount, and it may be prohibited from participating in future auctions, among other sanctions.⁴⁸

D. Limited Information Procedures

26. We remind applicants that, under the limited information procedures in effect for Auction 105 (sometimes also referred to as anonymous bidding), the Commission is withholding from public release, until after the close of bidding in Auction 105, any information that may indicate specific applicants' interests in the auction—including, among other things, license area selections, upfront payments and eligibility information, and the identities of bidders placing bids or taking other bidding-

⁴¹ A party that submits an auction application becomes an "applicant" under the rule at the application filing deadline and that status does not change based on subsequent developments. *See, e.g., Star Wireless, LLC v. FCC*, 522 F.3d 469 (D.C. Cir. 2008) (holding that section 1.2105(c) applies to applicants regardless of whether they are qualified to bid). Thus, an auction applicant that does not correct deficiencies in its application, fails to submit a timely and sufficient upfront payment, or does not otherwise become qualified, remains an "applicant" for purposes of the rule and remains subject to the prohibition on certain communications until the post-auction down payment deadline for Auction 105. *Auction 105 Procedures Public Notice*, 35 FCC Rcd at 2155 n.92, para. 43.

⁴² *Auction 105 Procedures Public Notice*, 35 FCC Rcd at 2154-61, paras. 42-67.

⁴³ 47 CFR § 1.2105(b); *see also Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures*, WT Docket No. 97-82, Seventh Report and Order, 16 FCC Rcd 17546, 17553-55, paras. 13-17 (2001).

⁴⁴ *See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 07-166, et al, Second Report and Order, 22 FCC Rcd 15289, 15395, paras. 285-86 (2007).

⁴⁵ 47 CFR § 1.2105(c)(6); *Part 1 Procedural Amendments Order*, 25 FCC Rcd at 522, para. 4.

⁴⁶ *See Auction 105 Procedures Public Notice*, 35 FCC Rcd at 2160, paras. 61-63.

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

⁴⁸ *See id.* § 1.2109(d).

related actions.⁴⁹ Accordingly, communication with other applicants or public disclosure of such non-public information may violate the Commission's limited information procedures and the rule prohibiting certain communications, section 1.2105(c) of the Commission's rules.

27. Therefore, applicants must take care not to communicate non-public information to the public, financial analysts, or the press.⁵⁰ Examples of communications raising concern, given the limited information procedures in effect for Auction 105, would include an applicant's statement to the press about its upfront payment or bidding eligibility and an applicant's statement to the press that it is or is not interested in bidding in the auction.

E. Submission of Auction-Related Filings

28. A party wishing to submit a request, a complaint, or other information concerning Auction 105 should, in addition to following other procedures prescribed by the Commission's rules, send a copy by email to auktion105@fcc.gov to the attention of the Auctions Division Chief. We occasionally receive complaints regarding specific bidders and requests to suspend bidding during an auction. While we reserve the right to take appropriate action during an auction to preserve the integrity of the auction process, it is generally our practice to address any such allegations only after a winning bidder has submitted its long-form application, when there is greater opportunity for investigation of such allegations, if warranted. The Commission will not investigate any complaints or allegations that are not accompanied by full contact information, including name, address, and telephone number, for the complaining party or parties.

F. Ex Parte Rule

29. Applicants should also be aware that the Commission has generally treated mutually exclusive short-form applications as exempt proceedings and, therefore, not subject to the *ex parte* prohibitions that pertain to restricted proceedings.⁵¹

IV. CONTACT INFORMATION

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

31. Additional information for applicants is available at the Auction 105 web page (www.fcc.gov/auktion/105).

⁴⁹ See *Auction 105 Procedures Public Notice*, 35 FCC Rcd at 2153-54, paras. 36-41.

⁵⁰ The Commission has long expressed the concern that applicants should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become a conduit for the communication of non-public information relating to auctions, such as bids and bidding strategies. See *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.").

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

32. For further information concerning Auction 105, contact:

General Auction Information

General Auction Questions

FCC Auctions Hotline(888) 225-5322, option two; or
(717) 338-2868**Auction 105 Process and Procedures**Bidding Procedures
Auction Schedule**Auctions Division, OEA**

Auctions Hotline (717) 338-2868

Auction 105 Legal InformationAuction Rules, Policies, Regulations, Including
Reports of Section 1.2105(c) Violations and
Application Modifications**Auctions Division, OEA**(202) 418-0660
Mary Lovejoy
Scott Mackoul**Licensing Information**Service Rules, Policies, Regulations
Licensing Issues, Engineering Issues
Due Diligence, Incumbency Issues**Mobility Division, WTB**(202) 418-1991
Jessica Quinley**Technical Support**

Hardware/Software Issues with Electronic Filing

FCC Auctions Technical Support Hotline(877) 480-3201, option nine; or (202) 414-1250
(202) 414-1255 (TTY)
Hours of service: 8:00 a.m. – 6:00 p.m. ET,
Monday through Friday**Payment Information**Instructions for Wiring Upfront Payments and
Completing Form 159**FCC Revenue & Receivables Operations
Group/Auctions**Scott Radcliffe at (202) 418-7518 or
Theresa Meeks at (202) 418-2945
(202) 418-2843 (fax) or email to
RROGWireFaxes@fcc.gov**Press Information**

Cecilia Sulhoff at (202) 418-0587

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

–FCC–