



# PUBLIC NOTICE

**Federal Communications Commission**  
**45 L Street NE**  
**Washington, DC 20554**

News Media Information: 202-418-0500  
Internet: [www.fcc.gov](http://www.fcc.gov)  
TTY: 888-835-5322

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## **AUCTION OF CONSTRUCTION PERMITS FOR LOW POWER TELEVISION AND TV TRANSLATOR STATIONS**

### **NOTICE AND FILING REQUIREMENTS, MINIMUM OPENING BIDS, UPFRONT PAYMENTS, AND OTHER PROCEDURES FOR AUCTION 111**

**BIDDING SCHEDULED TO BEGIN FEBRUARY 23, 2022**

**AU Docket No. 21-284**

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ATTACHMENT A: AUCTION 111 – CONSTRUCTION PERMITS

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

## I. GENERAL INFORMATION

### A. Introduction

1. By this Public Notice, the Office of Economics and Analytics (OEA) and the Media Bureau (MB) establish the procedures to be used for Auction 111, a closed auction of construction permits for new or modified low power television (LPTV) stations and TV translator stations (collectively referred to as “LPTV/translator stations”). Bidding in this auction is scheduled to start on February 23, 2022. Auction 111 is a closed auction; only those parties listed in Attachment A to this Public Notice are eligible to file applications to participate in Auction 111 and to complete the remaining steps to become qualified to bid. This Public Notice provides details regarding the procedures, terms, conditions, dates, and deadlines governing participation in Auction 111, as well as an overview of the post-auction application and payment processes.

### B. Background and Relevant Authority

2. Auction 111 will resolve groups of pending mutually exclusive (MX) engineering proposals for up to 17 new or modified LPTV/translator station construction permits. The MX groups and engineering proposals listed in Attachment A consist of applications for new LPTV/translator stations, or major changes to existing stations, that were accepted on a first-come, first-served basis (i.e., rolling one-day windows), pursuant to section 74.787(a)(3) of the Commission’s rules<sup>1</sup> and displacement relief applications filed pursuant to a special filing window for eligible LPTV/translator stations displaced by the broadcast television spectrum incentive auction (Auction 1000).<sup>2</sup> Any LPTV/translator station applications for new facilities, major changes to existing facilities, or displacement relief that are mutually exclusive with one another must be resolved via the Commission’s part 1 and part 73 competitive bidding rules.<sup>3</sup>

3. In 2009, MB began accepting applications for new rural digital LPTV/translator stations on a limited basis and then later froze those filings.<sup>4</sup> All but one of the MX groups listed in Attachment A

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<sup>1</sup> 47 CFR § 74.787(a)(3); *see Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, MB Docket No. 03-185, Report and Order, 19 FCC Rcd 19331, 19383, para. 155 (2004) (*Digital LPTV Order*). LPTV/translator station licensing and operation is governed by part 74, subpart G of the Commission’s rules. 47 CFR §§ 74.701-799. In addition, many part 73 broadcast regulations are applicable to LPTV/translator stations, including sections 73.3522 (Amendment of Applications), 73.3525 (Agreements for Removing Application Conflicts), and 73.3568 (Dismissal of Applications). *Id.* § 74.789.

<sup>2</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*, MB Docket No. 16-306, Public Notice, 33 FCC Rcd 1234 (IATF/MB 2018) (*Special Displacement Filing Public Notice*); *see* 47 CFR § 73.3700(g); *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567, 6835-37, paras. 659-61 (2014) (*Broadcast Incentive Auction Report and Order*).

<sup>3</sup> 47 CFR § 74.787(a)(3)-(4); *see id.* § 73.3700(g) (indicating that LPTV/translator displacement relief applications filed pursuant to the post-incentive auction licensing rules are generally subject to 47 CFR § 74.787(a)(4)); *see also Digital LPTV Order*, 19 FCC Rcd at 19384-87, paras. 160-67; *Broadcast Incentive Auction Report and Order*, 29 FCC Rcd at 6837, para. 661.

<sup>4</sup> *See Commencement of Rural, First-Come, First-Served Digital Licensing*, Public Notice, 24 FCC Rcd 8911 (MB 2009) (*Rural Filing Public Notice*); *Freeze on the Filing of Applications for New Digital Low Power Television and TV Translator Stations*, Public Notice, 25 FCC Rcd 15120 (MB 2010); *Initiation of Nationwide First-Come, First-* (continued....)

consist of applications for new or modified rural digital LPTV/translator stations that were submitted on the first day that MB began accepting such applications. The remaining MX group listed in Attachment A consists of two displacement relief applications filed pursuant to a special displacement application filing window opened in 2018 by the Incentive Auction Task Force and MB for eligible licensees and permittees of LPTV/translator stations displaced by Auction 1000.<sup>5</sup>

4. In order to facilitate resolution of pending mutually exclusive LPTV/translator station applications before initiating competitive bidding procedures, and given the passage of time since the applications were filed, MB announced that it would withhold action on certain MX applications for new or modified LPTV/translator stations, including each application listed in Attachment A, from June 1, 2020 to July 31, 2020, in order to provide applicants with an opportunity to resolve mutual exclusivity through settlement or technical modification of their engineering proposals.<sup>6</sup> MB advised each applicant that, absent resolution of its mutual exclusivity, its application would be subject to the Commission's competitive bidding procedures.<sup>7</sup>

5. On July 9, 2021, we released a public notice seeking comment on competitive bidding procedures to be used in Auction 111 to resolve the applications that remained MX after this settlement period.<sup>8</sup> We received no comments in response to the *Auction 111 Comment Public Notice*. In this Public Notice, we resolve all open issues raised in the *Auction 111 Comment Public Notice*. Auction 111 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>9</sup>

6. Other Commission rules and decisions provide the underlying authority for the procedures we adopt today for Auction 111. Among other things, prospective applicants should familiarize themselves with the Commission's general competitive bidding rules,<sup>10</sup> including recent (Continued from previous page) \_\_\_\_\_

*Served Digital Licensing for Low Power Television and TV Translators Postponed Until Further Notice, Public Notice*, 25 FCC Rcd 8179 (MB 2010) (*Rural Filing Freeze Public Notice*). Applications were first accepted for "rural areas" defined as specifying transmitting antenna site coordinates (geographic latitude and longitude) located more than 121 kilometers (75 miles) from the reference coordinates of the cities listed in Appendix A of the Public Notice. See *Rural Filing Public Notice*, 24 FCC Rcd at 8912, 8915-17.

<sup>5</sup> Displacement for LPTV Station Application of Ventana Television, Inc., LMS File No. 0000048498 (filed Mar. 12, 2018), Displacement for LPTV Station Application of Venture Technologies Group, LLC, LMS File No. 0000054805 (filed June 1, 2018). See *Special Displacement Filing Public Notice*, 33 FCC Rcd 1234. Auction 1000, which repurposed 84 megahertz of the 600 MHz band spectrum, resulted in the channel reassignments of certain full power and Class A television stations, and in turn displaced certain LPTV/translator stations. See *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*, MB Docket No. 16-306, Public Notice, 32 FCC Rcd 3860 (IATF/MB 2017).

<sup>6</sup> *Media Bureau Announces Settlement Opportunity for Mutually Exclusive Low Power Television and TV Translator Applications; June 1, 2020-July 31, 2020*, Public Notice, 35 FCC Rcd 5506 (MB 2020) (*2020 Settlement Opportunity Public Notice*).

<sup>7</sup> *Id.* at 5506. With regard to MX Group 21, this filing window fulfilled the settlement opportunity provided for mutually exclusive post-incentive auction displacement relief applications by section 74.3700(g)(3) of the Commission's rules. 47 CFR § 74.3700(g)(3); see *Broadcast Incentive Auction Report and Order*, 29 FCC Rcd at 6837, para. 661.

<sup>8</sup> See *Auction of Construction Permits for Low Power Television and TV Translator Stations; Comment Sought on Competitive Bidding Procedures for Auction 111*, AU Docket No. 21-284, Public Notice, DA 21-801 (OEA/MB July 9, 2021) (*Auction 111 Comment Public Notice*). A summary of the *Auction 111 Comment Public Notice* was published in the Federal Register at 86 Fed. Reg. 37972 (July 19, 2021).

<sup>9</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>10</sup> 47 CFR part 1, subpart Q; see *id.* part 73, subpart I (competitive bidding rules for broadcast services).

amendments and clarifications thereto, as well as Commission decisions regarding competitive bidding procedures, application requirements, and obligations of Commission licensees.<sup>11</sup> Applicants should also familiarize themselves with the Commission's rules relating to the LPTV and TV translator services, as well as Commission orders concerning competitive bidding for broadcast construction permits.<sup>12</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.

7. 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. Pursuant to the Commission's rules, OEA and MB also retain the authority to implement further procedures during the course of this auction.<sup>13</sup> It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to Auction 111.<sup>14</sup>

### C. Construction Permits and Parties Eligible to Participate in Auction 111

8. Attachment A lists the pending applications for LPTV/translator station construction permits that will be assigned through Auction 111 unless the applicants resolve their mutual exclusivity by entering into settlement agreements or making minor amendments to their pending applications before the deadline for filing an application to participate in the auction (FCC Form 175), referred to as a short-form application.<sup>15</sup> Only the LPTV/translator station applicants listed in Attachment A are eligible to file a short-form application for Auction 111. An applicant listed in Attachment A may become qualified to bid in Auction 111 only if it complies with the auction filing, qualification, and payment requirements described in this Public Notice, and otherwise complies with applicable rules, policies, and procedures. Each listed applicant may become a qualified bidder only for those construction permits specified for that applicant in Attachment A to this Public Notice. As noted in the *Auction 111 Comment Public Notice*,

<sup>11</sup> See, e.g., *Updating Part 1 Competitive Bidding Rules; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, WT Docket Nos. 14-170 and 05-211, GN Docket No. 12-268, RM-11395, 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*, WT Docket No. 97-82, Order, Memorandum Opinion and Order and Notice of Proposed Rule Making, 12 FCC Rcd 5686 (1997) (*Part 1 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) (*Part 1 Third R&O Second Recon/Part 1 Fifth R&O Recon*); Second Order on Reconsideration of the Fifth Report and Order, 20 FCC Rcd 1942 (2005) (*Part 1 Fifth R&O Second Recon*).

<sup>12</sup> See 47 CFR §§ 74.1-74.34, 74.701-74.799; 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); *Digital LPTV Order*, 19 FCC Rcd 19331.

<sup>13</sup> See generally 47 CFR §§ 0.21(m), 0.61(a).

<sup>14</sup> Copies of most auctions-related Commission documents, including public notices, can be retrieved from the Commission's FCC Auctions website at [www.fcc.gov/auctions](http://www.fcc.gov/auctions). Additionally, documents are available at the Commission's headquarters during normal business hours when the building is open to the public. Contact Auctions Division staff at [auction111@fcc.gov](mailto:auction111@fcc.gov) or (202) 418-0660 for guidance. See Section VI. "Procedural Matters," below.

<sup>15</sup> Attachment A also lists, for the construction permit for each MX Group, the minimum opening bid amount and upfront payment amount and, for each pending application in each MX group, the applicant name, FCC Registration Number (FRN), file number, facility identification number, community of license, and the channel requested.

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 through Auction 111 for each MX group identified in Attachment A.<sup>16</sup> A copy of this Public Notice is being sent to each party listed as an applicant in Attachment A.<sup>17</sup>

9. Section 73.3572(b) of the Commission's rules prohibits the transfer or assignment of an application for a new LPTV/translator station construction permit.<sup>18</sup> Any change in ownership to an applicant for a new LPTV/translator station construction permit listed in Attachment A that has resulted in a change in control of the applicant, or a situation where the original party or parties to the application do not retain more than 50 percent ownership interest in the application as originally filed, is considered a major amendment to the application and will result in the application being considered newly filed.<sup>19</sup> If the LPTV/translator station application is considered newly-filed, the applicant will not be eligible to file a short-form application for Auction 111 and its pending application will be dismissed.

10. In accordance with the Commission's rules, the LPTV/translator station applicants listed in Attachment A may withdraw or make minor amendments to their pending LPTV/translator station applications or enter into legal or engineering settlement agreements until 6:00 p.m. Eastern Time (ET) on November 9, 2021, the deadline announced herein for filing short-form applications in Auction 111.<sup>20</sup> As mentioned in the *Auction 111 Comment Public Notice*, if such actions (1) are submitted prior to the short-form application filing deadline, (2) are fully in accordance with the Communications Act of 1934, as amended (Act) and the Commission's rules, as determined by Commission staff, and (3) completely resolve the mutual exclusivity, then the subject MX group will be removed from Auction 111 and the remaining engineering proposal(s) will be processed under standard licensing procedures.<sup>21</sup> Additional details regarding making filings to resolve mutual exclusivity prior to the short-form application filing deadline are provided below.

11. Shortly after the short-form application filing deadline, we will release a public notice identifying the remaining mutually exclusive applications that will be resolved through competitive bidding in Auction 111. As provided in section 73.5002(d) of the Commission's rules, these mutually exclusive applicants will then be given one final limited opportunity to resolve mutual exclusivity by the filing of technical amendments, dismissal requests, and requests for approval of universal settlements.<sup>22</sup>

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<sup>16</sup> *Auction 111 Comment Public Notice* at 5, para. 9.

<sup>17</sup> The Public Notice will be sent by email and overnight delivery to the contact address listed on each LPTV/translator station application listed in Attachment A. Future public notices in this proceeding may be provided directly to each applicant listed in Attachment A at this contact address as well. Each applicant is obligated to maintain the accuracy of this information pursuant to section 1.65 of the Commission's rules. 47 CFR § 1.65. We ask each party that is eligible to file a short-form application in Auction 111 to make sure that the contact address provided in its LPTV/translator station application is accurate and is a location capable of accepting packages. After the deadline for filing short-form applications (FCC Form 175) to participate in Auction 111, Auction 111-related materials will be sent to auction applicants at the contact addresses in their short-form applications. These addresses should also be locations that are capable of accepting packages that require signatures.

<sup>18</sup> See 47 CFR § 73.3572(b) (a change in ownership of an applicant that results in a situation where the original party or parties to the application do not retain more than 50 percent ownership interest in the application as originally filed will be considered newly filed). An applicant must timely notify the Commission of any significant change in the ownership of the applicant, regardless of whether such change would result in the application being considered newly filed or not. See *id.* § 1.65

<sup>19</sup> *Id.* §§ 73.3522(a)(3), 73.3572(b).

<sup>20</sup> See 47 U.S.C. § 311(c); 47 CFR §§ 73.3525, 73.3522.

<sup>21</sup> *Auction 111 Comment Public Notice* at 4, para. 6.

Due to the prohibited communications rule, which starts at the short-form application filing deadline, applicants in Auction 111 will not be able to communicate with each other for the purpose of resolving conflicts outside of this limited settlement period.<sup>23</sup> As noted in the *Auction 111 Comment Public Notice*, under the Commission's established precedent, once two or more short-form applications are accepted for an MX group, mutual exclusivity exists for the relevant construction permit for auction purposes.<sup>24</sup> Unless the mutual exclusivity is resolved during this limited settlement opportunity, an applicant in Auction 111 cannot obtain a construction permit without placing a bid, even if no other auction applicant for that particular construction permit becomes qualified to bid or in fact places a bid.<sup>25</sup>

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

##### **1. Auction Title and Start Date**

12. This closed auction of construction permits for new and modified LPTV/Translator stations will be referred to as "Auction 111." Bidding in Auction 111 will begin on Wednesday, February 23, 2022. Pre-auction dates and deadlines are listed below.

13. The initial schedule for bidding rounds will be announced by public notice at least one week before the bidding starts in Auction 111. 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 Dates and Deadlines**

14. The following dates and deadlines apply to Auction 111:

Auction Tutorial Available (via Internet).....	No later than October 13, 2021
Short-Form Application (FCC Form 175)	
Filing Window Opens.....	November 1, 2021, 12:00 p.m. ET

(Continued from previous page) \_\_\_\_\_

<sup>22</sup> 47 CFR §§ 73.5002(d) (noting that certain applicants will be permitted to resolve mutual exclusivities "by means of engineering solutions or settlements during a limited period after the filing of short-form applications"), 74.787(a)(3)-(4) (applying 47 CFR § 73.5002(d) to certain mutually exclusive applications for LPTV/translator stations).

<sup>23</sup> Section 1.2105(c)(1) of the Commission's rules provides that, subject to specified exceptions, "[a]fter the short-form application filing deadline, all applicants are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other . . . in any manner the substance of their own, or each other's, or any other applicants' bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after the down payment deadline[.]" 47 CFR § 1.2105(c)(1). Sections 74.787(a)(3)(4) and 73.5002(d) of the Commission's rules provide a limited exception to the prohibited communications rule to allow certain mutually exclusive LPTV/translator station applicants to resolve their mutual exclusivity by means of engineering solutions or settlements during a limited period after the filing of short-form applications. 47 CFR §§ 73.5002(d), 74.787(a)(3), (4).

<sup>24</sup> 47 U.S.C. § 309(j)(1); *Auction 111 Comment Public Notice* at 5, para. 9.

<sup>25</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) (*Auction 25 Procedures Public Notice*).

Short-Form Application (FCC Form 175)	
Filing Window Deadline .....	November 9, 2021, 6:00 p.m. ET
Upfront Payments (via wire transfer) .....	January 25, 2022, 6:00 p.m. ET
Mock Auction .....	February 17, 2022
Bidding Begins in Auction 111 .....	February 23, 2022

### 3. Requirements for Participation

15. Those parties listed in Attachment A that wish to participate in Auction 111 must:
- Submit a short-form application (FCC Form 175) electronically prior to 6:00 p.m. ET on November 9, 2021, following the electronic filing procedures set forth in the FCC Form 175 Instructions.<sup>26</sup>
  - Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET on January 25, 2022, following the procedures and instructions set forth in Attachment B to this Public Notice.
  - Comply with all provisions outlined in this Public Notice and applicable Commission rules.

## II. APPLYING TO PARTICIPATE IN AUCTION 111

### A. Resolving Mutual Exclusivity Prior to the Short-Form Application Filing Deadline

16. The parties listed in Attachment A may avoid resolving their mutual exclusivity through competitive bidding by instead resolving their mutual exclusivity, prior to the short-form application filing deadline, by means of requests to dismiss the pending LPTV/translator station applications, unilateral engineering amendments to such applications, legal settlement, or engineering settlement. Any unilateral amendments or amendments pursuant to a settlement agreement made to the pending LPTV/translator station applications must be minor, as defined by the applicable rules, and must not create new mutual exclusivities or application conflicts.<sup>27</sup> Any legal or engineering settlement agreements must be filed with the Commission for approval and must include the documentation required by section 73.3525 of the Commission's rules.<sup>28</sup> All amendments to pending applications and any requests for approval of settlement agreements, as well as accompanying documentation, must be submitted by filing an amended FCC Form 2100 – Schedule C in the Media Bureau's Licensing and Management System (LMS) by **6:00 pm ET on November 9, 2021**. We encourage the parties listed in Attachment A that are interested in resolving their mutual exclusivity to initiate and complete negotiations, and make any necessary filings, well ahead of the short-form application filing deadline.<sup>29</sup>

17. As mentioned above, if a unilateral engineering amendment or legal or engineering settlement (1) is submitted for approval in accordance with the procedures described above by 6:00 pm ET on November 9, 2021, (2) is fully in accordance with the Act and the Commission's rules, as determined by Commission staff, and (3) completely resolves the mutual exclusivity, then the subject MX group will be removed from Auction 111 and the remaining engineering proposal(s) will be processed under standard licensing procedures.<sup>30</sup> If no such filing is made, and therefore the engineering proposals

<sup>26</sup> OEA will make publicly available detailed instructions for submitting an FCC Form 175 for Auction 111 (FCC Form 175 Instructions) in the Education section of the Auction 111 website at [www.fcc.gov/auction/111](http://www.fcc.gov/auction/111).

<sup>27</sup> See 47 CFR §§ 73.3572(a)(4), 74.787(a)(4).

<sup>28</sup> 47 CFR § 73.3525; see, e.g., 2020 Settlement Opportunity Public Notice 35 FCC Rcd at 5506-07.

<sup>29</sup> Applicants, however, should avoid both entering into a settlement agreement for a construction permit prior to the short-form application deadline and filing a short-form application covering that same construction permit. Such a situation could raise issues with regard to the applicant's compliance with the prohibited communications rule.



in an MX group remain mutually exclusive as of the short-form application filing deadline, then each applicant in that MX group must timely file a short-form application in order to avoid dismissal of its pending LPTV/translator station application. Specifically, MB will dismiss the mutually exclusive long-form application of any party eligible to participate in Auction 111 that fails to submit a short-form application.<sup>31</sup> Accordingly, if only one member of an MX group submits a short-form application, and thus all other long-form applications in that MX group are dismissed, that short-form application is not mutually exclusive for auction purposes and the relevant construction permit will not be included in Auction 111. In that case, the engineering proposal of the party that submitted a short-form application will be treated as a “singleton” and processed under standard licensing procedures.<sup>32</sup> We note that, if an applicant forgoes filing a short-form application pursuant to an agreement with mutually exclusive applicants, such settlement agreement must be submitted to MB for approval, as described above.<sup>33</sup>

#### **B. General Information Regarding Short-Form Applications**

18. A short-form application, or FCC Form 175, provides information that the Commission uses to determine whether the applicant has the legal, technical, and financial qualifications to participate in a Commission auction for licenses or permits.<sup>34</sup> The short-form application is the first part of the Commission’s two-phased auction application process. In the first phase, a party seeking to participate in Auction 111 must file a short-form application in which it certifies, under penalty of perjury, that it is qualified to participate.<sup>35</sup> Eligibility to participate in Auction 111 is determined based on an applicant’s short-form application and certifications and on the applicant’s upfront payment.<sup>36</sup> After bidding closes, in the second phase of the process, each winning bidder in Auction 111 must file an amendment to its pending long-form application listed in Attachment A for each permit it wins in the auction.<sup>37</sup>

19. A party seeking to participate in Auction 111 must file an FCC Form 175 electronically via the Auction Application System prior to 6:00 p.m. ET on November 9, 2021, following the

(Continued from previous page)

<sup>30</sup> *Auction 111 Comment Public Notice* at 4, para. 6.

<sup>31</sup> 47 CFR § 74.3568(a); *see Auction 25 Procedures Public Notice*, 14 FCC Rcd at 10635 (explaining that pending, mutually exclusive long-form applications would be dismissed if applicants failed to file a short-form application in a closed broadcast auction).

<sup>32</sup> *See Auction 25 Procedures Public Notice*, 14 FCC Rcd at 10634, 10637.

<sup>33</sup> 47 CFR § 73.3525. We note that if a party to a settlement agreement files a short-form application, that settlement agreement may need to be disclosed in its short-form application pursuant to section 1.2105(a)(2)(viii) or may be a prohibited joint bidding agreement pursuant to section 1.2105(a)(2)(ix). 47 CFR § 1.2105(a)(2)(viii)-(ix).

<sup>34</sup> *See* 47 CFR §§ 1.2105, 73.5002; *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, para. 166 (1994) (*Competitive Bidding Second Report and Order*).

<sup>35</sup> *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2376, para. 165.

<sup>36</sup> *See* Section III.E. “Upfront Payments,” below.

<sup>37</sup> *See* 47 CFR § 73.5005 (requiring high bidders in auctions of broadcast spectrum to file appropriate long-form applications). Because each party eligible to participate in Auction 111 has already filed a long-form application for a new or modified LPTV/translator station, winning bidders will be required to file the additional information that would be provided in a post-auction, long-form application as a minor amendment to the relevant pending long-form application. *Cf. 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, Public Notice, 34 FCC Rcd 4216, 4251, para. 137 (IATF/MB/OEA 2019) (*Auction 104 Procedures Public Notice*) (adopting similar post-auction procedures for an auction of LPTV/translator station construction permits). For more information regarding amendments to long-form applications of winning bidders, *see* Section V.C. “Winning Bidder Amendments to Long-Form Applications,” below. We remind applicants that being deemed qualified to bid in Auction 111 does not constitute a determination that a party is qualified to hold a Commission license or is eligible for a new entrant bidding credit.

procedures prescribed in the FCC Form 175 Instructions. If an applicant claims eligibility for a bidding credit, then the information provided in its FCC Form 175 will be used to determine whether the applicant is eligible for the claimed bidding credit. Below we describe more fully the information disclosures and certifications required in the short-form application. An applicant that files an FCC Form 175 for Auction 111 will be subject to the Commission's rule prohibiting certain communications.<sup>38</sup> An applicant is subject to the prohibition beginning at the deadline for filing short-form applications—6:00 p.m. ET on November 9, 2021.<sup>39</sup>

20. An Auction 111 applicant bears full responsibility for submitting an accurate, complete, and timely short-form application. Pursuant to the Commission's competitive bidding rules, you must make a series of certifications under penalty of perjury on your FCC Form 175 related to the information provided in your application and your participation in the auction, and you must confirm that you are legally, technically, financially, and otherwise qualified to hold a license.<sup>40</sup> If you fail to make the required certifications in your FCC Form 175 by the filing deadline, then your application will be deemed unacceptable for filing and cannot be corrected after the filing deadline.<sup>41</sup>

21. Submitting an FCC Form 175 (and any amendments thereto) constitutes a representation by the certifying official that you are an authorized representative of the applicant with authority to bind the applicant, that you have read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct.<sup>42</sup> Submitting a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

22. Applicants are cautioned that requests for confidential treatment of required information submitted in FCC Form 175 will not be routinely granted because this information bears on each applicant's qualifications. The Commission generally has held that it may publicly release confidential business information where the party has put that information at issue in a Commission proceeding or where the Commission has identified a compelling public interest in disclosing the information.<sup>43</sup> In this regard, the Commission specifically has held that information submitted in support of receiving bidding credits in auction proceedings should be made available to the public.<sup>44</sup>

23. No individual or entity may file more than one short-form application or have a controlling interest in more than one short-form application.<sup>45</sup> If a party submits multiple short-form

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<sup>38</sup> 47 CFR § 1.2105(c).

<sup>39</sup> The prohibition will end for applicants on the post-auction down payment deadline for Auction 111. *See* Section II.H.2. "Prohibition Applies Until Down Payment Deadline," below.

<sup>40</sup> 47 CFR § 1.2105(a)(2).

<sup>41</sup> *See* 47 CFR § 1.2105(b)(1).

<sup>42</sup> As more fully explained below in Section II.M. "Modifications to FCC Form 175," applicants are not permitted to make major modifications to their FCC Form 175 applications after the filing deadline. *See* 47 CFR § 1.2105(b)(2). A change in the required certifications is considered a major change and therefore is not permitted.

<sup>43</sup> *See Examination of Current Policy Concerning Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55, Report and Order, 13 FCC Rcd 24816, 24822-23, para. 8 (1998).

<sup>44</sup> *See, e.g., SAL Spectrum, LLC—Request for Confidential Treatment of Subscriber Information Provided in FCC Form 175*, Letter Order, 31 FCC Rcd 3726 (WTB 2016) (denying a request for confidentiality of the number of wireless, wireline, broadband, and cable subscribers submitted by an applicant for only those affiliates operating in the United States).

<sup>45</sup> *See* 47 CFR § 1.2105(a)(3); *see also Updating Part 1 Report and Order*, 30 FCC Rcd at 7579, para. 205.

applications for an auction, then only one application may form the basis for that party to become qualified to bid in that auction.<sup>46</sup>

24. Similarly, and consistent with the Commission's general prohibition on joint bidding agreements, a party generally is permitted to participate in a Commission auction only through a single bidding entity.<sup>47</sup> Accordingly, the filing of applications in Auction 111 by multiple entities controlled by the same individual or set of individuals generally will not be permitted.<sup>48</sup> As noted by the Commission in adopting the prohibition on applications by commonly controlled entities, this rule, in conjunction with the prohibition against joint bidding agreements, protects the competitiveness of the Commission's auctions.<sup>49</sup>

25. Additional details regarding certain information required to be submitted in the FCC Form 175 are provided below. You should also consult the Commission's rules to ensure that all required information is included in your short-form application. To the extent the information in this Public Notice does not address your specific operating structure, or if you need additional information or guidance concerning the described disclosure requirements, you should review the educational materials for Auction 111 (see the Education section of the Auction 111 website at [www.fcc.gov/auction/111](http://www.fcc.gov/auction/111)) and use the contact information provided in this Public Notice to consult with Commission staff to better understand the information you must submit in your short-form application.

#### C. Authorized Bidders

26. 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 or being listed as an authorized bidder in more than one FCC Form 175 application.<sup>50</sup>

#### D. Permit Selection

27. Only those parties listed in Attachment A are eligible to submit short-form applications and only with regard to the construction permit(s) covered by the party's pending, long-form application(s) listed in Attachment A. For each eligible party, the Auction Application System will only display on your FCC Form 175 the construction permits for which you are eligible to apply to bid. **You must, however, affirmatively select on your FCC Form 175 the construction permit(s) on which you want to bid.** You should carefully review and verify your construction permit selections before the deadline for submitting your FCC Form 175, because permit selections cannot be changed after the initial auction application filing deadline.<sup>51</sup> The FCC auction bidding system will not accept bids on construction permits that were not selected on the bidder's FCC Form 175.

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<sup>46</sup> See 47 CFR § 1.2105(a)(3), (b)(1)(ii).

<sup>47</sup> See *Updating Part 1 Report and Order*, 30 FCC Rcd at 7580-81, paras. 206-08.

<sup>48</sup> See 47 CFR § 1.2105(a)(3), (a)(4)(i), (b)(1)(ii); *Updating Part 1 Report and Order*, 30 FCC Rcd at 7580-81, paras. 206-08. This restriction applies across all applications, without regard to the geographic areas selected. See *id.* at 7580, para. 206. The Commission adopted a limited exception to the general prohibition on the filing of multiple applications by commonly controlled entities for qualified rural wireless partnerships and individual members of such partnerships. See 47 CFR § 1.2105(a)(3). Under this limited exception, each qualifying rural wireless partnership and its individual members will be permitted to participate separately in an auction. See *id.*; see also *Updating Part 1 Report and Order*, 30 FCC Rcd at 7582, para. 210.

<sup>49</sup> See *Updating Part 1 Report and Order*, 30 FCC Rcd at 7580, para. 206.

<sup>50</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>51</sup> 47 CFR § 1.2105(b)(2).

**E. Disclosure of Agreements and Bidding Arrangements**

28. An applicant must provide in its FCC Form 175 a brief description of, and identify each party to, any partnerships, joint ventures, consortia or agreements, arrangements, or understandings of any kind relating to the LPTV/TV translator station construction permits 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 or is controlled by the applicant, is a party.<sup>52</sup> In most circumstances, if a party filing a short-form application has entered into a settlement agreement regarding a construction permit listed in Attachment A, regardless of whether the party has selected that construction permit on its short-form application or not, that settlement agreement should be identified and briefly described in its FCC Form 175. In connection with the agreement disclosure requirement, the applicant must certify under penalty of perjury in its FCC Form 175 that it has described, and identified each party to, any such agreements, arrangements, or understandings to which it (or any party that controls it or that it controls) is a party.<sup>53</sup> If, after the FCC Form 175 filing deadline, an auction applicant enters into any agreement relating to the licenses being auctioned, then it is subject to these same disclosure obligations. Each applicant must maintain the accuracy and completeness of the information in its pending auction application.<sup>54</sup>

29. 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, then 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,<sup>55</sup> even if the agreement has not been reduced to writing.<sup>56</sup> Parties that have not agreed in principle by the FCC Form 175 filing deadline should not describe, or include the names of parties to, the discussions on their applications.<sup>57</sup>

30. 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>58</sup> For purposes of the prohibition, a joint bidding arrangement includes any arrangement relating to the construction permits being auctioned that addresses or communicates, directly or indirectly, bidding at the auction, bidding strategies, including arrangements regarding price or the specific construction permits on which to bid, and any such arrangement relating to the post-auction market structure.<sup>59</sup> The general

<sup>52</sup> *Id.* § 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. *See id.* § 1.2105(a)(4)(i). This definition is modeled on a similar term used in section 1.2110(c) (definitions for designated entities), though it differs in some respects from that rule. *Compare id.* § 1.2105(a)(4)(i) with *id.* § 1.2110(c)(2).

<sup>53</sup> *Id.* § 1.2105(a)(2)(viii). As discussed below, an applicant may continue negotiating, discussing, or communicating with respect to a new agreement after the FCC Form 175 filing deadline, provided that the communications involved do not relate both to the licenses being auctioned and to bids or bidding strategies or post-auction market structure. *See* Section II.H.3. "Scope of Prohibition on Certain Communications; Prohibition on Joint Bidding Agreements," below.

<sup>54</sup> 47 CFR § 1.65; *see also id.* § 1.2105(b)(4).

<sup>55</sup> 47 CFR § 1.2105(a)(2)(viii), (c)(1).

<sup>56</sup> *See Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules*, Public Notice, 11 FCC Rcd 9645, 9646 (WTB 1995) (clarifying standard for determining when a disclosable agreement exists, discussed in connection with an earlier version of section 1.2105 of the Commission's rules).

<sup>57</sup> *See id.*

<sup>58</sup> *See* 47 CFR § 1.2105(a)(2)(ix); *see also Updating Part 1 Report and Order*, 30 FCC Rcd at 7569-77, paras. 177-99.

<sup>59</sup> *See Updating Part 1 Report and Order*, 30 FCC Rcd at 7575, para. 195.

prohibition on joint bidding arrangements excludes certain agreements, including those that are solely operational in nature,<sup>60</sup> as defined in section 1.2105(a)(2)(ix)(A)-(C) of the Commission's rules.<sup>61</sup>

31. To implement the prohibition on joint bidding arrangements, the Commission's rules require each 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.<sup>62</sup> 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>63</sup>

32. 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>64</sup> the Commission reminds applicants that certain discussions or exchanges could nonetheless

<sup>60</sup> See 47 CFR § 1.2105(a)(2)(ix)(A). Under the Commission's rules, agreements that are solely operational in nature are those that address operational aspects of providing a broadcast service, such as shared services agreements, provided that any such agreement does 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. *See id.* § 1.2105(a)(4); *see also Updating Part 1 Report and Order*, 30 FCC Rcd at 7576, para. 197.

<sup>61</sup> See 47 CFR § 1.2105(a)(2)(ix); *see also Updating Part 1 Report and Order*, 30 FCC Rcd at 7575-76, paras. 195-97.

<sup>62</sup> 47 CFR § 1.2105(a)(2)(viii).

<sup>63</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 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); . . . , 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 CFR § 1.2105(a)(2)(viii)-(ix); *see also Updating Part 1 Report and Order*, 30 FCC Rcd at 7570-78, paras. 180-201.

<sup>64</sup> 47 CFR § 1.2105(a)(2)(viii), (a)(2)(ix)(A)-(C), (c)(1).

touch upon impermissible subject matters,<sup>65</sup> and that compliance with the Commission's rules will not insulate a party from enforcement of the antitrust laws.<sup>66</sup>

33. Applicants should bear in mind that a winning bidder will be required to disclose in its post-auction amendment to its pending long-form application the specific terms, conditions, and parties involved in any agreement relating to the licenses being auctioned into which it had entered prior to the time bidding was completed.<sup>67</sup> This applies to any settlement agreement, 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>68</sup>

#### F. Ownership Disclosure Requirements

34. Each applicant must comply with the ownership disclosure requirements and provide information required by sections 1.2105 and 1.2112.<sup>69</sup> Specifically, in completing FCC Form 175, an applicant must fully disclose information regarding the real party or parties-in-interest in the applicant or application 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 of the Commission's rules.<sup>70</sup> These interest holders may differ from the types of attributable interest holders that are required to be reported by broadcast applicants under part 73 of the rules in conjunction with licensing and assignment and transfer of facilities or reporting of ownership information, such as insulated interest holders and holders of non-voting stock/equity in the applicant.<sup>71</sup> Each applicant is responsible for ensuring that information submitted in its short-form application is complete and accurate.

35. In certain circumstances, an applicant may have previously filed an FCC Form 602 ownership disclosure information report or filed an auction application for a previous auction in which ownership information was disclosed. The most current ownership information contained in any FCC Form 602 or previous auction application on file with the Commission that used the same FCC Registration Number (FRN) the applicant is using to submit its FCC Form 175 will automatically be pre-filled into certain ownership sections on the applicant's FCC Form 175, if such information is in an electronic format compatible with FCC Form 175.<sup>72</sup> Each applicant must carefully review any ownership information automatically entered into its FCC Form 175, including any ownership attachments, to

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<sup>65</sup> See *Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures*, WT Docket No. 97-82, 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 *Guidance Regarding the Prohibition of Certain Communications During the Incentive Auction, Auction 1000*, AU Docket No. 14-252, GN Docket No. 12-269, WT Docket No. 12-269, 30 FCC Rcd 10794 (WTB 2015) (*Prohibited Communications Guidance Public Notice*).

<sup>66</sup> 47 CFR § 1.2105(a)(2)(ix)(A)-(C), (a)(2)(viii); see also *Updating Part 1 Report and Order*, 30 FCC Rcd at 7571, para. 181; *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd at 10809, para. 43.

<sup>67</sup> 47 CFR § 1.2107(d); see also *id.* § 1.2105(a)(2)(ix)(A)-(C), (a)(2)(viii).

<sup>68</sup> *Id.* § 1.2107(d); see also *id.* § 1.2105(a)(2)(ix)(A)-(C), (a)(2)(viii).

<sup>69</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(a)(2)(ii)(B). In addition, each applicant should ensure that its disclosures comply with the ownership disclosure requirements in the Part 1 rules. See generally *Updating Part 1 Report and Order*, 30 FCC Rcd 7493.

<sup>70</sup> 47 CFR §§ 1.2105, 1.2112.

<sup>71</sup> Compare 47 CFR § 1.2112 with 47 CFR § 73.3555.

<sup>72</sup> The FCC Form 175 Instructions provide additional details on pre-filled information.

confirm that all information supplied on FCC Form 175 is complete and accurate as of the application filing deadline. Any information that needs to be corrected or updated must be changed directly in FCC Form 175.

#### **G. Foreign Ownership Disclosure Requirements**

36. Section 310 of the Communications Act 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>73</sup> In completing FCC Form 175, an applicant is required to disclose information concerning foreign ownership of the applicant. If an applicant has foreign ownership interests in excess of the applicable limit or benchmark set forth in section 310(b), then it may seek to participate in Auction 111 only if it has filed a petition for declaratory ruling with the Media Bureau prior to the FCC Form 175 filing deadline.<sup>74</sup> An applicant must certify in its FCC Form 175 that, as of the deadline for filing its application to participate in the auction, the applicant either is in compliance with the foreign ownership provisions of section 310 or has filed a petition for declaratory ruling requesting Commission approval to exceed the applicable foreign ownership limit or benchmark in section 310(b) that is pending before, or has been granted by, the Commission.<sup>75</sup>

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

37. The rules prohibiting certain communications set forth in sections 1.2105(c) and 73.5002(d) and (e) of the rules apply to each applicant that files an FCC Form 175 in Auction 111.<sup>76</sup> Section 1.2105(c)(1) of the Commission's rules provides that, subject to specified exceptions, after the deadline for filing a short-form application, all applicants are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other in any manner the substance of their own, or each other's, or any other applicant's bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after the down payment deadline.<sup>77</sup>

##### **1. Entities Subject to Section 1.2105(c)**

38. 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>78</sup> A party that submits an application becomes an "applicant" under the rule at the short-form application filing deadline, and that status does not change based on later developments, including failure to become a qualified bidder.<sup>79</sup>

<sup>73</sup> See 47 U.S.C. § 310(a), (b); *see also Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, GN Docket No. 15-236, Report and Order, 31 FCC Rcd 11272 (2016).

<sup>74</sup> 47 CFR § 1.2105(a)(2)(vi). Rules for obtaining the Commission's prior approval of foreign ownership in broadcast radio station licensees in excess of the 25% benchmark in section 310(b)(4) of the Act are codified in 47 CFR §§ 1.5000-1.5004.

<sup>75</sup> See *id.* § 1.2105(a)(2)(v), (vi). If a petition for declaratory ruling concerning section 310 is pending or was granted previously, this information needs to be reported in an attachment to the applicant's FCC Form 175. Additional information concerning foreign ownership disclosure requirements is provided in the FCC Form 175 Instructions.

<sup>76</sup> 47 CFR §§ 1.2105(c), 73.5002(d)-(e).

<sup>77</sup> 47 CFR § 1.2105(c)(1).

<sup>78</sup> 47 CFR § 1.2105(c)(5)(i).

<sup>79</sup> See *Star Wireless, LLC v. FCC*, 522 F.3d 469, 474-75 (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.

## 2. Prohibition Applies Until Down Payment Deadline

39. The prohibition in section 1.2105(c) on certain communications begins at an auction's short-form application filing deadline and ends at the auction's down payment deadline after the auction closes, which will be announced in a future public notice.<sup>80</sup>

40. After the short-form application filing deadline, we will announce a limited settlement period of no more than two weeks during which this prohibition may be partially suspended for the purpose of resolving mutual exclusivity through settlements.<sup>81</sup> Outside of this limited settlement period, and until this limited settlement period is announced, the prohibition on certain communications remains in effect.

## 3. Scope of Prohibition on Certain Communications; Prohibition on Joint Bidding Agreements

41. Section 1.2105(c) of the Commission's rules prohibits certain communications between auction applicants, regardless of whether the applicants seek permits in the same geographic area or market.<sup>82</sup> The rule also 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>83</sup> The rule allows for limited exceptions for communications within the scope of any arrangement consistent with the exclusion from the Commission's rule prohibiting joint bidding, provided such arrangement is disclosed on the applicant's auction application.<sup>84</sup> An applicant may communicate pursuant to any pre-existing agreements, arrangements, or understandings relating to the licenses being auctioned that are solely operational or that provide for the 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>85</sup>

42. 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>86</sup> Consequently, an applicant must take care to determine whether its auction-related communications may reach another applicant.<sup>87</sup>

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<sup>80</sup> 47 CFR § 1.2105(c)(1).

<sup>81</sup> See 47 CFR § 73.5002(d); *Auction 111 Comment Public Notice* at 4, para. 8.

<sup>82</sup> 47 CFR § 1.2105(a)(2)(ix), (c)(1); *Updating Part 1 Report and Order*, 30 FCC Rcd at 7577, para. 199.

<sup>83</sup> 47 CFR § 1.2105(a)(2)(ix); *Updating Part 1 Report and Order*, 30 FCC Rcd at 7575-76, para. 195.

<sup>84</sup> 47 CFR § 1.2105(a)(2)(viii)-(ix)(C); *Updating Part 1 Report and Order*, 30 FCC Rcd at 7576-77, paras. 197-99.

<sup>85</sup> 47 CFR § 1.2105(a)(2)(ix)(A)-(C); see generally *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd at 10804-08, paras. 25-37.

<sup>86</sup> See *Updating 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>87</sup> We remind applicants that the prohibition on communications between applicants begins at the deadline for submitting short-form applications and before the public notice identifying applicants is released. Consequently, special care should be taken with regard to any public disclosures or private communications regarding bids or bidding strategies during the period following the short-form application deadline when the identity of other applicants is not known.



43. Parties subject to section 1.2105(c) should take special care in circumstances where their officers, directors, and employees may receive information directly or indirectly relating to any applicant's bids or bidding strategies. Such information may be deemed to have been received by the applicant under certain circumstances. For example, Commission staff have determined that, where an individual serves as an officer or director for two or more applicants, the bids and bidding strategies of one applicant are presumed to be conveyed to the other applicant through the shared officer or director, which creates an apparent violation of the rule.<sup>88</sup>

44. Subject to the limited exceptions described above, section 1.2105(c)(1) prohibits applicants from discussing or negotiating settlement agreements and 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>89</sup> The *Prohibited Communications Guidance Public Notice* released in advance of the broadcast incentive auction (Auction 1000) reviewed the scope of the prohibition generally, as well as specific variations on the prohibition that were unique to Auction 1000.<sup>90</sup> As the Commission explained therein, a communication conveying "bids or bidding strategies (including post-auction market structure)" must also relate to the "licenses being auctioned" in order to be covered by the prohibition.<sup>91</sup> Thus, the prohibition is limited in scope and does not apply to all communications between or among the specified parties. The Commission consistently has made clear that application of the rule prohibiting communications has never required total suspension of essential ongoing business.<sup>92</sup> Entities subject to the prohibition may negotiate agreements, other than settlement agreements, during the prohibition period, provided that the communications involved do not relate to both: (1) the licenses or permits being auctioned and (2) bids or bidding strategies or post-auction market structure.<sup>93</sup>

45. Accordingly, business discussions and negotiations that are *unrelated* to settlement agreements for the construction permits in Auction 111 or bidding in Auction 111 and that do not convey information about the bids or bidding strategies of an applicant, including the post-auction market structure, are not prohibited by the rule.<sup>94</sup> Moreover, not all auction-related information is covered by the prohibition. For example, communicating merely whether a party has or has not applied to participate in Auction 111 will not violate the rule.<sup>95</sup> In contrast, communicating, among other things, how a party will participate, including whether or not a party plans to submit an upfront payment and the upfront payment amount, specific bid amounts, and/or whether or not the party is placing bids, would convey bids or bidding strategies and would be prohibited.<sup>96</sup>

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<sup>88</sup> See, e.g., *Letter to Auction 109 Applicant Paul S. Alexander, Jr. Concerning Non-qualified Status*, AU Docket No. 21-39, Letter Order, DA 21-781 (OEA/MB July 1, 2021) (finding a violation of the prohibited communications rule where an individual applicant reported being the officer of another applicant).

<sup>89</sup> 47 CFR § 1.2105(c)(1).

<sup>90</sup> *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd 10794.

<sup>91</sup> *Id.* at 10806, para. 32.

<sup>92</sup> See, e.g., *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567, 6770-71, para. 492 (2014) (citing *Application of Todd Stuart Noordyk for a New FM Station on Channel 260A at Manistique, Michigan*, Memorandum Opinion and Order, 16 FCC Rcd 18113, 18116-17, para. 12 (2001) ("Our rules do not require the suspension of all relations among auction participants while an auction is pending.")).

<sup>93</sup> *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd at 10806-07, paras. 33-34.

<sup>94</sup> See *id.*

<sup>95</sup> *Id.* at 10796, paras. 6-7.

<sup>96</sup> See *id.* at 10796-97, paras. 8-9.

46. While section 1.2105(c) does not prohibit business discussions and negotiations among auction applicants that are unrelated to the auction, 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.

47. We caution applicants that bids or bidding strategies may be communicated outside of situations that involve one party subject to the prohibition communicating privately and directly with another such party. For example, the Commission has warned that prohibited “communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly.”<sup>97</sup> Moreover, the Commission found a violation of the rule against prohibited communications when an applicant used the Commission’s bidding system to disclose “its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate . . . in specific markets,”<sup>98</sup> and it has placed auction participants on notice that the use of its bidding system “to disclose market information to competitors will not be tolerated and will subject bidders to sanctions.”<sup>99</sup>

48. Likewise, when completing a short-form application, each applicant should avoid any statements or disclosures that may violate section 1.2105(c). Applicants also should be mindful that communicating non-public application or bidding information publicly or privately to another applicant may violate section 1.2105(c) even though that information subsequently may be made public during later periods of the application or bidding processes.

#### 4. Communicating with Third Parties

49. 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>100</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>101</sup> Within third-party firms, separate individual employees, such as attorneys or auction consultants, may advise individual applicants on bids or bidding strategies, as 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>102</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>103</sup>

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<sup>97</sup> *Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, PP Docket No. 93-253, Memorandum Opinion and Order, 9 FCC Rcd 7684, 7689, para. 12 (1994) (*Competitive Bidding Memorandum Opinion and Order*).

<sup>98</sup> *Mercury PCS II, LLC*, Notice of Apparent Liability for Forfeiture, 12 FCC Rcd 17970, 17976, para. 17 (1997).

<sup>99</sup> *Mercury PCS II, LLC*, Memorandum Opinion and Order, 13 FCC Rcd 23755, 23760, para. 11 (1998).

<sup>100</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>101</sup> *Id.*

<sup>102</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 (WTB 1998) (*Nevada Wireless Order*) (strongly encouraging applicants to implement any firewall procedures necessary and to provide information in their auction applications regarding the procedures).

50. As the Commission has noted in other broadcast auctions, in the case of an individual, the objective precautionary measure of a firewall is not available.<sup>104</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>105</sup> We emphasize that whether a prohibited communication has taken place in a given case will depend on all the facts pertaining to the case, including who possessed what information, what information was conveyed to whom, and the course of bidding in the auction.<sup>106</sup>

51. We remind potential applicants that they may discuss the short-form application or bids for specific permits with the counsel, consultant, or expert of their choice *before* the short-form application deadline. Furthermore, the same third-party individual could continue to give advice to multiple applicants regarding their applications after the short-form application deadline, provided that no information pertaining to bids or bidding strategies is conveyed to that individual from any of the applicants the individual advises. We remind potential applicants, however, that no person may serve as an authorized bidder for more than one applicant in Auction 111.<sup>107</sup>

52. 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>108</sup> Similarly, an FCC Form 175 applicant's public statement of intent not to place bids during bidding in Auction 111 could also violate the rule.

## 5. Section 1.2105(c) Certifications

53. By electronically submitting its FCC Form 175, each applicant in Auction 111 certifies its compliance with sections 1.2105(c) and 73.5002(d) of the rules.<sup>109</sup> The mere filing of a certifying statement as part of an application, however, will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted.<sup>110</sup> Any applicant found to have violated these communication prohibitions may be subject to sanctions.<sup>111</sup>

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<sup>103</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>104</sup> See, e.g., *Auction 104 Procedures Public Notice*, 34 FCC Rcd at 4229, para. 39 (citing *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd at 10800, para. 15).

<sup>105</sup> *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd at 10800, para. 15.

<sup>106</sup> See *id.*

<sup>107</sup> 47 CFR § 1.2105(a)(2)(iii).

<sup>108</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>109</sup> See 47 CFR § 1.2105(a)(2)(ix). In accordance with the *Updating Part 1 Report and Order*, if an applicant has a non-controlling interest with respect to more than one application, then the applicant must certify that it has established internal control procedures to preclude any person acting on behalf of the applicant from possessing information about the bids or bidding strategies of more than one applicant or communicating such information with respect to either applicant to another person acting on behalf of and possessing such information regarding another applicant. *Updating Part 1 Report and Order*, 30 FCC Rcd at 7577, para. 199.

<sup>110</sup> See *Nevada Wireless Order*, 13 FCC Rcd at 11978, para. 13; see also *Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689, para. 12.

<sup>111</sup> See 47 CFR §§ 1.2105(c), 1.2107(d), 1.2109(d).

## 6. Duty to Report Prohibited Communications

54. 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>112</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>113</sup>

## 7. Procedures for Reporting Prohibited Communications

55. A party reporting any information or 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, reporting a prohibited communication through ECFS or another Commission filing system that allows public access to filed materials could violate the rule by communicating prohibited information to other parties covered by the rule.

56. An applicant must file only a single report concerning a prohibited communication and must file that report with the Commission personnel expressly charged with administering the Commission's auctions.<sup>114</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>115</sup> For Auction 111, such reports must be filed with the Chief of the Auctions Division, OEA, by the most expeditious means available. Any such report should be submitted by email to the Auctions Division Chief at the following email address: [auction111@fcc.gov](mailto:auction111@fcc.gov). If you choose instead to submit a report in hard copy, contact Auctions Division staff at [auction111@fcc.gov](mailto:auction111@fcc.gov) or (202) 418-0660 for guidance.

57. Given the potential competitive sensitivity of information in such a report, a party seeking to report 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

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<sup>112</sup> *Id.* § 1.2105(c)(4); *see also Part 1 Seventh Report and Order*, 16 FCC Rcd at 17553-55, paras. 13-17.

<sup>113</sup> *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands et al.*, WT Docket No. 06-150 et al., Second Report and Order, 22 FCC Rcd 15289, 15394-95, paras. 285-86 (2007); *Procedural Amendments to Commission Part 1 Competitive Bidding Rules*, WT Docket No. 10-18, Order, 25 FCC Rcd 521, 523, para. 8 (2010) (*Part 1 Procedural Amendments Order*); *see also* 47 CFR § 1.65; *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17550-51, para. 9.

<sup>114</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 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>115</sup> 47 CFR § 1.2105(c)(4); *Part 1 Procedural Amendments Order*, 25 FCC Rcd at 522, para. 4

specified in section 0.459 of the Commission's rules.<sup>116</sup> We encourage such parties to coordinate with the Auctions Division staff about the procedures for submitting reports of prohibited communications.<sup>117</sup>

#### **8. Winning Bidders Must Disclose Terms of Agreements**

58. Each applicant that is a winning bidder will be required to provide, as part of its amendment to its long-form application, any agreement or arrangement relating to the competitive bidding process that it has entered into and a summary of the specific terms, conditions, and parties involved in that agreement.<sup>118</sup> This applies to any settlement agreement, 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>119</sup> Failure to comply with the Commission's rules can result in enforcement action.

#### **9. Additional Information Concerning Rule Prohibiting Certain Communications in Commission Auctions**

59. A summary listing of documents issued by the Commission and OEA addressing the application of section 1.2105(c) is available on the Commission's auction webpage at [www.fcc.gov/summary-listing-documents-addressing-application-rule-prohibiting-certain-communications](http://www.fcc.gov/summary-listing-documents-addressing-application-rule-prohibiting-certain-communications).

#### **10. Antitrust Laws**

60. 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>120</sup> Compliance with the disclosure requirements of section 1.2105(c)(4) will not insulate a party from enforcement of the antitrust laws.<sup>121</sup> For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submits a short-form application.<sup>122</sup> 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

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<sup>116</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 the material to which the request applies. *Id.* § 0.459(a)(1). Hand-delivery of confidential materials is not possible. Such materials should be submitted in accordance with the procedures described in *FCC Announces Closure of Filing Window at FCC Headquarters and Permanent Change in the Location and Hours for Receiving Hand-Carried Filings*, Public Notice (OMD July 7, 2020) and in *Amendment of the Commission's Rules of Practice and Procedure*, Order, 35 FCC Rcd 5450 (OMD 2020).

<sup>117</sup> See Section VI. "Procedural Matters," below.

<sup>118</sup> 47 CFR § 1.2107(d); see also Section V.C. "Winning Bidder Amendments to Long-Form Applications," below. Such agreements must have been entered into prior to the filing of short-form applications pursuant to section 1.2105. 47 CFR § 1.2107(d); see *id.* § 1.2105.

<sup>119</sup> 47 CFR § 1.2107(d).

<sup>120</sup> See, e.g., *Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures*, WT Docket No. 97-82, Third Further Notice of Proposed Rulemaking, 14 FCC Rcd 21558, 21560-61, para. 4 & n.17 (1999).

<sup>121</sup> See *Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689, para. 12; see also Press Release, Dep't of Justice, Justice Department Sues Three Firms Over FCC Auction Practices (Nov. 10, 1998), [https://www.justice.gov/archive/atr/public/press\\_releases/1998/2068.htm](https://www.justice.gov/archive/atr/public/press_releases/1998/2068.htm).

<sup>122</sup> See, e.g., *Implementation of Section 309(j) of the Communications Act*, PP Docket No. 93-253, Fourth Memorandum Opinion and Order, 9 FCC Rcd 6858, 6869, para. 59 & n.134 (1994).

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.<sup>123</sup>

61. 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>124</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, then it may be subject to a forfeiture and may be prohibited from participating further in Auction 111 and in future auctions, among other sanctions.<sup>125</sup>

#### **I. New Entrant Bidding Credit**

62. To promote the objectives of section 309(j) of the Act and further its long-standing commitment to the diversification of broadcast facility ownership, the Commission provides a tiered new entrant bidding credit for broadcast auction applicants with no, or very few, other media interests.<sup>126</sup>

63. Applicants that qualify for the new entrant bidding credit are eligible for a bidding credit in this auction that represents the amount by which a bidder's winning bid is discounted. Eligibility for the new entrant bidding credit must be specified in an applicant's short-form application, which establishes that applicant's maximum bidding credit eligibility for Auction 111.<sup>127</sup> The size of a new entrant bidding credit depends on the number of ownership interests in other media of mass communications that are attributable to the bidder-entity and its attributable interest-holders:

- A 35% bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has no attributable interest in any other media of mass communications, as defined in section 73.5008;
- A 25% bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has an attributable interest in no more than three mass media facilities, as defined in section 73.5008;
- No bidding credit will be given if any of the commonly owned mass media facilities serve the "same area" as the broadcast permit proposed in the auction, as defined in section 73.5007(b), or if the winning bidder, and/or any individual or entity with an attributable interest in the winning bidder, has attributable interests in more than three mass media facilities.<sup>128</sup>

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

65. 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>129</sup> Attributable interests are defined in section 73.3555 and note 2 of that section.<sup>130</sup> In Auction 111, the bidder's attributable interests, and thus, its

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<sup>123</sup> *Id.*

<sup>124</sup> *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388, para. 226.

<sup>125</sup> *See id.*; 47 CFR § 1.2109(d).

<sup>126</sup> 47 CFR § 73.5007.

<sup>127</sup> *Id.* § 73.5007(a).

<sup>128</sup> 47 CFR §§ 73.5007(b), 73.5008; *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, MB Docket No. 09-52, First Report and Order and Further Notice of Proposed Rule Making, 25 FCC Rcd 1583, 1609, para. 52 (2010) (*Rural First Report and Order*).

<sup>129</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.

maximum new entrant bidding credit eligibility, are determined as of the short-form application filing deadline.<sup>131</sup> Each prospective bidder is reminded, however, that events occurring after the short-form application filing deadline, such as the acquisition of attributable interests in media of mass communications, may cause diminishment or loss of the bidding credit and, must be reported immediately.<sup>132</sup>

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

- all officers and directors of a corporate bidder;
- any owner of 5% or more of the voting stock of a corporate bidder;
- all general partners and limited partners of a partnership bidder, unless the limited partners are sufficiently insulated; and
- all members of a limited liability company, unless sufficiently insulated.<sup>133</sup>

67. In cases where an applicant's spouse or close family member holds other media interests, such interests are not automatically attributable to the bidder. The Commission decides attribution issues in this context based on certain factors traditionally considered relevant.<sup>134</sup>

68. In the *New Entrant Bidding Credit Reconsideration Order*,<sup>135</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

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<sup>130</sup> See 47 CFR § 73.3555 note 2; see also 47 CFR § 73.5008.

<sup>131</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 November 10, 2021, an auction applicant has a pending or granted application to assign or transfer control of a media interest, the applicant will not avoid attribution with respect to that interest. To avoid attribution, an applicant must have consummated the transaction before the FCC Form 175 filing deadline. Thus, an applicant could not qualify for a bidding credit, nor upgrade a previously claimed bidding credit, based upon ownership or officer/director positional changes occurring after the short-form application filing deadline.

<sup>132</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, e.g., *Vermont Tel. Co., Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 14130 (EB 2011) (*Vermont Telephone Co.*) (finding auction applicant apparently liable for forfeiture in the amount of \$34,000 for failing to submit accurate bidding credit information and failing to maintain the continuing accuracy of bidding credit information in its application for Broadband Radio Service Auction 86).

<sup>133</sup> See 47 CFR § 73.3555 note 2.

<sup>134</sup> See *Clarification of Commission Policies Regarding Spousal Attribution*, MM Docket No. 91-122, Policy Statement, 7 FCC Rcd 1920 (1992). For a discussion of media attribution rules generally, see *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, MM Docket No. 94-150, Report and Order, 14 FCC Rcd 12559 (1999) (revising media attribution policies, prior history omitted).

<sup>135</sup> *Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, MM Docket No. 97-234, Memorandum Opinion and Order, 14 FCC Rcd 12541 (1999) (*New Entrant Bidding Credit Reconsideration Order*).

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>136</sup>

69. 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>137</sup> An “eligible entity” is defined in Note 2(i) of section 73.3555.<sup>138</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>139</sup>

70. Generally, media interests will be attributable for purposes of the new entrant bidding credit to the same extent that such other media interests are considered attributable for purposes of the broadcast multiple ownership rules.<sup>140</sup> Attributable interests held by a winning bidder in existing low power television, television translator or FM translator facilities, however, will not be counted among the applicant’s other mass media interests in determining its eligibility for a new entrant bidding credit.<sup>141</sup> A medium of mass communications is defined in section 73.5008(b).<sup>142</sup> Full service noncommercial educational stations, on both reserved and non-reserved channels, are included among “media of mass communications” as defined in section 73.5008(b).<sup>143</sup>

### 1. Application Requirements

71. 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

<sup>136</sup> See 47 CFR § 73.5008(c).

<sup>137</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*).

<sup>138</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>139</sup> See 47 CFR § 73.5008(c).

<sup>140</sup> Further, any bidder asserting new entrant status must have *de facto* as well as *de jure* control of the entity claiming the bidding credit. 47 CFR § 73.5007. Typically, *de jure* control is evidenced by ownership of at least 50.1% of an entity’s voting stock or equivalent level of interest in cases where the bidder is not a corporate entity. *De facto* control is determined on a case-by-case basis.

<sup>141</sup> 47 CFR § 73.5007; *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 8724, 8764, para. 75 (1999) (*Broadcast First Reconsideration Order*).

<sup>142</sup> See 47 CFR § 73.5008(b).

<sup>143</sup> *Id.*; see *Minnesota Christian Broadcasters, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 614, 615, para. 8 (2003) (*Minnesota Christian Broadcasters*), *aff’d sub nom. Carol DeLaHunt v. FCC*, No. 03-1029, slip op., 2004 WL 288606 (D.C. Cir. Feb. 4, 2004); *aff’d Minnesota Christian Broadcasters, Inc. v. FCC*, 411 F.3d 283 (D.C. Cir. 2005).



that they satisfy the eligibility requirements to qualify for the bidding credit.<sup>144</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 has any attributable interests in any other media of mass communications. An applicant claiming that it qualifies for a 25% new entrant bidding credit must 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>145</sup>

## 2. Unjust Enrichment

72. 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>146</sup>

### J. Provisions Regarding Former and Current Defaulters

73. 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 111,<sup>147</sup> but a former defaulter or delinquent may participate so long as it is otherwise qualified and makes an upfront payment that is 50% more than would otherwise be necessary.<sup>148</sup> Accordingly, each applicant must certify under penalty of perjury on its FCC Form 175 that it, its affiliates, its controlling interests, and 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 it is not delinquent on any non-tax debt owed to any Federal agency.<sup>149</sup> Additionally, an

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<sup>144</sup> See 47 CFR §§ 1.2105(a), 73.3555 & note 2, 73.5007, 73.5008.

<sup>145</sup> See 47 CFR §§ 73.5007, 73.5008.

<sup>146</sup> See 47 CFR § 73.5007(c).

<sup>147</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 *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317, para. 42 & n.142; *Wireless Telecommunications Bureau Reminds Prospective Broadband PCS Spectrum Auction Applicants of Default and Delinquency Disclosure Requirements*, Public Notice, 19 FCC Rcd 21920 (2004) (*Auction Default Disclosure Public Notice*). This public notice may be found at [www.fcc.gov/auction/58](http://www.fcc.gov/auction/58).

<sup>148</sup> 47 CFR §§ 1.2105(a)(2)(xi), (xii), (b)(1), 1.2106(a). For purposes of evaluating the certifications under sections 1.2105(a)(2)(xi) and (xii), we clarify that “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, 1358 (1996) (codified in relevant parts at 31 U.S.C. §§ 3716 (administrative offset), 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 participating in Auction 111 under the Commission’s rules. 47 CFR § 1.2105(a)(2)(xi), (b)(1). If, however, the applicant cures the overdue debt prior to the auction application filing deadline (and such debt does not fall within one of the exclusions described in paragraph 89 of this Public Notice), then it may be eligible to participate in Auction 111 as a former defaulter under the Commission’s rules. See *id.* §§ 1.2105(a)(2)(xii), 1.2106(a). For additional information on upfront payments and related forms, see Section III.F “Upfront Payments,” below.

<sup>149</sup> 47 CFR § 1.2105(a)(2)(xi); see also *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 (continued....)”).

applicant must certify under penalty of perjury whether it (along with its controlling interests) has ever been in default on any payment for a Commission construction permit or license (including down payments) or has ever been delinquent on any non-tax debt owed to any Federal agency, subject to the exclusions described below.<sup>150</sup> For purposes of making these certifications, the term “controlling interest” is defined in section 1.2105(a)(4)(i) of the Commission rules.<sup>151</sup>

74. Under the Commission’s rule regarding applications by former defaulters, an applicant is considered a “former defaulter” or a “former delinquent” when, as of the FCC Form 175 deadline, the applicant 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>152</sup> 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 or cured delinquency on a non-tax debt owed to a Federal agency for which any of the following criteria are met: (1) the notice of the final payment deadline or delinquency was received more than seven years before the FCC Form 175 filing deadline, (2) the default or delinquency amounted to less than \$100,000, (3) the default or delinquency was paid within two quarters (i.e., 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>153</sup> With respect to the first exclusion, notice to a debtor may include notice of a final payment deadline or notice of delinquency and may be express or implied depending on the origin of any Federal non-tax debt giving rise to a default or delinquency.<sup>154</sup> Additionally, for the third exclusion, the date of receipt of the notice of a final default deadline or delinquency by the intended party or debtor will be used for purposes of verifying receipt of notice.<sup>155</sup>

75. In addition to this Public Notice, we encourage applicants to review previous guidance on default and delinquency disclosure requirements in the context of the auction short-form application

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applicant will not be able to make the certification required by Section 1.2105(a)(2)(x) . . . and will not be eligible to participate in Commission auctions.”).

<sup>150</sup> 47 CFR § 1.2105(a)(2)(xii).

<sup>151</sup> *Id.* § 1.2105(a)(4)(i).

<sup>152</sup> In 2015, the Commission narrowed the scope of the individuals and entities to be considered for purposes of the former defaulter rule. *Updating Part 1 Report and Order*, 30 FCC Rcd at 7568, para. 175; *see* 47 CFR § 1.2105(a)(2)(xii), (a)(4).

<sup>153</sup> 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. Additionally, for purposes of the certification required on an FCC Form 175, a debt will not be deemed to be in default or delinquent until after the expiration of a final payment deadline. *See, e.g., Expedited Clarification of Sections 1.2105(a) and 1.2106(a) of the Commission's Rules*, Letter Order, 19 FCC Rcd 22907 (WTB 2004). Thus, to the extent that the rules providing for payment of a specific federal debt permit payment after an original payment deadline accompanied by late fee(s), such debts would not be in default or delinquent for purposes of applying the former defaulter rules until after the late payment deadline. In addition, the Commission provides the following regarding defaults on Commission licenses: any winning bidder that fails to timely pay its post-auction down payment or the balance of its final winning bid amount(s) or is disqualified for any reason after the close of an auction will be in default and subject to a default payment. 47 CFR § 1.2109(c). Commission staff provide individual notice of the amount of such a default payment as well as procedures and information required by the Debt Collection Improvement Act of 1996, including the payment due date and any charges, interest, and/or penalties that accrue in the event of delinquency. *See, e.g.,* 31 U.S.C. §§ 3716, 3717; 47 CFR §§ 1.1911, 1.1912, 1.1940. For purposes of the certifications required on an FCC Form 175, such notice provided by Commission staff assessing a default payment arising out of a default on a winning bid constitutes notice of the final payment deadline with respect to a default on a Commission license.

<sup>154</sup> *Updating Part 1 Report and Order*, 30 FCC Rcd at 7566, para. 173 & n.556.

<sup>155</sup> *Id.* at 7567, para. 173 & n.559.

process.<sup>156</sup> You should consult with Auctions Division staff if you have any questions about default and delinquency disclosure requirements.

76. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the “red light rule,” that implement its obligations under the Debt Collection Improvement Act of 1996, which governs the collection of debts owed to the United States.<sup>157</sup> Under the red light rule, applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission will not be processed. When adopting that rule, the Commission explicitly declared, however, that its competitive bidding rules “are not affected” by the red-light rule.<sup>158</sup> As a consequence, the Commission’s adoption of the red light rule does not alter the applicability of any of its competitive bidding rules, including the provisions and certifications of sections 1.2105 and 1.2106, with regard to current and former defaults or delinquencies.

77. We remind each applicant, however, that the Commission’s Red Light Display System, which provides information regarding debts currently owed to the Commission, may not be determinative of an auction applicant’s ability to comply with the default and delinquency disclosure requirements of section 1.2105.<sup>159</sup> Thus, while the red light rule ultimately may prevent the processing of amendments to long-form applications by auction winners, an auction applicant’s lack of current “red light” status is not necessarily determinative of its eligibility to participate in an auction (or whether it may be subject to an increased upfront payment obligation). Moreover, a prospective applicant in Auction 111 should note that any long-form applications amended after the close of bidding will be reviewed for compliance with the Commission’s red light rule,<sup>160</sup> and such review may result in the dismissal of a winning bidder’s long-form application.<sup>161</sup> We encourage each applicant to carefully review all records and other available Federal agency databases and information sources to determine whether the applicant, or any of its affiliates, or any of its controlling interests, or any of the affiliates of its controlling interests, currently owes or was ever delinquent in the payment of non-tax debt owed to any Federal agency.

#### **K. Optional Applicant Status Identification**

78. An applicant owned by members of minority groups and/or women, as defined in section 1.2110(c)(3),<sup>162</sup> or that is a rural telephone company, as defined in section 1.2110(c)(4),<sup>163</sup> may identify itself as such 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.<sup>164</sup>

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<sup>156</sup> *Auction Default Disclosure Public Notice*, 19 FCC Rcd at 21920.

<sup>157</sup> *Amendment of Parts 0 and 1 of the Commission’s Rules; Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors*, MD Docket No. 02-339, Report and Order, 19 FCC Rcd 6540 (2004) (*Debt Collection Report and Order*).

<sup>158</sup> *Id.* at 6541, para. 3 & n.11 (specifically noting the current defaulter and former defaulter certifications of 47 CFR § 1.2105(a)(2) and stating that “[t]hese rules are not affected by the red light rule”).

<sup>159</sup> *Auction Default Disclosure Public Notice*, 19 FCC Rcd at 21920 (addressing relationship between Commission’s Red Light Display System and short-form application default and delinquency disclosure requirements for auction applicants). To access the Commission’s Red Light Display System, go to <https://apps.fcc.gov/redlight/login.cfm>.

<sup>160</sup> *Debt Collection Report and Order*, 19 FCC Rcd at 6540-42, paras. 1-5 & n.11; *see also* 47 CFR § 1.1114.

<sup>161</sup> Applicants that have their long-form applications dismissed will be deemed to have defaulted and will be subject to default payments under 47 CFR §§ 1.2104(g) and 1.2109(c).

<sup>162</sup> 47 CFR § 1.2110(c)(3).

<sup>163</sup> *Id.* § 1.2110(c)(4).

<sup>164</sup> For instance, designated entities are defined as small businesses (including businesses owned by members of (continued....))

**L. Noncommercial Educational Status Election**

79. Section 309(j)(2)(C) of the Communications Act (the Act) exempts from competitive bidding applications for construction permits for noncommercial educational (NCE) broadcast.<sup>165</sup> For purposes of Auction 111, this exemption applies to a construction permit application for a new or modified LPTV/translator station that will be owned and operated by a municipality and will transmit only noncommercial programs for educational purposes.<sup>166</sup> Applications for such NCE stations are exempt from competitive bidding in Auction 111. Accordingly, in the FCC Form 175, applicants will have an opportunity to designate their status as an exempt NCE station application under the definition specified in section 397(6)(B).

80. In the *NCE Second Report and Order*, however, the Commission held that applications for exempt NCE stations on non-reserved spectrum, filed during an auction filing window, will be returned as unacceptable for filing if mutually exclusive with any application for a commercial station.<sup>167</sup> If an FCC Form 175 identifies the application's proposed station as an exempt noncommercial educational and that application remains mutually exclusive with any short-form application for a commercial station<sup>168</sup> after the limited settlement period, the NCE application will be returned as unacceptable for filing and the applicant will not be provided with any further opportunity to become eligible to bid in this auction.<sup>169</sup> For this reason, each prospective applicant in this auction should consider carefully whether it wishes to propose operation as an exempt noncommercial educational station under section 397(6)(B) for any LPTV/translator station acquired in this auction. This exempt NCE election cannot be reversed after the initial short-form application filing deadline.<sup>170</sup>

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

81. After the initial short-form application filing deadline, an Auction 111 applicant will be permitted to make only minor changes to its FCC Form 175.<sup>171</sup> Examples of minor changes include the deletion or addition of authorized bidders (to a maximum of three) and the revision of addresses and telephone numbers of the applicant, its responsible party, and its contact person. Major modification to an FCC Form 175 (e.g., change of construction permit selection, certain changes in ownership that would constitute an assignment or transfer of control of the applicant, change in the required certifications, change in applicant's legal classification that results in a change in control, or change in claimed eligibility for a higher percentage of bidding credit) will not be permitted after the FCC Form 175 filing deadline.<sup>172</sup> If an amendment reporting changes is a "major amendment," as described in section

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minority groups and/or women), rural telephone companies, and rural service providers. *Id.* § 1.2110(a).

<sup>165</sup> See 47 U.S.C. §§ 309(j)(C) and 397(6)(B).

<sup>166</sup> See 47 U.S.C. § 397(6)(B); see also *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, MM Docket No. 95-31, Second Report and Order, 18 FCC Rcd 6691, 6697 (2003) (*NCE Second Report and Order*); 47 CFR § 73.5002 (b).

<sup>167</sup> *NCE Second Report and Order*, 18 FCC Rcd at 6699-6701, paras. 21-24; see also 47 CFR § 73.5002(b).

<sup>168</sup> In the *NCE Second Report and Order*, the Commission determined that short-form applications that do not identify the facilities proposed in the FCC Form 175 as "noncommercial educational" will be considered, as a matter of law, applications for commercial broadcast stations. *NCE Second Report and Order*, 18 FCC Rcd at 6700, para. 22.

<sup>169</sup> 47 CFR § 73.5002(b); see also *NCE Second Report and Order*, 18 FCC Rcd at 6699-6701, paras. 21-24.

<sup>170</sup> 47 CFR § 1.2105(b); see also *NCE Second Report and Order*, 18 FCC Rcd at 6700, para. 22.

<sup>171</sup> See 47 CFR § 1.2105(b)(2). Minor amendments include any changes that are not major, such as correcting typographical errors and supplying or correcting information as requested to support the certifications made in the application. *Id.*

1.2105(b)(2), the major amendment will not be accepted and may result in the dismissal of the application.<sup>173</sup> Questions about FCC Form 175 amendments should be directed to the Auctions Division at (202) 418-0660.

## **2. Duty to Maintain Accuracy and Completeness of FCC Form 175**

82. Pursuant to section 1.65 of the Commission's rules, each applicant has a continuing obligation to maintain the accuracy and completeness of information furnished in a pending application, including a pending application to participate in Auction 111 or a pending LPTV/TV translator station application.<sup>174</sup> Consistent with the requirements for spectrum auctions, an applicant for Auction 111 must furnish additional or corrected information to the Commission within five business days after a significant occurrence, or amend its FCC Form 175, no more than five business days after the applicant becomes aware of the need for the amendment.<sup>175</sup> In accordance with the Commission's rules, an applicant's obligation to make modifications to a pending auction application in order to provide additional or corrected information continues beyond the five-day period, even if the report is not made within the five-day period.<sup>176</sup> An applicant is obligated to amend its pending application even if a reported change may result in the dismissal of the application because it is subsequently determined to be a major modification.

## **3. Modifying an FCC Form 175**

83. As noted above, a party seeking to participate in Auction 111 must file an FCC Form 175 electronically via the FCC's Auction Application System. During the short-form application filing window, an applicant will be able to make any necessary modifications to its FCC Form 175 in the Auction Application System. An applicant that has certified and submitted its FCC Form 175 before the short-form application filing deadline may continue to make modifications as often as necessary until the filing deadline; however, the applicant must re-certify and re-submit its FCC Form 175 before the filing deadline in order to confirm and effect its latest application changes. After each submission, a confirmation page will be displayed stating the submission time and submission date.

84. An applicant will also be allowed to modify its FCC Form 175 in the Auction Application System, except for certain fields,<sup>177</sup> during the resubmission filing window and after the release of the public notice announcing the qualified bidders for an auction. During these times, if an

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<sup>172</sup> See 47 CFR § 1.2105(b)(2); see also *Two Way Radio of Carolina, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 12035 (1999) (*Two Way Radio*) (holding that auction applicant was not allowed to change its designated entity status after application filing deadline).

<sup>173</sup> See 47 CFR § 1.2105(b)(2). Any change in control of an applicant—resulting from a merger, for example—will be considered a major modification, and the application will consequently be dismissed. The Commission reiterates that, even if an applicant's FCC Form 175 is dismissed, the applicant would remain subject to the communication prohibitions of 47 CFR § 1.2105(c) until the down payment deadline for Auction 111.

<sup>174</sup> See *id.* §§ 1.65, 1.2105(b)(4). For purposes of sections 1.65 and 1.2105(b)(4), an applicant's FCC Form 175 and associated attachments will remain pending until the release of a public notice announcing the close of the auction. However, we remind Auction 111 applicants that they remain subject to the section 1.2105(c) prohibition on certain communications until the post-auction deadline for making down payments on winning bids. See Section II.H.2. "Prohibition Applies Until Down Payment Deadline," above.

<sup>175</sup> 47 CFR §§ 1.65, 1.2105(b)(4). See also *Part 1 Procedural Amendments Order*, 25 FCC Rcd at 523, para. 8. We remind each applicant of its duty to continuously maintain the accuracy of information submitted in its auction application. See, e.g., *Vermont Telephone Company, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 14130, 14134, para. 11 (EB 2011). Specifically, 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>176</sup> 47 CFR § 1.2105(b)(4).

<sup>177</sup> Specifically, an applicant will not be allowed to modify electronically in the Auction Application System the applicant's legal classification, the applicant's name, or the certifying official.

applicant needs to make permissible minor changes to its FCC Form 175 or must make changes in order to maintain the accuracy and completeness of its application pursuant to sections 1.65 and 1.2105(b)(4), then it must make the change(s) in the Auction Application System and re-certify and re-submit its application to confirm and effect the change(s).

85. An applicant's ability to modify its FCC Form 175 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 between the closing of the resubmission filing window and the release of the public notice announcing the qualified bidders for an auction. During these periods, an applicant will be able to view its submitted application, but will be permitted to modify only the applicant's address, responsible party address, and contact information (e.g., name, address, telephone number, etc.) in the Auction Application System. An applicant will not be able to modify any other pages of the FCC Form 175 in the Auction Application System during these periods. 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 pursuant to sections 1.65 and 1.2105(b)(4), then the applicant must submit a letter briefly summarizing the changes to its FCC Form 175 via email to [auction111@fcc.gov](mailto:auction111@fcc.gov). The email summarizing the changes must include a subject line referring to Auction 111 and the name of the applicant, for example, "Re: Changes to Auction 111 Auction Application of XYZ Corp." Any attachments to the email must be formatted as Adobe® Acrobat® (PDF) or Microsoft® Word documents. An applicant that submits its changes in this manner must subsequently modify, certify, and submit its FCC Form 175 application(s) electronically in the Auction Application System once it is again open and available to applicants.

86. Applicants should also note that even at times when the Auction Application System is open and available to applicants, the system will not allow an applicant to make certain other permissible changes itself (e.g., correcting a misstatement of the applicant's legal classification, name, or certifying official).<sup>178</sup> If an applicant needs to make a permissible minor change of this nature, then it must submit a written request by email to the Auctions Division Chief, via [auction111@fcc.gov](mailto:auction111@fcc.gov) requesting that the Commission manually make the change on the applicant's behalf. Once Commission staff has informed the applicant that the change has been made in the Auction Application System, the applicant must then re-certify and re-submit its FCC Form 175 in the Auction Application System to confirm and effect the change(s).

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

88. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System. Further, as discussed above, parties submitting information related to their applications should use caution to ensure that their submissions do not contain confidential information or communicate information that would violate section 1.2105(c). An applicant seeking to submit, outside of the Auction Application System, information that might reflect non-public information, such as an applicant's upfront payment amount, or bidding eligibility, should consider including in its email a request that the filing or portions of the filing be withheld from public inspection until the end of the prohibition on certain communications pursuant to section 1.2105(c).

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<sup>178</sup> This is the case because certain fields on the FCC Form 175 will no longer be changeable by the applicant after the initial filing window closes.

### III. PREPARING FOR BIDDING IN AUCTION 111

#### A. Due Diligence

89. 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 Auction 111. **The Commission makes no representations or warranties about the use of this spectrum or these construction permits for particular services. Each applicant should be aware that a Commission auction represents an opportunity to become an FCC permittee in a broadcast service, subject to certain conditions and regulations. This includes the established authority of the Commission to alter the terms of existing licenses by rulemaking, which is equally applicable to licenses awarded by auction.<sup>179</sup> A Commission auction does not constitute an endorsement by the Commission of any particular service, technology, or product, nor does a Commission construction permit or license constitute a guarantee of business success.**

90. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. In particular, we 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 111 construction permit, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements. We also note that stations in the LPTV/translator services are licensed and operate on a secondary interference basis. This means that they may not interfere with, and must accept interference from, primary services including full power television stations. As a result, the operating channel of an LPTV/translator station may be displaced by a full power television station and the LPTV/translator station will either have to relocate to a new channel that does not cause interference or else discontinue operations altogether. We also urge each applicant to inspect any prospective transmitter sites located in, or near, the service area for which it plans to bid, to confirm the availability of such sites, and to familiarize itself with the Commission's rules regarding any applicable federal, state, and local requirements, including the National Environmental Policy Act (NEPA),<sup>180</sup> the National Historic Preservation Act (NHPA),<sup>181</sup> and other environmental statutes.<sup>182</sup>

91. We also encourage each applicant in Auction 111 to continue to conduct its own research throughout the auction in order to determine the existence of pending or future administrative or judicial proceedings that might affect its decision to continue participating in the auction. Each 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 Auction 111. 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.

92. 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 111. 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.

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<sup>179</sup> See, e.g., *Cellco P'ship v. FCC*, 700 F.3d 534, 542 (D.C. Cir. 2012); *Celtronix Telemetry, Inc. v. FCC*, 272 F.3d 585, 589 (D.C. Cir. 2001) (citing 47 U.S.C. § 309(j)(6)(D)).

<sup>180</sup> 42 U.S.C. § 4321 *et seq.*

<sup>181</sup> 54 U.S.C. § 300101 *et seq.*

<sup>182</sup> 47 CFR chapter 1, part 1, subpart I.

93. 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**

94. Before the opening of the short-form application filing window for Auction 111, detailed educational information will be provided in various formats to would-be participants on the Auction 111 webpage. Specifically, OEA will provide various materials on the pre-bidding processes in advance of the opening of the short-form application window, beginning with the release of step-by-step instructions for completing the FCC Form 175, which OEA will make available in the Education section of the Auction 111 website at [www.fcc.gov/auction/111](http://www.fcc.gov/auction/111). In addition, OEA will provide an online tutorial for the auction, covering pre-auction procedures including completing a short-form application in the FCC Auction Application System, and bidding procedures including how to use the FCC auction bidding system. In advance of the start of the mock auction, OEA will release a user guide for the bidding system.

95. We believe that parties interested in participating in Auction 111 will find the interactive, online tutorial an efficient and effective way to further their understanding of the application and bidding processes. The online tutorial will allow viewers to navigate the presentation outline, review written notes, and listen to audio of the notes. Additional features of this web-based tool include links to auction-specific Commission releases, email links for contacting Commission staff, and screen shots of the online application and bidding systems. The online tutorial will be accessible in the Education section of the Auction 111 website at [www.fcc.gov/auction/111](http://www.fcc.gov/auction/111). Once posted, the tutorial will remain continuously accessible.

#### **C. Short-Form Applications: Due Before 6:00 p.m. ET on November 9, 2021**

96. In order to be eligible to bid in Auction 111, an applicant must first submit a short-form application (FCC Form 175) electronically via the Auction Application System following the instructions set forth in the FCC Form 175 Instructions. The short-form application will become available with the opening of the initial filing window and must be submitted **prior to 6:00 p.m. ET on November 9, 2021. Late applications will not be accepted.** No filing fee is required to be paid at the time of filing a short-form application.

97. Applications may be filed at any time beginning at noon ET on November 1, 2021, until the filing window closes at 6:00 p.m. ET on November 9, 2021. 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 on November 9, 2021.

98. 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 telephony (TTY)). Hours of service are Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET.<sup>183</sup> In order to provide better service to the public, all calls to Technical Support are recorded.

<sup>183</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 (continued....)



**D. Application Processing, Limited Settlement Opportunity, and Minor Modifications****1. Public Notice of MX Groups and Limited Settlement Opportunity**

99. After the initial short-form application filing deadline, Commission staff will review all timely submitted applications for Auction 111 to identify the MX Groups listed in Attachment A for which two or more short-form applications were submitted and which are therefore subject to competitive bidding procedures.<sup>184</sup> Following this review, we will release a public notice identifying the remaining MX Groups in Auction 111. This public notice will also specify a settlement period, of no more than 10 business days, for resolving mutual exclusivity by the filing of technical amendments, dismissal requests, and requests for approval of settlement agreements.<sup>185</sup> Technical amendments submitted by applicants to resolve their mutual exclusivities must be minor, as defined by the applicable rules, and must not create any new mutual exclusivity or other application conflict.<sup>186</sup> Unless the mutual exclusivity is resolved during this limited settlement opportunity, an applicant in one of these MX Groups cannot obtain the construction permit without placing a bid, even if no other auction applicant in that MX Group becomes qualified to bid or in fact places a bid.<sup>187</sup>

100. As mentioned above, no more than one construction permit will be awarded through Auction 111 for each MX group identified in Attachment A.<sup>188</sup> Likewise, any settlement reached during this limited settlement opportunity may not result in more than one surviving application for an LPTV/translator station construction permit.<sup>189</sup> Accordingly, “partial settlements” (i.e., settlements which reduce the number of proposals in a group, but which do not completely resolve the mutual exclusivity of that group) and engineering solutions that completely resolve the mutual exclusivity of the group but result in more than one surviving application will not be permitted.<sup>190</sup> To facilitate resolution of mutual exclusivity, the prohibited communications rule will be suspended during the settlement period as specified by future public notice(s).<sup>191</sup> Discussions between applicants of bids, bidding strategies, or

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any downtime to auction-related systems, including the Auction Application System. However, there are occasions when auction-related systems may be temporarily unavailable.

<sup>184</sup> We will not make any determination as to the completeness or acceptability of the short-form application as part of the process of identifying MX Groups subject to competitive bidding.

<sup>185</sup> See 47 CFR § 73.5002(c)(3), (d)(3), (e).

<sup>186</sup> See 47 CFR § 74.1233(a)(1).

<sup>187</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); *Auction 25 Procedures Public Notice*, 14 FCC Rcd at 10646-47.

<sup>188</sup> See para. 8, above.

<sup>189</sup> Restricting such settlements agreements in this way also reduces the likelihood that a settlement agreement could be a prohibited joint bidding agreement. See 47 CFR § 1.2105(a)(2)(iv).

<sup>190</sup> See, e.g., *Low Power Television Auction No. 81 Mutually Exclusive Proposals Subject to Auction*, Public Notice, 16 FCC Rcd 11633, 11634 (MMB/WTB 2001) (limiting applicant’s ability to partially resolve mutual exclusivity during auction settlement windows).

<sup>191</sup> See 47 CFR § 73.5002(d).

settlements outside of any announced settlement period would violate the Commission's prohibition on certain communications by auction applicants.<sup>192</sup>

101. Non-mutually exclusive applications will be listed in a subsequent public notice to be released by OEA and MB. Such applications will not proceed to auction, but will proceed in accordance with instructions set forth in that public notice.<sup>193</sup>

## **2. Public Notice of Applicants' Initial Application Status and Opportunity for Minor Modifications**

102. Commission staff will review all timely submitted applications for Auction 111 that remain mutually exclusive after the limited settlement period to determine whether each applicant has complied with the application requirements and whether it has provided all required information concerning its qualifications for bidding. After this review is completed, we will issue a public notice announcing applicants' initial application status by identifying: (1) those that are complete; (2) those that are rejected;<sup>194</sup> and (2) those that are incomplete or deficient because of defects that may be corrected. This public notice also will establish an application resubmission filing window, during which an applicant may make permissible minor modifications to its application to address identified deficiencies.<sup>195</sup> The public notice will include the deadline for resubmitting corrected applications and a copy of the public notice will be sent by overnight delivery to the contact address listed in the FCC Form 175 for each applicant. We ask all applicants to make sure that the contact address provided in its short-form application is accurate and is a location capable of accepting packages that require a signature. 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 contact information of a Commission staff member who can answer questions specific to the application. To become a qualified bidder, an applicant must have a complete application (i.e., have timely corrected any identified deficiencies) and make a timely and sufficient upfront payment.<sup>196</sup> Qualified bidders will be identified by public notice at least 10 days prior to the mock auction.

103. After the initial application filing deadline on November 9, 2021, applicants can make only minor modifications to their applications.<sup>197</sup> Major modifications will not be permitted.<sup>198</sup> After the deadline for resubmitting corrected applications, an applicant will have no further opportunity to cure any deficiencies in its application or provide any additional information that may affect Commission staff's ultimate determination of whether and to what extent the applicant is qualified to participate in Auction 111.

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<sup>192</sup> See *id.* §§ 1.2105(c), 73.5002(d), (e); see also Section V.H. "Prohibited Communications and Compliance with Antitrust Laws," above.

<sup>193</sup> See 47 CFR § 73.5005(d).

<sup>194</sup> An application may be rejected based on the applicant's response to the noncommercial educational status election on its FCC Form 175. For more on this, see Section II.L., "Noncommercial Educational Status Election," above.

<sup>195</sup> 47 CFR § 1.2105(b)(2).

<sup>196</sup> *Id.* If an applicant fails to submit a sufficient upfront payment to establish eligibility to bid on at least one of the construction permits selected on its FCC Form 175, the applicant will not be eligible to participate in bidding in the auction. *Broadcast Competitive Bidding Order*, 13 FCC Rcd at 15979-80, para. 153. This applicant will retain its status as an applicant in Auction 111 and will remain subject to 47 CFR §§ 1.2105(c), 73.5002(d). See *Star Wireless, LLC*, Forfeiture Order, 19 FCC Rcd 18626, 18627-29, para. 4 & n.19 (EB 2004), *order granted in part sub nom, Star Wireless, LLC and Northeast Communications of Wis., Inc.*, Order on Review, 22 FCC Rcd 8943 (2007), *petition for review denied, Star Wireless, LLC v. FCC*, 522 F.3d 469 (D.C. Cir. 2008).

<sup>197</sup> See Section II.M. "Modifications to FCC Form 175," above.

<sup>198</sup> 47 CFR § 1.2105(b); see also *Two Way Radio*, 14 FCC Rcd at 12039, para. 8.

104. 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.<sup>199</sup> Authorizations may be sent by email to [auction111@fcc.gov](mailto:auction111@fcc.gov).

### **3. Public Notice of Applicants' Final Application Status After Upfront Payment Deadline**

105. After Commission staff review resubmitted applications for Auction 111 and evaluate upfront payments, we will release a public notice identifying applicants that have become qualified bidders. A *Qualified Bidders Public Notice* will be issued before bidding in the auction begins. Qualified bidders are those applicants with submitted FCC Forms 175 that are deemed timely filed and complete and that have made a sufficient upfront payment.

#### **E. Upfront Payments**

106. In order to be eligible to bid in Auction 111, a sufficient upfront payment and a complete and accurate FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be submitted before 6:00 p.m. ET on January 25, 2022. After completing its short-form application, an applicant will have access to an electronic pre-filled version of the FCC Form 159. An accurate and complete FCC Form 159 must accompany each payment. Proper completion of this form is critical to ensuring correct crediting of upfront payments. Payers using the pre-filled FCC Form 159 are responsible for ensuring that all the information on the form, including payment amounts, is accurate. Instructions for completing FCC Form 159 for Auction 111 are provided in Attachment B to this Public Notice.

#### **1. Making Upfront Payments by Wire Transfer for Auction 111**

107. Upfront payments for Auction 111 must be wired to, and will be deposited in, the U.S. Treasury.<sup>200</sup>

108. Wire transfer payments for Auction 111 must be received before 6:00 p.m. ET on January 25, 2022.<sup>201</sup> No other payment method is acceptable.<sup>202</sup> To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules and other specific bank wire transfer requirements, such as an in-person written request before a specified time of day) with their bankers several days before they plan to make the wire transfer, and must allow sufficient time for the transfer to be initiated and completed before the deadline. The following information will be needed:

ABA Routing Number: 021030004

Receiving Bank: TREAS NYC  
33 Liberty Street  
New York, NY 10045

Beneficiary: FCC  
45 L Street, NE, 3<sup>rd</sup> Floor

<sup>199</sup> 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 175. See Section III.F. "Auction Registration," below.

<sup>200</sup> See Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, Division P, Title I, 132 Stat. 348, 1080 (2018). For more information on calculating upfront payments and the impact of upfront payments on bidding eligibility, see Section III.E.3. "Upfront Payments and Bidding Eligibility," below.

<sup>201</sup> An applicant must initiate the wire transfer through its bank, authorizing the bank to wire funds from the applicant's account to the proper account at the U.S. Treasury.

<sup>202</sup> The Commission will not accept checks, credit cards, or automated clearing house (ACH) payments.

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: **“U111”**)

NOTE: The beneficiary account number (BNF Account Number) is specific to the upfront payments for Auction 111. Do not use a BNF Account Number from a previous auction.

109. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must print and fax a completed FCC Form 159 (Revised 2/03) 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 or in the email subject header, write “Wire Transfer—Auction Payment for Auction 111.” To meet the upfront payment deadline, an applicant’s payment must be credited to the Commission’s account for Auction 111 before the deadline.<sup>203</sup>

110. Each applicant is responsible for ensuring timely submission of its upfront payment and for timely filing of an accurate and complete FCC Form 159. An applicant should coordinate with its financial institution well ahead of the due date regarding its wire transfer and allow sufficient time for the transfer to be initiated and completed prior to the deadline.<sup>204</sup> 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>205</sup> **Each applicant also is responsible for obtaining 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 that it was deposited into the proper account.** As a regulatory requirement, the U.S. Treasury screens all payments from all financial institutions before deposits are made available to specified accounts. If wires are suspended, the U.S. Treasury may direct questions regarding any transfer to the financial institution initiating the wire. Each applicant must take care to assure that any questions directed to its financial institution(s) are addressed promptly. To receive confirmation from Commission staff, contact Scott Radcliffe of the Office of Managing Director’s Revenue & Receivables Operations Group/Auctions at (202) 418-7518 or Theresa Meeks at (202) 418-2945.

111. Please note the following information regarding upfront payments:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction 111 go to an account number different from the accounts used in previous FCC auctions.

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<sup>203</sup> See, e.g., *Four Corners Broadcasting, LLC — Request for Waiver of Section 1.2106(a), Closed Broadcast Auction 88*, Letter Order, 25 FCC Rcd 9046 (WTB 2010).

<sup>204</sup> Among other things, we caution each applicant to plan ahead regarding any potential delays in its or its financial institution’s ability to complete wire transfers due to the COVID-19 pandemic.

<sup>205</sup> See, e.g., *Spectrum Acquisitions, Inc. Application to Participate in Auction 73 — Request for Waiver of Upfront Payment Deadline*, 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).

112. Failure to deliver a sufficient upfront payment as instructed herein by the upfront payment deadline will result in dismissal of the short-form application and disqualification from participation in the auction.<sup>206</sup>

## 2. Completing and Submitting FCC Form 159

113. An accurate and complete FCC 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 or in the email subject header, write “Wire Transfer – Auction Payment for Auction 111.”

## 3. Upfront Payments and Bidding Eligibility

114. The Commission has delegated authority to OEA and MB to determine appropriate upfront payments for each construction permit being auctioned, taking into account such factors as the efficiency of the auction process and the potential value of similar licenses.<sup>207</sup> An upfront payment is a refundable deposit made by each applicant seeking to participate in bidding to establish its eligibility to bid on construction permits. 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>208</sup> In the *Auction 111 Comment Public Notice*,<sup>209</sup> we proposed an upfront payment amount for each construction permit and sought comment on the upfront payment amounts.<sup>210</sup> We received no comments regarding the upfront payment amounts for Auction 111, and we adopt the upfront payment amounts proposed in Attachment A of the *Auction 111 Comment Public Notice*.

115. An applicant must make an upfront payment sufficient to obtain bidding eligibility on the construction permits on which it will bid. We proposed in the *Auction 111 Comment Public Notice* that the amount of the upfront payment submitted by an applicant will determine its initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids in any single round.<sup>211</sup> Under that proposal, in order to bid on a particular construction permit, a qualified bidder must have a current eligibility level that meets or exceeds the number of bidding units assigned to that construction permit. **At a minimum, therefore, an applicant’s total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits selected on its FCC Form 175 for Auction 111, or else the applicant will not become qualified to participate in the auction.** An applicant does not have to make an upfront payment to cover all construction permits the applicant selected on its FCC Form 175, rather only enough to cover the maximum number of bidding units that are associated with construction permits on which the applicant wishes to place bids and hold provisionally

<sup>206</sup> Even if an applicant’s FCC Form 175 is dismissed, the applicant remains subject to the prohibitions on certain communications of 47 CFR § 1.2105(c) until the down payment deadline for this auction.

<sup>207</sup> See *Part 1 Order*, 12 FCC Rcd at 5697-98, para. 16; see also *Part 1 Third Report and Order*, 13 FCC Rcd at 425, para. 86; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2377-79, paras. 169-75; 47 CFR § 0.271.

<sup>208</sup> See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2377-79, paras. 169-76.

<sup>209</sup> *Auction 111 Comment Public Notice* at 6, paras. 12-13.

<sup>210</sup> See *Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures*, WT Docket No. 97-82, Order, Memorandum Opinion and Order and Notice of Proposed Rule Making, 12 FCC Rcd 5686, 5697-98, para. 16 (1997) (*Auction Procedures Consolidation Order & NPRM*). See also *Part 1 Third Report and Order*, 13 FCC Rcd at 425, para. 86; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2377-79, paras. 169-75.

<sup>211</sup> See *Auction 111 Comment Public Notice* at 6, para. 14.

winning bids in any given round. The total upfront payment does not affect the total dollar amount the bidder may bid on any given construction permit.

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

117. In calculating its upfront payment amount, an applicant must determine the **maximum** number of bidding units on which it may wish to bid in any single round and submit an upfront payment amount for the auction covering that number of bidding units.<sup>212</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.**

Example: Upfront Payments, Bidding Eligibility, and Bidding Flexibility			
Construction Permit	Market Name	Bidding Units	Upfront Payment
MX019	Tallahassee, FL	100,000	\$100,000
MX020	Beaumont, TX	50,000	\$50,000
If a bidder wishes to bid on both construction permits in a round, it must have selected both on its FCC Form 175 and purchased at least 150,000 bidding units (100,000 + 50,000) of bidding eligibility. If it only wishes to bid on one, but not both, purchasing 100,000 bidding units would meet the eligibility requirement for either construction permit. The bidder would be able to bid on either construction permit, but not both at the same time. If the bidder purchased only 50,000 bidding units, the bidder would have enough eligibility for the Beaumont, TX construction permit but not for the Tallahassee, FL construction permit.			

118. An applicant that is a former defaulter, as described above, must pay an upfront payment 50% greater than that required of an applicant that is not a former defaulter.<sup>213</sup> For purposes of this rule, defaults and delinquencies of the applicant itself and its controlling interests are included.<sup>214</sup> If an applicant is a former defaulter, it must calculate its upfront payment for all of its selected construction permits by multiplying the number of bidding units on which it wishes to be active (bid on or hold provisionally winning bids on) during a given round by 1.5.<sup>215</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>216</sup>

<sup>212</sup> A qualified bidder's maximum eligibility will not exceed the sum of the bidding units associated with the total number of construction permits selected on its FCC Form 175. In some cases, a qualified bidder's maximum eligibility may be less than the amount of its upfront payment because the qualified bidder has either previously been in default on a Commission construction permit or license or delinquent on non-tax debt owed to a Federal agency, *see* 47 CFR § 1.2106(a), or has submitted an upfront payment that exceeds the total amount of bidding units associated with the construction permits it selected on its FCC Form 175.

<sup>213</sup> *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15316-18, paras. 40-43; *see also* 47 CFR § 1.2106(a); Section II.J., "Provisions Regarding Former and Current Defaulters," above.

<sup>214</sup> For this purpose, the term "controlling interest" is defined in 47 CFR § 1.2105(a)(4)(i).

<sup>215</sup> 47 CFR § 1.2106(a).

<sup>216</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 selected on its FCC Form 175, the applicant will not be eligible to participate in Auction 111. *Broadcast Competitive Bidding Order*, 13 FCC Rcd at 15979-80, para. 153. The applicant, however, (continued....)

**F. Auction Registration**

119. All qualified bidders for Auction 111 are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight delivery. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID® tokens that will be required to place bids, the web address and instructions for accessing and logging in to the auction bidding system, FCC assigned username (User ID) for each authorized bidder, and the Auction Bidder Line phone number.

120. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, if this mailing is not received by the contact person for a qualified bidder by noon on February 15, 2022, call the Auctions Hotline at (717) 338-2868. Receipt of this registration mailing is critical to participating in the auction, and each qualified bidder is responsible for ensuring it has received all registration materials.

121. In the event that a SecurID® token is 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 a replacement. To request a replacement, call the Auction Bidder Line at the telephone number provided in the registration materials or the Auction Hotline at (717) 338-2868.

**G. Remote Electronic Bidding via the FCC Auction Bidding System**

122. Bidders will be able to participate in Auction 111 over the Internet using the FCC Auction Bidding System (bidding system) or by telephonic bidding. Each applicant should indicate its bidding preference—electronic or telephonic—on its FCC Form 175. 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 10 minutes. The toll-free telephone number for the auction bidder line will be provided to qualified bidders prior to the start of bidding in the auction.

123. Only qualified bidders are permitted to bid. Each qualified bidder will be issued three SecurID® tokens, which the Commission will provide at no charge. Each authorized bidder for a qualified bidder must have an individually assigned SecurID® token in order to access the bidding system, either by telephone or over the Internet. In order to access the bidding function of the bidding system, bidders must be logged in during the 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 *bid summary* for each round after they have completed all their activity for that round. 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 111. Please note that the SecurID® tokens can be recycled, and the Commission requests that bidders return the tokens to the FCC. Pre-addressed envelopes will be provided to return the tokens once the auction has ended.

124. The Commission makes no warranties whatsoever, and shall not be deemed to have made any warranties, with respect to the FCC Auction Application System and the auction bidding system, including any implied warranties of merchantability or fitness for a particular purpose. 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 use, loss of revenue,

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will retain its status as an applicant in Auction 111 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), *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).

loss of business information, or any other direct, indirect, or consequential damages) arising out of or relating to the existence, furnishing, functioning, or use of the FCC Auction Application System or the FCC auction bidding system. 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.

125. To the extent an issue arises with the bidding system itself, the Commission will take all appropriate measures to resolve such issues quickly and equitably.<sup>217</sup> Should an issue arise that is outside the bidding system or attributable to a bidder, including, but not limited to, a bidder's hardware, software, or Internet access problem that prevents the bidder from submitting a bid prior to the end of a round, the Commission shall have no obligation to resolve or remedy such an issue on behalf of the bidder. Similarly, if an issue arises due to bidder error using the bidding system, the Commission shall have no obligation to resolve or remedy such an issue on behalf of the bidder. Accordingly, after the close of a bidding round, the results of bid processing will not be altered absent evidence of any failure in the bidding system.

#### **H. Mock Auction**

126. All qualified bidders will be eligible to participate in a mock auction on February 17, 2022. The mock auction will enable qualified bidders to become familiar with the FCC auction bidding system and to practice submitting bids prior to the auction. We recommend that all qualified bidders, including all their authorized bidders, participate to ensure that they can log in to the bidding system and gain experience with the bidding procedures. Participating in the mock auction may reduce the likelihood of a bidder making a mistake during the auction. Details regarding the mock auction will be announced in the *Qualified Bidders Public Notice* for Auction 111.

#### **I. Auction Delay, Suspension, or Cancellation**

127. In the *Auction 111 Comment Public Notice*, we proposed that, by public notice or by announcement through the FCC auction bidding system, we may delay, suspend, or cancel bidding in the auction in the event of natural disaster, technical obstacle, network interruption, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding.<sup>218</sup> We received no comments on this issue.

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

#### **J. Environmental Review Requirements**

129. Permittees or licensees must comply with the Commission's rules for environmental review under the National Environmental Policy Act,<sup>219</sup> the National Historic Preservation Act,<sup>220</sup> and

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<sup>217</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.

<sup>218</sup> *Auction 111 Comment Public Notice* at 7-8, para. 18.

<sup>219</sup> 42 U.S.C. § 4321 *et seq.*



other federal environmental statutes.<sup>221</sup> The construction of a broadcast facility is a federal action, and the permittee or licensee must comply with the Commission's environmental rules for each such facility.<sup>222</sup> These environmental rules require, among other things, that the permittee or licensee consult with expert agencies having environmental responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the U.S. Army Corps of Engineers, and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). In assessing the effect of facility construction on historic properties, the permittee or licensee must follow the provisions of the FCC's Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process.<sup>223</sup> The permittee or licensee must prepare environmental assessments for any facility that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species, or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. In addition, the permittee or licensee must prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

#### IV. BIDDING

130. The first round of bidding for Auction 111 will begin on February 23, 2022. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released at least one week before the start of bidding in the auction.

##### A. Auction Structure

###### 1. Simultaneous Multiple Round Auction

131. In the *Auction 111 Comment Public Notice*, we proposed to auction all construction permits listed in Attachment A of this Public Notice in a single auction using a simultaneous multiple-round auction format.<sup>224</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 comments on this proposal, and this proposal is adopted. Unless otherwise announced, bids will be accepted on all construction permits in each round of the auction until bidding stops on every construction permit.

###### 2. FCC Auction Bidding System

132. All bidding will take place remotely either through the FCC auction bidding system or by telephonic bidding. 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.

133. An Auction 111 bidder's ability to bid on specific construction permits is determined by two factors: (1) the construction permits selected by that applicant in its FCC Form 175 and (2) the bidder's bidding eligibility measured in bidding units. The FCC auction bidding system will allow bidders to submit bids on only those construction permits the bidder selected on its FCC Form 175.

134. 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 PIN

(Continued from previous page)

<sup>220</sup> 54 U.S.C. § 300101 *et seq.*

<sup>221</sup> 47 CFR pt. 1, subpart I.

<sup>222</sup> 47 CFR §§ 1.1301-1.1319.

<sup>223</sup> 47 CFR pt. 1, subpart DD, Appendix C to Part 1.

<sup>224</sup> *Auction 111 Comment Public Notice* at 9, para. 24.

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

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

136. In the *Auction 111 Comment Public Notice*, we proposed to retain the discretion to adjust 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.<sup>225</sup> We received no comments on the proposal, and we adopt it for Auction 111. We may change the amount of time for bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors.

### 4. Eligibility and Activity Rules

137. As discussed above, the amount of the upfront payment submitted by a bidder will determine its initial bidding eligibility in terms of bidding units.<sup>226</sup> A bidder's bidding eligibility is the maximum number of bidding units on which a bidder may be active (bid or hold provisionally winning bids) in a given round. As noted earlier, each construction permit is assigned a specific number of bidding units as listed in Attachment A. Bidding units assigned to each construction permit do not change as prices rise during the auction. Upfront payments are not attributed to specific construction permits. Rather, a bidder may place bids on any of the construction permits selected on its FCC Form 175 as long as the total number of bidding units associated with those construction permits does not exceed the bidder's current eligibility.

138. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units 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 it selected on its short-form application. The total upfront payment does not affect the total dollar amount a bidder may bid on any given construction permit. We received no comments on the bidding eligibility proposals, and these proposals are adopted.

139. 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>227</sup> and provisionally winning bids from the previous round.<sup>228</sup>

140. 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

<sup>225</sup> *Id.* at 9-10, paras. 26-27.

<sup>226</sup> See Section III.E.3., "Upfront Payments and Bidding Eligibility," above.

<sup>227</sup> Bidding units associated with construction permits for which the bidder has removed bids do not count towards current activity.

<sup>228</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.

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 bids in subsequent rounds of the auction.<sup>229</sup>

## 5. Activity Rule Waivers

141. In the *Auction 111 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>230</sup> We received no comments on this issue.

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

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

144. 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 will be permanently reduced to bring it into compliance with the activity rule described above. Reducing eligibility is an irreversible action once the round has closed, and a bidder cannot regain its lost bidding eligibility.

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

## 6. Stopping Rule

146. For Auction 111, 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>231</sup> Specifically, bidding will close on all construction permits after the first round in which no bidder submits a new bid or applies a proactive waiver.<sup>232</sup>

147. We also sought comment on alternative versions of the simultaneous stopping rule for Auction 111:

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<sup>229</sup> See Section IV.A.5., "Activity Rule Waivers," below.

<sup>230</sup> *Auction 111 Comment Public Notice* at 11-12, paras. 32-36.

<sup>231</sup> *Auction 111 Comment Public Notice* at 10, para. 28.

<sup>232</sup> *Id.*

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

Option 2. The auction would close for all construction permits after the first round in which no bidder applies a waiver or places any new bid on any construction permit that already has a provisionally winning bid.<sup>233</sup> Thus, absent any other bidding activity, a bidder placing a new bid on an FCC-held construction permit (a construction permit that does not have a provisionally winning bid) would not keep the auction open under this modified stopping rule.

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

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

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

148. 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>234</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>235</sup> We proposed to retain the discretion to exercise any of these options with or without prior announcement during the auction.<sup>236</sup> We received no comments on these proposals and adopt them for Auction 111.

## **B. Bidding Procedures**

### **1. Minimum Opening Bids and Acceptable Bid Amounts**

149. 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 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>237</sup> Consistent with this mandate, the Commission directed the Bureaus to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.<sup>238</sup> Among other factors, we must consider the amount of spectrum being auctioned, levels of incumbency, the availability

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<sup>233</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.

<sup>234</sup> *Auction 111 Comment Public Notice* at 11, para. 30.

<sup>235</sup> *Id.*

<sup>236</sup> *Id.*

<sup>237</sup> 47 U.S.C. § 309(j)(4)(F).

<sup>238</sup> *Part 1 Third Report and Order*, 13 FCC Rcd at 455-56, para. 141.

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.

150. In the *Auction 111 Comment Public Notice*, we proposed not to establish reserve prices for specific construction permits listed in Attachment A that are different from minimum opening bid amounts.<sup>239</sup> This is consistent with previous broadcast spectrum auctions. We received no comments on this proposal and adopt it.

151. In the *Auction 111 Comment Public Notice*, 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, which has been used in other broadcast auctions, is an effective tool for accelerating the competitive bidding process.<sup>240</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.

152. We received no comments on the proposed minimum opening bids, and therefore we adopt the minimum opening bid amounts proposed in the *Auction 111 Comment Public Notice*. The specific minimum opening bid amounts for each of the construction permits are specified in Attachment A to this Public Notice.

153. In the *Auction 111 Comment Public Notice*, we proposed that, in each round, a qualified bidder will be able to place a bid on a given construction permit in any of up to nine different amounts.<sup>241</sup> Under the proposal, the FCC auction bidding system interface will list the nine acceptable bid amounts for each construction permit.<sup>242</sup> We received no comments on this proposal, and adopt it as proposed.

154. In the *Auction 111 Comment Public Notice*, to calculate 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 111 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%.

155. In Auction 111, 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

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<sup>239</sup> *Auction 111 Comment Public Notice* at 7, paras. 15-17. Normally, a reserve price is an absolute minimum price below which a construction permit or license will not be sold in a specific auction. A minimum opening bid, in contrast, is the minimum bid price set at the beginning of the auction below which no bids are accepted.

<sup>240</sup> *Id.*

<sup>241</sup> *Auction 111 Comment Public Notice* at 12-13, paras. 37-39. 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>242</sup> *Auction 111 Comment Public Notice* at 12-13, paras. 37-39.

amount will be calculated by multiplying the provisionally winning bid amount by one plus the minimum acceptable bid percentage—i.e., provisionally winning bid amount \* 1.10, rounded.<sup>243</sup>

156. In Auction 111, 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>244</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. Because the additional bid increment percentage is 5%, the calculation of the additional increment amount is (minimum acceptable bid amount) \* (0.05), rounded. The first additional acceptable bid amount equals (minimum acceptable bid amount) + (additional increment amount); the second additional acceptable bid amount equals (minimum acceptable bid amount) + (2\*(additional increment amount)); the third additional acceptable bid amount equals (minimum acceptable bid amount) + (3\*(additional increment amount)); etc.

157. We proposed to retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid increment percentage, the additional bid increment percentage, and the number of acceptable bid amounts if we determine that circumstances so dictate, consistent with past practice.<sup>245</sup> We also proposed to retain the discretion to do so on a construction permit-by-construction permit basis. We also proposed to retain the discretion to limit (a) the amount by which a minimum acceptable bid for a construction permit may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, we could set a \$1,000 limit on increases in minimum acceptable bid amounts over provisionally winning bids. Thus, if calculating a minimum acceptable bid using the minimum acceptable bid increment percentage results in a minimum acceptable bid amount that is \$1,200 higher than the provisionally winning bid on a construction permit, the minimum acceptable bid amount would instead be capped at \$1,000 above the provisionally winning bid.

158. We received no comments on these proposals concerning changes of bid amounts, and adopt the discretion to utilize them. We typically exercise this discretion based on our monitoring of ongoing bidding and reserve such discretion here. If we exercise this discretion, we will alert bidders by announcement in the FCC auction bidding system during the auction.

## 2. Provisionally Winning Bids

159. Consistent with practice in past auctions,<sup>246</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.

160. In the *Auction 111 Comment Public Notice*, we proposed to use a pseudo-random number generator to select a single provisionally winning bid if identical high bid amounts are submitted on a

<sup>243</sup> As explained in the *Auction 111 Comment Public Notice*, the result of that calculation is subject to a minimum of \$100. *Auction 111 Comment Public Notice* at 12, n.52. 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>244</sup> See note 243 above (regarding the standard rounding procedure used for auctions).

<sup>245</sup> See, e.g., *Auction 104 Procedures Public Notice*, 34 FCC Rcd at 4249-50, paras. 124-25; 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>246</sup> See, e.g., *Auction 104 Procedures Public Notice*, 34 FCC Rcd at 4250, paras. 126

construction permit in a given round (i.e., tied bids).<sup>247</sup> No comments were received on this proposal, and we adopt it as proposed.

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

162. As a reminder, provisionally winning bids count toward activity for purposes of the activity rule.<sup>248</sup>

### **3. Bid Removal and Bid Withdrawal**

163. In the *Auction 111 Comment Public Notice*, we explained that 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.<sup>249</sup> 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.

164. In the *Auction 111 Comment Public Notice*, we proposed to prohibit bidders from withdrawing any bid after close of the round in which that bid was placed.<sup>250</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 our experience with past auctions of broadcast construction permits. We received no comments on this issue. Accordingly, we will prohibit bid withdrawals in Auction 111. Bidders are cautioned to select bid amounts carefully because no bid withdrawals will be allowed, even if a bid was mistakenly or erroneously made.

### **4. Bidding Results**

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

### **5. Auction Announcements**

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

## **V. POST-AUCTION PROCEDURES**

167. The public notice announcing the close of the bidding and auction results will be released shortly after bidding has ended in Auction 111. This public notice will also establish the deadlines for submitting down payments, final payments, and amendments to long-form applications.

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<sup>247</sup> *Auction 111 Comment Public Notice* at 13-14, para. 44.

<sup>248</sup> See Section IV.A.4., “Eligibility and Activity Rules,” above.

<sup>249</sup> *Auction 111 Comment Public Notice* at 14, para. 45.

<sup>250</sup> *Id.* at 14, paras. 46-48.

**A. Down Payments**

168. The Commission's rules provide that, unless otherwise specified by public notice, within ten business days after the release of the auction closing public notice for Auction 111, 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 to 20% of the net amount of its winning bids (less any bidding credits, if applicable).<sup>251</sup>

**B. Final Payments**

169. Each winning bidder will be required to submit the balance of the net amount for each of its winning bids within 10 business days after the deadline for submitting down payments.<sup>252</sup>

**C. Winning Bidder Amendments to Long-Form Applications**

170. Because each party eligible to apply for Auction 111 has already filed an application for a new or modified LPTV/translator station (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)),<sup>253</sup> a winning bidder will not be required to submit a separate long-form application following close of bidding in Auction 111, but instead will be required to submit a minor amendment to its previously filed LPTV/Translator station 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>254</sup> Winning bidders' applications, as amended, will be placed on public notice, triggering the appropriate period for the filing of petitions to deny.<sup>255</sup> A winning bidder claiming new entrant status must include an exhibit demonstrating its eligibility for the bidding credit.<sup>256</sup> Further instructions will be provided to winning bidders in the auction closing public notice.

**D. Default and Disqualification**

171. Any winning bidder that defaults or is disqualified after the close of an auction (i.e., fails to remit the required down payment by the specified deadline, fails to submit a timely long-form application, fails to make a full and timely final payment, or is otherwise disqualified) is liable for default payments as described in section 1.2104(g)(2).<sup>257</sup> A default payment consists of a deficiency payment, equal to the difference between the amount of the 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.

172. 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 111 Comment Public Notice*, we proposed to set the additional default payment for this auction at 20% of the applicable

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<sup>251</sup> See 47 CFR § 1.2107(b).

<sup>252</sup> *Id.* § 1.2109(a); see *Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures*, WT Docket No. 05-211, Report and Order, 21 FCC Rcd 891, 907-09, paras. 43-46 (2006) (*CSEA/Part 1 Report and Order*).

<sup>253</sup> We note that some of the applications listed on Attachment A for new or modified LPTV/translator stations were originally filed on FCC Form 346. In 2015, the Media Bureau transitioned to its new Licensing and Management System (LMS) and applications for new LPTV/translator stations are now filed on FCC Form 2100 - Schedule C.

<sup>254</sup> For more information and help using the LMS system, contact: (877) 480-3201 TTY: (717) 333-2824.

<sup>255</sup> See 47 CFR § 73.5006.

<sup>256</sup> 47 CFR § 73.5005.

<sup>257</sup> *Id.* § 1.2104(g)(2).



bid.<sup>258</sup> We received no comments on this proposal, and it is therefore adopted for the reasons described in that proposal.<sup>259</sup>

173. 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>260</sup> In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, then 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>261</sup>

#### **E. Refund of Remaining Upfront Payment Balance**

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

175. If you have elected not to access the Refund Form through the *Auction Application Manager* page, then we request that all information listed below be supplied in writing.

1. Name, address, contact and phone number of Bank
2. ABA Number (capable to accept **ACH** payments) (please verify this number with your Bank)
3. Account Number to Credit
4. Name of Account Holder
5. FCC Registration Number (FRN)

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

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

## **VI. PROCEDURAL MATTERS**

### **A. Paperwork Reduction Act**

177. The Office of Management and Budget (OMB) has approved the information collections in the Application to Participate in an FCC Auction, FCC Form 175.<sup>262</sup> This Public Notice does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. Therefore, it does not contain any new or modified information collection 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>263</sup>

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<sup>258</sup> *Auction 111 Comment Public Notice* at 9, para. 23.

<sup>259</sup> *Id.*

<sup>260</sup> 47 CFR § 1.2109(b)-(c).

<sup>261</sup> *Id.* § 1.2109(d).

<sup>262</sup> OMB Control No. 3060-0600.

<sup>263</sup> *See* 44 U.S.C. § 3506(c)(4).

## B. Congressional Review Act

178. The Commission has determined, and Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that these rules are “non-major” under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this *Auction 111 Procedures Public Notice* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

## C. Supplemental Final Regulatory Flexibility Analysis

179. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>264</sup> the Commission prepared Initial Regulatory Flexibility Analyses (IRFAs) in connection with the *Broadcast Competitive Bidding Notice of Proposed Rulemaking* (NPRM),<sup>265</sup> and other Commission NPRMs (collectively, *Competitive Bidding NPRMs*) pursuant to which Auction 111 will be conducted.<sup>266</sup> Final Regulatory Flexibility Analyses (FRFAs) likewise were prepared in the *Broadcast Competitive Bidding Order*<sup>267</sup> and other Commission rulemaking orders (collectively, *Competitive Bidding Orders*) pursuant to which Auction 111 will be conducted.<sup>268</sup> In this proceeding, a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) was incorporated in the *Auction 111 Comment Public Notice*.<sup>269</sup> The Commission sought written public comment on the proposals in the *Auction 111 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.

180. *Need for, and Objectives of, the Public Notice.* The procedures for the conduct of Auction 111 as described in the *Auction 111 Procedures Public Notice* implement the Commission’s competitive bidding rules, which have been adopted by the Commission in multiple notice-and-comment rulemaking proceedings.<sup>270</sup> More specifically, the *Auction 111 Procedures Public Notice* provides an overview of the procedures, terms, and conditions governing Auction 111, and the post-auction

<sup>264</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>265</sup> *Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, MM Docket No. 97-234, Notice of Proposed Rulemaking, 12 FCC Rcd 22363, 22416-22, Appendix B (1997) (*Broadcast Competitive Bidding Notice*).

<sup>266</sup> See *Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Bidding Rules and Procedures*, WT Docket No. 05-211, Declaratory Ruling and Notice of Proposed Rule Making, 20 FCC Rcd 11268, 11301-07, Appendix B (2005) (*CSEA NPRM*); *Auction Procedures Consolidation Order & NPRM*, 12 FCC Rcd at 5749-53, Appendix C; *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Notice of Proposed Rule Making, 8 FCC Rcd 7635, 7666, Appendix (1993) (*Competitive Bidding Notice*).

<sup>267</sup> *Broadcast Competitive Bidding Order*, 13 FCC Rcd at 16015-27, Appendix B.

<sup>268</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; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2400, paras. 299-302.

<sup>269</sup> *Auction 111 Comment Public Notice* at 15-20, paras. 50-70. A summary of this public notice was published at 86 Fed. Reg. 37972 (July 19, 2021).

<sup>270</sup> See, e.g., *Updating Part 1 Report and Order*, 30 FCC Rcd at 7493; *Auction Procedures Consolidation Order & NPRM*, 12 FCC Rcd at 5686; *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15293; *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17546; *Part 1 Eighth Report and Order*, 17 FCC Rcd at 2962; *First Reconsideration of Fifth Report and Order*, 18 FCC Rcd at 10180; *Second Reconsideration of Fifth Report and Order*, 20 FCC Rcd at 1942; see also *Broadcast Competitive Bidding Order*, 13 FCC Rcd at 15920, *NCE Second Report and Order*, 18 FCC Rcd at 6691; *NCE Third Reconsideration Order*, 23 FCC Rcd at 17423.

application and payment processes, as well as setting the minimum opening bid amount for each of the LPTV/translator station construction permits that are subject to being assigned by competitive bidding.

181. To promote the efficient and fair administration of the competitive bidding process for all Auction 111 participants, including small businesses, in this *Auction 111 Procedures Public Notice*, we announce the following procedures: (1) use of a simultaneous multiple-round auction format, consisting of sequential bidding rounds with a simultaneous stopping procedure (with discretion to exercise alternative stopping rules under certain circumstances); (2) a specific upfront payment amount for each construction permit; (3) a specific minimum opening bid amount for each construction permit; (4) a specific number of bidding units for each construction permit; (5) a bidder's initial bidding eligibility will be based on the amount of that bidder's upfront payment; (6) 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 the auction; (8) use of minimum acceptable bid amounts and additional acceptable increments, along with the methodology for calculating such amounts; (9) a procedure for breaking ties if identical high bid amounts are submitted on one permit in a given round; (10) a prohibition on bid withdrawals while allowing for bid removals (before the close of a bidding round); (11) establishment of an additional default payment percentage of 20% of the applicable bid in the event that a winning bidder defaults or is disqualified after the auction; (12) retention by OEA and MB to exercise discretion to delay, suspend, or cancel bidding in Auction 111 for any reason that affects the ability of the competitive bidding process to be conducted fairly and efficiently; and (13) retention of discretion by OEA to adjust the bidding schedule in order to manage the pace of Auction 111.

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

183. *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>271</sup> The Chief Counsel did not file any comments in response to the procedures that were proposed in the *Auction 111 Comment Public Notice*.

184. *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>272</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>273</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>274</sup> A "small business concern" is one

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<sup>271</sup> 5 U.S.C. § 604(a)(3).

<sup>272</sup> *Id.*

<sup>273</sup> *Id.* § 601(6).

<sup>274</sup> *Id.* § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration (SBA) and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

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>275</sup>

185. The specific competitive bidding procedures and minimum opening bid amounts described in the *Auction 111 Procedures Public Notice* will affect all applicants participating in Auction 111, in which applicant eligibility is closed. Therefore, the specific competitive bidding procedures and minimum opening bid amounts described in the *Auction 111 Comment Public Notice* will affect only the 24 parties listed in Attachment A to this Public Notice and that are the only parties eligible to complete the remaining steps to become qualified to bid in Auction 111. These specific 24 Auction 111 parties include firms of all sizes.

186. *Television Broadcasting.* This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.”<sup>276</sup> These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.<sup>277</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 \$41.5 million or less in annual receipts.<sup>278</sup> The 2012 Economic Census reports that 751 firms in this category operated that entire year.<sup>279</sup> Of that number, 656 had annual receipts of \$25,000,000 or less, and 25 had annual receipts between \$25,000,000 and \$49,999,999.<sup>280</sup> Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

187. Additionally, the Commission has estimated the number of licensed commercial television stations to be 1,374.<sup>281</sup> Of this total, 1,269 stations (or about 92.5%) had revenues of \$41.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on April 20, 2021, and therefore these stations qualify as small entities under the SBA definition.

188. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 384.<sup>282</sup> These stations are non-profit, and therefore considered to be small entities.<sup>283</sup>

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<sup>275</sup> 15 U.S.C. § 632(a)(1), (a)(2)(A).

<sup>276</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “515120 Television Broadcasting”, <https://www.census.gov/naics/?input=515120&year=2017&details=515120>.

<sup>277</sup> *Id.*

<sup>278</sup> See 13 CFR § 121.201, NAICS Code 515120.

<sup>279</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series – Estab. and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 515120, <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=515120&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false>.

<sup>280</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>281</sup> News Release, FCC Media Bureau, *Broadcast Station Totals as of March 31, 2021* (Apr. 5, 2021), [www.fcc.gov/document/broadcast-station-totals-march-31-2021](http://www.fcc.gov/document/broadcast-station-totals-march-31-2021) (*Station Totals News Release*). 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>282</sup> *Id.*

189. There are also 2,371 LPTV stations, including Class A stations, and 3,306 TV translators.<sup>284</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.

190. We note, however, that the SBA size standard data does not enable us to make a meaningful estimate of the number of small entities that may participate in Auction 111.

191. In assessing whether a business entity qualifies as small under the SBA definition, business control affiliations must be included.<sup>285</sup> Our estimate therefore likely overstates the number of small entities that might be affected by this auction because the revenue figures on which this estimate 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 111 competitive bidding rules may apply does not exclude any television 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.

192. We also note that we are unable to accurately develop an estimate of how many of the 24 parties in this auction 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 111 eligible bidders would likely meet the SBA's definition of a small business concern.

193. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* For Auction 111, no new reporting, recordkeeping, or other compliance requirements for small entities or other auction applicants were proposed. The Commission designed the auction application process itself to minimize reporting and compliance requirements for applicants, including small business applicants.<sup>286</sup> For all spectrum auctions, in the first part of the Commission's two-phased auction application process, parties desiring to participate in an auction file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on an applicant's short-form application and certifications, as well as its upfront payment. In the second phase of the auction application process, there are additional compliance requirements for winning bidders. Thus, a small business that fails to become a winning bidder does not need to provide the additional showings and more detailed demonstrations required of a winning bidder.

194. Auction 111 applicants, including small entities, will become qualified to bid in Auction 111 only if they comply with the following: (1) submission of a short-form application that is timely and is found to be substantially complete, and (2) timely submission of a sufficient upfront payment for at least one of the construction permits that the applicant selected on its FCC Form 175.<sup>287</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 its application into compliance with the

(Continued from previous page) \_\_\_\_\_

<sup>283</sup> See generally 5 U.S.C. § 601(4), (6).

<sup>284</sup> See *Station Totals News Release*.

<sup>285</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).

<sup>286</sup> This Commission policy was articulated in a 1994 rulemaking order. See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2375-76, paras. 162-63, 165.

<sup>287</sup> Each upfront payment must be accompanied by a complete and accurate FCC Remittance Advice Form (FCC Form 159), following the procedures and instructions set forth in this Public Notice. 47 CFR § 1.1111 specifies that FCC Form 159 must accompany each such payment submission.

Commission's competitive bidding rules during a resubmission window.<sup>288</sup> In addition, each Auction 111 applicant must maintain the accuracy of its previously filed short-form application electronically using the FCC Auction Application System.

195. In the second phase of the process, there are additional compliance requirements only applicable to winning bidders. As with other winning bidders, any small entity that is a winning bidder will be required to comply with the terms of the following rules, among others: (1) 47 CFR § 1.2107(b), by submitting as a down payment within 10 business days after release of the auction closing public notice sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 111 to 20% of the amount of its winning bid or bids;<sup>289</sup> (2) 47 CFR § 1.2109(a), by submitting within 10 business days after the down payment deadline the balance of the amount for each of its winning bids;<sup>290</sup> and (3) 47 CFR § 73.5005(a), by electronically filing an amended long-form application and required exhibits for each construction permit won through Auction 111.<sup>291</sup>

196. Further, as required by 47 CFR § 1.2105(c), reports concerning prohibited communications must be filed with the Chief of the Auctions Division, as detailed in this Public Notice.<sup>292</sup>

197. *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>293</sup>

198. OEA and MB intend that the procedures adopted in this Public Notice to facilitate participation in Auction 111 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 to small entities and other auction participants at no cost, the processes and procedures announced in this Public Notice should minimize any economic impact of the auction processes and procedures on small entities and should result in both operational and administrative cost savings for small entities and other auction participants. For example, prior to the beginning of bidding in this auction, the Commission will hold a mock auction to allow qualified bidders the opportunity to familiarize themselves with both the processes and systems that will be used in Auction 111. During the auction, participants will be able to access and participate in bidding via the Internet using a web-based system, or telephonically, providing two cost-effective methods of participation and avoiding the cost of travel for in-person participation. Further, small entities as well as other auction participants will be able

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<sup>288</sup> The resubmission opportunity for auction applicants with certain application deficiencies was established by the Commission in a 1994 rulemaking order. *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2377, paras. 167-68.

<sup>289</sup> This down payment requirement was adopted by the Commission in the 1994 *Competitive Bidding Second Report and Order*. See *id.* at 2381-82, 2409, paras. 189-92.

<sup>290</sup> This final payment requirement was established by the Commission in the 1994 *Competitive Bidding Second Report and Order*. See *id.* at 2382, para. 194.

<sup>291</sup> This long-form application requirement was applied to winning bidders in broadcast auctions in a 1998 rulemaking order. See *Broadcast Competitive Bidding Order*, 13 FCC Rcd at 15984-85, paras. 163-64.

<sup>292</sup> This specific reporting requirement was adopted first by the Commission in a 2001 rulemaking order. See *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17546.

<sup>293</sup> 5 U.S.C. § 603(c)(1)-(4).

to avail themselves of a telephone hotline for assistance with auction processes and procedures as well as a technical support telephone hotline to assist with issues such as access to or navigation within the electronic FCC Form 175 and use of the FCC's auction bidding system. In addition, all auction participants, including small business entities, will have access to various other sources of information and databases through the Commission that will aid in both their understanding and participation in the process. These mechanisms are made available to facilitate participation by all qualified bidders and may result in significant cost savings for small business entities that utilize these mechanisms. These resources, coupled with the description and communication of the bidding procedures before bidding begins in Auction 111, should ensure that the auction will be administered predictably, efficiently and fairly, thus providing certainty for small entities as well as other auction participants.

199. *Notice to SBA.* The Commission will send a copy of the *Auctions 111 Procedures Public Notice*, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA. A summary of the *Auctions 111 Procedures Public Notice*, including this Supplemental FRFA, will also be published in the Federal Register.<sup>294</sup>

## VII. CONTACT INFORMATION

200. For further information concerning this proceeding, contact:

### General Auction 111 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 111 Legal Information

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

### Auctions Division, OEA

(202) 418-0660  
Lyndsey Grunewald (Attorney)  
Scott Mackoul (Attorney)

### Licensing Information

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

### Video Division, MB

Shaun Maher (Attorney) at (202) 418-2324  
Mark Colombo (Engineer) at (202) 418-7611

### Technical Support

Electronic Filing  
FCC Auction System (Hardware/Software  
Issues)

### FCC Auctions Technical Support Hotline

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

### Payment Information

Wire Transfers  
Refunds

### FCC Revenue & Receivables Operations Group/Auctions

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

### Auction Bidder Line

Will be furnished only to qualified bidders

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<sup>294</sup> *Id.* § 604(b).

**Press Information**

Janice Wise (202) 418-8165

**FCC Forms**

(800) 418-3676 (outside Washington, DC)  
(202) 418-3676 (in the Washington area)  
[www.fcc.gov/forms](http://www.fcc.gov/forms)

**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/111](http://www.fcc.gov/auction/111)  
[www.fcc.gov/media](http://www.fcc.gov/media)

– FCC –



**ATTACHMENT A:  
AUCTION 111 - 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:**  
**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 111. 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 # - Leave it Blank
2	Payer Name - Enter the name of the person or company making the payment. If the applicant itself is the payer, this entry would be the same as the name in FCC Form 175.
3	Total Amount Paid - Enter the amount of the upfront payment associated with the FCC Form 159 (February 2003 edition).
4-8	Street Address, City, State, ZIP Code - Enter the street mailing address ( <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 listing 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). If the Payer does not have a FRN, then they must register with CORES to receive one before submitting the FCC Form 159.
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 "U111."
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 "111" (indicating Auction 111).

## 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.
- Because 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.