



# PUBLIC NOTICE

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DA 21-628  
June 3, 2021

## **AUCTION OF AM AND FM BROADCAST CONSTRUCTION PERMITS SCHEDULED FOR JULY 27, 2021**

### **STATUS OF SHORT-FORM APPLICATIONS TO PARTICIPATE IN AUCTION 109**

#### **AU Docket No. 21-39**

1. By this Public Notice, the Office of Economics and Analytics (OEA) and the Media Bureau (MB) announce the status of the 158 short-form applications received for Auction 109.<sup>1</sup> This auction will offer four AM construction permits and 136 FM construction permits with bidding scheduled to begin on Tuesday, July 27, 2021.<sup>2</sup> This Public Notice also provides other important information regarding the modification and submission of short-form applications and reminds applicants of deadlines and certain procedures adopted for Auction 109.

#### **I. SHORT-FORM APPLICATIONS AND UPFRONT PAYMENTS**

##### **A. Status of Short-Form Applications**

2. The short-form applications to participate in Auction 109 (FCC Forms 175) have been reviewed for completeness and compliance with the Commission’s rules. The applications have been classified into the categories listed below:

<b>Complete</b> .....	<b>107 applications</b>
<b>Incomplete</b> .....	<b>50 applications</b>
<b>Rejected</b> .....	<b>1 application</b>

3. **Complete Applications.** Attachment A to this Public Notice lists the short-form applications for Auction 109 that have been accepted for filing and designated as complete. Each of these applicants will become a qualified bidder upon receipt by the Commission of the required upfront payment by the June 16, 2021, deadline described below.<sup>3</sup> Each applicant must maintain the accuracy of its short-form application as required by sections 1.65 and 1.2105(b) of the Commission’s rules.<sup>4</sup>

<sup>1</sup> A copy of this Public Notice will be sent by email and overnight delivery to the contact person listed on the FCC Form 175 for each Auction 109 applicant.

<sup>2</sup> See *Auction of AM and FM Broadcast Construction Permits Scheduled for July 27, 2021; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 109*, AU Docket No. 21-39, Public Notice, DA 21-361 (OEA/MB Apr. 1, 2021) (*Auction 109 Procedures Public Notice*).

<sup>3</sup> See section I.B., below; see also 47 CFR § 1.2106 (upfront payment rule). 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. See *Auction 109 Procedures Public Notice* at 30, para. 95.

Attachment A indicates the construction permits selected by each applicant on its short-form application. If an applicant claimed a new entrant bidding credit,<sup>5</sup> the applicant's claimed bidding credit percentage for each construction permit is indicated as 35% or 25%.

4. Designation of an application as complete indicates the applicant has provided the certifications and basic information concerning its qualifications that are required by the Commission's competitive bidding rules for participation in the auction. Under the Commission's two-phased auction application process, a winning bidder must submit a long-form application after the close of bidding in the auction to demonstrate its qualifications to hold a Commission construction permit or license and, if a bidding credit is requested, its eligibility for the bidding credit.<sup>6</sup> Thus, a determination that a short-form application is complete and complies with the Commission's competitive bidding rules and policies is not determinative of an applicant's qualifications to hold a license or of entitlement to a bidding credit. In the event that an applicant is found unqualified to be a Commission permittee or licensee or is ineligible for a claimed new entrant bidding credit, it will be liable for any obligations incurred as a result of its participation in the auction.<sup>7</sup>

5. **Incomplete Applications.** Attachment B to this Public Notice lists the short-form applications for Auction 109 that have been accepted for filing but found to be incomplete or otherwise deficient. Each of these applicants will receive a letter identifying each deficiency in its application. This letter will be sent to the contact person and contact address listed on the incomplete application via overnight delivery, along with a copy of this Public Notice.<sup>8</sup> To become a qualified bidder for Auction 109, each applicant must make the required upfront payment and resubmit its application, having corrected any deficiencies, by the June 16, 2021, deadline.<sup>9</sup> Each applicant must also maintain the accuracy of its short-form application as required by sections 1.65 and 1.2105(b) of the Commission's rules.<sup>10</sup>

6. **Rejected Application.** Attachment C to this Public Notice lists one short-form application for Auction 109 classified as rejected. An applicant whose application has been classified as rejected is disqualified from participation in Auction 109. The Commission concluded in the Second Report and Order in *Reexamination of the Comparative Standards for Noncommercial Educational Applicants* that any application for a noncommercial educational (NCE) station that is mutually exclusive with any application for a commercial broadcast station will be returned as unacceptable for filing.<sup>11</sup> The

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<sup>4</sup> 47 CFR §§ 1.65, 1.2105(b); *see also* 47 CFR § 1.2105(c)(4). Important information about this continuing obligation is found at Section III.A., "Duty to Maintain Accurate Information in Short-Form Applications," below.

<sup>5</sup> The new entrant bidding credit is not available to an applicant if it, and/or any individual or entity with an attributable interest in the applicant, has an attributable interest in more than three media of mass communications, or in any existing media of mass communications in the "same area" as the broadcast facility proposed in this auction. 47 CFR § 73.5007. *See* 47 CFR § 73.5007(b)(1)-(3) for the specific service definitions of "same area."

<sup>6</sup> *See* 47 CFR §§ 1.2107, 1.2109, 73.5005; *see also* *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Second Report and Order, 9 FCC Rcd 2348, 2376-77, paras. 163-168 (1994) (*Competitive Bidding Second Report and Order*).

<sup>7</sup> *See generally* 47 CFR § 1.2109.

<sup>8</sup> This package will require a signature for delivery to confirm receipt by the applicant. The person signing for the package does not need to be the contact person identified in the applicant's FCC Form 175.

<sup>9</sup> *See* 47 CFR §§ 1.2105(b), 1.2106.

<sup>10</sup> 47 CFR §§ 1.65, 1.2105(b); *see also* 47 CFR § 1.2105(c)(4).

<sup>11</sup> 47 CFR § 73.5002(b); *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, MM Docket No. 95-31, Second Report and Order, 18 FCC Rcd 6691, 6699-6700, paras. 21-22 (2003), Memorandum Opinion and Third Order on Reconsideration, 23 FCC Rcd 17423 (2008).

applicant identified in Attachment C has checked “yes” to the Noncommercial Educational election question on its FCC Form 175 for the AM or FM broadcast stations selected on that application, is mutually exclusive with at least one application for an AM or FM commercial broadcast station in this auction,<sup>12</sup> and therefore is excluded from further Auction 109 participation.<sup>13</sup>

## B. Upfront Payments

7. Upfront payments for Auction 109 are due in the proper account at the U.S. Treasury by **6:00 p.m. Eastern Time (ET) on Wednesday, June 16, 2021**. In order to meet the Commission’s upfront payment deadline, an applicant’s payment must be credited to the Commission’s account by the deadline. **Payments must be made only by wire transfer and only in accordance with the instructions provided in the *Auction 109 Procedures Public Notice*, including its Attachment C.**<sup>14</sup> No other payment method is acceptable for this auction.<sup>15</sup> Each applicant must also complete and transmit an FCC Remittance Advice Form (FCC Form 159, February 2003 edition) to the Commission following the instructions provided in Attachment C to the *Auction 109 Procedures Public Notice*. Each applicant is reminded to provide its FCC registration number (FRN) on the FCC Form 159 and to submit the same FRN with all future payments for Auction 109. At least one hour before placing the order for the wire transfer (but on the same business day), each applicant must submit a completed FCC Form 159 to the Commission by fax at (202) 418-2843, or by email to [RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov).

8. Each applicant is responsible for timely submitting its upfront payment and filing an accurate and complete FCC Remittance Advice Form (FCC Form 159).<sup>16</sup> An applicant should discuss arrangements and deadlines with its financial institution well ahead of the due date regarding its wire transfer (including that financial institution’s specific wire transfer requirements) and allow sufficient time for the wire transfer to be initiated and completed prior to the deadline. The Commission has repeatedly cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer.<sup>17</sup> **Each applicant should obtain**

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<sup>12</sup> Applications specifying the same AM or FM station construction permit are considered mutually exclusive. *Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, MM Docket No. 97-234, First Report and Order, 13 FCC Rcd 15920, 15974-75, para. 142 & nn.152-53 (1998) (*Broadcast Competitive Bidding Order*), *on recon.*, Memorandum Opinion and Order, 14 FCC Rcd 8724 (1999) (*Broadcast First Reconsideration Order*), *on further recon.*, Memorandum Opinion and Order, 14 FCC Rcd 12541 (1999), *aff’d*, *Orion Communications Ltd. v. FCC*, 221 F.3d 196 (D.C. Cir. June 13, 2000) (unpublished opinion available at 2000 WL 816046 (D.C. Cir.)), *aff’d*, *Orion Communications Ltd. v. FCC*, 213 F.3d 761 (D.C. Cir. 2000).

<sup>13</sup> OEA and MB provided guidance on this NCE status election in the *Auction 109 Procedures Public Notice*, including an explanation of the consequences of claiming such status in the context of this auction. *See Auction 109 Procedures Public Notice* at 23-24, para. 71.

<sup>14</sup> *See Auction 109 Procedures Public Notice* at 29-30, paras. 93-96, Attachment C: Auction-Specific Instructions for FCC Remittance Advice (FCC Form 159 – February 2003 edition).

<sup>15</sup> The Commission will not accept checks, credit cards, or automated clearing house (ACH) payments.

<sup>16</sup> Detailed instructions for submitting upfront payments, including how to complete Form 159, may be found in the *Auction 109 Procedures Public Notice*, including its Attachment C. *See Auction 109 Procedures Public Notice* at 29-30, paras. 93-96, Attachment C: Auction-Specific Instructions for FCC Remittance Advice (FCC Form 159 – February 2003 edition). An electronic, fillable pdf version of Form 159 may be accessed by clicking on the \$ icon on the auction application page of the applicant’s electronic Form 175 or the following link: <https://transition.fcc.gov/Forms/Form159/159.pdf>.

<sup>17</sup> *See, e.g., Four Corners Broadcasting, LLC*, Letter Order, 25 FCC Rcd 9046 (WTB 2010) (denying waiver request of upfront payment deadline); *Spectrum Acquisition, Inc.*, Letter Order, 23 FCC Rcd 4765 (WTB 2008) (denying (continued....))

**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. For confirmation from the Commission, an applicant may contact staff of the Office of Managing Director's Revenue & Receivables Operations Group/Auctions listed at the end of this Public Notice. Detailed information regarding upfront payments can be found in the *Auction 109 Procedures Public Notice* under section III.E.<sup>18</sup>

### C. Short-Form Application Changes and Resubmission

9. Each applicant whose application for Auction 109 has been identified as incomplete must address each defect in its application during the resubmission window, which is now open.<sup>19</sup> Corrected applications must be submitted **prior to 6:00 p.m. ET on Wednesday, June 16, 2021**. This will be the only opportunity to cure application defects. Late resubmissions will not be accepted. An applicant that filed an application deemed to be incomplete or otherwise deficient, as identified in Attachment B to this Public Notice, must submit a timely and sufficient upfront payment before the Commission will review its resubmitted application. If an application is incomplete or otherwise deficient after the resubmission deadline has passed, or if the required upfront payment is not made by the specified deadline, the applicant will not be permitted to bid in Auction 109.<sup>20</sup>

10. During this resubmission window, all applicants may make minor changes as described below in more detail. We remind applicants that sections 1.65 and 1.2105(b) of the Commission's rules require an applicant to maintain the accuracy and completeness of information furnished in its pending short-form application.<sup>21</sup> To the extent that changes may be made directly in the electronic Form 175 at the time of the amendment, an applicant must modify its short-form application electronically.<sup>22</sup> An applicant seeking to report changes outside of the resubmission window must submit a letter briefly summarizing the changes by email to the following address: [auCTION109@fcc.gov](mailto:auCTION109@fcc.gov). Questions about reporting application changes should be directed to the Auctions Division at (202) 418-0660.

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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).

<sup>18</sup> See *Auction 109 Procedures Public Notice* at 29-30, paras. 93-96, Attachment C.

<sup>19</sup> 47 CFR § 1.2105(b)(2).

<sup>20</sup> Any applicant that submits a short-form application but fails to become a qualified bidder for any reason, including a failure to timely submit a sufficient upfront payment, will retain its status as an applicant in Auction 109 and will remain subject to the Commission's rules prohibiting certain communications, 47 CFR §§ 1.2105(c) and 73.5002(d); see, e.g., *Star Wireless, LLC v. FCC*, 522 F.3d 469 (D.C. Cir. 2008) (*Star Wireless*).

<sup>21</sup> 47 CFR §§ 1.65, 1.2105(b); see also 47 CFR § 1.2105(c)(4). Important information about this continuing obligation is found at Section III.A., "Duty to Maintain Accurate Information in Short-Form Applications," below.

<sup>22</sup> During the resubmission phase, applicants will have electronic access to update the following application fields: jurisdiction of formation/country of citizenship, applicant address, responsible party information, responsible party address, contact information, contact address, authorized bidder information, bidding preference (telephonic or electronic), agreement information, and ownership information. During the resubmission period, some required updates in an Auction 109 FCC Form 175 may need to be submitted by uploading an attachment. During all phases of the application process, applicants have electronic access to make certain administrative changes including updates to: applicant address, responsible party address, contact information, contact address, and bidding preference (telephonic or electronic).

11. The electronic Form 175 will not permit an applicant to make changes to specific data fields in its application after the short-form application filing deadline, including changes to the following data fields: applicant name, legal classification, certifier, bidding credit, and permit selection. Administrative and minor changes can be made in other specific data fields, including, for example, deletion and addition of authorized bidders (to a maximum of three), revision of addresses and telephone numbers of the applicant and its contact person, and changes to responsible party. While changes can be made to ownership and agreement information,<sup>23</sup> we remind each applicant that any application changes must comply with the Commission's rules, which prohibit, among other things, changes in ownership that would constitute an assignment or transfer of control, as well as changes in ownership or agreements that would constitute violations of section 1.2105.<sup>24</sup> If any application is changed to effect a major amendment, such as a change in control, the applicant will be ineligible to bid in Auction 109.<sup>25</sup>

## II. OTHER IMPORTANT AUCTION 109 INFORMATION

### A. Announcement of Qualified Bidders

12. Approximately three weeks after the upfront payment deadline, following Commission review of resubmitted short-form applications and the correlation of payments and applications, a public notice listing all applicants qualified to bid in Auction 109 will be released. The same public notice will also include bidding schedules for both the mock auction and the first day of bidding in the auction.

13. When two or more short-form applications are submitted specifying the same AM or FM permit in Auction 109, mutual exclusivity exists for auction purposes and that construction permit must be awarded by competitive bidding procedures.<sup>26</sup> Once mutual exclusivity exists for auction purposes, even if only one applicant is qualified to bid or in fact places a bid for a particular construction permit, that applicant is required to submit a bid in order to obtain the construction permit.<sup>27</sup>

### B. Delivery of Registration Materials to Qualified Bidders

14. All qualified bidders are automatically registered for the auction.<sup>28</sup> For security purposes, registration materials will be sent by overnight delivery only to the contact person at the contact address listed on each qualified bidder's FCC Form 175. We ask all applicants to make sure that the contact address provided in their short-form application is accurate and is a location capable of accepting packages that will require a signature. The package will include an RSA SecurID® token (SecurID token) issued by the Commission and specifically assigned to each of the authorized bidders identified on the qualified bidder's FCC Form 175. The SecurID token will allow each authorized bidder to log in and access the FCC auction bidding system in order to participate in the mock auction and place bids in Auction 109. The package will also contain the web address and instructions for accessing and logging in to the auction bidding system, the FCC assigned username (User ID) for each of the authorized bidders identified on the qualified bidder's FCC Form 175, and the Auction Bidder Line phone number.

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<sup>23</sup> For more information on making administrative changes to an existing application, see "Modifying an FCC Form 175" in the *Auction 109 Procedures Public Notice* at 25, paras. 74-75, and "Updating an Existing Auction Application" in Attachment B at 18, paras. 102-06.

<sup>24</sup> See 47 CFR § 1.2105(a)-(c).

<sup>25</sup> See 47 CFR § 1.2105(b)(2); see also, e.g., *Koch Broadcasting Corp.*, Letter Order, 21 FCC Rcd 147 (WTB/MB 2006) (*Koch Broadcasting Corp.*) (dismissing short-form application filed for AM Auction 84 due to major change of control).

<sup>26</sup> See *Broadcast Competitive Bidding Order*, 13 FCC Rcd at 15979 n.166.

<sup>27</sup> See *Auction 109 Procedures Public Notice* at 6, para. 11.

<sup>28</sup> *Id.* at 32, paras. 102-05.

### III. APPLICANTS' CONTINUING OBLIGATIONS

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

15. We remind applicants that sections 1.65 and 1.2105(b) of the Commission's rules require an applicant to maintain the accuracy and completeness of information furnished in its pending short-form application to participate in Auction 109.<sup>29</sup> Each applicant must amend its short-form application to furnish additional or corrected information within five days of a significant occurrence, or no more than five days after the applicant becomes aware of the need for amendment.<sup>30</sup> An applicant's obligation to make such a modification or amendment to its pending application continues until it is made.<sup>31</sup> All changes are subject to review by Commission staff.

16. An applicant that needs to make permissible minor changes to its FCC Form 175, or that must make changes in order to maintain the accuracy and completeness of its short-form application during a time when the FCC Auction Application System is available to the applicant for purposes of making the type of change(s) required,<sup>32</sup> must make such changes electronically to its FCC Form 175 using the FCC Auction Application System. Between the closing of the resubmission filing window and the release of the public notice announcing qualified bidders for Auction 109, the only changes an applicant can make using the FCC Auction Application System are minor changes, specifically the revision of addresses and telephone numbers of the applicant, its responsible party, and its contact person, or change in the applicant's selected bidding preference (telephonic or electronic).<sup>33</sup> For all other application changes between the closing of the resubmission filing window and prior to the release of the public notice announcing the close of bidding for Auction 109, an applicant must submit a letter briefly summarizing the changes to its FCC Form 175 by email to [auktion109@fcc.gov](mailto:auktion109@fcc.gov).<sup>34</sup> An applicant must not submit application-specific material through the Commission's Electronic Comment Filing System (ECFS).

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<sup>29</sup> 47 CFR §§ 1.65, 1.2105(b). An applicant is obligated to amend its pending application even if a reported change is considered to be a major modification that may result in the dismissal of its application.

<sup>30</sup> *Id.*; see also 47 CFR § 1.2105(c)(4) (any applicant that makes or receives a prohibited communication must report such communication in writing to the Commission no later than five business days after the communication occurs).

<sup>31</sup> See *Procedural Amendments to Commission Part 1 Competitive Bidding Rules*, WT Docket No. 10-18, Order, 25 FCC Rcd 521, 521-23, paras. 6-8 (2010) (*Part 1 Procedural Amendments Order*).

<sup>32</sup> As described in the Commission's rules, an applicant may make only minor corrections to its short-form application (e.g., changing certain contact information or authorized bidder information). See 47 CFR § 1.2105(b). A major modification includes a change of construction permit selection, change in required certifications, change in control of the applicant such as any change in ownership or control that would constitute an assignment or transfer of control of the applicant, claim of eligibility for a higher percentage of bidding credit, or change of the identification of the application's proposed facilities as noncommercial educational. *Id.*; see also, e.g., *Koch Broadcasting Corp.*, 21 FCC Rcd at 147 (dismissing short-form application due to major amendment reporting change of control of applicant).

<sup>33</sup> An applicant should not use the FCC Auction Application System outside of the initial and resubmission filing windows to make changes to its short-form application for other than administrative changes. Auction applicants are not permitted to make a change to the following data fields after the short-form application filing deadline: applicant name, legal classification, certifier, bidding credit, and construction permit selection.

<sup>34</sup> The letter summarizing the changes must include a subject or caption referring to Auction 109 and the name of the applicant, for example, "Re: Changes to Auction 109 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 update its FCC Form 175 application in the FCC Auction Application System once it is open and available to applicants again.

17. For more information on an applicant's continuing obligation to maintain the accuracy and completeness of information furnished in its application to participate in Auction 109, applicants should refer to previous Auction 109 public notices, including the *Auction 109 Procedures Public Notice*.<sup>35</sup>

### **B. Due Diligence**

18. 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 permits for broadcast facilities being offered in Auction 109. The Commission makes no representations or warranties about the use of this spectrum or these construction permits for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC permittee in a broadcast service, subject to certain conditions and regulations. This includes the established authority of the Commission to alter the terms of existing licenses by rulemaking, which is equally applicable to licenses awarded by auction.<sup>36</sup> MB and OEA strongly encourage potential bidders to continue to conduct their own research in order to determine the existence of pending or future administrative or judicial proceedings, pleadings, applications, or authorizations that might affect their decisions regarding continued participation in the auction. Additionally, a potential bidder should perform technical analyses or refresh their previous analyses to assure itself that, should it become a winning bidder for any Auction 109 construction permit, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements. Each applicant should inspect any prospective transmitter sites located in or near any 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.<sup>37</sup> Participants in this auction should continue such research throughout the auction. For further details regarding due diligence, please refer to the *Auction 109 Procedures Public Notice*, section III.A.<sup>38</sup>

### **C. New Entrant Bidding Credit Eligibility**

19. An applicant seeking a new entrant bidding credit must have indicated on its short-form application that it is claiming eligibility for a credit, along with the percentage of the bidding credit it is claiming.<sup>39</sup> The bidding credit percentage indicated on the short-form application as of the May 11, 2021, filing deadline is the maximum level of bidding credit that an applicant can claim for this auction.<sup>40</sup> Circumstances may arise after the short-form application deadline under which an applicant may no longer be eligible to claim a bidding credit or may only be eligible for a bidding credit at a lower percentage. This might be the case, for example, where the applicant or one of its attributable interest holders acquires an interest in another radio station after the May 11, 2021, deadline.<sup>41</sup> Any change

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<sup>35</sup> See *Auction 109 Procedures Public Notice* at 25, paras. 74-75; see also 47 CFR §§ 1.65, 1.2105(b). Questions about FCC Form 175 amendments should be directed to the Auctions Division at (202) 418-0660 or by email to [auction109@fcc.gov](mailto:auction109@fcc.gov).

<sup>36</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>37</sup> See, e.g., 47 CFR pt. 1, subpart I (Procedures Implementing the National Environmental Policy Act of 1969); 47 CFR pt. 1, subpart BB (Disturbance of AM Broadcast Station Antenna Patterns); 47 CFR pt. 17 (Construction, Marking, and Lighting of Antenna Structures).

<sup>38</sup> See *Auction 109 Procedures Public Notice* at 25-26, paras. 76-81.

<sup>39</sup> 47 CFR § 73.5007.

<sup>40</sup> 47 CFR § 73.5007(a).

affecting eligibility for the new entrant bidding credit must be reported immediately, and no later than five business days after the change occurs,<sup>42</sup> if the change could result in the reduction or loss of the credit originally claimed on the short-form application.<sup>43</sup> To report any change regarding its new entrant bidding credit eligibility claim, an applicant must submit a letter briefly summarizing the change by email to the following address: [auction109@fcc.gov](mailto:auction109@fcc.gov).

#### D. Prohibition of Certain Communications.

20. MB and OEA remind applicants that the Commission's rules prohibiting certain communications apply to each applicant that filed a short-form application in Auction 109.<sup>44</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 in this auction 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>45</sup>

21. This prohibition took effect as of the short-form application filing deadline, which for Auction 109 was Tuesday, May 11, 2021, at 6:00 p.m. ET, and ends at the post-auction down payment deadline for Auction 109, which will be announced in a public notice released shortly following close of bidding.<sup>46</sup> **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid in Auction 109.**<sup>47</sup>

22. We also emphasize that, for purposes of this prohibition, an "applicant" includes all controlling interests of the entity submitting a short-form application to participate in the auction, all officers and directors of that entity, and all holders of interests amounting to 10% or more of that entity.<sup>48</sup> Thus, for example, a violation of section 1.2105(c) of the Commission's rules could occur when an

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<sup>41</sup> Additional information on the new entrant bidding credit may be found in the *Auction 109 Procedures Public Notice* at 18-21, paras. 54-63.

<sup>42</sup> An applicant's obligation to make such amendment or modification to its pending application continues until it is made. *See* 47 CFR §§ 1.65, 1.2105(b)(4); *see also Part 1 Procedural Amendments Order*, 25 FCC Rcd at 522-23, paras. 6-8. *See, e.g., Vermont Tel. Co.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 14130 (EB 2011) (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).

<sup>43</sup> The Commission has recognized that changes occurring subsequent to the short form application filing deadline, which could serve as the basis for reducing or eliminating an applicant's previously claimed bidding credit eligibility, may arise in a wide range of circumstances. *See 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, 1611-14, paras. 57-63 (2010). *See also* 47 CFR § 73.5007(a).

<sup>44</sup> 47 CFR §§ 1.2105(c)(1), 73.5002(d).

<sup>45</sup> *Id.*, § 1.2105(c).

<sup>46</sup> *Id.*, § 1.2105(c)(1).

<sup>47</sup> A party that submits an application becomes an "applicant" under the rule at the application filing deadline and that status does not change based on subsequent developments. *See, e.g., Star Wireless*, 522 F.3d at 469 (section 1.2105(c) applies to applicants regardless of whether they are qualified to bid). Thus, an auction applicant that does not correct deficiencies in its application, fails to submit a timely and sufficient upfront payment, or does not otherwise become qualified, remains an "applicant" for purposes of the rule and remains subject to the prohibition on certain communications until the applicable down payment deadline.

<sup>48</sup> 47 CFR § 1.2105(c)(5)(i).



individual serves as an officer and/or director for two or more Auction 109 applicants.<sup>49</sup> Therefore, applicants should continue to take precautionary steps to prevent prohibited communications between any of the entities or persons described as covered by the prohibition.<sup>50</sup>

23. The Commission's rules prohibits joint bidding arrangements, including any arrangement with any other applicant relating to the permits or licenses being auctioned that addresses or communicates, directly or indirectly, bidding at the auction, bidding strategies, or the post-auction market structure, including any such arrangement regarding price or the specific permits or licenses on which to bid.<sup>51</sup> This rule provides limited exceptions for a communication within the scope of any arrangement consistent with the exclusion from the Commission's rule prohibiting joint bidding, provided such arrangement is disclosed on the applicant's auction application.<sup>52</sup> An applicant may continue to communicate pursuant to any pre-existing agreement, arrangement, or understanding that is solely operational or that provides for transfer or assignment of license, provided that such agreement, arrangement, or understanding does not involve the communication or coordination of bids (including amounts), bidding strategies, or the particular permits or licenses on which to bid and provided that such agreement, arrangement, or understanding is disclosed on its application.<sup>53</sup>

24. *Disclosure Obligations.* Section 1.2105(c)(4) requires each auction applicant to report a prohibited discussion or disclosure regarding bids or bidding strategy to the Commission in writing immediately, but in no case later than five business days after the communication occurs, even if the communication does not result in an agreement or understanding regarding bids or bidding strategy that must be reported under section 1.65.<sup>54</sup> The Commission has clarified that each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.<sup>55</sup>

25. *Reporting Prohibited Communications.* A party reporting any communication pursuant to sections 1.65, 1.2105(a)(2), or 1.2105(c)(4) must take care to ensure that any report of a prohibited communication does not itself give rise to a violation of section 1.2105(c). For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other

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<sup>49</sup> See, e.g., *Lotus Communications Corp.*, Order, 23 FCC Rcd 9107 (WTB 2008) (affirming finding of apparent violation of communication prohibitions of section 1.2105(c) when one individual served as officer for two auction applicants); *TCCSA, Inc.*, Letter Order, 20 FCC Rcd 14648 (MB/WTB 2005) (finding apparent violation of communication prohibitions of section 1.2105(c) where applicants shared same individual as an officer and director).

<sup>50</sup> See *Application of Nevada Wireless*, Memorandum Opinion and Order, 13 FCC Rcd 11973, 11977-78, paras. 11-13 (WTB 1998). OEA and MB caution, however, that the mere existence of precautionary measures will not outweigh specific evidence of a prohibited communication, nor will it preclude the initiation of an investigation when warranted. *Id.* at 11978, para. 13.

<sup>51</sup> 47 CFR § 1.2105(a)(2)(ix). See *Updating Part 1 Competitive Bidding Rules*, Report and Order, Order on Reconsideration of the First Report and Order, Third Order on Reconsideration of the Second Report and Order, Third Report and Order, 30 FCC Rcd 7493, 7575-76, para. 195 (2015) (*Updating Part 1 Report and Order*) (modified by Erratum, 30 FCC Rcd 8518 (2015)).

<sup>52</sup> *Updating Part 1 Report and Order*, 30 FCC Rcd at 7575-77, paras. 195-99.

<sup>53</sup> *Id.*; see also *Guidance Regarding the Prohibition of Certain Communications During the Incentive Auction, Auction 1000*, WT Docket No. 12-269, Public Notice, 30 FCC Rcd 10794 (WTB 2015).

<sup>54</sup> 47 CFR § 1.2105(b); see also *Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures*, WT Docket No. 97-82, Seventh Report and Order, 16 FCC Rcd 17546, 17553-55, paras. 13-17 (2001).

<sup>55</sup> See *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150, Second Report and Order, 22 FCC Rcd 15289, 15395, paras. 285-86 (2007).

applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection, such as submission of filings to the Commission's Office of the Secretary or the Commission's Electronic Comment Filing System (ECFS).

26. The Commission amended section 1.2105(c) to minimize the risk of inadvertent dissemination of information by requiring any party to file only a single report concerning a prohibited communication and to file that report with Commission personnel expressly charged with administering the Commission's auctions.<sup>56</sup> Pursuant to the rule, any report required by section 1.2105(c) must be filed consistent with the instructions set forth in the *Auction 109 Procedures Public Notice*.<sup>57</sup>

27. A party seeking to report such a prohibited communication is encouraged to consult with the Auctions Division staff if it has any questions about the procedures for submitting such reports.<sup>58</sup> The *Auction 109 Procedures Public Notice* provides additional guidance on procedures for submitting application-related information.<sup>59</sup>

28. Each applicant that is a winning bidder will be required to disclose in its long-form application the specific terms, conditions, and parties involved in any bidding consortia, joint ventures, partnerships, or other agreements, understandings, or arrangements it has entered into that relate to the competitive bidding process.<sup>60</sup>

29. *Possible Sanctions.* Any applicant found to have violated section 1.2105(c) of the Commission's rules may be subject to sanctions.<sup>61</sup> If an applicant is found to have violated the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount, and it may be prohibited from participating in future auctions, among other sanctions.<sup>62</sup> In addition, we remind each applicant that it is subject to the antitrust laws, which are designed to prevent anti-competitive behavior in the marketplace.<sup>63</sup>

#### **E. Submission of Auction-Related Filings**

30. A party wishing to submit a request, a complaint, or other information concerning Auction 109 should, in addition to following other procedures prescribed by the Commission's rules, send to the attention of the Auctions Division Chief a copy by email to [auction109@fcc.gov](mailto:auction109@fcc.gov). We occasionally receive complaints regarding specific bidders and requests to suspend bidding during an auction. While we reserve the right to take appropriate action during an auction to preserve the integrity of the auction process, it is generally our practice to address any such allegations only after a winning bidder has submitted its long-form application, when there is greater opportunity for investigation of such allegations, if warranted. The Commission will not investigate any complaints or allegations that are not accompanied by full contact information, including name, address, and telephone number, for the complaining party or parties.

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<sup>56</sup> *Part 1 Procedural Amendments Order*, 25 FCC Rcd at 522, para. 4.

<sup>57</sup> *Auction 109 Procedures Public Notice* at 16-17, paras. 49-50.

<sup>58</sup> See Section IV., "Contact Information," below.

<sup>59</sup> See *Auction 109 Procedures Public Notice* at 25, paras. 74-75.

<sup>60</sup> See 47 CFR § 1.2107(d).

<sup>61</sup> See 47 CFR §§ 1.2105(c), 1.2109(d).

<sup>62</sup> See 47 CFR § 1.2109(d); see also *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388, para. 226.

<sup>63</sup> For information about the applicability of the antitrust laws to auction applicants, see *Auction 109 Procedures Public Notice* at 18, para. 53.

**F. Ex Parte Rule**

31. Applicants should also be aware that the Commission has generally treated mutually exclusive short-form applications to participate in the auctions process as exempt proceedings and, therefore, not subject to the *ex parte* prohibitions that pertain to restricted proceedings.<sup>64</sup>

**IV. CONTACT INFORMATION**

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

33. Additional information for applicants is available at the Auction 109 web page ([www.fcc.gov/auction/109](http://www.fcc.gov/auction/109)).

34. For further information concerning Auction 109, contact:

**General Auction Information**

General Auction Questions

**FCC Auctions Hotline**

(888) 225-5322, option two; or  
(717) 338-2868

**Auction 109 Process and Procedures**

Bidding Procedures  
Auction Schedule

**Auctions Division, OEA**

Auctions Hotline 717-338-2868

**Auction 109 Legal Information**

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

**Auctions Division, OEA**

(202) 418-0660  
Lynne Milne (Attorney)  
Lyndsey Grunewald (Attorney)

**Licensing Information**

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

**Audio Division, MB**

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

**Technical Support**

Hardware/Software Issues with Electronic Filing

**FCC Auctions Technical Support Hotline**

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

**Payment Information**

Instructions for Wiring Upfront Payments and  
Completing Form 159

**FCC Revenue & Receivables Operations  
Group/Auctions**

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

<sup>64</sup> See Commission Announces that Mutually Exclusive "Short-Form" Applications (Form 175) to Participate in Competitive Bidding Process ("Auctions") Are Treated as Exempt for Ex Parte Purposes, Public Notice, 9 FCC Rcd 6760 (1994); see also 47 CFR § 1.1202(d)(1) Note 1.

**Press Information**

Janice Wise (202) 418-8165

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

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