



# PUBLIC NOTICE

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## AUCTION OF CONSTRUCTION PERMITS FOR FULL POWER TELEVISION STATIONS

### TEN APPLICANTS QUALIFIED TO BID IN AUCTION 112

#### AU Docket No. 21-449

1. By this Public Notice, the Office of Economics and Analytics (OEA) and the Media Bureau (MB) identify 10 applicants that are qualified to bid in Auction 112.<sup>1</sup> Auction 112 will offer 27 construction permits for full power television (TV) stations. Bidding in Auction 112 is scheduled to begin on June 7, 2022.<sup>2</sup> This Public Notice provides important information to qualified bidders concerning access to the Auction 112 bidding system, available educational materials, the mock auction, and the start of bidding for Auction 112. Finally, the Public Notice also addresses the continuing obligations and auction procedures for all Auction 112 applicants, including those that have not qualified to bid.

#### I. QUALIFIED BIDDERS AND NON-QUALIFIED APPLICANTS

2. The short-form applications (FCC Form 175) to participate in Auction 112 have been reviewed for completeness and compliance with the Commission’s rules, and the applicants have been classified into the categories listed below.

**Qualified.....10 applicants**  
**Non-Qualified .....4 applicants**

3. **Qualified Bidders.** Attachment A to this Public Notice lists the names of the 10 qualified bidders. Attachment A also indicates whether the applicant has claimed a new entrant bidding credit and lists the bidding credit range. Designation of an applicant as qualified to bid in the auction indicates that the applicant has provided the certifications and information concerning its qualifications for participation in the auction, as required by the Commission’s competitive bidding rules, and that the applicant submitted a timely and sufficient upfront payment.<sup>3</sup>

<sup>1</sup> A copy of this Public Notice will be sent by overnight delivery to the contact person listed on the FCC Form 175 for each Auction 112 applicant.

<sup>2</sup> See *Auction of Construction Permits for Full Power Television Stations Scheduled for June 7, 2022; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 112*, AU Docket No. 21-449, Public Notice, DA 22-125 (OEA/MB 2022) (*Auction 112 Procedures Public Notice*); see also *Auction of Construction Permits for Full Power Television Stations Scheduled for June 7, 2022; Status of Short-Form Applications to Participate in Auction 112*, Public Notice, DA 22-444 (OEA/MB 2022) (*Auction 112 Status Public Notice*).

<sup>3</sup> See 47 CFR §§ 1.2105, 1.2106, 1.2112, 73.5002. Under the Commission’s two-phase auction application process, a winning bidder must submit a long-form application after the close of bidding in an auction to demonstrate its

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4. In order to participate effectively in the auction, each qualified bidder should again carefully review the auction rules, procedures, and other information described in the *Auction 112 Procedures Public Notice* and subsequent public notices.<sup>4</sup> These public notices and other documents related to Auction 112 are available on the Auction 112 website in the Releases section at [www.fcc.gov/auction/112](http://www.fcc.gov/auction/112). This Public Notice provides additional guidance for qualified bidders.

5. Consistent with Commission practice in previous broadcast auctions, an applicant cannot obtain a construction permit without placing a bid, even if no other applicant for that particular construction permit becomes qualified to bid or in fact places a bid.<sup>5</sup>

6. **Non-Qualified Applicants.** Attachment B to this Public Notice lists each applicant that submitted an FCC Form 175 but did not qualify to bid in Auction 112.<sup>6</sup> All applicants, including those that have not qualified to bid, remain subject to the Commission's rules prohibiting certain communications pertaining to bids and bidding strategies.<sup>7</sup>

## II. REGISTRATION AND ACCESS TO THE AUCTION BIDDING SYSTEM

### A. Registration Materials

7. All qualified bidders have been automatically registered for the auction. Registration materials will be sent by overnight delivery only to the contact person at the contact person's address identified in the qualified bidder's FCC Form 175.<sup>8</sup> The contact person for each qualified bidder must distribute each RSA SecurID token to the specific authorized bidder as identified on each envelope contained in the registration materials package.<sup>9</sup> Upon receipt, each qualified bidder should be in possession of the following:

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qualifications to hold a Commission license or construction permit and entitlement to a new bidding credit, if claimed in its short-form application. 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 construction permit. See 47 CFR §§ 1.2107, 1.2109; see also *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Second Report and Order, 9 FCC Rcd 2348, 2376-77, paras. 163-168 (1994). Commission staff considers an applicant's qualifications after the auction during the long-form application process. In the event that an applicant is found unqualified to be a Commission licensee or ineligible for any claimed bidding credit, it will be liable for any obligations incurred as a result of its participation in the auction. See generally 47 CFR § 1.2109.

<sup>4</sup> *Auction 112 Procedures Public Notice* at 13-46, paras. 41-178; see also *Auction 112 Status Public Notice* at 3-11, paras. 7-33.

<sup>5</sup> See, e.g., *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, 35 FCC Rcd 6424, 6429, para. 11 (OEA/MB 2021). See also *Auction 112 Status Public Notice* at 5, para. 13.

<sup>6</sup> This list includes one applicant previously disqualified because the application was rejected. See *Auction 112 Status Public Notice* at 2-3, para. 6; see also *Auction 112 Procedures Public Notice* at 26, 30-31, paras. 83 & nn.156-59, 103 & n.173.

<sup>7</sup> See 47 CFR §§ 1.2105(c), 73.5002(d); see also *Auction 112 Procedures Public Notice* at 13-19, paras. 41-63.

<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 qualified bidder's short-form application.

<sup>9</sup> The contact person is also responsible for timely distributing each SecureID token to the specific authorized bidder associated with each token, as well as the relevant information in the registration materials necessary for each authorized bidder to establish its access to the bidding system.

<sup>10</sup> Each qualified bidder will be issued three SecurID tokens. Consequently, qualified bidders with fewer than three authorized bidders will receive extra SecurID tokens. The extra SecurID token(s) cannot be used unless the contact

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- Three RSA SecurID® tokens (SecurID tokens);<sup>10</sup>
- A web address and instructions for accessing and logging in to the FCC auction bidding system;
- An FCC assigned username (user ID) for each authorized bidder; and
- The FCC Auction Bidder Line telephone number.

8. A qualified bidder must have the above-referenced registration materials to participate in the mock auction and to bid in Auction 112. Any qualified bidder listed in Attachment A of this Public Notice that has not received the registration mailing **by 12:00 noon Eastern Time (ET) on Tuesday, May 31, 2022**, must contact the Auctions Hotline at (717) 338-2868. Receipt of the registration mailing is crucial to participating in the mock auction and the actual auction. Each qualified bidder is responsible for ensuring that it has received all of the registration materials listed above.

9. Each qualified bidder is solely responsible for ensuring the security and functionality of its computer systems, Internet connection(s), and its registration materials, in addition to ensuring that only authorized bidders place bids on its behalf. The Commission assumes no responsibility or liability for these matters. **WARNING: Any unauthorized individual or entity accessing or tampering with an FCC or other government computer system will be prosecuted to the full extent of the law.**

#### **B. Registration Material Replacement**

10. In the event that a qualified bidder's SecurID tokens are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's FCC Form 175 may request replacements. To request replacements for these items, call the Auction Bidder Line at the telephone number provided in the registration materials, or the Auction Hotline at (717) 338-2868.

#### **C. Access to the Auction Bidding System**

11. We will conduct the mock auction and bidding in Auction 112 electronically over the Internet and will provide the option of telephonic bidding using the Auction Bidder Line. Each qualified bidder will receive in its registration materials the web address for accessing the FCC auction bidding system and the phone number for the Auction Bidder Line.

12. Bidders will first be able to access the bidding system for the mock auction at 12:00 noon ET on Thursday, June 2, 2022. Access to the mock auction bidding system will remain available until 12:00 noon ET on Monday, June 6, 2022. Access to the Auction 112 bidding system will open at 1:00 p.m. ET on Monday, June 6, 2022, and will remain open to bidders until the conclusion of bidding in Auction 112.

13. Each authorized bidder must have his or her own activated SecurID token to access the FCC auction bidding system and place bids electronically or by telephone in the mock auction and Auction 112. For security purposes, the SecurID tokens and the instructions are sent only to the contact person at the contact address listed on the qualified bidder's FCC Form 175. Please note that each SecurID token is tailored to a specific auction and for a specific authorized bidder. SecurID tokens issued for other auctions or obtained from a source other than the Commission will not work for Auction 112.

14. All bidders should carefully review the FCC Auction Bidding System User Guide, which is accessible in the "Education" section of the Auction 112 webpage at [www.fcc.gov/auction/112](http://www.fcc.gov/auction/112).

15. There are minimum system requirements for accessing the FCC auction bidding system. Bidders must access the FCC auction bidding system over the Internet. To use the FCC auction bidding system, each applicant must have the following:

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person, certifier, or an authorized bidder for the qualified bidder contacts the FCC to activate the extra token for a specific additional authorized bidder or for an authorized bidder whose SecurID token has been lost or damaged.

- A computer running Windows® 10 or Windows® 11; or Apple® Mac OS X® 10.14 or higher
- Access to the Internet
- A recent version of Google Chrome™ or Microsoft Edge<sup>11</sup>
- A spreadsheet program such as Microsoft Excel 2013 or newer (may be needed for viewing files downloaded from ABS or for editing bid upload files)
- 1366 x 768 or greater screen resolution<sup>12</sup>

Smartphones and tablets are not supported.

16. To maximize protection against potential security vulnerabilities, users are advised to ensure the latest service pack (if applicable), security patches for their operating system, and the most recent version of Google Chrome or Microsoft Edge have been installed.

17. Each user should test his or her computer configuration and browser(s) with the FCC auction bidding system in advance of the auction—for example, during the mock auction. Any user attempting to access the FCC auction bidding system with a computer configuration or device that does not meet the requirements listed above and in the user guide is solely responsible for any resulting failure to access the auction bidding system, failure to do so in a timely manner, or failure of the bidding system to process the user's attempted bidding or other actions (even if it appears to the user that such actions were completed properly).

18. Any bidder may use the Auction Bidder Line as an alternative method of bidding in the mock auction and Auction 112.<sup>13</sup> The mock auction provides an opportunity for bidders to bid using the Auction Bidder Line and to become familiar with that process and the time required.

19. Qualified bidders choosing to bid telephonically during the mock auction and Auction 112 should initiate their calls as early as possible during a round. Telephonic bid assistants must use a script, and the length of a call to place bids may vary depending on the complexity and number of bids.<sup>14</sup> Calls placed late in the round might not provide enough time for bids to be entered before the round ends.

20. SecurID tokens can be recycled.<sup>15</sup> We strongly encourage bidders to return the tokens to the Commission. We will provide pre-addressed stamped envelopes to return the tokens once bidding has concluded.

#### **D. Bidding Contingency Plan**

21. Prior to the start of the auction, each bidder should develop comprehensive contingency plans that can be quickly implemented in case difficulties arise when participating in the auction. While the Commission will correct any problems within Commission controlled facilities, each bidder is solely responsible for anticipating and overcoming any other problems that arise, such as bidder computer

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<sup>11</sup> Please refer to the FCC Auction Bidding System User Guide for additional information about acceptable browsers.

<sup>12</sup> Other screen sizes will work, but a minimum of 1366 x 768 is required to fit all of the information on a single screen without horizontal scrolling. If all of the information cannot fit on your display, you can either zoom out using your internet browser or scroll right and left using the scroll bars. To adjust the zoom, hold down the control ("ctrl") key and use the "+" and "-" keys to zoom in and out.

<sup>13</sup> The Auction Bidder Line telephone number will be supplied in the registration materials sent to each qualified bidder.

<sup>14</sup> Because the length of a call to place bids may vary, the bidder should initiate its call a minimum of ten minutes prior to the scheduled end of the bidding round.

<sup>15</sup> A SecurID token can only be recycled if it is returned to the Commission in good condition with nothing written or glued on it.

failures or other technical issues; loss of or problems with data connections, telephone service, or power; adverse local weather conditions; unavailability of its authorized bidders; or the loss or breach of confidential security codes.

22. A qualified bidder should ensure that each of its authorized bidders can access and place bids in the FCC auction bidding system, without relying upon the same computer. Contingency plans will ideally include arrangements for accessing and placing bids in the FCC auction bidding system from one or more alternative locations.

23. We remind bidders that their contingency plans might include, among other arrangements, calling the Auction Bidder Line. If a bidder encounters a situation in which it must implement its backup plan and call the Auction Bidder Line, it should do so as soon as possible and as early in the round as possible. Calling at the beginning of a round will help ensure that the call can be completed before the end of the round. Failure to call early in the round may affect the bidder's ability to submit some or all of its bids before the round closes. Even if a bidder does not plan to bid using the Auction Bidder Line, we encourage all bidders to do so at least once during the mock auction.

24. If for any reason a bidder fails to submit all of its bids before the round closes, and fails to meet the requisite activity level, an activity rule waiver will be used, if any remain, or the bidder's eligibility will be reduced, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.<sup>16</sup> We will not restore any portion of a bidder's lost bidding eligibility.

### **III. EDUCATIONAL MATERIALS AND IMPORTANT UPCOMING EVENTS AND DATES**

25. Below we provide information regarding the availability of educational and informational materials, and the opportunity for qualified bidders to participate in a mock auction prior to the start of bidding in Auction 112. The documents described below will be available in the Education section of the Auction 112 website at [www.fcc.gov/auction/112](http://www.fcc.gov/auction/112), where they will remain accessible for reference.

#### **A. FCC Auction Bidding System User Guide**

26. The FCC Auction Bidding System User Guide describes the features and functionality of the bidding system that will be used to bid in Auction 112. The user guide will be accessible in the "Education" section of the Auction 112 website at [www.fcc.gov/auction/112](http://www.fcc.gov/auction/112). We will email a link to access and download the user guide to each authorized bidder and to the contact person listed on the qualified bidder's FCC Form 175. Additionally, the user guide will remain available and accessible on the Auction 112 website for reference. Bidders are encouraged to read the user guide prior to participating in the mock auction in order to familiarize themselves with the bidding system.

#### **B. Auction Tutorial**

27. The online auction tutorial was made available on February 25, 2022, and it provides information about both pre-auction and auction procedures, as well as how the FCC auction bidding system reflects those procedures. The tutorial allows viewers to navigate the presentation outline, review written notes, and listen to an audio recording of the notes. Additional features of this web-based tool include links to auction-specific Commission releases, email links for contacting Commission auctions and licensing staff, and screen shots of the FCC auction bidding system. The online tutorial is accessible from the "Education" tab of the Auction 112 website at [www.fcc.gov/auction/112](http://www.fcc.gov/auction/112). The tutorial will remain available and accessible on the Auction 112 website for reference.

#### **C. Mock Auction**

28. All qualified bidders in Auction 112 will have the opportunity to participate in the mock auction on Friday, June 3, 2022. We strongly encourage each qualified bidder in Auction 112 to participate in the mock auction as it provides an opportunity for the bidder to become familiar with the

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<sup>16</sup> *Auction 112 Procedures Public Notice* at 39-40, paras. 138-146.

FCC auction bidding system and the telephonic process, to test its contingency plans, and to ask Commission auction staff and technical support staff questions about the system and auction conduct.

29. A qualified bidder can access the mock auction at the web address provided to qualified bidders in the registration materials. Bidders choosing to bid electronically should review the FCC Auction Bidding System User Guide. Any qualified bidder who wishes to place bids by telephone should use the Auction Bidder Line telephone number supplied in the Auction 112 registration materials.

30. The set-up of the mock auction will differ in some aspects from the set-up for bidding in Auction 112. A qualified bidder's assigned construction permits and eligibility in the mock auction will not represent the actual construction permits for which it is qualified to bid or its eligibility based on its actual upfront payment. The mock auction will include 10 sample construction permits. Each sample construction permit will have 150 bidding units, and each bidder in the mock auction will initially have 750 bidding units of eligibility (enough to bid on 5 of those construction permits). The mock auction will otherwise follow the procedures for Auction 112, and each bidder will be required to be active on 100% of its current bidding eligibility. If a bidder does not meet this requirement, an activity rule waiver will be automatically applied (if any waivers are available) or its current eligibility will be permanently reduced (if no waivers remain), possibly eliminating it from further bidding in the mock auction. A bidder should take advantage of the mock auction to practice taking actions it might wish to take during Auction 112.

31. The mock auction bidding schedule for Friday, June 3, 2022, will be as follows:

Mock Round 1	10:00 a.m.	-	11:00 a.m. ET
Mock Round 2	11:30 a.m.	-	12:00 p.m. ET
Mock Round 3	1:30 p.m.	-	2:00 p.m. ET
Mock Round 4	2:30 p.m.	-	3:00 p.m. ET

#### IV. AUCTION INFORMATION

##### A. Bidding Schedule

32. Bidding in Auction 112 will begin on Tuesday, June 7, 2022, with the following schedule, which will continue each business day until further notice:

Bidding Round	10:00 a.m.	-	11:00 a.m. ET
Bidding Round	12:00 p.m.	-	1:00 p.m. ET
Bidding Round	2:00 p.m.	-	3:00 p.m. ET
Bidding Round	4:00 p.m.	-	5:00 p.m. ET

33. We will set the pace of the auction based upon our assessment of the auction's progress. We will provide notice of any schedule changes by announcement in the FCC auction bidding system and the Public Reporting System (PRS) during the course of the auction.

##### B. Auction Announcements

34. The Commission will post pertinent auction information as announcements in the FCC auction bidding system. Each bidder should routinely check for announcements each time it enters the auction bidding system and should click on and read the entirety of each announcement carefully. Announcements convey important auction information including, but not limited to, bidding schedule changes.

##### C. Bid Amounts

35. For each construction permit in Auction 112, the FCC auction bidding system will provide a minimum bid amount, as previously announced, and eight additional bid amounts from which to choose (for a total of nine bid amounts).<sup>17</sup> While a bidder can change the amount of or remove new

<sup>17</sup> *Auction 112 Procedures Public Notice* at 41-44, paras. 150-60. Attachment A lists the minimum opening bid amount for each construction permit in Auction 112.



bids during a round, it cannot do so once a round ends. We caution each bidder to select its bid amounts carefully because each bidder assumes a binding obligation to pay the full bid amount, even if the bid was mistakenly or erroneously made.<sup>18</sup> Moreover, no bidder will be permitted to withdraw any of its bids submitted in a prior round in Auction 112.<sup>19</sup>

36. OEA and MB retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid increment percentage, the additional bid increment percentage, the number of acceptable bid amounts, and the parameters of the formulas used to calculate bid amounts if we determine that circumstances so dictate.<sup>20</sup> We also 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. If we exercise this discretion to make any of these changes, we will alert bidders by announcement in the FCC auction bidding system.<sup>21</sup>

#### **D. Watchlists**

37. A qualified bidder may create watchlists containing construction permits of its own choosing, and specific construction permits may appear in multiple watchlists. Bidders may begin creating watchlists when access to the FCC auction bidding system becomes available. Instructions for creating watchlists are provided in the FCC Auction Bidding System User Guide. Please note that watchlists created in the mock auction will be for the mock auction only. Bidders will need to create new watchlists for bidding in Auction 112.

#### **E. Round Results**

38. Round results will be available within approximately ten minutes after the close of each round. We remind bidders that the results of their bidding are subject to procedures that limit the disclosure of information on bidder interests and identities until after the close of bidding in Auction 112.<sup>22</sup>

39. Two types of reports will be available to qualified bidders during the auction: (1) publicly available information, and (2) bidder-specific information available only to that bidder when logged in to the FCC auction bidding system. The public information will be available on the Public Reporting System at [auctiondata.fcc.gov](https://auctiondata.fcc.gov) for which there is a link in the Results section of the Auction 112 website at [www.fcc.gov/auction/112](https://www.fcc.gov/auction/112). When a bidder is logged in to the FCC auction bidding system, it will have access to a record of the bids it placed by using the *Round Summary* screen and will have access to the results of its bids by using the *Posted Results* screen. These features can be accessed using the links in the navigation bar of the FCC auction bidding system.

40. Detailed instructions for reviewing and downloading round results are provided in the FCC Auction Bidding System User Guide. The user guide will be available in electronic form in the “Education” section of the Auction 112 website at [www.fcc.gov/auction/112](https://www.fcc.gov/auction/112).

#### **F. Bidder Questions During Auction 112 and the Mock Auction**

41. Commission auction staff and technical support staff will be available during the auction and the mock auction. Only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the qualified bidder’s FCC Form 175 should call on behalf of a bidder.

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<sup>18</sup> See 47 CFR § 1.2104(g).

<sup>19</sup> *Auction 112 Procedures Public Notice* at 44, para. 166.

<sup>20</sup> *Id.* at 43-44, paras. 159-160.

<sup>21</sup> *Id.*

<sup>22</sup> See *Auction 112 Procedures Public Notice* at 12-13, paras. 35-40.

When calling, the person should state that he or she is calling on behalf of a bidder with a time-sensitive auction question. To place bids by telephone or to ask questions during the auction, a bidder must use the FCC Auction Bidder Line telephone number supplied in the registration materials and have his or her login information and SecurID token available. Otherwise, a bidder should refer to the contact information provided in Section VII, Contact Information, below.

### G. Bidder Suggestions

42. A bidder may submit questions or suggestions to the Commission staff concerning Auction 112 or future auctions by using the *Messages* feature in the FCC auction bidding system.<sup>23</sup> However, this is not an appropriate mechanism for asking time-sensitive questions that may need an immediate response, such as questions about auction procedures or placing bids. Any time-sensitive questions should be directed to the Auction Bidder Line. Commission staff considers all suggestions but may not always provide an individualized response.

## V. APPLICANT CONTINUING OBLIGATIONS

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

43. We remind applicants that sections 1.65 and 1.2105(b)(4) of the Commission's rules require that they maintain the accuracy and completeness of information furnished in their applications to participate in Auction 112.<sup>24</sup> Each applicant should amend its application to furnish additional or corrected information within five business days of a significant occurrence, or no more than five business days after the applicant becomes aware of the need for amendment.<sup>25</sup> All changes are subject to review by Commission staff.

44. An applicant that needs to make permissible minor changes to its FCC Form 175,<sup>26</sup> or that must make changes in order to maintain the accuracy and completeness of its short-form application, must do so electronically using the FCC auction application system 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>27</sup> The applicant must also submit a letter briefly summarizing the change(s) to its FCC Form 175 by email to [auction112@fcc.gov](mailto:auction112@fcc.gov) to the attention of the Chief, Auctions Division, Office of Economics and Analytics. The letter summarizing the change(s) must include a subject or caption referring to Auction 112 and the name of the applicant, for example, "Re: Changes to Auction 112 Application of XYZ Corp." Any attachments to the email must be formatted as Adobe® Acrobat® (PDF) or Microsoft® Word documents. An applicant must not submit application-specific material through the Commission's Electronic Comment Filing System.

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<sup>23</sup> To access the *Messages* feature, select the Messages link on the navigation pane of the FCC auction bidding system. For information on how to use this feature, please see the FCC Auction Bidding System User Guide.

<sup>24</sup> See 47 CFR §§ 1.65, 1.2105(b)(4).

<sup>25</sup> See *id.* at §§ 1.65, 1.2105(b)(4).

<sup>26</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 *id.* at § 1.2105(b)(2). A major modification includes a change in construction permit selection, newly claimed or increased bidding credit, or change in control of the applicant. *Id.*; see also, e.g., *Koch Broadcasting Corp.*, Letter Order, 21 FCC Rcd 147 (WTB/MB 2006) (dismissing short-form application due to major amendment reporting change of control of applicant).

<sup>27</sup> An applicant should not use the auction application system outside of the resubmission filing window to make changes to its short-form application for other than administrative changes. An applicant retains electronic access to its FCC Form 175 to make certain administrative changes, including updates to: applicant address, responsible party information, contact information, and bidding option (telephonic or electronic). 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.



45. 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 112, applicants should refer to previous Auction 112 public notices, including the *Auction 112 Procedures Public Notice*.<sup>28</sup>

## **B. Due Diligence**

46. 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 its valuation of the construction permits in Auction 112. The Commission makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that this 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 and other authorizations awarded by auction.<sup>29</sup> A Commission auction does not constitute an endorsement by the Commission of any particular service, technology, or product, nor does a Commission license constitute a guarantee of business success. Accordingly, each qualified bidder is encouraged to review the Commission's previous guidance concerning bidders' due diligence efforts prior to and during the auction.<sup>30</sup>

47. OEA and MB strongly encourage each potential bidder to conduct its own research prior to the beginning of bidding in Auction 112 in order to determine the existence of pending proceedings, pleadings, applications, or authorizations that might affect its decision to continue participating in the auction. Each potential bidder is solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect its ability to bid on, otherwise acquire, or make use of any specific construction permit available in Auction 112. In addition, each potential bidder should perform sufficient technical analyses or refresh its previous analyses to assure itself that, should it be a winning bidder for any Auction 112 construction permit, it will be able to build and operate facilities that will comply fully with the Commission's technical and legal requirements. We strongly encourage each qualified bidder 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.<sup>31</sup>

48. The Commission has also encouraged each applicant in Auction 112 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 on continued participation in the auction.<sup>32</sup> Each applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on licenses available in an auction. The due diligence considerations mentioned in this Public Notice and previous Auction 112 public notices do not constitute an exhaustive list of steps that should be undertaken prior to participating in Auction 112. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon the specific facts and circumstances related to its interests.

49. 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

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<sup>28</sup> See *Auction 112 Procedures Public Notice* at 26-28, paras. 84-92; see also 47 CFR §§ 1.65, 1.2105(b)(4). Questions about FCC Form 175 amendments should be directed to the Auctions Division at (202) 418-0660 or by email to [auCTION112@fcc.gov](mailto:auCTION112@fcc.gov).

<sup>29</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>30</sup> *Auction 112 Procedures Public Notice* at 28-29, para. 93.

<sup>31</sup> See 47 CFR pt. 1, subpart I.

<sup>32</sup> *Auction 112 Procedures Public Notice* at 29, para. 95.

make use of the construction permits available in Auction 112.<sup>33</sup> Each potential bidder is responsible for undertaking research to ensure that any construction permits won in the 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.

50. 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.

### C. Prohibition of Certain Communications

51. OEA and MB remind applicants that the rules prohibiting certain communications set forth in sections 1.2105(c) and 73.5002(d) of the Commission's rules apply to each applicant that filed a short-form application in Auction 112.<sup>34</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, or 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>35</sup> An "applicant" includes all controlling interests of the entity submitting a short-form application to participate in the auction, including all officers and directors of that entity and all holders of interests amounting to 10% or more of the entity submitting a short-form application.<sup>36</sup> A party that submits an auction application becomes an "applicant" under the rule at the application filing deadline and that status does not change based on subsequent developments.<sup>37</sup>

52. This prohibition took effect as of the short-form application filing deadline, which for Auction 112 was March 30, 2022, at 6:00 p.m. ET, and ends at the post-auction down payment deadline, which will be announced in a future public notice.<sup>38</sup> **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.**<sup>39</sup> For further information on the prohibition, applicants should refer to the *Auction 112 Procedures Public Notice*.<sup>40</sup>

53. The prohibition of "communicating in any manner" includes public disclosures as well as private communications and indirect or implicit communications of bids and bidding strategies. Consequently, an applicant must take care to determine whether its auction-related communications may reach another applicant and must take care not to communicate non-public information to the public, financial analysts, or the press.<sup>41</sup> Examples of communications raising concern, given the limited

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<sup>33</sup> *Id.* at 28, para. 93.

<sup>34</sup> 47 CFR §§ 1.2105(c)(1), 73.5002(d).

<sup>35</sup> *Id.* § 1.2105(c).

<sup>36</sup> 47 CFR § 1.2105(c)(5)(i).

<sup>37</sup> *Auction 112 Procedures Public Notice* at 14, para. 42.

<sup>38</sup> 47 CFR § 1.2105(c)(1).

<sup>39</sup> *See, e.g., Star Wireless, LLC v. FCC*, 522 F.3d 469 (D.C. Cir. 2008) (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>40</sup> *Auction 112 Procedures Public Notice* at 13-19, paras. 41-63.

<sup>41</sup> The Commission has long expressed the concern that applicants should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become a conduit for the

information procedures in effect for Auction 112, would include an applicant's statement to the press or other public statement (such as a post on social media) about its upfront payment or bidding eligibility, and an applicant's statement to the press or other public statement that it is or is not interested in bidding in the auction.

#### **D. Disclosure Obligations and Possible Sanctions**

54. Section 1.2105(c)(4) requires each auction applicant that makes or receives a communication that appears to violate section 1.2105(c) to report the communication in writing to the Commission immediately, but in no case later than five business days after the communication occurs, even if the communication does not result in an agreement or understanding regarding bids or bidding strategy that must be reported under sections 1.65 and 1.2105(b)(4).<sup>42</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>43</sup>

55. *Reporting Prohibited Communication.* Any party reporting any communication pursuant to sections 1.65, 1.2105(a)(2), 1.2105(b)(4), or 1.2105(c)(4) must take care to ensure that any such report does not itself give rise to a violation of section 1.2105(c). To minimize the risk of inadvertent dissemination of a report of a potential prohibited communication, section 1.2105(c)(4) requires a party to file only a single report with the Chief of the Auctions Division.<sup>44</sup> In Auction 112, any such report must be filed according to the instructions set forth in the *Auction 112 Procedures Public Notice*.<sup>45</sup> Any such report must be filed immediately, and in no case later than five business days after the communication occurs.

56. *Possible Sanctions.* Any applicant found to have violated section 1.2105(c) may be subject to sanctions.<sup>46</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. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount, and it may be prohibited from participating in future auctions, among other sanctions.<sup>47</sup>

#### **E. Limited Information Procedures**

57. We remind applicants that, under the limited information procedures in effect for Auction 112 (sometimes also referred to as anonymous bidding), the Commission is withholding from public release, until after the close of bidding in Auction 112, any information that may indicate specific applicants' interests in the auction—including, among other things, construction permit selections, upfront payments and eligibility information, and the identities of bidders placing bids or taking other bidding-related actions.<sup>48</sup> Accordingly, communication with other applicants or public disclosure of such

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communication of non-public information relating to auctions, such as bids and bidding strategies. *See Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction*, Public Notice, 13 FCC Rcd 341, 347-48 (WTB 1998) ("Public statements can give rise to collusion concerns. This has occurred in the antitrust context, where certain public statements can support other evidence which tends to indicate the existence of a conspiracy.").

<sup>42</sup> 47 CFR §§ 1.65, 1.2105(b)(4); *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>43</sup> 47 CFR § 1.2105(b)(4); *see also Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150 *et al.*, Second Report and Order, 22 FCC Rcd 15289, 15395, paras. 285-86 (2007).

<sup>44</sup> 47 CFR § 1.2105(c)(4); *Part 1 Procedural Amendments Order*, 25 FCC Rcd at 522, para. 4.

<sup>45</sup> *See Auctions 112 Procedures Public Notice* at 18-19, para. 59-61.

<sup>46</sup> 47 CFR §§ 1.2105(c), 1.2109(d).

<sup>47</sup> *See id.* § 1.2109(d).

non-public information may violate the Commission's rule prohibiting certain communications, section 1.2105(c) of the Commission's rules.

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

58. An applicant must not submit application-specific material through the Commission's Electronic Comment Filing System (ECFS).

59. A party wishing to submit a request, a complaint, or other information concerning Auction 112 should, in addition to following other procedures prescribed by the Commission's rules, send a copy by email to the attention of the Auctions Division Chief at [auction112@fcc.gov](mailto:auction112@fcc.gov). The Commission occasionally receives complaints regarding specific bidders and requests to suspend bidding during an auction. While the Commission reserves 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.

60. Finally, parties wishing to make suggestions concerning Auction 112 or future auctions should present such ideas using the *Messages* feature of the FCC auction bidding system. As mentioned above, however, this feature is not an appropriate mechanism for asking time-sensitive questions that need an immediate response. Commission staff considers all suggestions but may not always provide an individualized response.

#### **G. Ex Parte Rule**

61. Applicants should also be aware that the Commission has generally treated mutually exclusive short-form applications as exempt proceedings and, therefore, not subject to the *ex parte* prohibitions that pertain to restricted proceedings.<sup>49</sup>

### **VI. POST-AUCTION PROCEDURES**

62. To ensure prompt receipt of time-sensitive Commission communications, OEA and MB urge each applicant to verify now the accuracy and completeness of the contact information in its FCC Form 175. Corrections to contact information in an FCC Form 175 should be made promptly in preparation for post-auction procedures.

63. Shortly after bidding has ended, the Commission will release a public notice declaring bidding finished, identifying the winning bidders, and establishing the deadlines for submitting down payments and final payments.<sup>50</sup> Each winning bidder will have ten business days following the release of that public notice to make down payments. Final payments will be due ten business days after the deadline for submitting down payments for this auction.

64. Each winning bidder must electronically file a complete and accurate long-form application (FCC Form 2100, Schedule A, in the Media Bureau's Licensing and Management System (LMS)), including required exhibits, along with the applicable application filing fee, which is in addition to the winning bid amount, for each construction permit won through Auction 112 within the time period announced in the auction closing public notice.<sup>51</sup> Further filing instructions will be provided to auction

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<sup>48</sup> *Auction 112 Procedures Public Notice* at 12-13, paras. 35-40.

<sup>49</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.

<sup>50</sup> See *Auction 112 Procedures Public Notice* at 45-46, paras. 169-78.

winners at the close of the auction.<sup>52</sup> Further information regarding these post-auction procedures is contained in the *Auction 112 Procedures Public Notice* and will be provided in the public notice announcing the winning bidders.<sup>53</sup>

## VII. CONTACT INFORMATION

65. Additional information for applicants is available at the Auction 112 website ([www.fcc.gov/auction/112](http://www.fcc.gov/auction/112)).

66. For further information concerning Auction 112, please contact:

### General Auction Information

General Auction Questions

### FCC Auctions Hotline

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

### Auction 112 Process and Procedures

Bidding Procedures  
Auction Schedule

### Auctions Division, OEA

Auctions Hotline (717) 338-2868

### Auction 112 Legal Information

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

### Auctions Division, OEA

(202) 418-0660  
Mary Lovejoy (Attorney)  
Andrew McArdell (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  
Kevin Harding (Engineer) at (202) 418-7077

### Technical Support

Hardware/Software Issues with Electronic Filing  
or FCC Auction System

### 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

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<sup>51</sup> See 47 CFR §§ 1.2107, 73.5005(a). See also *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, GC Docket No. 92-52, GEN Docket No. 90-264, First Report and Order, 13 FCC Rcd 15920, 15984-85, paras. 163-64 (1998). Commission rules also require that a winning bidder in a commercial broadcast spectrum auction submit an application filing fee with its post-auction long-form application. See 47 CFR §§ 1.1104, 1.2107(c). The application filing fee must be paid in addition to the winning bid amount. The Commission recently adopted a new long-form application filing fee that includes an amount to recover costs for processing the short-form application. *Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules*, MD Docket No. 20-270, Report and Order, 35 FCC Rcd 15089, 15118-122, paras. 91-104 (2020) (amending filing fee schedule for AM and FM long-form applications); see also Fact Sheet, FCC, *Application Filing Fee Guide for Media Bureau*, (July 15, 2021), [www.fcc.gov/document/media-bureau-application-fee-filing-guide-2](http://www.fcc.gov/document/media-bureau-application-fee-filing-guide-2).

<sup>52</sup> See 47 CFR §§ 1.2107, 1.2109(a), 73.3571, 73.3573, 73.5003, 73.5005, 73.5006(d).

<sup>53</sup> See *Auction 112 Procedures Public Notice* at 45-46, paras. 169-78; see also 47 CFR §§ 1.2107, 1.2109(a).

**Payment Information**

Instructions for Wiring Upfront Payments and  
Completing Form 159

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

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

**Press Information**

Janice Wise (202) 418-8165

67. 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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