



PUBLIC NOTICE

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DA 05-2478
September 21, 2005

FM BROADCAST AUCTION START DATE RESCHEDULED FOR JANUARY 12, 2006

New Pre-Auction Dates and Deadlines Established for Auction No. 62

Report No. AUC-05-62-D (Auction No. 62)

In order to provide additional time for bidder preparation and planning in the aftermath of Hurricane Katrina, the upcoming auction of 171 FM broadcast construction permits ("Auction No. 62"), initially scheduled to commence on November 1, 2005, is rescheduled to begin on January 12, 2006.¹ In addition, certain pre-auction events and deadlines are rescheduled as follows:

Upfront Payments (via wire transfer)	December 2, 2005; 6:00 p.m. Eastern Time
Mock Auction	January 9-10, 2006
Auction Begins	January 12, 2006

These dates and deadlines replace those previously announced in any prior public notice regarding Auction No. 62, including the *Auction No. 62 Procedures Public Notice*.² Consistent with its usual practice, the Commission intends to announce the status of applications approximately two weeks in advance of the rescheduled upfront payment deadline. All other previously announced auction procedures and requirements remain the same.

Applicants are reminded that Sections 1.2105(c) and 73.5002(d) of the Commission's rules prohibit applicants for any of the same geographic license areas from communicating with each other about bids, bidding strategies, or settlements unless they have identified each other as parties with which they have entered into agreements under Section 1.2105(a)(2)(viii).³ For Auction No. 62, this prohibition became

¹ See Auction of FM Broadcast Construction Permits Scheduled for November 1, 2005; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures for Auction No. 62, *Public Notice*, DA 05-1076 (rel. April 14, 2005) ("Auction No. 58 Comment Public Notice"). See Auction of FM Broadcast Construction Permits Scheduled for November 1, 2005; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 62, *Public Notice*, DA 05-1598 (rel. June 17, 2005) ("Auction No. 62 Procedures Public Notice"). One FM broadcast construction permit was removed from the auction inventory. See also Removal of FM Broadcast Construction Permit From FM Auction No. 62, *Public Notice*, DA 05-2057 (rel. July 25, 2005).

² See, e.g., Sections I.A., I.C., III.A., III.B., III.D., III.G., IV. in the *Auction No. 62 Procedures Public Notice*.

³ 47 C.F.R. §§ 1.2105(a)(2)(viii), 1.2105(c)(1), 73.5002(d). See also *Auction No. 62 Procedures Public Notice* at 4 (discussion of geographic license area in the context of an FM service auction); Amendment of Part 1 of the

effective at the short-form application filing deadline on August 12, 2005, and will end on the post-auction down payment deadline, which will be announced in a future public notice.⁴ **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.**⁵ For purposes of this prohibition, Section 1.2105(c)(7)(i) defines “applicant” as including all controlling interests in the entity submitting a short-form application to participate in the auction, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application, and all officers and directors of that entity.⁶ If parties had agreed in principle on all material terms of a bidding agreement(s), those parties must have been identified on the short-form application under Section 1.2105(c), even if the agreement had not been reduced to writing. If parties had not agreed in principle by the August 12, 2005 filing deadline, an applicant should not have included the names of those parties on its application, and must not have continued negotiations.⁷

Bidders competing for a construction permit in the same mutually exclusive group must not communicate indirectly about bids or bidding strategy.⁸ Accordingly, the Bureaus have encouraged applicants competing for construction permits in any of the same designated markets not to use the same individual as an authorized bidder.⁹ A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he or she is authorized to represent in the auction.¹⁰ Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or consulting firm), a violation could likewise occur. In such a case, at a minimum, applicants should take precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.¹¹ However, the Bureaus caution that the mere existence of precautionary measures will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted.¹²

Commission’s Rules — Competitive Bidding Procedures, *Seventh Report and Order*, 16 FCC Rcd 17546 (2001) (*Part I Seventh Report and Order*); *id.*, *Part I Fifth Report and Order*, 15 FCC Rcd 15293, 15297-98 ¶¶ 7-8 (2000).

⁴ 47 C.F.R. § 1.2105(c)(1).

⁵ *See, e.g.*, Northeast Communications of Wisconsin, LLC, *Forfeiture Order*, 19 FCC Rcd 18635 (Enf. Bur. 2004) (imposing forfeiture in the amount of \$100,000 for violation of the anti-collusion rule, even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder); Letter to Robert Pettit, Esquire, from Margaret W. Wiener, Chief, Auctions and Industry Analysis Div., Wireless Telecommunications Bur., Federal Communications Commission., 16 FCC Rcd 10080 (WTB-AIAD 2000) (declining to exempt an applicant’s controlling interest from coverage by the anti-collusion rule, even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder).

⁶ 47 C.F.R. § 1.2105(c)(7)(i).

⁷ *See* Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, 11 FCC Rcd 9645 (WTB 1995).

⁸ *Part I Seventh Report and Order*, 16 FCC Rcd at 17549-50 ¶ 6.

⁹ *See Auction No.62 Procedures Public Notice* at 3-5.

¹⁰ *See Auction No.62 Procedures Public Notice* at 3-6.

¹¹ *See* Application of Nevada Wireless for a License to Provide 800 MHz Specialized Mobile Radio Service in the Farmington, NM-CO Economic Area (EA-155) Frequency Band A, *Memorandum Opinion and Order*, 13 FCC Rcd 11973, 11977 ¶ 11 (1998).

¹² *Id.*, 13 FCC Rcd at 11978 ¶ 13.

In addition, Section 1.65 of the Commission's rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantive change that may be of decisional significance to that application.¹³ Thus, Section 1.65 requires auction applicants that engage in communications of bids or bidding strategies that result in a bidding agreement, arrangement, or understanding not already identified on their short-form applications to promptly disclose any such agreement, arrangement, or understanding to the Commission by amending their pending applications. In addition, Section 1.2105(c)(6) requires all auction applicants to report prohibited discussions or disclosures 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 1.65.¹⁴

Applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in all bidding consortia, joint ventures, partnerships, and other arrangements entered into relating to the competitive bidding process.¹⁵ Any applicant found to have violated the anti-collusion rule may be subject to sanctions.¹⁶ In addition, applicants are reminded that they are 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 in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions.¹⁷

For further information concerning this auction proceeding, contact:

Auctions and Spectrum Access Division, Wireless Telecommunications Bureau

For legal questions	Howard Davenport at (202) 418-0660
For general auction questions:	Jeff Crooks at (202) 418-0660, or Linda Sanderson at (717) 338-2888

Audio Division, Media Bureau

For legal and service rule questions:	Lisa Scanlan or Tom Nessinger at (202) 418-2700
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¹³ 47 C.F.R. § 1.65.

¹⁴ 47 C.F.R. § 1.2105(c)(6); *see also Part 1 Seventh Report and Order*, 16 FCC Rcd at 17555 ¶ 17.

¹⁵ 47 C.F.R. § 1.2107(d).

¹⁶ *See* 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

¹⁷ 47 C.F.R. § 1.2109(d).