



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 05-2892
November 9, 2005

AUCTION OF FM BROADCAST CONSTRUCTION PERMITS

Status of FCC Form 175 Applications to Participate in Auction No. 62

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

The Media Bureau and the Wireless Telecommunications Bureau (collectively the “Bureaus”) of the Federal Communications Commission (“Commission”) have received 339 FCC Form 175 (short-form) applications to participate in the upcoming auction of 171 FM broadcast construction permits (Auction No. 62) scheduled to begin on Thursday, January 12, 2006.¹ The applications have been reviewed for completeness and compliance with the Commission’s rules, and have been classified into the categories listed below.

Application Categories:

ACCEPTED FOR FILING 253 applications

INCOMPLETE 81 applications

REJECTED 5 applications

Accepted: Applications accepted for filing are listed alphabetically in Attachment A. **These applicants will become qualified bidders upon receipt of the required upfront payment due before 6:00 p.m. Eastern Time (ET) on Friday, December 2, 2005.**² With respect to the FCC Form 175 application, these applicants need take no further action except as may be necessary to maintain the accuracy of their

¹ 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*, 20 FCC Rcd 10492 (WTB/MB 2005) (“*Auction No. 62 Procedures Public Notice*”); see also “Removal of FM Broadcast Construction Permit from FM Auction No. 62,” *Public Notice*, 20 FCC Rcd 12478 (WTB/MB 2005). In order to provide additional time for preparation and planning in the aftermath of Hurricane Katrina, the Bureaus postponed the beginning of competitive bidding in Auction No. 62 from November 1, 2005, to January 12, 2006, and extended the deadline for upfront payments from September 30, 2005, to December 2, 2005. “FM Broadcast Auction Start Date Rescheduled for January 12, 2006,” *Public Notice*, DA 05-2478 (WTB/MB Sept. 21, 2005).

² See 47 C.F.R. § 1.2106.

applications.³ Attachment A also indicates the FM construction permits selected by each applicant on its FCC Form 175 filing. If the accepted applicant selected a New Entrant Bidding Credit, the applicant's selection for each FM construction permit is indicated as 35 percent or 25 percent.⁴

Incomplete: Applications found to be incomplete are listed alphabetically in Attachment B. Applicants whose FCC Form 175 applications have been deemed incomplete will receive overnight correspondence indicating what information is required to make the applications acceptable for filing. **These applicants may become qualified bidders only if they: (1) make the required upfront payments before 6:00 p.m. ET on Friday, December 2, 2005; and (2) resubmit their applications before 6:00 p.m. ET on Friday, December 2, 2005, having corrected the deficiencies indicated.** Applicants also must maintain the accuracy of their FCC Form 175 applications as required by the Commission's rules.⁵

The filing window for resubmitting FCC Form 175 applications is now open. Corrected applications must be filed before **6:00 p.m. ET on Friday, December 2, 2005.** This will be the only opportunity to cure specified FCC Form 175 defects; late resubmissions will not be accepted. In addition, if an application remains incomplete or otherwise deficient after the resubmission deadline has passed, the application will be dismissed.

Rejected: Applications classified as rejected are listed alphabetically in Attachment C. Applicants whose applications have been classified as rejected are disqualified from participation in Auction No. 62. In Auction No. 62, rejected short-forms applications include applications in which the applicant has checked "yes" to the Noncommercial Educational election question on the FCC Form 175. 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.⁶ The applications for NCE FM broadcast stations identified in Attachment C are mutually exclusive with applications for FM commercial broadcast stations, and therefore are excluded from further Auction No. 62 participation.

1. UPFRONT PAYMENT DEADLINE

Upfront payments and accompanying FCC Remittance Advice forms (FCC Form 159) for Auction No. 62 are due in the proper account at Mellon Bank, Pittsburgh, Pennsylvania, before **6:00 p.m. ET on Friday, December 2, 2005.** **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.**⁷ Payments must be made by wire transfer in accordance with the instructions provided in the *Auction No. 62 Procedures Public Notice*.⁸ No other payment method is acceptable for this auction. Applicants are reminded to provide

³ See 47 C.F.R. § 1.65.

⁴ 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 any existing media of mass communications in the "same area" as the proposed broadcast facility. 47 C.F.R. § 73.5007(b). See 47 C.F.R. § 73.5007(b)(1)-(2) for the specific service definitions of "same area."

⁵ See 47 C.F.R. § 1.65 (an applicant must maintain the accuracy and completeness of information furnished in its pending application and notify the Commission within 30 days of any substantial change that may be of decisional significance to that application), 47 C.F.R. § 1.2105(c)(6) (any applicant that makes or receives a prohibited communication must report such communication in writing to the Commission no later than five business days after the communication occurs).

⁶ 18 FCC Rcd 6691, 6700 (2003). This procedure has been codified at 47 C.F.R. § 73.5002(b).

⁷ See Letter from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, to Patrick Shannon, Esq., Counsel for Lynch 3G Communications Corporation, 18 FCC Rcd 11552 (WTB 2003).

⁸ See *Auction No. 62 Procedures Public Notice*, 20 FCC Rcd at 10514-15.

their FCC Registration Number (“FRN”) on the FCC Form 159. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must send by facsimile a completed FCC Form 159 (revised February 2003) to Mellon Bank at (412) 209-6045.

Applicants that have filed applications deemed to be incomplete, as noted in this Attachment B to this public notice, must submit timely and sufficient upfront payments before the Commission will review their submitted applications. **If no upfront payment is made, or the application remains incomplete following its resubmission, the application will be dismissed.** If the applicant has provided its FRN *and* wire transfer instructions from the payor of record, any upfront payment made prior to dismissal will be refunded in a timely manner upon request.

Applicants are responsible for obtaining confirmation from their financial institution that Mellon Bank has timely received their upfront payment and deposited it in the proper account. We remind applicants that to avoid untimely upfront payments they should discuss arrangements (including transfer times and bank closing schedules) with their financial institution several days before making the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Detailed information regarding upfront payments, including additional requirements for “former defaulters,” can be found in the *Auction No. 62 Procedures Public Notice* under Section II.F and Section III.D.⁹

Note: Applicants are reminded to submit the same FRN with all future payments for Auction No. 62.

2. OTHER IMPORTANT INFORMATION

Qualified Bidders: Approximately three weeks after the upfront payment deadline, following Commission review of resubmitted FCC Form 175 applications, and correlation of payments and applications, a public notice listing all applicants qualified to bid in the auction will be released (Qualified Bidders Public Notice). The same public notice will also include bidding schedules for both the mock auction and the first day of Auction No. 62.

Due Diligence: Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the broadcast construction permits being offered in this auction. The FCC makes no representations or warranties about the use of this spectrum for particular services. Potential bidders are strongly encouraged to conduct their own research prior to the beginning of bidding in Auction No. 62 in order to determine the existence of pending proceedings, pleadings, applications, or authorizations that might affect their decisions regarding participation in the auction. Potential bidders also should review all underlying Commission orders, such as the specific *Report and Order* amending the FM Table of Allotments and allotting the FM channel(s) on which they plan to bid.¹⁰ Participants in Auction No. 62 are strongly encouraged to continue such research during the auction. For further details regarding due diligence, please refer to the *Auction No. 62 Procedures Public Notice* under Section I.B.3.¹¹

Prohibition of Collusion: 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).¹² For Auction No.

⁹ See *id.*, 20 FCC Rcd at 10510-11, 10514-17.

¹⁰ See 47 C.F.R. § 73.202.

¹¹ See *Auction No. 62 Procedures Public Notice*, 20 FCC Rcd at 10497-99.

¹² 47 C.F.R. §§ 1.2105(a)(2)(viii), 1.2105(c)(1), 73.5002(d). See also Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Procedures, *Seventh Report and Order*, 16 FCC Rcd 17546 (2001) (“*Part 1 Seventh Report and Order*”); *id.*, *Part I Fifth Report and Order*, 15 FCC Rcd at 15297-98 ¶¶ 7-8.

62, this prohibition became 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.¹³ **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.**¹⁴ 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.¹⁵ 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.¹⁶

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. 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.¹⁷ 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 to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.¹⁸ 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.¹⁹

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.²⁰ 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

¹³ 47 C.F.R. § 1.2105(c)(1).

¹⁴ See, e.g., Northeast Communications of Wisconsin, LLC, *Forfeiture Order*, 19 FCC Rcd 18635 (EB 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 Com., 16 FCC Rcd 10080 (WTB 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).

¹⁵ 47 C.F.R. § 1.2105(c)(7)(i).

¹⁶ See Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, 11 FCC Rcd 9645 (1995).

¹⁷ See *Auction No. 62 Procedures Public Notice*, 20 FCC Rcd at 10494-97.

¹⁸ 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).

¹⁹ *Id.*, 13 FCC Rcd at 11978 ¶ 13.

²⁰ 47 C.F.R. § 1.65.

the communication does not result in an agreement or understanding regarding bids or bidding strategy that must be reported under Section 1.65.²¹

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.²² Any applicant found to have violated the anti-collusion rule may be subject to sanctions.²³ 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.²⁴

Ex Parte Rule: Applicants should also be aware that the Commission has generally exempted auction proceedings from the strict requirements of the *ex parte* rule found in Section 1.1208 of the Commission's rules.²⁵

Mock Auction: All applicants found to be qualified bidders will be eligible to participate in a mock auction on Monday and Tuesday, January 9-10, 2006. We encourage all qualified bidders to take advantage of this mock auction to become familiar with the FCC's Integrated Spectrum Auction System ("FCC Auction System" or "ISAS").²⁶ In the public notice announcing the qualified bidders, the Bureaus will announce the bidding schedule for the mock auction. The mock auction will be conducted over the Internet, and telephonic bidding will be available as well.

Electronic Bidding: Applicants are reminded that qualified bidders are eligible to bid either electronically or telephonically. Applicants should specify their bidding preference on the FCC Form 175.

Bidders can access the FCC Auction System over the Internet. Access to the system via the Internet requires, at a minimum, the following software:

- Web Browser, either of the following:
 - ◆ Microsoft® Internet Explorer 6.0 or higher (recommended). Your browser must have either Microsoft VM or Java Plug-In Version 1.4.2_05 installed.
 - ◆ Netscape® Communicator™ 6.0 or higher, with Java Plug-In Version 1.4.2_05.

Other browsers are not supported.

Java Plug-In Version 1.4.2_05 is available for downloading at http://java.sun.com/products/archive/j2se/1.4.2_05/index.html (choose the JRE version).

- PDF Viewer: Adobe Acrobat Reader 5.0 or higher (available at <http://www.adobe.com>)

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

²² 47 C.F.R. § 1.2107(d).

²³ *See* 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

²⁴ 47 C.F.R. § 1.2109(d).

²⁵ 47 C.F.R. § 1.1208. *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).

²⁶ For additional information regarding the FCC's Integrated Spectrum Auction System, including sample screen shots, visit the "About ISAS" web page at http://wireless.fcc.gov/auctions/about_isas.

Long-Form Applications: All applicants should be aware that at the long-form application stage, they will be subject to the more extensive reporting requirements contained in the Commission's Part 1 and Part 73 ownership disclosure rules.²⁷

CONTACT INFORMATION

For questions about payment or instructions for wiring upfront payments, contact Gail Glasser, Auctions Accounting Group, at (202) 418-0578.

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

For technical assistance with using the FCC Auction System, contact the FCC Technical Support Hotline at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY). The FCC Technical Support Hotline is generally available Monday through Friday from 8:00 a.m. to 6:00 p.m. ET. All calls to the FCC Technical Support Hotline are recorded.

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 bidding and auction procedures questions: Jeff Crooks at (202) 418-0660

For bidding and general filing status questions: 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

- FCC -

²⁷ See 47 C.F.R. §§ 1.2112(b)(2), 73.5005. See also Instructions for Form 301, Application for Construction Permit for Commercial Broadcast Station, Instructions for Section I: General Information, paragraph G: Item 10: Auction Authorization for auction-related exhibit filing requirements.