



PUBLIC NOTICE

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AUCTION OF FM BROADCAST CONSTRUCTION PERMITS SCHEDULED FOR JANUARY 10, 2007

Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 68

AU Docket No. 06-101

Report No. AUC-06-68-B (Auction No. 68)

TABLE OF CONTENTS

Heading	Paragraph #
I. GENERAL INFORMATION.....	1
A. Introduction.....	1
1. Construction Permits to be Auctioned.....	2
B. Rules and Disclaimers.....	8
1. Relevant Authority.....	8
2. Prohibition of Collusion; Compliance with Antitrust Laws.....	10
3. Due Diligence.....	19
4. Use of Integrated Spectrum Auction System.....	27
5. Bidder Alerts.....	28
6. National Environmental Policy Act Requirements.....	30
C. Auction Specifics.....	31
1. Auction Date.....	31
2. Auction Title.....	33
3. Bidding Methodology.....	34
4. Pre-Auction Dates and Deadlines.....	35
5. Requirements for Participation.....	36
6. General Contact Information.....	37
II. SHORT-FORM APPLICATION (FCC FORM 175) REQUIREMENTS.....	38
A. New Entrant Bidding Credit.....	42
1. Eligibility.....	43
B. Application Requirements.....	48
1. Bidding Credits.....	49
2. Installment Payments.....	51
C. Permit Selection.....	52
D. Disclosure of Bidding Arrangements.....	53
E. Ownership Disclosure Requirements.....	55

F. Provisions Regarding Former and Current Defaulters	57
G. Other Information	63
H. Minor Modifications to Short-Form Applications (FCC Forms 175).....	64
I. Maintaining Current Information in Short-Form Applications (FCC Form 175).....	69
1. Maintaining the Accuracy of FCC Form 175 Information	70
III. PRE-AUCTION PROCEDURES.....	72
A. Auction Seminar	72
B. Short-Form Application (FCC Form 175) — Due Before 6:00 p.m. ET on November 13, 2006 ..	73
C. Application Processing and Minor Corrections	76
D. Upfront Payments — Due December 11, 2006.....	79
1. Making Auction Payments by Wire Transfer.....	80
2. FCC Form 159.....	83
3. Upfront Payments and Bidding Eligibility	84
4. Applicant’s Wire Transfer Information for Purposes of Refunds of Upfront Payments	89
E. Auction Registration	90
F. Remote Electronic Bidding.....	94
G. Mock Auction — January 8, 2007	96
IV. AUCTION EVENT	97
A. Auction Structure	98
1. Simultaneous Multiple Round Auction	98
2. Eligibility and Activity Rules	101
3. Activity Rule Waivers	106
4. Auction Stopping Rules.....	112
5. Auction Delay, Suspension, or Cancellation	117
B. Bidding Procedures	119
1. Round Structure.....	119
2. Reserve Price and Minimum Opening Bids	121
3. Bid Amounts.....	127
4. Provisionally Winning Bids.....	131
5. Bid Removal and Bid Withdrawal.....	140
6. Round Results.....	147
7. Auction Announcements	148
V. POST-AUCTION PROCEDURES	149
A. Down Payments	149
B. Final Payments	151
C. Long-Form Application	152
D. Default and Disqualification	153
E. Refund of Remaining Upfront Payment Balance.....	155
VI. CONTACTS	159
ATTACHMENT A: Construction Permits to Be Auctioned	
ATTACHMENT B: Electronic Filing and Review of the Short-Form Application (FCC Form 175)	
ATTACHMENT C: Auction-Specific Instructions for FCC Remittance Advice (FCC Form 159)	
ATTACHMENT D: Summary Listing of Commission and Bureau Documents Addressing Application of the Anti-Collusion Rule	

I. GENERAL INFORMATION

A. Introduction

1. By this Public Notice, the Media Bureau (“MB”) and Wireless Telecommunications Bureau (“WTB”) (collectively the “Bureaus”) announce the procedures and minimum opening bid amounts for the upcoming auction of certain FM broadcast construction permits scheduled to begin on January 10, 2007 (Auction No. 68). On August 24, 2006, in accordance with Section 309(j)(3) of the Communications Act of 1934, as amended,¹ the Bureaus released a public notice seeking comment on reserve prices or minimum opening bid amounts and the procedures to be used in Auction No. 68.² Interested parties submitted six comments and one reply comment in response to the *Auction No. 68 Comment Public Notice*.³

1. Construction Permits to be Auctioned

2. Auction No. 68 will offer nine construction permits in the FM broadcast service as listed in Attachment A. The construction permits to be auctioned are nine unsold FM construction permits from Auction Nos. 37 and 62.⁴ These construction permits are for vacant FM allotments, reflecting FM channels assigned to the FM Table of Allotments,⁵ pursuant to the Commission’s established rulemaking procedures, and are designated for use in the indicated communities.

3. Pursuant to the policies established in the *Broadcast Competitive Bidding First Report and Order*, applicants may apply for any vacant FM allotment listed in Attachment A.⁶ When two or more short-form applications (FCC Form 175) specifying the same FM allotment are accepted for filing, mutual exclusivity

¹ 47 U.S.C. § 309(j)(3)(E)(i)(requirement to seek comment on proposed auction procedures); *see* 47 U.S.C. § 309(j)(4)(F)(authorization to prescribe reserve price or minimum bid); *see also* 47 C.F.R. § 1.2104(c) and (d).

² “Auction of FM Broadcast Construction Permits Scheduled for January 10, 2007; Comment Sought on Competitive Bidding Procedures for Auction No. 68,” AU Docket No. 06-101, *Public Notice*, DA 06-997 (“*Auction No. 68 Comment Public Notice*”).

³ Concerned Citizens of Hawaii, Legacy Media Company, Inc., Mullaney Engineering, Inc., National Public Radio, and Steven R. Bartholomew filed comments. Houston Christian Broadcasters, Inc., the Sister Sherry Lynn Foundation, Inc., and Revival Christian Ministries, Inc. jointly filed “Petition for Reconsideration” by the deadline for comments; as discussed further below, we are treating this submission in the same manner as comments received in this proceeding. Steven R. Bartholomew submitted reply comments.

⁴ “FM Broadcast Construction Permits Auction Closes, Auction No. 37 Winning Bidders Announced; Payment and Application Deadlines Established,” *Public Notice*, 20 FCC Rcd 1021 (WTB/MB 2004); “Auction of FM Broadcast Construction Permits Closes, Winning Bidders Announced for Auction No. 62, Down Payments due February 23, 2006, FCC Form 301 due March 10, 2006,” *Public Notice*, 21 FCC Rcd 1071 (WTB/MB 2006). *See also Letter to Alva Fearon, President, In Vibration, Inc.*, 20 FCC Rcd 7791 (WTB/MB 2005).

⁵ 47 C.F.R. § 73.202(b).

⁶ *See 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 (1998) (“*Broadcast Competitive Bidding First Report and Order*”), *Memorandum Opinion and Order*, 14 FCC Rcd 8724 (1999) (“*Broadcast Competitive Bidding First Reconsideration Order*”), *Memorandum Opinion and Order*, 14 FCC Rcd 12541 (1999), *aff’d*, *Orion Communications Ltd. V. FCC*, 221 F.3d 196, No. 98-1424, slip op. (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)). Attachment A also lists the reference coordinates for each vacant FM allotment. With regard to the FM service, the Commission gave applicants the opportunity to submit a set of preferred site coordinates as an alternative to the reference coordinates for the vacant FM allotment upon which they intend to bid. Further information regarding preferred site coordinates may be found in Attachment B to this public notice. *See Broadcast Competitive Bidding First Report and Order*, 13 FCC Rcd at 15974-75 and n.153.

("MX") exists for auction purposes,⁷ and thus, that construction permit for the FM allotment will be awarded by competitive bidding procedures.⁸ Once mutual exclusivity exists for auction purposes, even if only one applicant within an MX group submits an upfront payment, that applicant is required to submit a bid in order to obtain the construction permit.⁹

4. National Public Radio ("NPR") contends that the *Auction No. 68 Comment Public Notice* is deficient in that it does not sufficiently encourage the submission of applications for noncommercial educational ("NCE") broadcast stations.¹⁰ NPR surmises that the previously unsold construction permits available in Auction No. 68 show a lack of interest in providing commercial service in these areas, and therefore suggests that encouraging applications for NCE stations might result in new NCE service to these locations.¹¹ NPR's suggestion rests on an erroneous premise that there was a lack of interest in these permits. Rather, as discussed further below, the permits in this auction received multiple bids in those prior auctions. These permits are now available because either a bidder withdrew a high bid during the auction or a winning bidder defaulted after the close of the auction.¹²

5. NPR also suggests that the *Auction No. 68 Comment Public Notice* is deficient because it does not contain instructions for the submission of applications for NCE stations.¹³ NPR cites to a portion of Section 73.5002(a) of the Commission's rules which states that "initial and other public notices will contain" instructions for completing applications to participate in the broadcast auction, and applications for NCE stations.¹⁴ NPR's argument fails to recognize that an initial auction public notice is limited to "announcing the upcoming auction and specifying [filing] the period" for short-form applications.¹⁵ The Commission's initial auction public notices for FM auctions do not supply specific application filing instructions. Rather, such instructions are typically supplied in a subsequent public notice, such as this one, which announces the procedures to be followed for the upcoming broadcast auction and provides filing instructions. The instructions for the filing of short-form applications for both commercial and NCE stations are provided in detail below.¹⁶ Moreover, the Commission's competitive bidding and broadcast service rules are specifically designed to accommodate applicants for NCE broadcast stations who seek to use nonreserved spectrum.¹⁷ In order to maximize opportunity for noncommercial broadcasters, the Commission has also permitted applicants

⁷ *Broadcast Competitive Bidding First Report and Order*, 13 FCC Rcd at 15978-80 ¶¶ 149-154. 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 ¶ 165 (1994) ("*Competitive Bidding Second Report & Order*").

⁸ *Broadcast Competitive Bidding First Report and Order*, 13 FCC Rcd at 15923-25 ¶¶ 7-12.

⁹ Any applicant that submits a short-form application that is accepted for filing but fails to timely submit an upfront payment will retain its status as an applicant in Auction No. 68 and will remain subject to the Commission's anti-collusion rules, 47 C.F.R. §§ 1.2105(c) and 73.5002(d), but, having purchased no bidding eligibility, will not be eligible to bid. See *Broadcast Competitive Bidding First Report and Order*, 13 FCC Rcd at 15980 ¶ 153.

¹⁰ NPR Comments.

¹¹ See NPR Comments at 3-4.

¹² This Public Notice explains below that bid withdrawals will not be permitted in this auction and additional payments will be imposed to deter post-auction defaults. For detailed information on the bids placed during the previous FM auctions (Auction Nos. 37 and 62), auction results, and post-auction decisions, see the Commission's Auctions web page at <http://wireless.fcc.gov/auctions>.

¹³ See NPR Comments at 2-3.

¹⁴ See *id.*, at 2 (citing 47 C.F.R. § 73.5002(a)).

¹⁵ 47 C.F.R. § 73.5002(a).

¹⁶ See Attachment B.

¹⁷ See 47 C.F.R. § 73.5002 (a) and (b).

for NCE stations the opportunity to obtain licenses to use nonreserved spectrum by participating in auction filing windows. In a decision resolving the issues raised by the court in *National Public Radio v. FCC*, the Commission determined that an applicant for an NCE station would be permitted to submit an application for nonreserved spectrum in an auction filing window, subject to being returned as unacceptable for filing if such application is mutually exclusive with an application for a commercial station.¹⁸ The opening of the upcoming window for nonreserved FM allotments for Auction No. 68 provides a filing opportunity for both NCE and commercial applicants. As with the previous two FM auctions,¹⁹ applicants for NCE broadcast stations will be allowed to submit short-form applications (FCC Forms 175) for the specific nonreserved spectrum to be auctioned in Auction No. 68 in the forthcoming filing window.²⁰

6. The broad principle of NCE auction participation is simply not a subject matter for which the Bureaus seek comment. The Bureaus released the *Auction No. 68 Comment Public Notice* pursuant to statutory directive. Section 309(j)(3) of the Act requires the Commission to “ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed . . . before issuance of bidding rules, to permit notice and comment on proposed auction procedures”²¹ As stated in the *Auction No. 68 Comment Public Notice*, to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Commission ordered the Bureaus to seek comment on a variety of auction-specific procedures prior to the start of each auction.²² Specifically, the Commission directed the Bureaus to seek comment on particular mechanisms related to auction conduct, mechanisms including the structure of the bidding rounds, establishment of minimum opening bids, activity requirements, activity rule waivers and information relating to auction delay, suspension or cancellation. Thus, the concerns raised by NPR lie outside of the scope of this proceeding.

7. Three entities filed jointly a “petition for reconsideration” in response to the *Auction No. 68 Comment Public Notice*, requesting that we delete four permits from the Auction No. 68 inventory.²³ In their view, the FM construction permits at Perry, Florida, Parowan, Utah, Cedar Key, Florida, and Tecopa, California should be removed from the inventory and awarded on a first-come, first-served basis. Each of these three entities had its short-form application dismissed in an earlier FM auction because each was mutually exclusive with one or more applications for a commercial station for the same FM construction permit.²⁴ These entities contend that the Commission should follow “a longstanding ‘first come, first served’ policy, and should

¹⁸ See Reexamination of the Comparative Standards for Noncommercial Educational Applicants, MM Docket No. 95-31, *Second Report and Order*, 18 FCC Rcd 6691, 6699-6700 ¶ 21 (2003) (“*NCE Second Report and Order*”), recons pending.

¹⁹ “*Auction of FM Broadcast Construction Permits Scheduled for November 1, 2005, Auction No. 62*,” 20 FCC Rcd 10492 (WTB / MB 2005); “*Auction of FM Broadcast Construction Permits Scheduled for November 3, 2004, Auction No. 37*,” Public Notice, 19 FCC Rcd 10570 (WTB / MB 2004).

²⁰ NPR’s complaint that the *Auction No. 68 Comment Public Notice* does not mention that NCE applicants need not pay minimum opening bids, upfront payments or filing fees is misdirected because the Bureaus’ proposals in that public notice were only intended to apply where applications submitted in an auction filing window are found to be mutually exclusive. In such event, Section 309(j) of the Communications Act requires that such mutual exclusivity must be resolved through the use of competitive bidding procedures. See *Broadcast Competitive Bidding First Report and Order*, 13 FCC Rcd at 5920.

²¹ 47 U.S.C. § 309(j)(3).

²² See Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rulemaking*, 13 FCC Rcd 374, 448 (1997).

²³ “Petition for Reconsideration” of Houston Christian Broadcasters, Inc., the Sister Sherry Lynn Foundation, Inc., and Revival Christian Ministries, Inc. (filed Sept. 12, 2006) (*Houston Christian PFR*).

²⁴ See “*Auction of FM Broadcast Permits; Status of Applications to Participate in Auction No. 37*,” Public Notice, 19 FCC Rcd 17,938 (2004) (rejecting applications for NCE FM broadcast stations that were mutually exclusive with applications for FM commercial broadcast stations).

immediately issue construction permits for these four FM stations to them.²⁵ The parties claim that, because these permits were offered but not awarded in Auction Nos. 37 or 62, they should now be available to them. We hereby deny this request. We decline to adopt the proposal made by these three former applicants because it would violate the Commission's rules and policies as established in the *NCE Second Report and Order* concerning the processing of mutual exclusive NCE and commercial applications. Implementation of this proposal would require amendment of the Commission's competitive bidding and broadcast service rules. The Bureaus' process for seeking comment on auction procedures is not the appropriate forum in which either to challenge determinations made in a rulemaking proceeding or to propose additional rule changes.

B. Rules and Disclaimers

1. Relevant Authority

8. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules, including recent amendments and clarifications.²⁶ Broadcasters should also familiarize themselves with the Commission's rules relating to the FM broadcast service contained in 47 C.F.R. §§ 73.201 – 73.333 and 73.1001 – 73.5009. Prospective bidders must also be familiar with the rules relating to broadcast auctions and competitive bidding proceedings contained in 47 C.F.R. §§ 1.2001 – 1.2112 and 73.5000 – 73.5009. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions contained in this public notice, the *Auction No. 68 Comment Public Notice* and the *Broadcast Competitive Bidding First Report and Order*,²⁷ the *Broadcast Competitive Bidding First Reconsideration Order*²⁸ and the *New Entrant Bidding Credit Reconsideration Order*²⁹ and the *NCE Second Report and Order*.³⁰

9. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most auctions-related Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at <http://wireless.fcc.gov/auctions>. Additionally, documents are available for public inspection and copying between 8:00 a.m. and 4:30 p.m. Eastern Time (ET) Monday through Thursday or 8:00 a.m. to 11:30 a.m. ET Fridays at the FCC Reference Information Center, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. Documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. ("BCPI"), 445 12th Street, SW, Room CY-B402, Washington, DC 20554, 800-378-3160 or at <http://www.bcpiweb.com>.³¹

²⁵ *Houston Christian PFR* at 4.

²⁶ See, e.g., Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd 15293 (2000) ("*Fifth Report and Order*"); *id.*, *Seventh Report and Order*, 16 FCC Rcd 17546 (2001) ("*Seventh Report and Order*"); *id.*, *Eighth Report and Order*, 17 FCC Rcd 2962 (2002); *id.*, *Second Order on Reconsideration of the Third Report and Order and Order on Reconsideration of the Fifth Report and Order*, 18 FCC Rcd 10180 (2003).

²⁷ *Broadcast Competitive Bidding First Report and Order*, 13 FCC Rcd at 15920.

²⁸ *Broadcast Competitive Bidding First Reconsideration Order*, 14 FCC Rcd at 8724.

²⁹ Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, *Memorandum Opinion and Order*, 14 FCC Rcd 12541 (1999) ("*New Entrant Bidding Credit Reconsideration Order*").

³⁰ *NCE Second Report and Order*, 18 FCC Rcd at 6691.

³¹ When ordering documents from BCPI, please provide the appropriate FCC document number (for example, DA 06-997 for the *Auction No. 68 Comment Public Notice*, or DA 06-1949 for this Public Notice).

2. Prohibition of Collusion; Compliance with Antitrust Laws

10. To ensure the competitiveness of the auction process, Section 1.2105(c) of the Commission's rules prohibits applicants competing for construction permits in any of the same geographic license areas from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications (FCC Forms 175) as parties with whom they have entered into agreements pursuant to Section 1.2105(a)(2)(viii).³² Thus, applicants for any of the same geographic license areas must affirmatively avoid all communications with each other that affect or, in their reasonable assessment, have the potential to affect bids or bidding strategy. In some instances, this prohibition extends to communications regarding the post-auction market structure. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction.³³ **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.**³⁴ The "geographic license area" is the market designation of the particular service.³⁵ For the FM service, the market designation is the particular vacant FM allotment (e.g., Covelo, California, Channel 245A, Market FM366-A). In Auction No. 68, for example, the rule would apply to applicants designating on the short-form application any of the same FM allotments. Therefore, applicants that apply to bid for an FM construction permit for the same allotment would be precluded from engaging in prohibited communications during the period from the short-form application deadline until the down payment deadline following the close of the auction. In addition, even if auction applicants are each eligible to bid on only one common FM allotment, they may not discuss with each other their bids or bidding strategies relating to any FM allotment that either designates on its short-form application.

11. For purposes of this prohibition, Section 1.2105(c)(7)(i) defines "applicant" as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, 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.³⁶

12. Applicants for construction permits for any of the same allotments must not communicate directly or indirectly about bids or bidding strategy.³⁷ Accordingly, such applicants are encouraged 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 such applicants. Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or engineering firm or consulting firm), a violation similarly could occur.³⁸ In such a case, at a minimum, applicants should certify on their applications that precautionary

³² 47 C.F.R. §§ 1.2105(a)(2)(viii), 1.2105(c)(1), and 73.5002. See also *Part 1 Seventh Report and Order*, 16 FCC Rcd 17546 (2001); *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15297-98 ¶¶ 7-8.

³³ 47 C.F.R. § 1.2105(c)(1).

³⁴ See, e.g., *Star Wireless, LLC, Forfeiture Order*, 19 FCC Rcd 18626, 18628 ¶ 4, n.19 (EB 2004), application for review pending (collusion rule applies to applicants regardless of whether they are qualified to bid); Letter to Robert Pettit, Esquire, from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 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).

³⁵ *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17549 n.12.

³⁶ 47 C.F.R. § 1.2105(c)(7)(i).

³⁷ *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17549-50 ¶ 6.

³⁸ 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) ("*Nevada Wireless Order*").

steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.³⁹ A violation of the anti-collusion rule could occur in other contexts, such as an individual serving as an officer for two or more applicants.⁴⁰ Moreover, the Commission has found a violation of the anti-collusion rule where a bidder used the Commission's bidding system to disclose "its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets,"⁴¹ and has placed auction participants on notice that the use of its bidding system "to disclose market information to competitors will not be tolerated and will subject bidders to sanctions."⁴² Bidders are cautioned that the Commission remains vigilant about prohibited communications taking place in other situations. For example, the Commission has warned that prohibited "communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly."⁴³ Auction participants are hereby placed on notice that public disclosure of information relating to bidder interests, bids and bidder identities that typically has been revealed prior to and during past Commission auctions may violate the anti-collusion rule.⁴⁴ Bidders 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 communication of prohibited bidding information.

13. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form application.⁴⁵ If parties agree in principle on all material terms prior to the short-form filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under Section 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the short-form filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiations, discussions or communications with any other applicants after the short-form filing deadline.⁴⁶

14. By electronically submitting its short-form application, each applicant certifies its compliance with Sections 1.2105(c) and 73.7002. However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted.⁴⁷ The Commission has stated that it "intend[s] to scrutinize

³⁹ *Id.*

⁴⁰ See, e.g., *Letter to Colby M. May, TCCSA, Inc., d/b/a Trinity Broadcasting Network, from Barbara A. Kreisman, Chief, Video Division, Media Bureau, and Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau*, 20 FCC Rcd 14648 (WTB/MB 2005) (finding apparent violation of anti-collusion rule where applicants with mutually exclusive applications reported sharing same individual as an officer and director and reported having no bidding agreement).

⁴¹ *Mercury PCS II, LLC, Notice of Apparent Liability for Forfeiture*, 12 FCC Rcd 17970, 17976 ¶ 12 (1997).

⁴² *Mercury PCS II, LLC, Memorandum Opinion and Order*, 13 FCC Rcd 23755, 23760 ¶ 11 (1998).

⁴³ *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, *Memorandum Opinion and Order*, 9 FCC Rcd 7684, 7689 ¶ 12 (1994).

⁴⁴ *Cf. Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction, Public Notice*, 13 FCC Rcd 341, 347-8 (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.").

⁴⁵ 47 C.F.R. § 1.2105(c)(7)(i).

⁴⁶ See *Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, Public Notice*, 11 FCC Rcd 9645 (1995) ("*Anti-Collusion Public Notice*").

⁴⁷ *Nevada Wireless Order*, 13 FCC Rcd at 11978 ¶ 13.

carefully any instances in which bidding patterns suggest that collusion may be occurring.”⁴⁸ Any applicant found to have violated the anti-collusion rule may be subject to sanctions.⁴⁹

15. Applicants are also reminded that, regardless of compliance with the Commission’s rules, they remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace.⁵⁰ Compliance with the disclosure requirements of the Commission’s anti-collusion rule will not insulate a party from enforcement of the antitrust laws.⁵¹ For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submits a short form application.⁵² The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws: for example, actual or potential competitors may not agree to divide territories horizontally in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another for the other.⁵³ Similarly, the Bureaus have long reminded potential applicants and others that “[e]ven where the applicant discloses parties with whom it has reached an agreement on the short-form application, thereby permitting discussions with those parties, the applicant is nevertheless subject to existing antitrust laws.”⁵⁴ To the extent the Commission becomes aware of specific allegations that may give rise to violations of the federal antitrust laws, the Commission may refer such allegations to the United States Department of Justice for investigation.⁵⁵ 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 may be prohibited from participating in future auctions, among other sanctions.⁵⁶

16. 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 substantial change that may be of decisional significance to that application.⁵⁷ Thus, Section 1.65 requires an auction applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. Applicants are therefore required by Section 1.65

⁴⁸ Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, 9 FCC Rcd 7684, 7689 ¶ 12 (1994).

⁴⁹ See 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

⁵⁰ See Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Further Notice of Proposed Rule Making*, 14 FCC Rcd 21558, 21560 ¶ 4 and n. 4 (1999) citing Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, 9 FCC Rcd 7684, 7689 ¶ 12 (1994) (“[W]e wish to emphasize that all applicants and their owners continue to be subject to existing antitrust laws. Applicants should note that conduct that is permissible under the Commission's Rules may be prohibited by the antitrust laws.”); Implementation of Section 309(j) of the Communications Act-Competitive Bidding, PP Docket No. 93-253, *Fourth Memorandum Opinion & Order*, 9 FCC Rcd 6858, 6869 n. 134 (1994) (“[A]pplicants will also be subject to existing antitrust laws.”) (“*Fourth Memorandum Opinion and Order*”).

⁵¹ See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226. See also “Justice Department Sues Three Firms Over FCC Auction Practices,” *Press Release* 98-536 (DOJ Nov. 10, 1998).

⁵² The Commission has cited a number of examples of such anticompetitive behavior. See, e.g., Implementation of Section 309(j) of the Communications Act-Competitive Bidding, PP Docket No. 93-253, *Fourth Memorandum Opinion & Order*, 9 FCC Rcd 6858 at 6869 n.134.

⁵³ *Id.*; see also *Anti-Collusion Public Notice*, 11 FCC Rcd 9645.

⁵⁴ See *Anti-Collusion Public Notice*, *id.*

⁵⁵ See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226.

⁵⁶ See 47 C.F.R. § 1.2109(d); see also *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226.

⁵⁷ 47 C.F.R. § 1.65.

to report to the Commission any communications they have made to or received from another applicant after the short-form filing deadline that affect or have the potential to affect bids or bidding strategy unless such communications are made to or received from parties to agreements identified under Section 1.2105(a)(2)(viii). In addition, Section 1.2105(c)(6) requires that any applicant that makes or receives a communication prohibited by Section 1.2105(c) must report such communication to the Commission in writing immediately, and in no case later than five business days after the communication occurs.⁵⁸

17. Applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in any bidding consortia, joint venture, partnership, or agreement or other arrangement entered into relating to the competitive bidding process.⁵⁹

18. A summary listing of documents issued by the Commission and the Bureau addressing the application of the anti-collusion rule may be found in Attachment D. These documents are available on the Commission's auction anti-collusion web page.⁶⁰

3. Due Diligence

19. Potential applicants are reminded that they are solely responsible for investigating and evaluating all technical and market place factors that may have a bearing on the value of the broadcast facilities in this auction. **The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC permittee in the broadcast service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success.** Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

20. In particular, potential applicants are strongly encouraged to 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.⁶¹ Reports and orders adopted in FM allotment rulemaking proceedings often include anomalies such as site restrictions or expense reimbursement requirements.⁶² Bidders are also responsible for reviewing all pending rulemaking petitions and open proceedings that might affect the FM allotment(s) on which they plan to bid. Additionally, potential bidders should perform technical analyses sufficient to assure themselves that, should they prevail in competitive bidding for a given FM allotment, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements.

21. Potential applicants are also strongly encouraged to conduct their own research prior to the beginning of bidding in Auction No. 68 in order to determine the existence of any pending administrative or judicial proceedings that might affect their decision to participate in the auction. Participants in Auction No. 68 are strongly encouraged to continue such research throughout the auction.

22. Applicants should also be aware that certain pending and future proceedings, including applications (including those for modification), petitions for rulemaking, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal oppositions, and applications for review, before the Commission may relate to particular applicants or incumbent permittees, or

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

⁵⁹ 47 C.F.R. § 1.2107(d).

⁶⁰ <http://wireless.fcc.gov/auctions/anticollusion>

⁶¹ *See* 47 C.F.R. § 73.202.

⁶² *See, e.g., Charlotte Amalie, Frederiksted, and Christiansted, U.S. Virgin Islands, Memorandum Opinion & Order*, 19 FCC Rcd 30 (MB 2004); *Cheyenne, Wyoming and Gering, Nebraska, Memorandum Opinion & Order*, 15 FCC Rcd 7528 (MMB 2000); *Circleville, Ohio, Memorandum Opinion & Order*, 9 F.C.C.2d 159 (1967).

incumbent licensees, or the construction permits available in Auction No. 68. In addition, pending and future judicial proceedings may relate to particular applicants or incumbent permittees, or incumbent licensees, or the construction permits available in Auction No. 68. Prospective applicants are responsible for assessing the likelihood of the various possible outcomes, and considering their potential impact on construction permits available in this auction.

23. Applicants should perform due diligence to identify and consider all proceedings that may affect the construction permits being auctioned and that could have an impact on the availability of spectrum for Auction No. 68. In addition, although the Commission may continue to act on various pending applications, informal objections, petitions, and other requests for Commission relief, some of these matters may not be resolved by the beginning of bidding in the auction.

24. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the construction permits available in Auction No. 68. Potential applicants are strongly encouraged to physically inspect any prospective sites located in, or near, the service area for which they plan to bid, and also to familiarize themselves with the environmental assessment obligations described below in Section I.B.6.

25. Applicants may research the licensing database for the Media Bureau on the Internet in order to determine which channels are already licensed to incumbent licensees or previously-authorized to construction permittees. Licensing records for the Media Bureau are contained in the Media Bureau's Consolidated Data Base System (CDBS) and may be researched on the Internet at <http://www.fcc.gov/mb>. Potential bidders may query the database online and download a copy of their search results if desired. Detailed instructions on using Search for Station Information, Search for Ownership Report Information and Search for Application Information and downloading query results are available online by selecting the CDBS Public Access (main) button at the bottom of the Electronic Filing and Public Access list section. The database searches return either station or application data. The application search provides an application link that displays the complete electronically filed application in application format. An AL/TC search under the application search link permits searching for Assignment of License/Transfer of Control groups using the AL/TC group lead application. For further details, click on the Help file. Potential bidders should direct questions regarding the search capabilities of CDBS to the Media Bureau help line at (202) 418-2662, or via e-mail at mbinfo@fcc.gov.

26. 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, applicants may obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

4. Use of Integrated Spectrum Auction System

27. The Commission will make available a browser-based bidding system to allow bidders to participate in Auction No. 68 over the Internet using the Commission's Integrated Spectrum Auction System ("ISAS" or "FCC Auction System"). The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning or use of the FCC Auction System that is accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming or other advice or service provided in connection with the FCC Auction System.

5. Bidder Alerts

28. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 68 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a “cold call” from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of investment is less than \$25,000.
- The sales representative makes verbal representations that: (a) the Internal Revenue Service (“IRS”), Federal Trade Commission (“FTC”), Securities and Exchange Commission (“SEC”), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

29. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326-2222 and from the SEC at (202) 942-7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876-7060. Consumers who have concerns about specific proposals regarding Auction No. 68 may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225-5322).

6. National Environmental Policy Act Requirements

30. Permittees or licensees must comply with the Commission’s rules regarding implementation of the National Environmental Policy Act (“NEPA”).⁶³ The construction of a broadcast facility is a federal action and the permittee must comply with the Commission’s NEPA rules for each such facility.⁶⁴ The Commission’s NEPA rules require, among other things, that the permittee or licensee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corps of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). In assessing the effect of facilities construction on historic properties, the licensee must follow the provisions of the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process.⁶⁵ The permittee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The permittee also must prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

⁶³ 47 C.F.R. Ch. 1, Subpart 1.

⁶⁴ 47 C.F.R. §§ 1.1305-1.1319.

⁶⁵ See 47 C.F.R. Part 1, Appendix C.

C. Auction Specifics**1. Auction Date**

31. Bidding in Auction No. 68 will begin on Wednesday, January 10, 2007, as announced in the *Auction No. 68 Comment Public Notice*.⁶⁶ The initial schedule for bidding will be announced by public notice at least one week before the start of the auction.

32. Unless otherwise announced, bidding on construction permits will be conducted on each business day until bidding has stopped on all construction permits.

2. Auction Title

33. Auction No. 68 – FM Broadcast

3. Bidding Methodology

34. As discussed in more detail below, the bidding methodology for Auction No. 68 will be simultaneous multiple round bidding.⁶⁷ The Commission will conduct this auction over the Internet using the FCC Auction System, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically via the Internet or by telephone.⁶⁸ All telephone calls are recorded.

4. Pre-Auction Dates and Deadlines

35. Dates and Deadlines

Short-Form Application (FCC Form 175) Filing Window Opens.....	November 6, 2006; 12:00 noon. ET
Short-Form Application (FCC Form 175) Filing Window Deadline...	November 13, 2006; 6:00 p.m. ET
Upfront Payments (via wire transfer).....	December 11, 2006; 6:00 p.m. ET
Mock Auction.....	January 8, 2007
Auction Begins.....	January 10, 2007

5. Requirements for Participation

36. Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically prior to 6:00 p.m. Eastern Time (ET), November 13, 2006, following the electronic filing procedures set forth in Attachment B to this Public Notice.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) before 6:00 p.m. ET, December 11, 2006.
- Comply with all provisions outlined in this Public Notice and applicable Commission rules.

6. General Contact Information

37. General Contact Information

⁶⁶ *Auction No. 68 Comment Public Notice* at 1.

⁶⁷ See *infra* Section IV.A.1. "Simultaneous Multiple Round Auction."

⁶⁸ For additional information regarding ISAS, including sample screen shots, visit the "About ISAS" web page at http://wireless.fcc.gov/auctions/about_isas.

GENERAL AUCTION INFORMATION

General Auction Questions

FCC Auctions Hotline

(888) 225-5322, option two;
or (717) 338-2868Hours of service: 8:00 a.m. – 5:30 p.m. ET,
Monday through Friday**AUCTION LEGAL INFORMATION**

Auction Rules, Policies, Regulations

Auctions and Spectrum Access Division

(202) 418-0660

LICENSING INFORMATION

Service Rules, Policies, Regulations

Licensing Issues, Engineering Issues

Due Diligence, Incumbency Issues

Audio Division

(202) 418-2700

TECHNICAL SUPPORT

Electronic Filing

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**PAYMENT INFORMATION**

Wire Transfers

Refunds

FCC Auctions Accounting Branch

(202) 418-0578

(202) 418-2843 (Fax)

AUCTION BIDDER LINE

Will be furnished only to qualified bidders

FCC COPY CONTRACTOR

Additional Copies of

Commission Documents

Best Copy and Printing, Inc

445 12th Street, SW, Room CY-B402

Washington, DC 20554

(800) 378-3160

<http://www.bcpweb.com>**PRESS INFORMATION**

Chelsea Fallon (202) 418-7991

FCC FORMS

(800) 418-3676 (outside Washington, DC)

(202) 418-3676 (in the Washington area)

<http://www.fcc.gov/formpage.html>**ACCESSIBLE FORMATS**

Braille, large print, electronic files, or

audio format for people with disabilities

Consumer and Governmental Affairs Bureau

(202) 418-0530 or (202) 418-0432 (TTY)

fcc504@fcc.gov**FCC INTERNET SITES**<http://www.fcc.gov><http://wireless.fcc.gov/auctions><http://wireless.fcc.gov/uls><http://www.fcc.gov/mb>

II. SHORT-FORM APPLICATION (FCC FORM 175) REQUIREMENTS

38. An application to participate in an FCC auction, referred to as a short-form application or FCC Form 175, provides information used in determining whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or permits.⁶⁹ The short-form application is the first part of the Commission's two-phased auction application process. In the first phase of this process, parties desiring to participate in the auction file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications.⁷⁰ Eligibility to participate in bidding is based on the applicants' short-form applications and certifications as well as their upfront payments, as explained below.⁷¹ In the second phase of the process, winning bidders file a more comprehensive long-form application.⁷²

39. Entities and individuals seeking construction permits available in Auction No. 68 must file a short-form application electronically via the FCC Auction System before 6:00 p.m. ET on November 13, 2006, following the procedures prescribed in Attachment B to this Public Notice. If an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 will be used in determining whether the applicant is eligible for the claimed bidding credit. Applicants bear full responsibility for submitting accurate, complete and timely short-form applications. All applicants must certify under penalty of perjury on their short-form applications that they are legally, technically, financially and otherwise qualified to hold a license.⁷³ Applicants should read the instructions set forth in Attachment B to this Public Notice carefully and should consult the Commission's rules to ensure that, in addition to the materials described below all the information that is required under the Commission's rules is included with their short-form applications.⁷⁴

40. An entity may not submit more than one short-form application for a single auction. In the event that a party submits multiple short-form applications, only one application will be accepted for filing.

41. Applicants also should note that submission of a short-form application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true, complete and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

A. New Entrant Bidding Credit

42. To fulfill its obligations under Section 309(j) and further its long-standing commitment to the diversification of broadcast facility ownership, the Commission adopted a tiered New Entrant Bidding Credit for broadcast auction applicants with no, or very few, other media interests.

⁶⁹ See 47 C.F.R. § 1.2105.

⁷⁰ See *id.*; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2376 ¶ 163.

⁷¹ See *infra* Section III.D. "Upfront Payments – Due December 11, 2006."

⁷² See 47 C.F.R. §§ 1.2107, 73.5005.

⁷³ See 47 C.F.R. § 1.2105(a)(2)(v).

⁷⁴ As discussed generally in *NCE Second Report and Order*, the opening of a window for nonreserved vacant FM allotments provides a filing opportunity for both NCE and commercial applicants. However, as discussed in Section III.C, *infra*, while non-mutually exclusive NCE applications will not be resolved through competitive bidding, any applications specifying NCE facilities that are mutually exclusive with any applications specifying commercial facilities will be returned as unacceptable for filing. 47 C.F.R. § 73.5002(b).

1. Eligibility

43. The interests of the applicant, and of any individuals or entities with an attributable interest in the applicant, in other media of mass communications shall be considered when determining an applicant's eligibility for the New Entrant Bidding Credit.⁷⁵ The bidder's attributable interests shall be determined as of the short-form application (FCC Form 175) filing deadline – November 13, 2006. Thus, the applicant's maximum new entrant bidding credit eligibility will be determined as of the short-form application filing deadline. Applicants intending to divest a media interest or make any other ownership changes, such as resignation of positional interests, in order to avoid attribution for purposes of qualifying for the New Entrant Bidding Credit must have consummated such divestment transactions or have completed such ownership changes by no later than the short-form filing deadline – November 13, 2006.⁷⁶ Prospective bidders are reminded, however, that events occurring after the short-form filing deadline, such as the acquisition of attributable interests in media of mass communications, may cause diminishment or loss of the bidding credit, and must be reported immediately.

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

- all officers and directors of a corporate bidder;
- any owner of 5 percent or more of the voting stock of a corporate bidder;
- all partners and limited partners of a partnership bidder, unless the limited partners are sufficiently insulated; and
- all members of a limited liability company, unless sufficiently insulated.⁷⁷

45. In cases where an applicant's spouse or close family member holds other media interests, such interests are not automatically attributable to the bidder. The Commission decides attribution issues in this context based on certain factors traditionally considered relevant.⁷⁸ Applicants should note that the mass media attribution rules were revised in 1999.⁷⁹

46. Bidders are also reminded that, by the *New Entrant Bidding Credit Reconsideration Order*, the Commission further refined the eligibility standards for the New Entrant Bidding Credit, judging it appropriate to attribute the media interests held by very substantial investors in, or creditors of, an applicant claiming new entrant status. Specifically, the attributable mass media interests held by an individual or entity with an equity and/or debt interest in an applicant shall be attributed to that bidder for purposes of determining its eligibility for the New Entrant Bidding Credit, if the equity and debt interests, in the aggregate, exceed 33 percent of the total asset value of the applicant, even if such an interest is non-voting.⁸⁰

⁷⁵ “Media of mass communication” include both commercial and NCE full-power broadcast stations.

⁷⁶ The fact that, on November 13, 2006, an applicant has a pending or granted application to assign or transfer control of a media interest shall not be sufficient to avoid attribution. Applicants must have consummated the transaction by November 13, 2006, to avoid attribution. Thus, an applicant could not qualify for a bidding credit, nor upgrade a previously claimed bidding credit, based upon ownership or positional changes occurring after the short-form filing deadline. See *Liberty Productions, a Limited Partnership, Memorandum Opinion and Order*, 16 FCC Rcd 12061, *stay denied*, 16 FCC Rcd 18966 (2001), *aff’d sub nom, Biltmore Forest Broadcasting FM, Inc. v. F.C.C.*, 321 F.3d 155 (D.C. Cir.), *cert. denied*, 540 U.S. 981 (2003) (“*Liberty Productions*”).

⁷⁷ See 47 C.F.R. § 73.3555 Note 2.

⁷⁸ See *Clarification of Commission Policies Regarding Spousal Attribution, Memorandum Opinion and Order*, 7 FCC Rcd 1920 (1992).

⁷⁹ See *Review of the Commission’s Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, MM Docket No. 94-150, *Report and Order*, 14 FCC Rcd 12559 (1999) (prior history omitted).

⁸⁰ See 47 C.F.R. § 73.5008(c).

47. Generally, media interests will be attributable for purposes of the New Entrant Bidding Credit to the same extent that such other media interests are considered attributable for purposes of the broadcast multiple ownership rules.⁸¹ However, attributable interests held by a winning bidder in existing low power television, television translator or FM translator facilities will not be counted among the bidder's other mass media interests in determining its eligibility for a New Entrant Bidding Credit.⁸² A medium of mass communications is defined in 47 C.F.R. § 73.5008(b). Full service noncommercial educational stations, on both reserved and nonreserved channels, are included among "media of mass communications" as defined in Section 73.5008(b).⁸³

B. Application Requirements

48. In addition to the ownership information required pursuant to § 1.2112, applicants are required to establish on their short-form applications that they satisfy the eligibility requirements to qualify for a New Entrant Bidding Credit.⁸⁴ In those cases where a New Entrant Bidding Credit is being sought, a certification under penalty of perjury must be provided in completing the applicant's short-form application. An applicant claiming that it qualifies for a 35 percent new entrant bidding credit must certify that neither it nor any of its attributable interest holders have any attributable interests in any other media of mass communications. An applicant claiming that it qualifies for a 25 percent new entrant bidding credit must certify that neither it nor any of its attributable interest holders have any attributable interests in more than three media of mass communications, and must identify and describe such media of mass communications.⁸⁵

1. Bidding Credits

49. Applicants that qualify for the New Entrant Bidding Credit, as specified in the applicable rule,⁸⁶ are eligible for a bidding credit that represents the amount by which a bidder's winning bid is discounted. The size of a New Entrant Bidding Credit depends on the number of ownership interests in other media of mass communications that are attributable to the bidder-entity and its attributable interest-holders:

- A 35 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has no attributable interest in any other media of mass communications, as defined in 47 C.F.R. § 73.5008;
- A 25 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has an attributable interest in no more than three mass media facilities, as defined in 47 C.F.R. § 73.5008;
- No bidding credit will be given if any of the commonly owned mass media facilities serve the same area as the proposed broadcast station, as defined in 47 C.F.R. § 73.5007(b), or if the winning bidder, and/or any individual or entity with an attributable interest in the winning bidder, has attributable interests in more than three mass media facilities.

⁸¹ Further, any bidder asserting new entrant status must have *de facto* as well as *de jure* control of the entity claiming the bidding credit. 47 C.F.R. § 73.5007. Typically, *de jure* control is evidenced by ownership of at least 50.1 percent of an entity's voting stock or equivalent level of interest in cases where the bidder is not a corporate entity. *De facto* control is determined on a case-by-case basis.

⁸² *Broadcast Competitive Bidding Reconsideration Order*, 14 FCC Rcd at 8764 ¶ 75; 47 C.F.R. § 73.5007.

⁸³ See *Minnesota Christian Broadcasters, Inc., Memorandum Opinion and Order*, 18 FCC Rcd 614 (2003), *aff'd sub nom. Carol DeLaHunt v. F.C.C.*, No. 03-1029 (D.C. Cir. Feb. 4, 2004) and *Minnesota Christian Broadcasters, Inc. v. FCC*, No. 03-1439 (D.C. Cir. June 14, 2005).

⁸⁴ See 47 C.F.R. §§ 1.2105(a), 73.3555 and Note 2, 73.5007, 73.5008.

⁸⁵ See 47 C.F.R. §§ 73.5007, 73.5008.

⁸⁶ See 47 C.F.R. § 73.5007.

50. Bidding credits are not cumulative; qualifying applicants receive either the 25 percent or the 35 percent bidding credit, but not both. Attributable interests are defined in 47 C.F.R. § 73.3555 and Note 2 of that section.⁸⁷ Applicants should note that unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license or construction permit to an entity not qualifying for the same level of bidding credit.⁸⁸

2. Installment Payments

51. Installment payment plans will not be available in Auction No. 68.

C. Permit Selection

52. In Auction No. 68, applicants must select the construction permits on which they want to bid from the “Eligible Permits” list. There will be no opportunity to change construction permit selection after the short-form filing deadline.⁸⁹ It is critically important that an applicant confirm its construction permit selections before submitting its short-form application because the FCC Auction System will not accept bids on construction permits that an applicant has not selected on its short-form application.

D. Disclosure of Bidding Arrangements

53. Applicants will be required to identify in their short-form applications all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the construction permits being auctioned, including any agreements relating to post-auction market structure.⁹⁰ Applicants also will be required to certify under penalty of perjury in their short-form applications that they have not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application, regarding the amount of their bids, bidding strategies, or the particular construction permits on which they will or will not bid.⁹¹ If an applicant has had discussions, but has not reached a joint bidding agreement by the short-form application filing deadline, it would not include the names of parties to the discussions on its application and may not continue such discussions with any applicants after the deadline.⁹²

54. After the filing of short-form applications, the Commission’s rules do not prohibit a party holding a non-controlling, attributable interest in one applicant from acquiring an ownership interest in or entering into a joint bidding arrangement with other applicants provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants.⁹³ While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.⁹⁴ Such subject areas include, but are not limited to, issues such as management sales, local marketing agreements, rebroadcast agreements, and other

⁸⁷ See 47 C.F.R. § 73.5008.

⁸⁸ See 47 C.F.R. § 73.5007(c).

⁸⁹ See 47 C.F.R. § 1.2105(b)(2).

⁹⁰ See 47 C.F.R. § 1.2105(a)(2)(viii), (c)(1).

⁹¹ See 47 C.F.R. § 1.2105(a)(2)(ix).

⁹² See *supra* Section I.B.2 “Prohibition of Collusion; Compliance with Antitrust Laws.”

⁹³ See 47 C.F.R. § 1.2105(c)(4)(i), (ii).

⁹⁴ See *supra* Section I.B.2 “Prohibition of Collusion; Compliance with Antitrust Laws.”

transactional agreements. Further, as discussed above, compliance with the disclosure requirements of the Commission's anti-collusion rule will not insulate a party from enforcement of the antitrust laws.⁹⁵

E. Ownership Disclosure Requirements

55. The Commission specified in the *Broadcast Competitive Bidding First Report and Order* that, for purposes of determining eligibility to participate in a broadcast auction, all applicants must comply with the uniform Part 1 ownership disclosure standards and provide information required by Sections 1.2105 and 1.2112 of the Commission's rules.⁹⁶ Specifically, in completing the short-form application, applicants will be required to fully disclose information on the real party or parties-in-interest and ownership structure of the applicant. The ownership disclosure standards for the short form are prescribed in Sections 1.2105 and 1.2112 of the Commission's rules.⁹⁷ Each applicant is responsible for information submitted in its short-form application being complete and accurate.

56. In certain circumstances an applicant's most current ownership information on file with the Commission, if in an electronic format compatible with the short-form application (FCC Form 175) (such as information submitted in an on-line FCC Form 602 or in an FCC Form 175 filed for a previous auction using ISAS) will automatically be entered into the applicant's short-form application. Applicants are responsible for ensuring that the information submitted in their short-form application for Auction No. 68 is complete and accurate. Accordingly, applicants should carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for filing the short-form application. Applicants can update any information that was entered automatically and needs to be changed directly in the short-form application.

F. Provisions Regarding Former and Current Defaulters

57. Each applicant must state under penalty of perjury on its short-form application whether or not the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by Section 1.2110,⁹⁸ have ever been in default on any Commission construction permit or license or have ever been delinquent on any non-tax debt owed to any Federal agency.⁹⁹ In addition, each applicant must certify under penalty of perjury on its short-form application that as of the short-form filing deadline, the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by Section 1.2110, are not in default on any payment for a Commission construction permit or license (including a down payment) and that they are not delinquent on any non-tax debt owed to any Federal agency.¹⁰⁰ Prospective applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

58. "Former defaulters" — *i.e.*, applicants, including any of their affiliates, any of their controlling interests, or any of the affiliates of their controlling interests, that in the past have defaulted on any Commission construction permit or license or been delinquent on any non-tax debt owed to any Federal

⁹⁵ *See id.*

⁹⁶ 47 C.F.R. § 1.2105 requires the disclosure on the short-form application of the applicant's ownership information as set forth in 47 C.F.R. §§ 1.2105 and 1.2112.

⁹⁷ Section 73.5002 of the Commission's rules specifies the bidding procedures, certification requirements and the anti-collusion rules applicable to mutually exclusive applications for commercial broadcast services subject to auction. Subsection (b) of that rule requires the timely submission of short form applications, along with the required certifications, information and exhibits, pursuant to the provisions of 47 C.F.R. § 1.2105(a) and any Commission public notices. 47 C.F.R. § 1.2105 requires the disclosure on the short-form application of the applicant's ownership information as set forth in 47 C.F.R. § 1.2112.

⁹⁸ *See* 47 C.F.R. § 1.2110.

⁹⁹ *See* 47 C.F.R. § 1.2105(a)(2)(xi); *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317 ¶ 42 and n. 142.

¹⁰⁰ *See* 47 C.F.R. § 1.2105(a)(2)(x); *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317 ¶ 42.

agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies — are eligible to bid in Auction No. 68, provided that they are otherwise qualified. However, as discussed in Section III.D.3., *infra*, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.¹⁰¹

59. “Current defaulters” — *i.e.*, applicants, including any of their affiliates, any of their controlling interests, or any of the affiliates of their controlling interests, that are in default on any payment for any Commission construction permit or license (including a down payment) or are delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for applications to participate in this auction — are not eligible to bid in Auction No. 68.¹⁰²

60. Applicants are encouraged to review the Wireless Telecommunications Bureau’s previous guidance on default and delinquency disclosure requirements in the context of the short-form application process.¹⁰³ For example, it has been determined that to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for purposes of Sections 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline.¹⁰⁴ Therefore, with respect to regulatory or application fees, the provisions of Sections 1.2105(a) and 1.2106(a) regarding default and delinquency in connection with competitive bidding are limited to circumstances in which the relevant party has not complied with a final Commission payment deadline.¹⁰⁵

61. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the “red light rule,” that implement the Commission’s obligations under the Debt Collection Improvement Act of 1996, which governs the collection of claims owed to the United States.¹⁰⁶ Under the red light rule, the Commission will not process applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission. In the same rulemaking order, the Commission explicitly declared, however, that the Commission’s competitive bidding rules “are not affected” by the red light rule.¹⁰⁷ As a consequence, the

¹⁰¹ See 47 C.F.R. § 1.2106(a).

¹⁰² See 47 C.F.R. §§ 1.2105(a)(2)(x) and 1.2105(b)(1); see *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317 ¶ 42 and n.142. (“If any one of an applicant’s controlling interests or their affiliates... is in default on any Commission licenses or is delinquent on any non-tax debt owed to any Federal agency at the time the applicant files it[s] Form 175, the applicant will not be able to make the certification required by Section 1.2105(a)(2)(x)... and will not be eligible to participate in Commission auctions.”)

¹⁰³ See “WTB Reminds Prospective Broadband PCS Spectrum Auction Applicants of Default and Delinquency Disclosure Requirements,” *Public Notice*, 19 FCC Rcd 21920 (2004) (“*Auction Default Disclosure Public Notice*”). This public notice may be found at <http://wireless.fcc.gov/auctions/58/>.

¹⁰⁴ See Letter to Cheryl A. Tritt, Esq., Morrison and Foerster, LLP, from Margaret Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, 19 FCC Rcd 22907 (2004) (clarifying the term “debt” or “non-tax debt” as referenced in 47 C.F.R. §§ 1.2105(a) and 1.2106(a)). This letter may be found at <http://wireless.fcc.gov/auctions/58/>.

¹⁰⁵ Even where Commission rules expressly permit late payment, subject to payment of an additional late fee, and do not impose a final payment deadline, the Commission may in some cases issue a demand for payment by a date certain. See 47 C.F.R. § 1.1164(a). Failure to comply with the terms of a particular demand letter in the time period provided may render the subject debt delinquent, notwithstanding rules generally permitting late payment.

¹⁰⁶ Amendment of Parts 0 and 1 of the Commission’s Rules; Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors, MD Docket No. 02-339, *Report and Order*, 19 FCC Rcd 6540 (2004) (implementing Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996)) (“*Debt Collection Report and Order*”).

¹⁰⁷ *Debt Collection Report and Order*, 19 FCC Rcd at 6541 n.11. Footnote 11 specifically mentions 47 C.F.R. § 1.2105(a)(2)(x) and (xi).

Commission's adoption of the red light rule does not alter the applicability of any of the Commission's competitive bidding rules, including the provisions and certifications of Sections 1.2105 and 1.2106, with regard to current and former defaults or delinquencies. Applicants are reminded, however, that the Commission's Red Light Display System, which provides information regarding debts owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of section 1.2105.¹⁰⁸ Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant's "red light" status is not necessarily determinative of its eligibility to participate in this auction or of its upfront payment obligation.

62. Prospective applicants in Auction No. 68 should note that any long-form applications filed after the close of competitive bidding will be reviewed for compliance with the Commission's red light rule,¹⁰⁹ and such review may result in the dismissal of a winning bidder's long-form application.¹¹⁰

G. Other Information

63. Applicants owned by members of minority groups and/or women, as defined in Section 1.2110(c)(3),¹¹¹ may identify themselves in filling out their short-form applications regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of "designated entities" in its auctions.¹¹²

H. Minor Modifications to Short-Form Applications (FCC Forms 175)

64. After the deadline for filing short-form applications (FCC Forms 175) at **6:00 p.m. ET on November 13, 2006**, applicants are permitted to make only minor changes to their applications. Applicants are not permitted to make major modifications to their applications (*e.g.*, change their construction permit selections, change control of the applicant, claim eligibility for a higher percentage of bidding credit or change their self-identification as noncommercial educational).¹¹³ Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons.

65. Any application amendment and related statements of fact must be certified by: (1) the applicant, if the applicant is an individual, (2) one of the partners if the applicant is a partnership, (3) an officer, director, or duly authorized employee, if the applicant is a corporation, (4) by a member who is an officer, if the applicant is an unincorporated association, (5) the trustee if the applicant is an amateur radio service club, or (6) a duly elected or appointed official who is authorized to make such certifications under the laws of the applicable jurisdiction, if the applicant is a governmental entity.¹¹⁴

66. An applicant must make permissible minor changes to its short-form application, as such changes are defined by Section 1.2105(b), electronically, using the FCC Auction System. Applicants must click on the **SUBMIT** button in the FCC Auction System for the changes to be submitted and considered by the

¹⁰⁸ See *Auction Default Disclosure Public Notice*, 19 FCC Rcd at 21920 (addressing relationship between Commission's Red Light Display System and FCC Form 175 default and delinquency disclosure requirements for auction applicants).

¹⁰⁹ See *Debt Collection Report and Order*, 19 FCC Rcd 6540. See also 47 C.F.R. § 1.1112.

¹¹⁰ Applicants that have their long-form applications dismissed will be deemed to have defaulted and will be subject to default payments under 47 C.F.R. §§ 1.2104(g) and 1.2109(c).

¹¹¹ See 47 C.F.R. § 1.2110(c)(3).

¹¹² Designated entities are defined as small businesses, businesses owned by members of minority groups and/or women, and rural telephone companies. 47 C.F.R. § 1.2110(a).

¹¹³ See 47 C.F.R. § 1.2105(b).

¹¹⁴ See 47 C.F.R. § 1.917; see also 47 C.F.R. § 73.3513.

Commission. After the revised application has been submitted, a confirmation page will be displayed that states the submission time and date, along with a unique file number.

67. In addition, an applicant should submit a letter briefly summarizing the changes and subsequently update their short-form applications in ISAS as soon as possible. Note: After the filing window has closed, the auction system will not permit applicants to make certain changes, such as legal classification, NCE status, and bidding credit. Any letter describing changes to an applicant's short-form application must be submitted by electronic mail to the following address: auction68@fcc.gov. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 68 and the name of the applicant (e.g., "RE: Changes to Auction No. 68 Short-Form Application of ABC Corp."). The Bureaus request that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Questions about short-form application (FCC Form 175) amendments should be directed to Lynne Milne of the Auctions and Spectrum Access Division at (202) 418-0660.

68. Applicants must **not** submit application-specific material through the Commission's Electronic Comment Filing System (ECFS), which was used for submitting comments regarding Auction No. 68 procedures.

I. Maintaining Current Information in Short-Form Applications (FCC Form 175)

69. 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 substantial change that may be of decisional significance to that application.¹¹⁵ Changes that cause a loss of or reduction in the percentage of bidding credit specified on the originally submitted Form 175 application must be reported immediately.¹¹⁶ If an amendment reporting substantial changes is a "major amendment" as defined by 47 C.F.R. § 1.2105, the major amendment will not be accepted and may result in the dismissal of the short-form application.¹¹⁷

1. Maintaining the Accuracy of FCC Form 175 Information

70. As noted in Section II.H., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications, for example, deletion and addition of authorized bidders (to a maximum of three). Applicants must click on the **SUBMIT** button in the FCC Auction System for the changes to be submitted and considered by the Commission. In addition, applicants must submit a letter, briefly summarizing the changes, by electronic mail at the following address: auction68@fcc.gov. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 68 and the name of the applicant. The Bureaus requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

71. Applicants must **not** submit application-specific material through ECFS into the record of the proceeding concerning Auction No. 68 procedures.

III. PRE-AUCTION PROCEDURES

A. Auction Seminar

72. There will be no auction seminar for Auction No. 68. A previously held FM broadcast auction seminar is available for individuals to view. The Auction No. 62 seminar provided attendees information about

¹¹⁵ See 47 C.F.R. § 1.65.

¹¹⁶ For example, if ownership changes result in the attribution of new interest holders that affect the applicant's qualifications for a new entrant bidding credit, such information must be clearly stated in the bidder's amendment. See *Liberty Productions*, 16 FCC Red at 12078. Events occurring after the short-form filing deadline, such as the acquisition of attributable interests in media of mass communications, may also cause diminishment or loss of the bidding credit, and must be reported immediately.

¹¹⁷ See 47 C.F.R. § 1.2105(b)(2).

pre-auction procedures, completing FCC Form 175, auction conduct, the FCC Auction System, auction rules, and the FM broadcast service rules. The Audio/Video webcast of the Auction No. 62 seminar is available from the FCC's Auction No. 62 web page at <http://wireless.fcc.gov/auctions/62/>. Select the "Auction Seminar" link. FCC staff are available to answer questions concerning the auction, auction procedures, filing requirements, and other matters related to this auction. (Note that, to the extent that competitive bidding procedures discussed in that presentation may have differed from those described in this public notice, the procedures and instructions described herein will control and must be followed.)

B. Short-Form Application (FCC Form 175) — Due Before 6:00 p.m. ET on November 13, 2006

73. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application electronically via the FCC Auction System.¹¹⁸ This application must be received at the Commission prior to 6:00 p.m. ET on November 13, 2006. **Late applications will not be accepted.** There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment.¹¹⁹

74. Applications may generally be filed at any time beginning at noon ET on November 6, 2006, until 6:00 p.m. ET on November 13, 2006. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their applications multiple times until the filing deadline on November 13, 2006.

75. An applicant must always click on the **SUBMIT** button on the Certify & Submit screen of the electronic form to successfully submit its FCC Form 175 or modifications. Any form that is not submitted will not be reviewed by the FCC. Information about accessing, completing, and viewing the FCC Form 175 is included in Attachment B. FCC Auctions Technical Support is available at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET. In order to provide better service to the public, all calls to Technical Support are recorded.

C. Application Processing and Minor Corrections

76. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (1) those applications accepted for filing; (2) those applications rejected; and (3) those applications which have minor defects that may be corrected, and the deadline for resubmitting corrected applications.

77. Non-mutually exclusive applications will be listed in a subsequent public notice to be released by the Bureaus. Such applications will not proceed to auction, but will proceed in accordance with instructions set forth in that public notice.¹²⁰ All mutually exclusive applications will be considered under the relevant procedures for conflict resolution. Mutually exclusive commercial applications will proceed to auction.¹²¹ In the *NCE Second Report and Order*, the Commission held that applications for NCE FM stations on nonreserved spectrum, filed during an FM filing window, will be returned as unacceptable for filing if mutually exclusive with any application for a commercial station.¹²² Accordingly, if an FCC Form 175 filed during the

¹¹⁸ See 47 C.F.R. § 12105(a).

¹¹⁹ See *infra* Section III.D. "Upfront Payments — Due December 11, 2006."

¹²⁰ See 47 C.F.R. § 73.3573(f)(4).

¹²¹ In the *NCE Second Report and Order*, the Commission determined that short-form applicants that do not identify themselves on their FCC Form 175 as "noncommercial educational" will be considered, as a matter of law, applicants for commercial broadcast stations. *NCE Second Report and Order*, 18 FCC Rcd at 6700 ¶ 22.

¹²² *Id.* at 6699-6701. See also 47 C.F.R. § 73.5002(b).

Auction No. 68 filing window identifying the applicant as noncommercial educational is mutually exclusive with any application filed during that window by an applicant for a commercial station, the former will be returned as unacceptable for filing.¹²³

78. As described more fully in the Commission's rules, after the short-form filing deadline on November 13, 2006, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their construction permit selections, change control of the applicant, claim eligibility for a higher percentage of bidding credit or change their self-identification as NCE).¹²⁴

D. Upfront Payments — Due December 11, 2006

79. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and sent by facsimile to Mellon Bank in Pittsburgh, PA. **All upfront payments must be received in the proper account at Mellon Bank before 6:00 p.m. ET on December 11, 2006.**

1. Making Auction Payments by Wire Transfer

80. Wire transfer payments must be received before 6:00 p.m. ET on December 11, 2006. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261
 Receiving Bank: Mellon Pittsburgh
 500 Ross St.
 Pittsburgh, PA 15262
 BENEFICIARY: FCC/Account # 910-0180
 Originating Bank Information (OBI Field): (Skip one space between each information item)
 "AUCTIONPAY"
 APPLICANT FCC REGISTRATION NUMBER (FRN): (same as FCC Form 159, block 21)
 PAYMENT TYPE CODE: (same as FCC Form 159, block 24A: "A68U")
 FCC CODE 1: (same as FCC Form 159, block 28A: "68")
 PAYER NAME: (same as FCC Form 159, block 2)
 LOCKBOX NO. # 358420

NOTE: The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

81. 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 2/03) to Mellon Bank at (412) 209-6045. On the cover sheet of the facsimile, write "Wire Transfer — Auction Payment for Auction No. 68." In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account before the deadline.¹²⁵ **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.**

¹²³ *NCE Second Report and Order*, 18 FCC Rcd at 6699-6701. See also 47 C.F.R. § 73.5002(b).

¹²⁴ See 47 C.F.R. § 1.2105(b); see also *Two Way Radio of Carolina, Inc., Memorandum Opinion and Order*, 14 FCC Rcd 12035 (1999).

¹²⁵ See Letter to Patrick Shannon, Counsel for Lynch 3G Communications Corp., 18 FCC Rcd 11552 (WTB 2003).

82. Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 68 go to a lockbox number different from the lockboxes used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the specified deadline on December 11, 2006, will result in dismissal of the application and disqualification from participation in the auction.

2. FCC Form 159

83. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be sent by facsimile to Mellon Bank to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/03) is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment C to this Public Notice. An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payors using a pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

3. Upfront Payments and Bidding Eligibility

84. In the *Part 1 Order*, the Commission delegated to the Bureaus the authority and discretion to determine appropriate upfront payment(s) for each auction.¹²⁶ In addition, in the *Part 1 Fifth Report and Order*, the Commission ordered that applicants that are “former defaulters” be required to pay upfront payments 50 percent greater than non-former defaulters.¹²⁷ For purposes of this calculation, the “applicant” includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by Section 1.2110 of the Commission’s rules.¹²⁸

85. In the *Auction No. 68 Comment Public Notice*, we proposed that the amount of the upfront payment would determine a bidder’s initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids.¹²⁹ In order to bid on a construction permit, otherwise qualified bidders that selected that construction permit on FCC Form 175 must have a current eligibility level that meets or exceeds the number of bidding units assigned to that construction permit. At a minimum, therefore, an applicant’s total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits selected on its FCC Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all construction permits the applicant selected on its FCC Form 175, but rather to cover the maximum number of bidding units that are associated with construction permits on which the bidder wishes to place bids and hold provisionally winning bids at any given time.¹³⁰

¹²⁶ Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Proceeding, *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, 12 FCC Rcd 5686, 5697-98 ¶ 16 (1997) (“*Part 1 Order*”).

¹²⁷ See *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15316-17 ¶¶ 40-42; 47 C.F.R. § 1.2106(a); see *supra* Section II.F. “Provisions Regarding Former and Current Defaulters.”

¹²⁸ 47 C.F.R. § 1.2110(c).

¹²⁹ *Auction No. 68 Comment Public Notice* at 4.

¹³⁰ Provisionally winning bids are bids that would become final winning bids if the auction were to close after the given round. See *infra* Section IV.B.4. “Provisionally Winning Bids.”

86. In the *Auction No. 68 Comment Public Notice*, the Bureaus proposed upfront payments for each construction permit taking into account various factors related to the efficiency of the auction process and the potential value of similar spectrum and sought comment on this proposal. The specific upfront payments and bidding units for each construction permit are set forth in Attachment A of this Public Notice.

87. In calculating its upfront payment amount, an applicant should determine the **maximum** number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all construction permits on which it seeks to be active in any given round. **Applicants should check their calculations carefully, because it is not possible to increase a bidder's eligibility after the upfront payment deadline.**

Example: Upfront Payments and Bidding Flexibility			
Construction Permit	Market Name	Bidding Units	Upfront Payment
MM-FM366-A	Covelo, CA	7,500	\$7,500
MM-FM068-A	Perry, FL	15,000	\$15,000

If a bidder wishes to bid on both construction permits in a round, it must have selected both on its FCC Form 175 and purchased at least 22,500 bidding units (7,500 + 15,000). If a bidder only wishes to bid on one, but not both, purchasing 15,000 bidding units would meet the requirement for either construction permit. The bidder would be able to bid on either construction permit, **but not both at the same time**. If the bidder purchased only 7,500 bidding units, it would have enough eligibility for the Covelo, CA, construction permit but not for the Perry, FL, construction permit.

88. "Former defaulters" should calculate their upfront payment for all construction permits by multiplying the number of bidding units on which they wish to be active by 1.5.¹³¹ In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit. If a "former defaulter" fails to submit a sufficient upfront payment to establish eligibility to bid on at least one of the construction permits for which the applicant applied on its FCC Form 175, the applicant will not be eligible to participate in the auction.

4. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

89. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information listed below be supplied to the FCC. Applicants can provide the information electronically during the initial application filing window after the application has been submitted. (Applicants are reminded that information submitted as part of an FCC Form 175 will be available to the public; for that reason, wire transfer information should **not** be included in an FCC Form 175.) Wire Transfer Instructions can also be manually sent by facsimile to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Gail Glasser, at (202) 418-2843. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call Gail Glasser at (202) 418-0578.

Name of Bank
 ABA Number
 Address of Bank

¹³¹ See 47 C.F.R. § 1.2106(a).