



PUBLIC NOTICE

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

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

DA 06-2248
November 2, 2006

AUCTION OF FM BROADCAST CONSTRUCTION PERMITS SCHEDULED FOR MARCH 7, 2007

Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 70

AU Docket No. 06-170

Report No. AUC-06-70-B (Auction No. 70)

TABLE OF CONTENTS

Heading	Paragraph #
I. GENERAL INFORMATION	1
A. Introduction	1
1. Construction Permits to be Auctioned	2
B. Rules and Disclaimers	4
1. Relevant Authority	4
2. Prohibition of Collusion; Compliance with Antitrust Laws	6
3. Due Diligence	15
4. Use of Integrated Spectrum Auction System	26
5. Bidder Alerts	27
6. Environmental Review Requirements	29
C. Auction Specifics	30
1. Auction Date	30
2. Auction Title	32
3. Bidding Methodology	33
4. Pre-Auction Dates and Deadlines	34
5. Requirements for Participation	35
6. General Contact Information	36
II. SHORT-FORM APPLICATION (FCC FORM 175) REQUIREMENTS	37
A. New Entrant Bidding Credit	45
B. Application Requirements	51
1. Bidding Credits	52
2. Installment Payments	58
C. Permit Selection	59
D. Disclosure of Bidding Arrangements	60
E. Ownership Disclosure Requirements	62
F. Provisions Regarding Former and Current Defaulters	64
G. Other Information	70
H. Minor Modifications to Short-Form Applications (FCC Forms 175)	71
I. Maintaining Current Information in Short-Form Applications (FCC Form 175)	76

III. PRE-AUCTION PROCEDURES	79
A. Auction Seminar	79
B. Short-Form Application (FCC Form 175) — Due Before 6:00 p.m. ET on December 19, 2006 ..	82
C. Application Processing and Minor Corrections	85
D. Upfront Payments — Due February 5, 2007	88
1. Making Auction Payments by Wire Transfer	89
2. FCC Form 159	92
3. Upfront Payments and Bidding Eligibility	93
4. Applicant’s Wire Transfer Information for Purposes of Refunds of Upfront Payments	99
E. Auction Registration	100
F. Remote Electronic Bidding	104
G. Mock Auction – March 5, 2007	107
IV. AUCTION EVENT	108
A. Auction Structure	109
1. Simultaneous Multiple Round Auction	109
2. Eligibility and Activity Rules	112
3. Auction Stages	116
4. Stage Transitions	121
5. Activity Rule Waivers	123
6. Auction Stopping Rules	129
7. Auction Delay, Suspension, or Cancellation	134
B. Bidding Procedures	136
1. Round Structure	136
2. Reserve Price and Minimum Opening Bids	138
3. Bid Amounts	144
4. Provisionally Winning Bids	150
5. Bidding	153
6. Bid Removal	159
7. Bid Withdrawal	160
8. Round Results	164
9. Auction Announcements	165
V. POST-AUCTION PROCEDURES	166
A. Down Payments	166
B. Final Payments	168
C. Long-Form Application	170
D. Default and Disqualification	171
E. Refund of Remaining Upfront Payment Balance	173
VI. CONTACTS	177
ATTACHMENT A: Construction Permits to Be Auctioned	
ATTACHMENT B: FCC Auction Seminar Registration Form	
ATTACHMENT C: Electronic Filing and Review of the Short-Form Application (FCC Form 175)	
ATTACHMENT D: Auction-Specific Instructions for FCC Remittance Advice (FCC Form 159)	
ATTACHMENT E: Summary Listing of 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 March 7, 2007 (Auction No. 70). On September 21, 2006, in accordance with Section 309(j)(3) of the Communications Act of 1934, as amended (the Act),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. 70.² Interested parties submitted seven comments and one reply comment in response to the *Auction No. 70 Comment Public Notice*.³

1. Construction Permits to be Auctioned

2. Auction No. 70 will offer 121 construction permits in the FM broadcast service as listed in Attachment A.⁴ The construction permits to be auctioned are 121 new FM allotments. 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 ("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

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 March 7, 2007; Comment Sought on Competitive Bidding Procedures for Auction No. 70," AU Docket No. 06-170, *Public Notice*, DA 06-1810 (September 21, 2006) ("*Auction No. 70 Comment Public Notice*"). A summary of the *Auction No. 70 Comment Public Notice* was published at 71 Fed. Reg. 56977 (September 28, 2006).

³ Carrie LeAnn Riordan, CODO Group, LLC, Garysburg Radio, Kevin M. Fitzgerald, Mullaney Engineering, Inc., National Public Radio, and Steven R. Bartholomew filed comments. National Public Radio submitted reply comments. These comments and reply comments are available in AU Docket No. 06-170 in the Commission's Electronic Comment Filing System (ECFS).

⁴ Attachment A reflects revisions to the inventory for this auction. Three construction permits were removed from the inventory provided in the *Auction No. 70 Comment Public Notice*: (1) FM-619-C3 on Channel 276C3 at Crandon, Wisconsin, (2) FM-527-A on Channel 247A at Lake City, Colorado, and (3) FM-574-A on Channel 299A at Diamond Lake, Oregon. See discussion *infra* ¶ 25.

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, 15923-25 ¶ 7-12 (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 C to this public notice. See *Broadcast Competitive Bidding First Report and Order*, 13 FCC Rcd at 15974-75 and n.153.

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.

applicant for a particular construction permit submits an upfront payment, that applicant is required to submit a bid in order to obtain the construction permit.⁹

B. Rules and Disclaimers

1. Relevant Authority

4. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules, including recent amendments and clarifications, as well as Commission decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees.¹⁰ 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. 70 Comment Public Notice* and the *Broadcast Competitive Bidding First Report and Order*,¹¹ the *Broadcast Competitive Bidding First Reconsideration Order*¹² and the *New Entrant Bidding Credit Reconsideration Order*¹³ and the *NCE Second Report and Order*.¹⁴

5. 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>.¹⁵

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. 70 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 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) ("*Part 1 Fifth Report and Order*") (modified by Erratum, DA 00-2475 (rel. Nov. 3, 2000)); *id.*, *Seventh Report and Order*, 16 FCC Rcd 17546 (2001) ("*Part 1 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); *id.*, *Second Order on Reconsideration of the Fifth Report and Order*, 20 FCC Rcd 1942 (2005). See also Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, WT Docket No. 05-211, *Report and Order*, 21 FCC Rcd 891 (2006) ("*CSEA/Part 1 Report and Order*"), petitions for recon. pending.

¹¹ *Broadcast Competitive Bidding First Report and Order*, 13 FCC Rcd at 15920.

¹² *Broadcast Competitive Bidding First Reconsideration Order*, 14 FCC Rcd at 8724.

¹³ 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*").

¹⁴ Reexamination of the Comparative Standard for Noncommercial Educational Applicants, MM Docket No. 95-31, *Second Report and Order*, 18 FCC Rcd 6691 (2003) ("*NCE Second Report and Order*"), petitions for recon. pending.

¹⁵ When ordering documents from BCPI, please provide the appropriate FCC document number (for example, DA 06-997 (continued....))

2. Prohibition of Collusion; Compliance with Antitrust Laws

6. 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).¹⁶ Thus, unless they have identified each other on their short-form applications as parties with whom they have entered into agreements under Section 1.2105(a)(2)(viii), applicants for any of the same geographic license areas must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy.¹⁷ 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.¹⁸ **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.**¹⁹ The "geographic license area" is the market designation of the particular service.²⁰ For the FM service, the market designation is the particular vacant FM allotment (e.g., New Hope, Alabama, Channel 278A, Market FM502-A). In Auction No. 70, 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.

7. 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.²¹

8. Applicants for construction permits for any of the same allotments must not communicate directly or indirectly about bids or bidding strategy.²² 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

(Continued from previous page) _____
for the Auction No. 70 Comment Public Notice, or DA 06-2248 for this Public Notice).

¹⁶ 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.

¹⁷ See, e.g., Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E and F Block Bidders, *Public Notice*, 11 FCC Rcd 10134 (WTB 1996).

¹⁸ 47 C.F.R. § 1.2105(c)(1).

¹⁹ 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*, 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).

²⁰ *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17549 n.12.

²¹ 47 C.F.R. § 1.2105(c)(7)(i).

²² *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17549-50 ¶ 6.

could occur.²³ In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.²⁴ 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.²⁵ 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,"²⁶ 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."²⁷ 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."²⁸ 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.²⁹

9. 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.³⁰ 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.³¹

10. By electronically submitting its short-form application, each applicant certifies its compliance with Sections 1.2105(c) and 73.7002. However, the Bureaus caution 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

²³ 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*").

²⁴ *Id.*

²⁵ 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).

²⁶ *Mercury PCS II, LLC, Notice of Apparent Liability for Forfeiture*, 12 FCC Rcd 17970, 17976 ¶ 12 (1997).

²⁷ *Mercury PCS II, LLC, Memorandum Opinion and Order*, 13 FCC Rcd 23755, 23760 ¶ 11 (1998).

²⁸ *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).

²⁹ *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.")

³⁰ 47 C.F.R. § 1.2105(c)(7)(i).

³¹ See *Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, Public Notice*, 11 FCC Rcd 9645 (1995) ("*Anti-Collusion Public Notice*").

the initiation of an investigation when warranted.³² The Commission has stated that it “intend[s] to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring.”³³ Any applicant found to have violated the anti-collusion rule may be subject to sanctions.³⁴

11. 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.³⁵ Compliance with the disclosure requirements of the Commission’s anti-collusion rule will not insulate a party from enforcement of the antitrust laws.³⁶ For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submits a short form application.³⁷ 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.³⁸ 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.”³⁹ 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.⁴⁰ 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.⁴¹

12. 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.⁴² Thus, Section 1.65

³² *Nevada Wireless Order*, 13 FCC Rcd at 11978 ¶ 13.

³³ 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).

³⁴ See 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

³⁵ 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*”).

³⁶ 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).

³⁷ 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, 6869 n.134 (1994).

³⁸ *Id.*; see also *Anti-Collusion Public Notice*, 11 FCC Rcd at 9645.

³⁹ See *Anti-Collusion Public Notice*, *id.*

⁴⁰ See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226.

⁴¹ See 47 C.F.R. § 1.2109(d); see also *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226.

⁴² 47 C.F.R. § 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 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.⁴³

13. 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.⁴⁴

14. A summary listing of documents issued by the Commission and the Bureaus addressing the application of the anti-collusion rule may be found in Attachment E. These documents are available on the Commission's auction anti-collusion web page.⁴⁵

3. Due Diligence

15. Potential applicants are reminded that they are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the broadcast 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.

16. 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.⁴⁶ Orders adopted in FM allotment rulemaking proceedings often include anomalies such as site restrictions or expense reimbursement requirements.⁴⁷ 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 in order to make reasoned, appropriate decisions about their participation in Auction No. 70 and their bidding strategy. 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.

17. Potential applicants are also strongly encouraged to conduct their own research prior to the beginning of bidding in Auction No. 70 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. 70 are strongly encouraged to continue such research throughout the auction.

18. Applicants should also be aware that certain pending and future proceedings, including applications (including those for modification), petitions for rulemaking, requests for special temporary

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

⁴⁴ 47 C.F.R. § 1.2107(d).

⁴⁵ <http://wireless.fcc.gov/auctions/anticollusion>

⁴⁶ *See* 47 C.F.R. § 73.202.

⁴⁷ *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*, 8 F.C.C.2d 159 (1967).

authority, waiver requests, petitions to deny, petitions for reconsideration, informal objections, and applications for review, before the Commission may relate to particular applicants or incumbent permittees, or incumbent licensees, or the construction permits available in Auction No. 70. 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. 70. 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.

19. 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. 70. 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.

20. 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. 70. 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 review obligations described below in Section I.B.6.

21. 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.

22. 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.

23. Mullaney Engineering, Inc. ("MEI") lists eleven "conflicted channels" that it contends must be removed from the auction. These eleven challenged allotments fall into three categories. Upon further review, two of these permits are removed from the auction.

24. MEI claims that five FM allotments still require foreign concurrence, listing three allotments that it contends are short-spaced with Mexico,⁴⁸ and two that it claims are short-spaced with Canada.⁴⁹ All of these

⁴⁸ FM-512-A, Channel 232A Huachuca City, Arizona; FM-515-A, Channel 251A Patagonia, Arizona; and FM-516-A, Channel 300A Rio Rico, Arizona.

⁴⁹ FM-545-A, Channel 234A Monticello, Maine; FM-569-A, Channel 246A Pittsburg, New Hampshire.

allotments were accepted by the governments of Mexico and Canada, and need not be removed from FM Auction No. 70.⁵⁰ Furthermore, concurrence data, including the approval dates, have been made available in the Media Bureau's CDBS database regarding these Canadian and Mexican approvals. The next category consists of three allotments that MEI states appear to have conflicts. Those apparent conflicts, however, disappear with respect to FM-523-A, Aspen, Colorado; FM-525-C3, Flagler, Colorado; and FM-564-A, Garysburg, North Carolina when the CDBS database is updated, the relevant records have been archived, or the appropriate condition has been added. Additionally, commenter Garysburg Radio contends that FM-564-A, Garysburg, North Carolina, must be removed from the Auction No. 70 inventory because the Commission's Electronic Comment Filing System ("ECFS") indicates that there are pending petitions for reconsideration of the *Report and Order* establishing the allotment.⁵¹ ECFS has been updated to indicate that the *Memorandum Opinion and Order* denying both Petitions for Reconsideration was released January 10, 2005.⁵² We note, however, that the *Memorandum Opinion and Order* was previously available for viewing in the Commission's EDOCS database, as well as commercial databases such as Westlaw. Accordingly, we will not remove these FM allotments from the Auction No. 70 inventory.

25. Finally, MEI contends that three FM allotments should be pulled from the auction due to claimed short spacing. One of these, FM-602-A, Hamilton, Texas, is not short spaced and will not be removed from the auction inventory. FM-619-C3, Crandon, Wisconsin, is short spaced, and will be removed from the auction inventory. In addition, due to the pendency of an application for review in MB Docket No. 03-57, the third FM allotment identified by MEI, FM-527-A, Channel 247A, Lake City, Colorado, also will be removed from the auction.⁵³ Finally, because action on Channel 299A, Diamond Lake, Oregon, included in MB Docket No. 05-10,⁵⁴ is not yet final, on our own motion, we hereby remove the Diamond Lake, Oregon FM allotment, FM574-A, from the FM Auction No. 70 inventory.

4. Use of Integrated Spectrum Auction System

26. The Commission will make available a browser-based bidding system to allow bidders to participate in Auction No. 70 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.

⁵⁰ FM-512-A was accepted by Mexico on April 24, 2001; FM-515-A was accepted by Mexico on March 8, 2004; FM-516-A was accepted by Mexico on April 24, 2001; FM-545-A was accepted by Canada on September 21, 2001; and FM-569-A was accepted by Canada on October 3, 2001.

⁵¹ Alberta, Virginia, and Whitakers, North Carolina; Dinwiddie, Virginia, and Garysburg, North Carolina, *Report and Order*, 17 FCC Rcd 8781 (MB 2002).

⁵² Alberta and Dinwiddie, Virginia, and Whitakers and Garysburg, North Carolina, *Memorandum Opinion and Order*, 20 FCC Rcd 406 (MB 2005).

⁵³ See Fort Collins, Creede, Westcliffe and Wheat Ridge, Colorado, *Memorandum Opinion and Order*, 19 FCC Rcd 15317 (MB 2004).

⁵⁴ See Monument, Oregon; Prairie City, Pringle, and Sisters, Oregon and Weiser, Idaho; The Dalles, Tualatin, Eugene, Albany, Lebanon, Paisley, and Diamond Lake, Oregon and Goldendale, Washington, *Report and Order*, DA 06-1759 (MB rel. Sept. 5, 2006).

5. Bidder Alerts

27. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 70 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.

28. Information about deceptive telemarketing investment schemes is available from the Commission as well as the FTC and SEC. Additional sources of information for potential bidders and investors may be obtained from: (i) the FCC by going to <http://wireless.fcc.gov/csinfo/#fraud> or by telephone at (888) 225-5322 (FCC's Consumer Call Center); (ii) the FTC by going to <http://ftc.gov/bcp/menu-invest.htm> or by telephone at (202) 326-2222; and (iii) the SEC by going to <http://sec.gov/cgi-bin/txt-srch-sec?text=fraud§ion=Investor+Information&x=8&y=5> or by telephone 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.

6. Environmental Review Requirements

29. Permittees or licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act (“NEPA”) and other federal environmental statutes.⁵⁵ The construction of a broadcast facility is a federal action and the permittee or licensee must comply with the Commission's environmental rules for each such facility.⁵⁶ The Commission's environmental rules require, among other things, that the permittee or licensee consult with expert agencies having environmental responsibilities, including the U.S. Fish and Wildlife Service, the relevant 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 permittee or licensee must follow the provisions of the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process.⁵⁷ The permittee or licensee 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 or licensee also must prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

⁵⁵ 47 C.F.R. Ch. 1, Subpart I.

⁵⁶ 47 C.F.R. §§ 1.1305-1.1319.

⁵⁷ See 47 C.F.R. Part 1, Appendix C.

C. Auction Specifics

1. Auction Date

30. Bidding in Auction No. 70 will begin on Wednesday, March 7, 2007, as announced in the *Auction No. 70 Comment Public Notice*.⁵⁸ The initial schedule for bidding will be announced by public notice at least one week before the start of the auction.

31. 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

32. Auction No. 70 – FM Broadcast

3. Bidding Methodology

33. As discussed in more detail below, the bidding methodology for Auction No. 70 will be simultaneous multiple round bidding.⁵⁹ 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.⁶⁰ All telephone calls are recorded.

4. Pre-Auction Dates and Deadlines

34. Dates and Deadlines

Auction Seminar	December 6, 2006
Short-Form Application (FCC Form 175) Filing Window Opens.....	December 6, 2006; 12:00 noon ET
Short-Form Application (FCC Form 175) Filing Window Deadline...	December 19, 2006; prior to 6:00 p.m. ET
Upfront Payments (via wire transfer)	February 5, 2007; 6:00 p.m. ET
Mock Auction	March 5, 2007
Auction Begins	March 7, 2007

5. Requirements for Participation

35. 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), December 19, 2006, following the electronic filing procedures set forth in Attachment C to this Public Notice.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) before 6:00 p.m. ET, February 5, 2007.
- Comply with all provisions outlined in this Public Notice and applicable Commission rules.

⁵⁸ *Auction No. 70 Comment Public Notice* at 1.

⁵⁹ *See infra* Section IV.A.1. “Simultaneous Multiple Round Auction.”

⁶⁰ For additional information regarding ISAS, including sample screen shots, visit the “About ISAS” web page at http://wireless.fcc.gov/auctions/about_isas.

6. General Contact Information

36. General Contact Information

GENERAL AUCTION INFORMATION

General Auction Questions

FCC Auctions Hotline

(888) 225-5322, option two;

or (717) 338-2868

Hours 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

37. 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.⁶¹ 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.⁶² Eligibility to participate in bidding is based on the applicants' short-form applications and certifications as well as their upfront payments, as explained below.⁶³ In the second phase of the process, winning bidders file a more comprehensive long-form application.⁶⁴

38. Entities and individuals seeking construction permits available in Auction No. 70 must file a short-form application electronically via the FCC Auction System prior to 6:00 p.m. ET on December 19, 2006, following the procedures prescribed in Attachment C 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.⁶⁵ Applicants should read the instructions set forth in Attachment C 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.⁶⁶

39. 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.

40. 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. Applicants are not permitted to make major modifications to their applications; such impermissible changes include a change of the certifying official to the application.⁶⁷ 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.

41. In its Comments and Reply comment, National Public Radio ("NPR") reiterates the position it took in Auction No. 68 -- that an initial broadcast auction public notice that makes no mention of the opportunity to obtain construction permits to construct noncommercial educational ("NCE") stations, as was the case with the *Auction No. 70 Comment Public Notice* -- does not provide the requisite notice to potential NCE applicants that the Commission's rules require. NPR also suggests that the *Auction No. 70 Comment Public Notice* is deficient

⁶¹ See 47 C.F.R. § 1.2105.

⁶² See *id.*; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2376 ¶ 163.

⁶³ See *infra* Section III.D. "Upfront Payments – Due February 5, 2007."

⁶⁴ See 47 C.F.R. §§ 1.2107, 73.5005.

⁶⁵ See 47 C.F.R. § 1.2105(a)(2)(v).

⁶⁶ As discussed generally in the *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).

⁶⁷ See 47 C.F.R. § 1.2105(b).

because it does not contain information regarding the completion and submission of applications for NCE stations.

42. NPR fundamentally misconstrues the primary function of the *Auction No. 70 Comment Public Notice*. It is this Public Notice, not the *Auction No. 70 Comment Public Notice*, that provides the requisite notice to potential NCE applicants. The Bureaus released the *Auction No. 70 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 . . .”⁶⁸ As stated in the *Auction No. 70 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.⁶⁹ 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. While the public notice announces the scheduling of an upcoming auction, by and large, the subject matter of the *Auction No. 70 Comment Public Notice* is limited to those topics on which the Bureaus seek comment.

43. NPR’s statement that potential NCE applicants are entitled to notice of the impending opportunity to obtain construction permits, and its suggestion that the *Auction No. 70 Comment Public Notice* is deficient in this regard, misconstrues the pre-auction public notice process. NPR is correct in stating that before commencing an auction of broadcast spectrum the Commission’s rules require that the Bureaus issue a public notice to, among other things, inform the public of the opportunity to obtain broadcast construction permits. NPR’s comments fail to recognize, however, that an initial auction public notice is limited to “announcing the upcoming auction and specifying the [filing] period” for short-form applications.⁷⁰ Under this approach, all potential applicants – those seeking to participate in an auction, and all potential applicants for NCE broadcast stations on non-reserved channels – collectively receive notice when a new broadcast auction is announced via public notice. Furthermore, Section 73.5002(a) of the Commission’s rules states that “initial and other public notices will contain” instructions for completing applications to participate in the broadcast auction, and applications for NCE stations.⁷¹ The Commission’s first public notice initiating an FM auction neither specifies detailed application filing requirements, nor elaborates on applicant eligibility.⁷² Rather, such comprehensive specifications are supplied in a subsequently released public notice, such as this one, which announces not only the procedures to be followed for the upcoming broadcast auction, but provides instructions regarding a variety of wide-ranging matters such as who may file, when to file and how to file a Form 175

⁶⁸ 47 U.S.C. § 309(j)(3).

⁶⁹ 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) (“*Part 1 Third Report and Order*”) (directing the Bureaus to seek comment on specific mechanisms related to day-to-day auction conduct). See also *Broadcast Competitive Bidding First Report and Order*, 13 FCC Rcd at 15967-68 (consistent with the Part 1 rules, the Commission delegated authority to the Mass Media Bureau to seek comment on and establish an appropriate auction design methodology prior to the start of each broadcast auction).

⁷⁰ 47 C.F.R. § 73.5002(a).

⁷¹ *Id.*

⁷² However, where engineering standards are applied to establish mutual exclusivity, as in the AM service, the initial auction public notice announces the filing window, as well as specifies application filing procedures. In that instance, the public notice soliciting comments on auction procedures is released later, in contrast with the sequence of public notices for FM Auction No. 70. See, e.g., *AM New Station and Major Modification Auction Filing Window; Minor Modification Application Freeze, Public Notice*, 18 FCC Rcd 23016 (MB/WTB 2003).

application to participate in the auction. The instructions for the filing of short-form applications for both commercial and NCE stations are provided in detail below.⁷³

44. We note that the Commission's competitive bidding and broadcast service rules have been specifically designed to accommodate applicants for NCE broadcast stations who seek to use non-reserved spectrum.⁷⁴ In order to maximize opportunities for noncommercial broadcasters, the Commission provides applicants for NCE stations a chance to obtain licenses to use nonreserved spectrum by participating in our 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.⁷⁵ Thus, the opening of the upcoming window for nonreserved FM allotments for Auction No. 70 provides such a filing opportunity for both NCE and commercial applicants. As with the previous two FM auction proceedings,⁷⁶ applicants for NCE broadcast stations will be allowed to submit Form 175 applications for the specific non-reserved spectrum to be auctioned in Auction No. 70 in the forthcoming filing window. The instant public notice recognizes the opportunity for NCE applicants to participate in the upcoming auction process and amply addresses the process for participation.

A. New Entrant Bidding Credit

45. 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.

46. 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.⁷⁷ The bidder's attributable interests shall be determined as of the short-form application (FCC Form 175) filing deadline – December 19, 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 – December 19, 2006.⁷⁸ 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.

⁷³ See Attachment C.

⁷⁴ See 47 C.F.R. § 73.5002(a), (b).

⁷⁵ See *NCE Second Report and Order*, 18 FCC Rcd at 6699-6700 ¶ 21.

⁷⁶ Auction of FM Broadcast Construction Permits Scheduled for November 1, 2005, Auction No. 62, *Public Notice*, 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).

⁷⁷ "Media of mass communication" include both commercial and NCE full-power broadcast stations.

⁷⁸ The fact that, on December 19, 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. To avoid attribution, applicants must have consummated the transaction by December 19, 2006. 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*").

47. 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.⁷⁹

48. 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.⁸⁰ Applicants should note that the mass media attribution rules were revised in 1999.⁸¹

49. 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.⁸²

50. 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.⁸³ 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.⁸⁴ 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).⁸⁵

B. Application Requirements

51. 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

⁷⁹ See 47 C.F.R. § 73.3555 Note 2.

⁸⁰ See Clarification of Commission Policies Regarding Spousal Attribution, *Memorandum Opinion and Order*, 7 FCC Rcd 1920 (1992).

⁸¹ 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).

⁸² See 47 C.F.R. § 73.5008(c).

⁸³ 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.

⁸⁴ *Broadcast Competitive Bidding Reconsideration Order*, 14 FCC Rcd at 8764 ¶ 75; 47 C.F.R. § 73.5007.

⁸⁵ See *Minnesota Christian Broadcasters, Inc.*, *Memorandum Opinion and Order*, 18 FCC Rcd 614 (2003), *aff'd sub nom. Carol DeLaHunt v. FCC*, No. 03-1029 (D.C. Cir. Feb. 4, 2004) and *Minnesota Christian Broadcasters, Inc. v. FCC*, 411 F.3d 283 (D.C. Cir. 2005).

Entrant Bidding Credit.⁸⁶ 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.⁸⁷

1. Bidding Credits

52. Applicants that qualify for the New Entrant Bidding Credit, as specified in the applicable rule,⁸⁸ 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.

53. 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.⁸⁹ 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.⁹⁰

54. CODO Group, LLC ("CODO") requests that we consider increasing the new entrant bidding credits from their current levels of 25 percent (for applicants with attributable interests in three or fewer media of mass communication) and 35 percent (for applicants with no attributable interests in media of mass communication) to 35 and 45 percent, respectively. It contends that its experience in FM Auction Nos. 37 and 62 suggest that winning bids "far surpass[ed] what [CODO] believes were commercially reasonable amounts for a new entrant to pay when starting a broadcast business from scratch," suggesting that increased bidding credits will better enable such new entrants to compete against established broadcasters, thus "adding new voices to radio markets throughout the nation." CODO recognizes, however, that the bidding credit amounts were not expressly solicited for comment.

55. MEI also argues that the established 35 percent discount is inadequate, especially when new entrants are bidding against broadcasters with existing facilities in the same area.

⁸⁶ See 47 C.F.R. §§ 1.2105(a), 73.3555 and Note 2, 73.5007, 73.5008.

⁸⁷ See 47 C.F.R. §§ 73.5007, 73.5008.

⁸⁸ See 47 C.F.R. § 73.5007.

⁸⁹ See 47 C.F.R. § 73.5008.

⁹⁰ See 47 C.F.R. § 73.5007(c).

56. MEI further requests that we modify the bidding credit eligibility criteria in three respects. First, MEI seeks to expand bidding credit eligibility so that a bidder's interest in an existing daytime-only AM station would not be considered attributable on a bid for an FM permit in the same area as the AM station. MEI additionally recommends that entities that have held an attributable interest in more than three media facilities within the three years prior to the Form 175 filing deadline should not qualify for the credit. Finally, MEI proposes that the use of a bidding credit by a winning bidder "should be eliminated once that entity has an attributable interest in more than three media facilities," even if the winning bidder acquires more than three media facilities in the same auction.

57. The Bureaus are unable to adopt for Auction No. 70 the suggestions by commenters to revise the criteria for and the amount of the new entrant bidding credit, and to adopt new bidding credits based on other criteria. Implementation of these proposals would require amendment of the Commission's competitive bidding and broadcast service rules, which can only be accomplished through a rulemaking proceeding.⁹¹ The Bureaus' process for seeking comment on auction procedures is not the appropriate forum in which to raise such rule changes. Such rule change suggestions should have been raised in the context of the rulemaking proceeding establishing bidding credits for the FM broadcast service.

2. Installment Payments

58. Installment payment plans will not be available in Auction No. 70.

C. Permit Selection

59. In Auction No. 70, applicants must select the construction permits on which they want to bid from the "Eligible Permits" list. In Auction No. 70, FCC Form 175 will include a filtering mechanism that allows an applicant to filter the available construction permits. The applicant will make selections for one or more of the filter criteria and the system will produce a list of construction permits satisfying the specified criteria. The applicant may select all the construction permits in the customized list or select individual construction permits from the list. Applicants also will be able to select construction permits from one customized list and then create additional customized lists to select additional construction permits. There will be no opportunity to change construction permit selection after the short-form filing deadline.⁹² 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

60. 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.⁹³ 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.⁹⁴ 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.⁹⁵

⁹¹ See, e.g., 47 C.F.R. §§ 73.5007, 73.5008.

⁹² See 47 C.F.R. § 1.2105(b)(2).

⁹³ See 47 C.F.R. § 1.2105(a)(2)(viii), (c)(1).

⁹⁴ See 47 C.F.R. § 1.2105(a)(2)(ix).

⁹⁵ See *supra* Section I.B.2 "Prohibition of Collusion; Compliance with Antitrust Laws."

61. 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.⁹⁶ 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 matter because they may convey pricing information and bidding strategies.⁹⁷ Such subject areas include, but are not limited to, issues such as management sales, local marketing agreements, rebroadcast agreements, and other transactional agreements.⁹⁸ 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.⁹⁹

E. Ownership Disclosure Requirements

62. 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.¹⁰⁰ 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 application are prescribed in Sections 1.2105 and 1.2112 of the Commission's rules.¹⁰¹ Each applicant is responsible for information submitted in its short-form application being complete and accurate.

63. 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. 70 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 directly in the short-form application any information that was entered automatically and needs to be changed.

F. Provisions Regarding Former and Current Defaulters

64. 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

⁹⁶ See 47 C.F.R. § 1.2105(c)(4)(i), (ii).

⁹⁷ See *supra* Section I.B.2 "Prohibition of Collusion; Compliance with Antitrust Laws."

⁹⁸ See, e.g., Todd Stuart Noordyk, *Memorandum Opinion and Order*, 16 FCC Rcd 18113, 18117 (2001); see also 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 Rule Making*, 13 FCC Rcd 374, 467 (1997).

⁹⁹ See *id.*

¹⁰⁰ 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.

¹⁰¹ 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.

Section 1.2110,¹⁰² 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.¹⁰³ 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.¹⁰⁴ 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.

65. “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 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. 70, 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.¹⁰⁵

66. “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. 70.¹⁰⁶

67. 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.¹⁰⁷ 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.¹⁰⁸ 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.¹⁰⁹

¹⁰² See 47 C.F.R. § 1.2110.

¹⁰³ 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.

¹⁰⁴ See 47 C.F.R. § 1.2105(a)(2)(x); *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317 ¶ 42.

¹⁰⁵ See 47 C.F.R. § 1.2106(a).

¹⁰⁶ 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.”).

¹⁰⁷ 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/>.

¹⁰⁸ See Letter to Cheryl A. Tritt, Esq., Morrison and Foerster, LLP, from Margaret Wiener, Chief, Auctions and Spectrum Access Division, 19 FCC Rcd 22907 (WTB 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/>.

¹⁰⁹ 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 (continued....)

68. 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.¹¹⁰ 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.¹¹¹ As a consequence, the 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 1.2105.¹¹² 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.

69. Prospective applicants in Auction No. 70 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,¹¹³ and such review may result in the dismissal of a winning bidder’s long-form application.¹¹⁴

G. Other Information

70. Applicants owned by members of minority groups and/or women, as defined in Section 1.2110(c)(3),¹¹⁵ 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.¹¹⁶

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

71. After the deadline for filing short-form applications (FCC Forms 175) at **6:00 p.m. ET on December 19, 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, change the certifying official, claim eligibility for a higher percentage of bidding credit or change their identification of the application’s proposed facilities as

(Continued from previous page)

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.

¹¹⁰ 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*”).

¹¹¹ *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).

¹¹² 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).

¹¹³ See *Debt Collection Report and Order*, 19 FCC Rcd at 6540. See also 47 C.F.R. § 1.1112.

¹¹⁴ 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).

¹¹⁵ See 47 C.F.R. § 1.2110(c)(3).

¹¹⁶ 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).

noncommercial educational).¹¹⁷ 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.

72. 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.¹¹⁸

73. 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.¹¹⁹ Applicants must click on the **SUBMIT** button in the FCC Auction System for the changes to be submitted and considered by the 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.

74. 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. Any letter describing changes to an applicant's short-form application must be submitted by electronic mail to the following address: auCTION70@fcc.gov. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 70 and the name of the applicant (e.g., "RE: Changes to Auction No. 70 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.

75. 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. 70 procedures.

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

76. 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.¹²⁰ 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.¹²¹ 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.¹²²

¹¹⁷ See 47 C.F.R. § 1.2105(b); see also *NCE Second Report and Order*, 18 FCC Rcd at 6700.

¹¹⁸ See 47 C.F.R. § 1.917; see also 47 C.F.R. § 73.3513.

¹¹⁹ After the filing window has closed, the auction system will not permit applicants to make certain changes, such as legal classification or NCE identification.

¹²⁰ See 47 C.F.R. § 1.65.

¹²¹ 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 Rcd 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.

¹²² See 47 C.F.R. § 1.2105(b)(2).

77. 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: auction70@fcc.gov. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 70 and the name of the applicant. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

78. Applicants must **not** submit application-specific material through ECFS into the record of the proceeding concerning Auction No. 70 procedures.

III. PRE-AUCTION PROCEDURES

A. Auction Seminar

79. On Wednesday, December 6, 2006, the FCC will sponsor a free seminar for parties interested in participating in Auction No. 70 at the FCC headquarters, located at 445 12th Street, SW, Washington, DC. The seminar will provide attendees with information about pre-auction procedures, completing FCC Form 175, auction conduct, the FCC Auction System, auction rules, and the FM broadcast service rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff concerning the auction, auction procedures, filing requirements and other matters related to this auction.

80. To register, complete the registration form attached hereto as Attachment B and submit it by Monday, December 4, 2006. Registrations are accepted on a first-come, first-served basis. The seminar is free of charge.

81. For individuals who are unable to attend, an Audio/Video webcast of this seminar will be available from the FCC's Auction No. 70 web page at <http://wireless.fcc.gov/auctions/70/>. Select the "Auction Seminar" link. The seminar webcast will be archived for future viewing, and will be available for viewing on a 24/7 basis once it is posted on the Auction No. 70 web page.

B. Short-Form Application (FCC Form 175) — Due Before 6:00 p.m. ET on December 19, 2006

82. 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.¹²³ This application must be received at the Commission prior to 6:00 p.m. ET on December 19, 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.¹²⁴

83. Applications may generally be filed at any time beginning at noon ET on December 6, 2006, and the filing window will close at 6:00 p.m. ET on December 19, 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 December 19, 2006.

84. 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 C. 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.

¹²³ See 47 C.F.R. § 12105(a).

¹²⁴ See *infra* Section III.D. "Upfront Payments — Due February 5, 2007."

C. Application Processing and Minor Corrections

85. 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.

86. 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.¹²⁵ All mutually exclusive applications will be considered under the relevant procedures for conflict resolution. Mutually exclusive commercial applications will proceed to auction.¹²⁶ 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.¹²⁷ Accordingly, if an FCC Form 175 filed during the Auction No. 70 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.¹²⁸

87. As described more fully in the Commission's rules, after the short-form filing deadline on December 19, 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, change the certifying official, or change their self-identification as NCE).¹²⁹

D. Upfront Payments — Due February 5, 2007

88. 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 February 5, 2007.**

1. Making Auction Payments by Wire Transfer

89. Wire transfer payments must be received before 6:00 p.m. ET on February 5, 2007. 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 # 910-1174

¹²⁵ See 47 C.F.R. § 73.3573(f)(4).

¹²⁶ 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.

¹²⁷ *Id.*, 18 FCC Rcd at 6699-6701. See also 47 C.F.R. § 73.5002(b).

¹²⁸ *NCE Second Report and Order*, 18 FCC Rcd at 6699-6701. See also 47 C.F.R. § 73.5002(b).

¹²⁹ See 47 C.F.R. § 1.2105(b); see also *NCE Second Report and Order*, 18 FCC Rcd at 6700; Two Way Radio of Carolina, Inc., *Memorandum Opinion and Order*, 14 FCC Rcd 12035 (1999).