



PUBLIC NOTICE

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April 17, 2009

AUCTION OF FM BROADCAST CONSTRUCTION PERMITS SCHEDULED FOR SEPTEMBER 1, 2009

NOTICE AND FILING REQUIREMENTS, MINIMUM OPENING BIDS, UPFRONT PAYMENTS, AND OTHER PROCEDURES FOR AUCTION 79

AU Docket No. 09-21

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I. GENERAL INFORMATION

A. Introduction

1. By this Public Notice, the Wireless Telecommunications Bureau (“WTB”) and the Media Bureau (“MB”) (collectively, the “Bureaus”) announce the procedures and minimum opening bid amounts for the upcoming auction of certain FM broadcast construction permits. This auction, which is designated as Auction 79, is scheduled to commence on September 1, 2009. On February 27, 2009, in

accordance with Section 309(j)(3) of the Communications Act of 1934, as amended,¹ the Bureaus released a public notice seeking comment on competitive bidding procedures to be used in Auction 79.² Interested parties submitted three comments and four reply comments in response to the *Auction 79 Comment Public Notice*.³

1. Construction Permits to be Offered in Auction 79

2. Auction 79 will offer 122 construction permits in the FM broadcast service as listed in Attachment A. The construction permits to be auctioned are for 122 new FM allotments, and include construction permits for three FM allotments that were defaulted on after a previous auction, and a construction permit for one FM allotment that was offered but not sold in Auctions 37 and 62. These construction permits are for vacant FM allotments, reflecting FM channels assigned to the FM Table of Allotments (“Table”),⁴ pursuant to the Commission’s established rulemaking procedures, and are designated for use in the indicated communities.

3. L. Topaz Enterprises, Inc. (“LTE”) requests that we add construction permits for two vacant allotments, Channels 274C3 and 284C3 at Elko, Nevada, to the Auction 79 inventory. Both allotments were added to the Table by a *Report and Order* released October 10, 2008.⁵ Briarwood Media (“Briarwood”) goes farther than LTE in urging that the Bureaus add to this auction all new FM allotments approved in a specified rulemaking proceeding.⁶ Furthermore, several other parties have made inquiries regarding certain vacant allotments. FM allotments are auctioned in the order they are added to the Table, with older allotments being auctioned before more recently added ones. There are many allotments awaiting auction that were added to the Table before the two allotments that LTE has suggested be auctioned, thus we deny LTE’s request that we include these two recently added allotments to the Auction 79 inventory, as we deny Briarwood’s larger requested addition.⁷

4. 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.⁸ When two or more

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

² “Auction of FM Broadcast Construction Permits Scheduled for September 1, 2009; Comment Sought on Competitive Bidding Procedures For Auction 79,” *Public Notice*, DA 09-422 (rel. Feb. 27, 2009) (“*Auction 79 Comment Public Notice*”). A summary of this public notice was published at 74 Fed. Reg. 10578 (March 11, 2009).

³ L. Topaz Enterprises, Inc., Eric A. Williams, and Mullaney Engineering, Inc. filed comments. Briarwood Media, the Minority Media and Telecommunications Council, Easy Living Magazine [sic], and Sutton Radiocasting Corporation filed reply comments. These comments and reply comments are available at AU Docket No. 09-21 in the Commission’s Electronic Comment Filing System (ECFS).

⁴ 47 C.F.R. § 73.202(b).

⁵ Elko, Nevada, *Report and Order*, DA 08-2256, 23 FCC Rcd 14724 (MB 2008).

⁶ *See* Revision of Procedures Governing Amendments To FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services, MB Docket No. 05-210, *Report and Order*, FCC 06-163, 21 FCC Rcd 14212 (2006).

⁷ In its reply comments, Easy Living Magazine [sic] appears to be requesting that an unproposed and unapproved allotment for a “low powered FM Television Station” be added to the inventory for this auction. *See* Reply Comment to Auction 79 of Easy Living Magazine, filed April 1, 2009. A request for a Low Power Television station allotment or construction permit is beyond the scope of this proceeding, which is confined to developing competitive bidding procedures for an FM auction.

⁸ *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*, FCC 98-194, 13 FCC Rcd 15920, 15923-25 ¶ 7-12 (1998) (“*Broadcast First Report and Order*”), *Memorandum* (continued....)

short-form applications (FCC Form 175) specifying the same FM allotment are accepted for filing, mutual exclusivity (“MX”) exists for auction purposes,⁹ and thus, that construction permit for the FM allotment will be awarded by competitive bidding procedures.¹⁰ Once mutual exclusivity exists for auction purposes, even if only one 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.¹¹

B. Rules and Disclaimers

1. Relevant Authority

5. 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.¹² 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 –

(Continued from previous page)

Opinion and Order, FCC 99-74, 14 FCC Rcd 8724 (1999) (“*Broadcast First Reconsideration Order*”), *Memorandum Opinion and Order*, FCC 99-201, 14 FCC Rcd 12541 (1999), *aff’d*, *Orion Communications Ltd. v. FCC*, 221 F.3d 196, No. 98-1424, slip op. (D.C. Cir. June 13, 2000) (unpublished opinion available at 2000 WL 816046 (D.C. Cir.), *aff’d*, *Orion Communications Ltd. v. FCC*, 213 F.3d 761 (D.C. Cir. 2000). Attachment A also lists the reference coordinates for each vacant FM allotment. With regard to the FM service, the Commission gave applicants the opportunity to submit a set of preferred site coordinates as an alternative to the reference coordinates for the vacant FM allotment upon which they intend to bid. Further information regarding preferred site coordinates may be found in Attachment B to this public notice. See *Broadcast First Report and Order*, 13 FCC Rcd at 15974-75 and ¶153.

⁹ *Broadcast 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*, FCC 94-61, 9 FCC Rcd 2348, 2376 ¶ 165 (1994) (“*Competitive Bidding Second Report & Order*”).

¹⁰ *Broadcast First Report and Order*, 13 FCC Rcd at 15923-25 ¶¶ 7-12.

¹¹ 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 79 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 First Report and Order*, 13 FCC Rcd at 15980 ¶ 153.

¹² 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*, FCC 00-274, 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*, FCC 01-270, 16 FCC Rcd 17546 (2001) (“*Part 1 Seventh Report and Order*”); *id.*, *Eighth Report and Order*, FCC 02-34, 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*, FCC 03-98, 18 FCC Rcd 10180 (2003); *id.*, *Second Order on Reconsideration of the Fifth Report and Order*, FCC 04-295, 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*, FCC 06-4, 21 FCC Rcd 891 (2006) (“*CSEA/Part 1 First Report and Order*”), petitions for recon. pending; *id.*, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, FCC 06-52, 21 FCC Rcd 4753 (2006), petitions for recon. pending; *id.*, *Order on Reconsideration of the Second Report and Order*, FCC 06-78, 21 FCC Rcd 6703 (2006) (modified by Erratum and Notice of Office of Management and Budget Approval of Information Collections, DA 06-1280, 21 FCC Rcd 6622 (WTB 2006)), petition for review dismissed sub nom. *Council Tree Communications, Inc. v. FCC*, 503 F.3d 284 (3d Cir. 2007); *id.*, *Second Order on Reconsideration of the Second Report and Order*, FCC 08-92, 23 FCC Rcd 5425 (2008), petition for review pending, *Council Tree Communications, Inc. v. FCC*, Case No. 08-2036 (3d Cir., filed April 8, 2008).

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 79 Comment Public Notice* and the *Broadcast First Report and Order*,¹³ the *Broadcast First Reconsideration Order*,¹⁴ the *New Entrant Bidding Credit Reconsideration Order*,¹⁵ and the *NCE Second Report and Order*.¹⁶

6. 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>.¹⁷

2. Prohibition of Collusion and Compliance with Antitrust Laws

7. To ensure the competitiveness of the auction process, Section 1.2105(c) of the Commission's rules prohibits auction applicants 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 Form 175) as parties with whom they have entered into agreements pursuant to Section 1.2105(a)(2)(viii).¹⁸ 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.¹⁹ 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.²⁰ **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or**

¹³ *Broadcast First Report and Order*, FCC 98-194, 13 FCC Rcd at 15920.

¹⁴ *Broadcast First Reconsideration Order*, FCC 99-74, 14 FCC Rcd at 8724.

¹⁵ 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*, FCC 99-201, 14 FCC Rcd 12541 (1999) ("*New Entrant Bidding Credit Reconsideration Order*").

¹⁶ Reexamination of the Comparative Standards for Noncommercial Educational Applicants, MM Docket No. 95-31, *Second Report and Order*, FCC 03-44, 18 FCC Rcd 6691 (2003) ("*NCE Second Report and Order*"), *Memorandum Opinion and Third Order on Reconsideration*, FCC 08-219, 23 FCC Rcd 17423 (2008).

¹⁷ When ordering documents from BCPI, please provide the appropriate FCC document number (for example, AU Docket No. 09-21 for the *Auction 79 Comment Public Notice*, or DA 09-810 for this Public Notice).

¹⁸ See 47 C.F.R. §§ 1.2105(a)(2)(viii), 1.2105(c)(1) and 47 C.F.R. § 73.5002; see also *Part I Seventh Report and Order*, FCC 01-270, 16 FCC Rcd at 17546; *Part I Fifth Report and Order*, 15 FCC Rcd at 15297-98 ¶¶ 7-8.

¹⁹ See, e.g., Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E and F Block Bidders, *Public Notice*, DA 96-1460, 11 FCC Rcd 10134 (WTB 1996).

²⁰ 47 C.F.R. § 1.2105(c)(1).

actually bid.²¹ The “geographic license area” is the market designation of the particular service.²² For the FM service, the market designation is the particular vacant FM allotment (e.g., Boligee, Alabama, Channel 297A, Market FM626-A). In Auction 79, 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.

8. Applicants for Auction 79 are reminded that they remain subject to the provisions of Section 1.2105(c), prohibition of collusion, until the down payment deadline after the auction, which will be announced in a future public notice.²³ Applicants are also reminded that, for purposes of this prohibition on certain communications, 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.²⁴

9. Applicants should note that they must not communicate directly or indirectly about bids or bidding strategy to other applicants for construction permits for any of the same allotments.²⁵ The anti-collusion rule prohibits not only a communication about an applicant’s own bids or bidding strategy, but also a communication of another applicant’s bids or bidding strategy.²⁶ While the anti-collusion rule provisions do not prohibit business negotiations among auction applicants, applicants must remain vigilant so as not to communicate directly or indirectly information that affects, or could affect, bids or bidding strategy, or the negotiation of settlement agreements.

10. Moreover, individuals and entities subject to the anti-collusion rule should take special care in circumstances where their employees may receive information directly or indirectly from a competing applicant relating to any competing applicant’s bids or bidding strategies. Where an individual served as an officer for two or more applicants, the Bureaus have found that the bids and bidding strategies of one applicant are necessarily conveyed to the other applicant, and, absent a disclosed bidding agreement, an apparent violation of the anti-collusion rule occurs.²⁷ The Bureaus have not addressed situations where

²¹ See, e.g., *Star Wireless, LLC, Forfeiture Order*, DA 04-3026, 19 FCC Rcd 18626, 18628 ¶ 4 n.19 (EB 2004), *order granted in part, Order on Review*, FCC 07-80, 22 FCC Rcd 8943 (2007), *petition for review denied, Star Wireless, LLC v. FCC*, 522 F.3d 469 (D.C. Cir. 2008) (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*, DA 00-2905, 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).

²² *Part I Seventh Report and Order*, 16 FCC Rcd at 17549 n.12.

²³ 47 C.F.R. § 1.2105(c)(1).

²⁴ 47 C.F.R. § 1.2105(c)(7)(i).

²⁵ *Part I Seventh Report and Order*, 16 FCC Rcd at 17549-50 ¶ 6.

²⁶ See *Western PCS BTA I Corp., Memorandum Opinion and Order*, FCC 99-385, 14 FCC Rcd 21571 (1999).

²⁷ 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*, DA 05-2445, 20 FCC Rcd 14648 (WTB/MB 2005) (finding apparent (continued...))

employees who do not qualify as the applicant (such as, individuals who are not officers or directors) receive information regarding a competing applicant's bids or bidding strategies and whether that information might be deemed to necessarily convey to the applicant. We note that an exception to the anti-collusion rule allowing non-controlling interest holders to have interests in more than one competing applicant without violating the anti-collusion rule, provided specified conditions are met (including a certification that no prohibited communications have occurred or will occur), does not extend to controlling interest holders.²⁸

11. Auction 79 applicants are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between such applicants. Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or engineering firm or consulting firm), a violation similarly could occur.²⁹ 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.³⁰

12. Applicants 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."³¹ Moreover, the Commission has found a violation of the anti-collusion rule where an applicant 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,"³² 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."³³ Applicants also should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become conduits for the communication of prohibited bidding information. For example, an applicant's statement to the press that it intends to stop bidding in the auction could give rise to a finding of an anti-collusion rule violation.³⁴ Similarly, a listed applicant's public statement of intent not to participate in Auction 79 bidding could also violate the rule. Applicants are hereby placed on notice that

(Continued from previous page)

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).

²⁸ 47 C.F.R. § 1.2105(c)(4).

²⁹ 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*, DA 98-1137, 13 FCC Rcd 11973, 11977 ¶ 11 (1998) ("*Nevada Wireless Order*").

³⁰ *Id.*

³¹ Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, FCC 94-295, 9 FCC Rcd 7684, 7689 ¶ 12 (1994).

³² Mercury PCS II, LLC, *Notice of Apparent Liability for Forfeiture*, FCC 97-388, 12 FCC Rcd 17970, 17976 ¶ 12 (1997).

³³ Mercury PCS II, LLC, *Memorandum Opinion and Order*, FCC 98-203, 13 FCC Rcd 23755, 23760 ¶ 11 (1998).

³⁴ *Compare* Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction, *Public Notice*, DA 98-37, 13 FCC Rcd 341, 347-48 (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.").

public disclosure of information relating to bids or bidding strategies, or to post auction market structures may violate the anti-collusion rule.

13. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form applications.³⁵ 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.³⁶

14. By electronically submitting a short-form application, each applicant in Auction 79 will certify its compliance with Sections 1.2105(c) and 73.5002. 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 the initiation of an investigation when warranted.³⁷ The Commission has stated that it "intend[s] to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring."³⁸ Any applicant found to have violated the anti-collusion rule may be subject to sanctions.³⁹

15. If an applicant makes or receives a communication that appears to violate the anti-collusion rule, it must report such communication in writing to the Commission immediately and in no case later than five business days after the communication occurs.⁴⁰ The Commission has clarified that each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five day period.⁴¹

16. In addition, Section 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application.⁴² Thus, Section 1.65 requires an auction applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. Applicants are therefore required by Section 1.65 to report to the Commission any communications they have made to or received from another applicant after the short-form application 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).

³⁵ 47 C.F.R. § 1.2105(c)(7)(i).

³⁶ See Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, DA 95-2244, 11 FCC Rcd 9645 (1995) ("*Anti-Collusion Public Notice*").

³⁷ *Nevada Wireless Order*, 13 FCC Rcd at 11978 ¶ 13.

³⁸ 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).

³⁹ See 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

⁴⁰ 47 C.F.R. § 1.2105(c)(6).

⁴¹ See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, *Second Report and Order*, FCC 07-132, 22 FCC Rcd 15289, 15403-04 ¶¶ 285-86 (2007).

⁴² 47 C.F.R. § 1.65; see also *Part I Seventh Report and Order*, 16 FCC Rcd at 17555 ¶ 17.

17. Parties reporting communications pursuant to Sections 1.2105(a)(2) or 1.2105(c)(6) must take care to ensure that any reports of prohibited communications do not themselves give rise to a violation of the anti-collusion rule. For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection. A party seeking to report such prohibited communications should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection.⁴³ Such parties also are encouraged to coordinate with the Auctions and Spectrum Access Division staff if they have any questions about the procedures for submitting such reports.⁴⁴ This Public Notice provides additional guidance on procedures for submitting application-related information below.⁴⁵

18. 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.⁴⁶

19. Applicants must be aware that failure to comply with the Commission's rules can result in enforcement action. 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 D. These documents are available on the Commission's auction anti-collusion web page.⁴⁷

20. 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.⁴⁸ Compliance with the disclosure requirements of the Commission's anti-collusion rule will not insulate a party from enforcement of the antitrust laws.⁴⁹ For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submitted a short-form application.⁵⁰ The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws: for example, actual or potential

⁴³ See 47 C.F.R. § 0.459 (requests that materials or information submitted to the Commission be withheld from public inspection). Filers requesting confidential treatment of documents must be sure that the cover page of the filing prominently displays that the documents seek confidential treatment. For example, a filing might include a cover page stamped with "Request for Confidential Treatment Attached" or "Not for Public Inspection." Any such request must cover all of the material to which the request applies. See 47 C.F.R. § 0.459 (a).

⁴⁴ See Section VI. "Contact Information," below.

⁴⁵ See Section II. J. "Maintaining Current Information in Short-Form Applications," below.

⁴⁶ 47 C.F.R. § 1.2107(d).

⁴⁷ <http://wireless.fcc.gov/auctions/anticollusion>

⁴⁸ 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*, FCC 99-384, 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*, FCC 94-264, 9 FCC Rcd 6858, 6869 n. 134 (1994)("[A]pplicants will also be subject to existing antitrust laws.") ("*Fourth Memorandum Opinion and Order*").

⁴⁹ 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).

⁵⁰ See, e.g., *Fourth Memorandum Opinion & Order*, FCC 94-264, 9 FCC Rcd at 6869 n.134.

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 market for the other.⁵¹ Similarly, the Wireless Telecommunications Bureau previously has 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.”⁵² To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation.⁵³ 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.⁵⁴

3. Due Diligence

21. 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.

22. 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.⁵⁵ Orders adopted in FM allotment rulemaking proceedings often include anomalies such as site restrictions or expense reimbursement requirements.⁵⁶ 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 79 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.**

23. Potential applicants are also strongly encouraged to conduct their own research prior to the beginning of bidding in Auction 79 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 79 are strongly encouraged to continue such research throughout the auction.

⁵¹ *Id.*

⁵² *Anti-Collusion Public Notice*, DA 95-2244, 11 FCC Rcd 9645.

⁵³ *See Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226.

⁵⁴ *See* 47 C.F.R. § 1.2109(d); *see also Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226.

⁵⁵ *See* 47 C.F.R. § 73.202.

⁵⁶ *See, e.g.,* Charlotte Amalie, Frederiksted, and Christiansted, U.S. Virgin Islands, *Report and Order*, DA 03-4120, 19 FCC Rcd 30 (MB 2004); Cheyenne, Wyoming and Gering, Nebraska, *Report and Order*, DA 00-865, 15 FCC Rcd 7528 (MMB 2000); Circleville, Ohio, *Second Report and Order*, 8 F.C.C.2d 159 (1967).

24. Applicants should also be aware that certain pending and future proceedings, including applications, applications for modification, petitions for rulemaking, requests for special temporary 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 79. 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 79. 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.

25. 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 79. 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.

26. 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 79. 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.

27. 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.

28. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, applicants may obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

4. Use of Integrated Spectrum Auction System

29. The Commission will make available a browser-based bidding system to allow bidders to participate in Auction 79 over the Internet using the Commission's Integrated Spectrum Auction System ("ISAS" or "FCC Auction System"). The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits,

business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning or use of the FCC Auction System that is accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming or other advice or service provided in connection with the FCC Auction System.

5. Fraud Alert

30. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction 79 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, 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.
- Information about deceptive telemarketing investment schemes is available from the FCC 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 telephone at (877) FTC-HELP ((877) 382-4357) or by going to <http://ftc.gov/bcp/edu/pubs/consumer/invest/inv03.shtm>; and (iii) the SEC by telephone at (202) 942-7040 or by going to <http://sec.gov/cgi-bin/txt-srch-sec?text=fraud§ion=Investor+Information&x=8&y=5>. 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

31. Permittees or licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other federal environmental statutes.⁵⁷ 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.⁵⁸ 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 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 FCC's

⁵⁷ 47 C.F.R. Ch. 1, Subpart I.

⁵⁸ 47 C.F.R. §§ 1.1301-1.1319.

Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process.⁵⁹ 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.

C. Auction Specifics

1. Auction Start Date

32. The Bureaus proposed that bidding in this auction would begin on September 1, 2009. Minority Media argues that access to capital remains a primary barrier to minority media ownership, that almost no equity or debt capital is available at this time, and that the start of bidding should accordingly be postponed until there is an economic recovery or until at least six months after the proposed date.⁶⁰ In contrast, Briarwood opposes a postponement because the current “soft market” favors minority and small broadcasters and a delay would exclude smaller companies.⁶¹ Sutton Radiocasting Corporation (“Sutton”) also opposes a postponement, arguing that the current economic climate might mean that fewer speculators would participate and therefore small or local community-based bidders could acquire desired frequencies in this auction.⁶² In its comments, MEI asserted that holding this auction during the current severe economic situation would result in a “fire sale” of precious broadcast spectrum.⁶³ Briarwood disagrees, arguing that it and other potential bidders are prepared to begin bidding in this auction and that a delay would risk losing potential bidders who are prepared to bid now.

33. The bidding delay specified by Minority Media and implied by MEI would undermine an important goal of auctions – the rapid deployment of service to the public. The Bureaus conclude that to promote this public interest goal, they will not postpone bidding until the national economic climate improves, or a specified six month delay, whichever comes first. Accordingly, bidding will begin on the proposed date. The Bureaus note that construction permits for additional vacant FM allotments will be made available in future auctions.

34. Bidding in Auction 79 will begin on Tuesday, September 1, 2009. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Moreover, unless otherwise announced, bidding on all construction permits will be conducted on each business day until bidding has stopped on all construction permits.

2. Auction Title

35. Auction 79 – FM Broadcast

3. Bidding Methodology

36. As discussed in more detail below, the bidding methodology for Auction 79 will be simultaneous multiple round (“SMR”) bidding.⁶⁴ The Commission will conduct this auction over the

⁵⁹ 47 C.F.R. Part 1, Appendix C.

⁶⁰ Minority Media Reply Comments at 2-3.

⁶¹ Briarwood Reply Comments at 3.

⁶² Comments of Sutton Radiocasting Corporation, filed April 1, 2009 (Sutton Reply Comments).

⁶³ MEI Comments at 2.

⁶⁴ See Section IV.A.1. “Simultaneous Multiple Round Auction,” below.

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. All telephone calls are recorded.

4. Pre-Auction Dates and Deadlines

37. The following dates and deadlines apply:

Auction Seminar.....	June 16, 2009
Short-Form Application (FCC Form 175)	
Filing Window Opens	June 16, 2009; 12:00 noon ET
Short-Form Application (FCC Form 175)	
Filing Window Deadline	June 25, 2009; prior to 6:00 p.m. ET
Upfront Payments (via wire transfer).....	July 31, 2009; 6:00 p.m. ET
Mock Auction.....	August 28, 2009
Auction Begins.....	September 1, 2009

5. Requirements for Participation

38. Those wishing to participate in this auction must:

- Submit a short-form application (FCC Form 175) electronically prior to 6:00 p.m. ET, June 25, 2009, following the electronic filing procedures set forth in Attachment B to this Public Notice.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, July 31, 2009, following the procedures and instructions set forth in Attachment C to this Public Notice.
- Comply with all provisions outlined in this Public Notice and applicable Commission rules.

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

A. General Information Regarding Short-Form Applications

39. 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.⁶⁵ 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 must file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications.⁶⁶ Each applicant must take seriously its duties and responsibilities and carefully determine before filing an application that the applicant has the legal, technical and financial resources to participate in Auction 79, as well as construct and operate an FM station if the auction applicant becomes a licensee as a result of its participation in this auction. Eligibility to participate in bidding is based on the applicants' short-form

⁶⁵ 47 C.F.R. §§ 1.2105, 73-5002.

⁶⁶ *Id.*; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2376 ¶ 163.

applications and certifications as well as their upfront payments, as explained below.⁶⁷ In the second phase of the process, winning bidders must file more comprehensive long-form applications.⁶⁸

40. Entities and individuals seeking construction permits available in Auction 79 must file a short-form application electronically via the FCC Auction System prior to 6:00 p.m. ET on June 25, 2009, following the procedures prescribed in Attachment B to this Public Notice. If an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 will be used in determining whether the applicant is eligible for the claimed bidding credit. Applicants filing a short-form application are subject to the Commission's anti-collusion rules beginning on the deadline for filing, as described above.

41. Applicants bear full responsibility for submitting accurate, complete and timely short-form applications. All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license.⁶⁹ Applicants should read the instructions set forth in Attachment B to this Public Notice carefully and should consult the Commission's rules to ensure that, in addition to the materials described below, all the information that is required under the Commission's rules is included with their short-form applications.⁷⁰

42. An entity may not submit more than one short-form application for a single auction. If a party submits multiple short-form applications, only one application may be accepted for filing.

43. Applicants also should note that submission of a short-form application (and any amendments thereto) 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 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.⁷¹ 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.

B. Permit Selection

44. An applicant must select the construction permits on which it wants to bid from the "Eligible Permits" list on its short-form application. To assist applicants in identifying construction permits of interest that will be available in Auction 79, the FCC Auction System includes a filtering mechanism that allows an applicant to filter the "Eligible Permits" list. 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.

⁶⁷ Section III.D. "Upfront Payments – Due July 31, 2009," below.

⁶⁸ 47 C.F.R. §§ 1.2107, 73.5005.

⁶⁹ 47 C.F.R. § 1.2105(a)(2)(v).

⁷⁰ 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, *below*, 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).

⁷¹ See 47 C.F.R. § 1.2105(b).

45. Applicants will not be able to change their construction permit selections after the short-form application filing deadline.⁷² Applicants interested in participating in Auctions 79 must have selected construction permit(s) available in this auction by the short-form application filing deadline. Applicants must review and verify their construction permit selections before the deadline for submitting short-form applications. The FCC Auction System will not accept bids from an applicant on construction permits that the applicant has not selected on its short-form application.

C. New Entrant Bidding Credit

46. To promote the objectives of 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.

47. The interests of the applicant, and of any individuals or entities with an attributable interest in the applicant, in other media of mass communications are considered when determining an applicant's eligibility for the New Entrant Bidding Credit.⁷³ The bidder's attributable interests are determined as of the short-form application (FCC Form 175) filing deadline – June 25, 2009. 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 – June 25, 2009.⁷⁴ 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.

48. 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.⁷⁵

49. 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.⁷⁶ Applicants should

⁷² 47 C.F.R. § 1.2105(b)(2).

⁷³ “Media of mass communication” include both commercial and NCE full-power broadcast stations.

⁷⁴ The fact that, on June 25, 2009, 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 June 25, 2009. 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*, FCC 01-129, 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*”).

⁷⁵ See 47 C.F.R. § 73.3555 Note 2.

⁷⁶ See *Clarification of Commission Policies Regarding Spousal Attribution, Memorandum Opinion and Order*, FCC 92-60, 7 FCC Rcd 1920 (1992).

note that the mass media attribution rules were revised in 1999.⁷⁷

50. 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.⁷⁸

51. In the *Diversity Order*, the Commission recently relaxed the equity/debt plus (“EDP”) attribution standard, to allow for higher investment opportunities in entities meeting the definition of “eligible entities.”⁷⁹ An “eligible entity” is defined in Section 73.3555, Note 2(i) of the Rules.⁸⁰ Pursuant to the *Diversity Order*, the Commission will now allow the holder of an equity or debt interest in the applicant to exceed the above-noted 33 percent threshold without triggering attribution provided (1) the combined equity and debt in the “eligible entity” is less than 50 percent; or (2) the total debt in the “eligible entity” does not exceed 80 percent of the asset value, and the interest holder does not hold any equity interest, option, or promise to acquire an equity interest in the “eligible entity” or any related entity.⁸¹

52. 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.⁸² 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.⁸³ 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

⁷⁷ See Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, MM Docket No. 94-150, *Report and Order*, FCC 99-207, 14 FCC Rcd 12559 (1999) (prior history omitted).

⁷⁸ See 47 C.F.R. § 73.5008(c).

⁷⁹ Promoting Diversification of Ownership in the Broadcasting Services, *Report and Order and Third Further Notice of Proposed Rulemaking*, FCC 07-217, 23 FCC Rcd 5922 (2008) (“*Diversity Order*”).

⁸⁰ 47 C.F.R. § 73.3555, Note 2(i). An “eligible entity” shall include any entity that qualifies as a small business under the Small Business Administration's size standards for its industry grouping, as set forth in 13 C.F.R. § 121.201, and holds (i) 30 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will own the media outlet; or (ii) 15 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will own the media outlet, provided that no other person or entity owns or controls more than 25 percent of the outstanding stock or partnership interests; or (iii) more than 50 percent of the voting power of the corporation that will own the media outlet if such corporation is a publicly traded company.

⁸¹ See 47 C.F.R. § 73.5008 (c)

⁸² 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.

⁸³ *Broadcast Reconsideration Order*, 14 FCC Rcd at 8764 ¶ 75; 47 C.F.R. § 73.5007.

communications” as defined in Section 73.5008(b).⁸⁴

53. Mullaney Engineering, Inc. (“MEI”) 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 40 and 60 percent, respectively. The Minority Media and Telecommunications Council (“Minority Media”)⁸⁵ and Briarwood in separate reply comments support MEI’s proposal. Sutton, in its reply comments, opposes bidding credit increases and argues that the current levels have allowed small, locally-based broadcasters to add a license “to an existing local cluster.” Sutton argues that this arrangement serves the public interest because a small, locally-based licensee is more likely to provide locally-based programming.⁸⁶ According to Sutton, the current bidding credit percentages should be retained because they have worked well in the past and will continue to work well in the future.⁸⁷ MEI further requests that the new entrant bidding credit apply only to the “first four facilities” obtained in the auction. Briarwood argues, however, that the increased percentages should apply to more than four facilities obtained in one auction to encourage new companies to participate in broadcasting and to avoid difficulties in determining, after an auction closes, which were the “first four” of multiple facilities obtained in the auction.⁸⁸ Suggesting that many current broadcast stations have changed ownership in the past eight years, Briarwood also disagrees with MEI’s proposal to restrict the sale of all “discounted” facilities for a period of eight years following grant of the initial construction permit. MEI also requests that we change the definition of “new entrant” to a bidder that has not had any interest in a broadcast facility during the 24 months preceding Commission notice of the auction, while Briarwood would extend this period to five years and would not allow eligibility for the higher “no media” bidding credit percentage for anyone who owned more than three broadcast facilities within five years.

54. The Bureaus are unable to adopt for Auction 79 the suggestions of MEI, Briarwood, and Minority Media to revise the criteria for and the amount of the new entrant bidding credit, to re-define “new entrant,” to limit the number of facilities to which the new entrant bidding credit may be applied, and to impose a holding period for facilities obtained using the new entrant bidding credit. As the Bureaus explained when rejecting a similar request made by MEI and other commenters in Auction 70,⁸⁹ 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.⁹⁰ The Bureaus’ process for seeking comment on auction procedures is not the appropriate forum in which to raise such rule changes.⁹¹

⁸⁴ See *Minnesota Christian Broadcasters, Inc., Memorandum Opinion and Order*, FCC 03-5, 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).

⁸⁵ Reply Comments of the Minority Media and Telecommunications Council, filed April 1, 2009.

⁸⁶ Sutton Reply Comments at 2.

⁸⁷ *Id.*

⁸⁸ Briarwood Media Reply to Comments, filed April 1, 2009.

⁸⁹ See 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, DA 06-2248, *Public Notice*, 21 FCC Rcd 12957, 12974-75 ¶¶ 54-57 (MB/WTB 2006) (*Auction 70 Procedures Public Notice*).

⁹⁰ See, e.g., 47 C.F.R. §§ 73.5007, 73.5008.

⁹¹ For the same reasons, the Bureaus are not able to consider Briarwood’s proposal to adopt a new “discount” on the filing fees when an application is submitted for a new allocation by anyone who has not owned a Commission licensed station within five years prior to the date of filing or previously filed for a new allocation. This Briarwood (continued....)

D. Application Requirements

55. In addition to the ownership information required pursuant to Section 1.2112, applicants are required to establish on their short-form applications that they satisfy the eligibility requirements to qualify for a New Entrant Bidding Credit.⁹² 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 has any attributable interests in more than three media of mass communications, and must identify and describe such media of mass communications.⁹³

1. Bidding Credits

56. Applicants that qualify for the New Entrant Bidding Credit, as specified in the applicable rule,⁹⁴ 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 broadcast station proposed in the auction, 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.

57. 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.⁹⁵ 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.⁹⁶

2. Installment Payments

58. Installment payment plans will not be available in Auction 79.

(Continued from previous page) _____

proposal is beyond the scope of this proceeding, which is confined to developing competitive bidding procedures for Auction 79.

⁹² See 47 C.F.R. §§ 1.2105(a), 73.3555 and Note 2, 73.5007, 73.5008.

⁹³ See 47 C.F.R. §§ 73.5007, 73.5008.

⁹⁴ See 47 C.F.R. § 73.5007.

⁹⁵ See 47 C.F.R. § 73.5008.

⁹⁶ See 47 C.F.R. § 73.5007(c).

E. Disclosure of Bidding Arrangements

59. Applicants will be required to identify in their short-form application 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.⁹⁷

60. 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.⁹⁸ If an applicant has had discussions, but has not reached an agreement by the short-form application filing deadline, it should not include the names of parties to the discussions on its application and may not continue such discussions with any applicants after the deadline.⁹⁹

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.¹⁰⁰ While the anti-collusion rules do not prohibit non-auction-related business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.¹⁰¹ Such subject areas include, but are not limited to, issues such as management sales, local marketing agreements, rebroadcast agreements, and other transactional agreements.¹⁰² 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.¹⁰³

F. Ownership Disclosure Requirements

62. The Commission specified in the *Broadcast 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.¹⁰⁴ 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

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

⁹⁸ 47 C.F.R. § 1.2105(a)(2)(ix).

⁹⁹ Section I.B.2. "Prohibition of Collusion and Compliance with Antitrust Laws," above.

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

¹⁰¹ Section I.B.2. "Prohibition of Collusion and Compliance with Antitrust Laws," above.

¹⁰² See, e.g., Todd Stuart Noordyk, *Memorandum Opinion and Order*, FCC 01-275, 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*, FCC 97-413, 13 FCC Rcd 374, 467 (1997) ("*Part 1 Third Report and Order*").

¹⁰³ *Id.*

¹⁰⁴ 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.

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.¹⁰⁵ 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 79 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.

G. Provisions Regarding Former and Current Defaulters

64. Current defaulters are not eligible to participate in Auction 79, but former defaulters can participate so long as they are otherwise qualified and, as discussed in Section III.D.3. below, make upfront payments that are fifty percent more than the normal upfront payment amounts.¹⁰⁶ An applicant is considered a "current defaulter" when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, are in default on any payment for any Commission construction permits or licenses (including down payments) or are delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for short-form applications. An applicant is considered a "former defaulter" when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, have defaulted on any Commission construction permit or license or been delinquent on any non-tax debt owed to any Federal agency, but have since remedied all such defaults and cured all of the outstanding non-tax delinquencies.

65. On the short-form application, an applicant must certify under penalty of perjury that it, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by Section 1.2110 of the Commission's rules,¹⁰⁷ are not in default on any payment for a Commission construction permit or license (including down payments) and that it is not delinquent on any non-tax debt owed to any Federal agency.¹⁰⁸ Each applicant must also state under penalty of perjury whether or not it, its affiliates, its controlling interests, and the affiliates of its controlling interests, 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.¹⁰⁹ Prospective applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including

¹⁰⁵ 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.

¹⁰⁶ 47 C.F.R. §§ 1.2105(a)(2)(x), 1.2105(b)(1), and 1.2106(a); see *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317 ¶ 42 and 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] FCC 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 47 C.F.R. § 1.2110.

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

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

monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution. These statements and certifications are prerequisites to submitting an application to participate in an FCC auction.

66. Applicants are encouraged to review the Bureaus' previous guidance on default and delinquency disclosure requirements in the context of the short-form application process.¹¹⁰ 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.¹¹¹ 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.¹¹² Parties are also encouraged to coordinate with the Commission's Office of Managing Director or the Wireless Telecommunications Bureau's Auctions and Spectrum Access Division staff if they have any questions about default and delinquency disclosure requirements.

67. 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.¹¹³ 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.¹¹⁴ 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.

68. 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

¹¹⁰ "WTB Reminds Prospective Broadband PCS Spectrum Auction Applicants of Default and Delinquency Disclosure Requirements," *Public Notice*, DA 04-3491, 19 FCC Rcd 21920 (2004) ("*Auction Default Disclosure Public Notice*"). This public notice (Report No. AUC-04-58-E) may be found at <http://wireless.fcc.gov/auctions/58/>.

¹¹¹ Letter to Cheryl A. Tritt, Esq., Morrison and Foerster, LLP, from Margaret Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, DA 04-3685, 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/>.

¹¹² Even where Commission rules expressly permit late payment, subject to payment of an additional late fee, and do not impose a final payment deadline, the Commission may in some cases issue a demand for payment by a date certain. See 47 C.F.R. § 1.1164(a). Failure to comply with the terms of a particular demand letter in the time period provided may render the subject debt delinquent, notwithstanding rules generally permitting late payment.

¹¹³ 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*, FCC 04-72, 19 FCC Rcd 6540 (2004) (implementing Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996)) ("*Debt Collection Report and Order*").

¹¹⁴ *Debt Collection Report and Order*, 19 FCC Rcd at 6541 n.11 (specifically mentions 47 C.F.R. §§ 1.2105(a)(2)(x) and (xi)).

Section 1.2105.¹¹⁵ 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 an auction or of its upfront payment obligation.

69. Moreover, prospective applicants in Auction 79 should note that any long-form applications filed after the close of bidding will be reviewed for compliance with the Commission's red light rule,¹¹⁶ and such review may result in the dismissal of a winning bidder's long-form application.¹¹⁷

H. Optional Applicant Status Identification

70. Applicants owned by members of minority groups and/or women, as defined in Section 1.2110(c)(3),¹¹⁸ and rural telephone companies, as defined in Section 1.2110(c)(4),¹¹⁹ may identify themselves regarding this status in filling out their short-form applications. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of "designated entities" in its auctions.¹²⁰

I. Minor Modifications to Short-Form Applications

71. After the deadline for filing short-form applications (FCC Form 175) at **6:00 p.m. ET on June 25, 2009**, applicants are permitted to make only minor changes to their applications. Applicants are not permitted to make major modifications to their short-form applications (e.g., change their construction permit selections, change control of the applicant, change the certifying official, or claim eligibility for a higher percentage of bidding credit or change their identification of the application's proposed facilities as noncommercial educational) after the short-form application deadline.¹²¹ Thus, any change in control of an applicant, resulting from a merger for example, will be considered a major modification to the applicant's short-form application, which will consequently be dismissed.¹²² Permissible minor changes include, among other things, 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) 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.¹²³

¹¹⁵ *Auction Default Disclosure Public Notice*, DA 04-3491, 19 FCC Rcd at 21920 (addressing relationship between Commission's Red Light Display System and short-form application default and delinquency disclosure requirements for auction applicants).

¹¹⁶ *Debt Collection Report and Order*, 19 FCC Rcd at 6540. See 47 C.F.R. § 1.1112.

¹¹⁷ Applicants that have their long-form application 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).

¹¹⁸ 47 C.F.R. § 1.2110(c)(3).

¹¹⁹ 47 C.F.R. § 1.2110(c)(4).

¹²⁰ Designated entities are defined as small businesses, businesses owned by members of minority groups and/or women, and rural telephone companies. See 47 C.F.R. § 1.2110(a).

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

¹²² We reiterate that, even if an applicant's short-form application is dismissed, the applicant would remain subject to the anti-collusion rule until the down-payment deadline, which will be established after the auction closes.

¹²³ See 47 C.F.R. § 1.917; see also 47 C.F.R. § 73.3513.

73. If an applicant wishes to make permissible minor changes to its short-form application, such changes should be made electronically to its short-form application using the FCC Auction System whenever possible. Applicants are reminded to 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.¹²⁴

74. An applicant cannot use the FCC Auction System outside of the initial and resubmission filing windows to make changes to its short-form application other than administrative changes (e.g. changing certain contact information). If these or other permissible minor changes need to be made outside of these windows, the applicant must submit a letter briefly summarizing the changes and subsequently update its short-form application in ISAS once the system is available. Moreover, after the filing window has closed, ISAS will not permit applicants to make certain changes, such as the applicant's legal classification and the identification of the application's proposed facilities as noncommercial educational.

75. Any letter describing changes to an applicant's short-form application should be submitted by e-mail to the following address: auction79@fcc.gov. The e-mail summarizing the changes must include a subject or caption referring to Auction 79 and the name of the applicant – for example, "RE: Changes to Auction 79 Short-Form Application of ABC Corp." The Bureaus request that parties format any attachments to e-mail as Adobe[®] Acrobat[®] (pdf) or Microsoft[®] Word documents. Questions about short-form application amendments should be directed to the Auctions and Spectrum Access Division at (202) 418-0660.

76. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System ("ECFS"), which was used for submitting comments regarding Auction 79.

J. Maintaining Current Information in Short-Form Applications

77. 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.¹²⁵ Changes that cause a loss of or reduction in the percentage of bidding credit specified on the originally submitted FCC Form 175 must be reported immediately.¹²⁶ If an amendment reporting substantial changes is a "major amendment," as defined by Section 1.2105, the major amendment will not be accepted and may result in the dismissal of the short-form application.¹²⁷

78. As noted above, after the short-form application filing deadline, applicants may make only minor changes to their short-form applications. 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, an applicant cannot update its short-form application using the FCC Auction System after the initial and resubmission filing windows close. If Section 1.65 submissions are needed after these windows close, applicants must submit a letter, briefly summarizing the changes, by e-mail at the following address:

¹²⁴ The Bureaus advise applicants to print and retain a copy of this confirmation page.

¹²⁵ 47 C.F.R. § 1.65.

¹²⁶ 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.

¹²⁷ 47 C.F.R. § 1.2105(b)(2).

auCTION79@fcc.gov. The e-mail summarizing the changes must include a subject or caption referring to Auction 79 and the name of the applicant. The Bureaus request that parties format any attachments to e-mail as Adobe[®] Acrobat[®] (pdf) or Microsoft[®] Word documents.

III. PRE-AUCTION PROCEDURES

A. Auction Seminar – June 16, 2009

79. On Tuesday, June 16, 2009, the Commission will conduct a seminar for parties interested in participating in Auction 79 at 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 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, please provide the information listed on Attachment E by fax, e-mail or telephone to the FCC by Friday, June 12, 2009. The seminar is free of charge.

81. For individuals who are unable to attend, a webcast of this seminar will be available from the FCC's Auction 79 web page at <http://wireless.fcc.gov/auCTIONS/79/>. Select the "Auction Seminar" link. The seminar webcast will also be archived for future viewing.

B. Short-Form Applications – Due Prior to 6:00 p.m. ET on June 25, 2009

82. In order to be eligible to bid in this auction, applicants must first follow the procedures set forth in Attachment B to this Public Notice to submit a short-form application (FCC Form 175) electronically via the FCC Auction System.¹²⁸ This application must be received at the Commission prior to 6:00 p.m. ET on June 25, 2009. **Late applications will not be accepted.** There is no application fee required when filing a FCC Form 175, but an applicant must submit a timely upfront payment to be eligible to bid.¹²⁹

83. Applications may generally be filed at any time beginning at noon ET on June 16, 2009, until the filing window closes at 6:00 p.m. ET on June 25, 2009. 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 June 25, 2009.

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

C. Application Processing and Minor Corrections

85. After the deadline for filing FCC Form 175 applications, the Commission will process all timely submitted applications to determine which are complete, and subsequently will issue a public notice identifying: (1) those applications that are complete; (2) those applications that are rejected; and (3) those applications that are incomplete because of minor defects that may be corrected. The public notice will include the deadline for resubmitting corrected applications.

¹²⁸ 47 C.F.R. § 1.2105(a).

¹²⁹ See Section III.D. "Upfront Payments – Due July 31, 2009," below.