



# PUBLIC NOTICE

Federal Communications Commission  
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## AUCTION OF FM BROADCAST CONSTRUCTION PERMITS

### 114 Bidders Qualified to Participate in Auction No. 70

#### Report No. AUC-07-70-E (Auction No. 70)

In this Public Notice, the Media and Wireless Telecommunications Bureaus (the “Bureaus”) identify 114 applicants found to be qualified to bid in the upcoming auction of FM broadcast construction permits (Auction No. 70).<sup>1</sup> Bidding in Auction No. 70 is scheduled to begin on Wednesday, March 7, 2007. In addition, this Public Notice contains bidding instructions and other important information regarding Auction No. 70.

**Attachment A** lists the name of each of the 114 qualified bidders, their upfront payments and maximum eligibility in bidding units.

**Attachment B** lists the construction permits selected on each qualified bidder’s short-form application (FCC Form 175). For qualified bidders claiming a new entrant bidding credit, the applicant’s bidding percentage for each construction permit is indicated as 35 percent or 25 percent.<sup>2</sup>

**Attachment C** lists each applicant that submitted a short-form application, but did not qualify to bid in this auction, except for six applicants previously disqualified from participation in Auction No. 70.<sup>3</sup> Each

<sup>1</sup> 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, AU Docket No. 06-170, *Public Notice*, 21 FCC Rcd 12957 (WTB/MB 2006) (“*Auction No. 70 Procedures Public Notice*”); see also Removal of FM Broadcast Construction Permit from Auction No. 70, *Public Notice*, DA 06-2466, (WTB/MB Dec. 5, 2006).

<sup>2</sup> The new entrant bidding credit is not available to an applicant if it, and/or any individual or entity with an attributable interest in the applicant, has an attributable interest in more than three media of mass communications or any existing media of mass communications in the “same area” as the broadcast facility proposed by the applicant. 47 C.F.R. § 73.5007. See 47 C.F.R. § 73.5007(b)(1)-(3) for the specific service definitions of “same area.”

<sup>3</sup> As announced in Auction of FM Broadcast Construction Permits, Status of Short-Form Applications to Participate in Auction No. 70, *Public Notice*, DA 07-190 (WTB/MB Jan. 26, 2007) (“*Auction No. 70 Status Public Notice*”), these six applicants checked “yes” to the Noncommercial Educational election question on the Form 175 and the applications were mutually exclusive with applications for FM commercial stations in Auction No. 70. Pursuant to 47 C.F.R. § 73.5002(b), these six applications were rejected and the applicants are excluded from further participation in Auction No. 70. Radio Training Network, Inc. has filed a petition seeking reconsideration of the

applicant listed in Attachment C did not submit the required upfront payment.<sup>4</sup> The applicants not qualified in Auction No. 70 are reminded that they remain subject to the Commission's rules prohibiting collusion in Commission auctions.<sup>5</sup>

Designation of an applicant as qualified to bid in the auction indicates that the applicant has provided the certifications and information concerning its qualifications for participation in the auction as required by the Commission's competitive bidding rules. Under the Commission's two-phased auction application process, a winning bidder must submit a long-form application after the close of the auction to demonstrate its qualifications to hold a Commission license and, if a bidding credit is requested, its eligibility for the requested bidding credit.<sup>6</sup> Thus, a determination that a short-form application is complete and complies with the Commission's competitive bidding rules and policies is not determinative of an applicant's qualifications to hold a license or entitlement to a bidding credit.<sup>7</sup>

In order to participate effectively in the auction, qualified bidders should again familiarize themselves with the auction rules, procedures, and other information described in the *Auction No. 70 Procedures Public Notice* and subsequent public notices.<sup>8</sup> These public notices and other documents related to Auction No. 70 are available on the Commission's auctions website at <http://wireless.fcc.gov/auctions/>. The following information provides additional guidance.

To assist in analyzing Auction No. 70, a file will be made available to the public on the Auction No. 70 web site. This file will list each construction permit each qualified bidder in Auction No. 70 selected on its FCC Form 175. The file will be located under the subheading "General Information" on the Auction No. 70 web site (<http://wireless.fcc.gov/auctions/70>).

**Registration.** Qualified bidders have been automatically registered for the auction. Registration materials will be sent to the bidder's contact person at the contact address identified in the bidder's short-form application. Upon receipt, each bidder should be in possession of the following:

- At least two RSA SecurID<sup>®</sup> tokens
- Integrated Spectrum Auction System (ISAS) Bidder's Guide
- FCC Auction Bidder Line telephone number

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rejection of its short-form application. Petition for Reconsideration or Waiver of the Rules for Reinstatement of Radio Training Network, Inc. (filed Jan. 30, 2007). That request is pending.

<sup>4</sup> Scott M. Knoblauch had requested waiver of 47 C.F.R. § 73.5007 and had claimed eligibility for a 35 percent new entrant bidding credit in his short form application. The waiver request was denied on February 8, 2007. See Letter to Scott M. Knoblauch, DA 07-608 (WTB/MB Feb. 8, 2007). Scott M. Knoblauch did not qualify as a bidder in Auction No. 70.

<sup>5</sup> See 47 C.F.R. § 1.2105(c); *Auction No. 70 Procedures Public Notice*, 21 FCC Rcd at 12961-64 ¶¶ 6-14.

<sup>6</sup> See 47 C.F.R. §§ 1.2107 – 1.2109, 73.5002 – 73.5009; see also Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348, 2376-77 ¶¶ 163-168 (1994).

<sup>7</sup> Requests concerning application qualifications and eligibility for the new entrant bidding credit are generally considered after the auction during the long-form application process. In the event that an applicant is found unqualified to be a Commission licensee or ineligible for claimed designated entity benefits, it will be liable for any obligations incurred as a result of its participation in the auction. See generally 47 C.F.R. § 1.2109.

<sup>8</sup> See *Auction No. 70 Procedures Public Notice*, 21 FCC Rcd at 12957; see also *Auction No. 70 Status Public Notice*.

Qualified bidders are solely responsible for ensuring the security of their computer systems and their registration materials and for ensuring that only authorized bidders place bids on their behalf. The Commission assumes no responsibility or liability for these matters.

**WARNING:** Any unauthorized entity accessing or tampering with an FCC or other government computer will be prosecuted to the full extent of the law.

Any qualified bidder listed in Attachment A of this public notice that has not received the registration mailing **by 12:00 p.m. Eastern Time (ET) on Thursday, March 1, 2007**, must contact the Auctions Hotline directly at (717) 338-2868. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Receipt of the registration mailing is critical to participating in both the mock auction and the actual auction, and it is the responsibility of each qualified bidder to ensure that all registration information has been received.

**Registration Material Replacement.** In the event that a bidder's SecurID® tokens are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacement registration material. Qualified bidders requiring replacement of these items must call Technical Support at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY).

**Bidding.** As stated in the *Broadcast Competitive Bidding First Report and Order*, all pending mutually exclusive applications for broadcast services must be resolved through a system of competitive bidding.<sup>9</sup> When two or more short-form applications are accepted for filing for the same construction permit in Auction No. 70, mutual exclusivity exists for auction purposes.<sup>10</sup> Once mutual exclusivity exists for auction purposes, even if only one applicant for a particular construction permit becomes a qualified bidder, that applicant is required to submit a bid in order to obtain the construction permit.<sup>11</sup>

The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. The Integrated Spectrum Auction System ("ISAS" or "FCC Auction System") can be accessed at <http://auctions.fcc.gov> or <http://auctions2.fcc.gov>. Bidders are reminded that Apple® Mac OS® is not currently supported.

Qualified bidders are permitted to bid telephonically or electronically. In either case, each authorized bidder must have his or her own SecurID® token. Applicants with only one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. For security purposes, the SecurID® tokens and the instructions for using them are only mailed to the contact person at the contact address listed on the applicant's short-form application. Please note that each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 70.

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<sup>9</sup> Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, *First Report and Order*, 13 FCC Rcd 15920, 15923-25 ¶¶ 7-12 (1998) ("*Broadcast Competitive Bidding First Report and Order*"; *recon. denied*, 14 FCC Rcd 8724, *modified*, 14 FCC Rcd 12541 (1999); *review denied*, *Orion Communications Ltd. v. FCC*, 213 F.3d 761 (D.C. Cir. 2000) (per curiam); *review denied*, *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).

<sup>10</sup> *Broadcast Competitive Bidding First Report and Order*, 13 FCC Rcd at 15978-80 ¶¶ 149-154. *See also* Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Second Report and Order*, 9 FCC Rcd 2348, 2376 ¶ 165 (1994).

<sup>11</sup> Any applicant that submits a short-form application that is accepted for filing but fails to timely submit an upfront payment will retain its place in the relevant mutually exclusive ("MX") group but, having purchased no bidding eligibility, will not be eligible to bid. *See Auction No. 70 Procedures Public Notice*, 21 FCC Rcd at 12960, n. 9

In their registration materials, all qualified bidders will be supplied with a telephone number for the Auction Bidder Line. Bidders choosing to bid telephonically are required to use this telephone number to place bids. Bidders choosing to bid electronically may use this telephone number as an alternate method of bidding. Telephonic bidders are reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round.<sup>12</sup>

Please note that the SecurID® tokens can be recycled, and we strongly encourage bidders to return the tokens to the FCC once the auction closes. We will provide pre-addressed envelopes that bidders may use to return the tokens.

**Bidding Contingency Plan.** Bidders should develop comprehensive contingency plans that can be quickly implemented if bidders experience difficulty participating in the auction. While the FCC will correct any problems within Commission-controlled facilities, bidders are solely responsible for anticipating and overcoming problems such as bidder computer or other technical failures, loss of or problems with data connections, telephone service interruptions, adverse local weather conditions, unavailability of authorized bidders, or the loss or breach of confidential security codes.

**Minimum Opening Bid Amounts.** There will be a minimum opening bid amount for each construction permit in Auction No. 70, calculated in accordance with the factors previously announced.<sup>13</sup> The minimum opening bid amount is subject to reduction at the discretion of the Bureaus. The Bureaus will not entertain requests to lower minimum opening bid amounts. The Bureaus will exercise this discretion, if at all, independent of any communications from bidders.

**Announcements.** The Commission will post pertinent auction information as announcements in the FCC Auction System. Bidders should routinely check for announcements each time they enter the FCC Auction System and should read this information carefully.

**Bidding Schedule.** On Wednesday, March 7, 2007, there will be two rounds of bidding as follows:

|               |            |   |               |
|---------------|------------|---|---------------|
| Bidding Round | 10:00 a.m. | - | 11:30 a.m. ET |
| Bidding Round | 1:30 p.m.  | - | 3:00 p.m. ET  |

The bidding schedule for Thursday, March 8, 2007, and continuing until further notice, will be:

|               |            |   |               |
|---------------|------------|---|---------------|
| Bidding Round | 10:00 a.m. | - | 11:00 a.m. ET |
| Bidding Round | 12:00 p.m. | - | 1:00 p.m. ET  |
| Bidding Round | 2:00 p.m.  | - | 3:00 p.m. ET  |
| Bidding Round | 4:00 p.m.  | - | 5:00 p.m. ET  |

The Bureaus will set the pace of the auction based upon monitoring of the bidding and assessment of the auction's progress. All subsequent schedule changes will be made by announcement via the FCC Auction System during the course of the auction.

**Round Results.** Round results will be available approximately 10 minutes after the close of each round.

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<sup>12</sup> The length of a call to place a telephonic bid may vary; please allow a minimum of 10 minutes.

<sup>13</sup> *Auction No. 70 Procedures Public Notice*, 21 FCC Rcd at 12990-92 ¶¶ 138-143. Attachment A of the *Auction No. 70 Procedures Public Notice* sets forth the minimum opening bid amounts for each construction permit offered in Auction No. 70.

**Monitoring Round Results.** Detailed instructions for reviewing and downloading round results are provided in the Integrated Spectrum Auction System (ISAS) Bidder’s Guide. The bidder’s guide is included with qualified bidders’ registration materials and is available in electronic form through the “HELP” link in the FCC Auction System.

When a bidder is logged in to the FCC Auction System, it will have a selection of “My Bid Reports” available to it on the FCC Auction System’s bidding page. Information in “My Bid Reports” allows only the respective bidder to view all of its actions in the current and previous rounds of the auction.

**Watchlists.** The FCC Auction System sets up for each qualified bidder a default watchlist, called All Permits, that contains every construction permit selected on the bidder’s short-form application. Qualified bidders may create additional watchlists containing construction permits of their own choosing, and construction permits may appear in multiple watchlists. Bidders may access the FCC Auction System and begin creating their watchlists upon receipt of their SecurID® tokens. Instructions for creating watchlists will be provided in the Integrated Spectrum Auction System (ISAS) Bidder’s Guide. Please note that watchlists created in the mock auction will not display in Auction No. 70.

**Bidder Questions during the Auction.** FCC auction staff and technical support staff will be available during the auction to answer questions from authorized bidders. When appropriate, a bidder should identify itself as a bidder with a time-sensitive auction question when calling. Help can be obtained through the following options:

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| FCC Auction Bidder Line<br>(telephonic bidding, auction conduct questions) | Use Auction Bidder Line telephone number<br>supplied in registration mailing |
| FCC Technical Support<br>(all technical questions, software and hardware)  | (877) 480-3201, option nine; (202) 414-1250; or<br>(202) 414-1255 (TTY)      |
| FCC Auctions and Spectrum Access Division<br>(legal questions only)        | (202) 418-0660   |

The FCC Auction System includes a function for bidders to submit suggestions to the FCC, but this is **not** an appropriate mechanism for asking time-sensitive questions that may need an immediate response, such as questions about auction procedures or other issues. Such questions should be directed to one of the telephone numbers listed above.

**Amendments to Short-Form Applications.** Applicants are responsible for maintaining the accuracy and completeness of information furnished in their short-form applications, including their attachments.<sup>14</sup> Applicants should amend their short-form applications as promptly as possible, but no later than ten business days from the occurrence of a reportable change. Any change affecting eligibility for the new entrant bidding credit, insofar as it results in the diminishment or loss of the bidding credit claimed on the short-form application, must be reported immediately. Applicants must modify their short-form application electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: [auction70@fcc.gov](mailto:auction70@fcc.gov). Questions about changes should be directed to Lynne Milne at (202) 418-0660.

As described in the Commission’s rules, applicants may make only minor corrections to their short-form applications (e.g., changing an authorized bidder or facsimile number).<sup>15</sup> Major modifications (e.g.,

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<sup>14</sup> See 47 C.F.R. § 1.65.

<sup>15</sup> See 47 C.F.R. § 1.2105(b).

construction permit selection changes, newly claimed or increased new entrant bidding credit, or changing control of the applicant) will not be accepted.<sup>16</sup> Bidders are reminded that any change affecting eligibility for the new entrant bidding credit, insofar as it results in the diminishment or loss of the new entrant bidding credit claimed on the short-form application, must be clearly stated in the bidder's amendment and in the summary letter referenced above. In such cases, the Commission will make appropriate adjustments in the new entrant bidding credit prior to the computation of any down and final payment amounts due.<sup>17</sup>

**Due Diligence.** Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the broadcast construction permits being offered in this auction. The Commission makes no representations or warranties about the use of this spectrum for particular services. Potential bidders are strongly encouraged to conduct their own research prior to the beginning of competitive bidding in Auction No. 70 in order to determine the existence of pending administrative or judicial proceedings, pleadings, applications, or authorizations that might affect their decisions regarding participation in the auction. Potential bidders are also 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.<sup>18</sup> Bidders are also responsible for reviewing all pending rulemaking petitions and open proceedings, as well as reconsideration petitions or waiver requests, that might affect the FM allotment(s) on which they plan to bid. Additionally, potential bidders should perform technical analyses sufficient to assure themselves that, should they prevail in competitive bidding for a particular FM allotment, they will be able to build and operate facilities that will comply fully with the Commission's technical and legal requirements. Participants in Auction No. 70 are strongly encouraged to continue such research during the auction.

Each potential bidder is solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect the bidder's ability to bid on, otherwise acquire, or make use of construction permits (and subsequent licenses) available in Auction No. 70. For further details regarding due diligence, qualified bidders should refer to the *Auction No. 70 Procedures Public Notice* under Section I.B.3.<sup>19</sup>

**Mock Auction.** On Monday, March 5, 2007, the Bureaus will conduct a mock auction, which will allow qualified bidders to familiarize themselves with the FCC Auction System. Only qualified bidders will be permitted to participate in the mock auction. The Bureaus will conduct this auction over the Internet, and telephonic bidding will also be available.

Qualified bidders can access the mock auction at <http://auctions.fcc.gov> or <http://auctions2.fcc.gov>. Bidders choosing to bid electronically are advised to review the Integrated Spectrum Auction System (ISAS) Bidder's Guide provided in the registration materials. Qualified bidders that wish to place bids telephonically should use the telephone number supplied in the Auction No. 70 registration materials.

The mock auction will include only 20 of the 120 construction permits: FM502A –FM 521A, and will follow the rules governing the actual auction. The mock auction will be identified as Mock Auction No. 74. The FCC Auction System will assume that each bidder applied for all 20 construction permits. The FCC Auction System will also assume that each bidder submitted an upfront payment sufficient to give the bidder initial (maximum) eligibility (as measured in bidding units) to bid on all 20 of those

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<sup>16</sup> *Id.*

<sup>17</sup> See 47 C.F.R. §§ 73.5007 and 73.5008.

<sup>18</sup> See 47 C.F.R. § 73.202.

<sup>19</sup> *Auction No. 70 Procedures Public Notice*, 21 FCC Rcd at 12964-66 ¶¶ 15-25.

construction permits. The mock auction will simulate the start of the auction, and each bidder will be required to be active on 75 percent of its current bidding eligibility. If a bidder does not meet this requirement, it will have a waiver automatically applied (if the bidder has any waivers available), or its current eligibility will be permanently reduced (if the bidder has no waivers remaining), possibly eliminating the bidder from further bidding in the mock auction.

The mock auction bidding schedule for Monday, March 5, 2007, will be:

|         |            |   |               |
|---------|------------|---|---------------|
| Round 1 | 10:00 a.m. | - | 11:00 a.m. ET |
| Round 2 | 12:00 p.m. | - | 1:00 p.m. ET  |
| Round 3 | 2:30 p.m.  | - | 3:00 p.m. ET  |
| Round 4 | 3:30 p.m.  | - | 4:00 p.m. ET  |
| Round 5 | 4:15 p.m.  | - | 4:30 p.m. ET  |

**Prohibition of Collusion.** Applicants are reminded that Sections 1.2105(c) and 73.5002(d) of the Commission’s rules prohibits applicants for any of the same geographic license areas from communicating with each other about bids, bidding strategies, or settlements unless they have identified each other on their short-form applications as parties with which they have entered into agreements under Section 1.2105(a)(2)(viii).<sup>20</sup> The “geographic license area” is the market designation of the particular service.<sup>21</sup> For the FM service, the market designation is the particular vacant FM allotment (e.g., New Hope, Alabama, Channel 278, Market FM502-A). In Auction No. 70, the rule applies to applicants applying for any of the same FM allotments. Therefore, applicants that have applied to bid for an FM construction permit for the same allotment have been precluded from engaging in prohibited communications after the short-form application filing deadline. 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 on which either is eligible to bid. For Auction No. 70, this prohibition became effective at the short-form application filing deadline on Tuesday, December 19, 2006, and will end at the post-auction down payment deadline, which will be announced in a future public notice.<sup>22</sup> **This prohibition applies to all applicants regardless of whether such applicants became qualified bidders or actually bid.**<sup>23</sup> The prohibition continues for all applicants until the down payment deadline regardless of whether an applicant became a winning bidder and needs to make an additional payment by the down payment deadline.

For purposes of this prohibition, Section 1.2105(c)(7)(i) defines “applicant” to include all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling

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<sup>20</sup> 47 C.F.R. §§ 1.2105(a)(2)(viii), 1.2105(c)(1), and 73.5002(d). See *Auction No. 70 Procedures Public Notice*, 21 FCC Rcd at 12961-64 ¶¶ 6-14, for a discussion of the anti-collusion rules for Auction No. 70. See also Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures, *Seventh Report and Order*, 16 FCC Rcd 17546 (2001) (“*Part 1 Seventh Report and Order*”); see also *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd 15293, 15297-98 ¶¶ 7-8 (2000).

<sup>21</sup> See generally *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17549 n.12.

<sup>22</sup> 47 C.F.R. § 1.2105(c)(1).

<sup>23</sup> See, e.g., *Star Wireless, LLC, Forfeiture Order*, 19 FCC Rcd 18626 (EB 2004) (imposing forfeiture in the amount of \$100,000 for violation of the anti-collusion rule, even though an applicant never made an upfront payment for the auction and was not listed as a qualified bidder); *Northeast Communications of Wisconsin, LLC, Forfeiture Order*, 19 FCC Rcd 18635 (EB 2004) (imposing forfeiture in the amount of \$100,000 for violation of the anti-collusion rule, even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder); Letter to Robert Pettit, Esq., from Margaret W. Wiener, 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).

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.<sup>24</sup> We note that a violation of the anti-collusion rule could occur when an individual serves as an officer or director for two or more competing applicants.<sup>25</sup>

If parties had agreed in principle on all material terms of a bidding agreement(s), those parties must have been identified on the short-form application as required by Section 1.2105(c), even if the agreement had not been reduced to writing. If parties had not agreed in principle by the short-form application filing deadline, an applicant should not have included the names of those parties on its application and must not have continued negotiations or communications prohibited by the anti-collusion rule.<sup>26</sup>

Applicants competing for construction permits for any of the same FM allotments must not communicate directly or indirectly about bids or bidding strategy.<sup>27</sup> Applicants competing for construction permits for any of the same FM allotments 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 the applicants he or she is authorized to represent in the auction. A violation similarly could occur if the authorized bidders are different individuals employed by the same organization (e.g., law firm or consulting firm). In such a case, at a minimum, applicants should take precautionary steps to prevent communication between authorized bidders.<sup>28</sup> However, the Bureaus caution that merely filing a certifying statement as part of the short-form application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted.<sup>29</sup>

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.<sup>30</sup> Thus, Section 1.65 requires auction applicants that engage in a communication of bids or bidding strategies that results in a bidding agreement, arrangement, or understanding not already identified on their short-form applications to promptly disclose any such agreement, arrangement or understanding to the Commission by amending their pending applications. In addition, Section 1.2105(c)(6) requires all auction applicants to report any prohibited discussion or disclosure regarding bids or bidding strategy to the Commission in writing immediately, but in no case later than five business days after the communication occurs, even if the communication does not result in an agreement or understanding regarding bids or bidding strategy that must be reported under Section 1.65.<sup>31</sup>

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<sup>24</sup> 47 C.F.R. § 1.2105(c)(7)(i).

<sup>25</sup> See Letter to Colby M. May from Barbara A. Kreisman and Margaret W. Wiener, Division Chiefs, 20 FCC Rcd 14648 (WTB/MB 2005) (finding apparent violation of anti-collusion rule where applicants with mutually-exclusive station proposals shared same individual as an officer and director and reported no bidding agreements).

<sup>26</sup> See "Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules," *Public Notice*, 11 FCC Rcd 9645 (1995).

<sup>27</sup> See *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17549-50 ¶ 6.

<sup>28</sup> See Application of Nevada Wireless for a License to Provide 800 MHz Specialized Mobile Radio Service in the Farmington, NM-CO Economic Area (EA-155) Frequency Band A, *Memorandum Opinion and Order*, 13 FCC Rcd 11973, 11977 ¶ 11 (1998).

<sup>29</sup> *Id.* at 11978 ¶ 13.

<sup>30</sup> 47 C.F.R. § 1.65.

<sup>31</sup> 47 C.F.R. §§ 1.65, 1.2105(c)(6); see also *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17555 ¶ 17.

Applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in all bidding consortia, joint ventures, partnerships, or other agreements or arrangements relating to the competitive bidding process into which they have entered with any other party or parties.<sup>32</sup> Any applicant found to have violated the anti-collusion rule may be subject to sanctions.<sup>33</sup> In addition, applicants are reminded that they are subject to the antitrust laws, which are designed to prevent anti-competitive behavior in the marketplace. If an applicant is found to have violated the antitrust laws in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions.<sup>34</sup>

**Submission of Auction-Related Filings.** As noted above, applicants seeking to amend their short-form applications during the auction must make modifications to their short-form applications electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: [auction70@fcc.gov](mailto:auction70@fcc.gov).

Parties wishing to submit requests, complaints, or other information concerning Auction No. 70 also should send a copy by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: [auction70@fcc.gov](mailto:auction70@fcc.gov), in addition to following other procedures prescribed by the Commission's rules. The Commission occasionally receives complaints regarding certain bidders and requests to suspend bidding during an auction. While the Commission reserves the right to take appropriate action during an auction to preserve the integrity of the auction process, it is generally our practice to address any such allegations only after the winning bidders have submitted their long-form applications, when there is greater opportunity for investigation of such allegations, if warranted. The Commission will not investigate any complaints or allegations that are not accompanied by full contact information, including name, address, and telephone number, for the complaining party or parties.

Finally, parties wishing to make suggestions concerning Auction No. 70 or future auctions are encouraged to present such ideas using the suggestion feature of the FCC Auction System. (As mentioned above, this feature is not an appropriate mechanism for posing time-sensitive questions that need an immediate response.) Commission staff considers all suggestions, but may not always provide an individualized response.

**Down Payments and Final Payments.** Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction No. 70 to 20 percent of the net amount of its winning bids (gross bids less any applicable new entrant bidding credits).<sup>35</sup> Each winning bidder will be required to submit the balance of the net amount of its winning bids within ten business days after the deadline for submitting down payments.<sup>36</sup>

**Long-Form Applications.** Within thirty days after release of the auction closing notice, each winning bidder must electronically submit a properly completed long-form application (FCC Form 301, Application for FM Construction Permit), including required exhibits, for each construction permit that it

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<sup>32</sup> See 47 C.F.R. § 1.2107(d).

<sup>33</sup> See 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

<sup>34</sup> See 47 C.F.R. § 1.2109(d).

<sup>35</sup> See 47 C.F.R. § 1.2107(b).

<sup>36</sup> See 47 C.F.R. §§ 1.2109, 73.3573, 73.5003, and 73.5006. See also Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, WT Docket No. 05-211, *Report and Order*, 21 FCC Rcd 891 (2006), petitions for recon. pending.

won in Auction No. 70.<sup>37</sup> The electronic submission of FCC Form 301 must be accompanied by the applicable filing fee.<sup>38</sup> Applicants that claim new entrant status should be aware that, following the auction, they will be required to include an exhibit demonstrating their eligibility for the bidding credit.<sup>39</sup> Further filing instructions will be provided to auction winners at the close of the auction.<sup>40</sup>

For additional information regarding this public notice, please contact:

Auctions and Spectrum Access Division, Wireless Telecommunications Bureau:

For bidding and software questions: Jeff Crooks at (202) 418-0660

For bidding, auction procedures, and general filing questions: Linda Sanderson at (717) 338-2868

For legal questions: Lynne Milne at (202) 418-0660

Audio Division, Media Bureau:

For legal and service rule questions: Lisa Scanlan or Thomas Nessinger at (202) 418-2700

For technical questions about software or hardware, please contact FCC Technical Support at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY).

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<sup>37</sup> See 47 C.F.R. §§ 1.2107 and 73.5005. See also *Broadcast Competitive Bidding First Report and Order*, 13 FCC Rcd at 15984-85 ¶¶ 163-64.

<sup>38</sup> See *Broadcast Competitive Bidding First Report and Order*, 13 FCC Rcd at 15984 ¶ 164.

<sup>39</sup> See 47 C.F.R. §§ 73.5005, 73.5007 and 73.5008. See also Instructions for Form 301, Application for Construction Permit for Commercial Broadcast Station, Instructions for Section II: Legal Information, paragraph G: Item 10: Auction Authorization for auction-related exhibit filing requirements.

<sup>40</sup> See 47 C.F.R. §§ 1.2107, 1.2109(a), 73.3573, 73.5003, 73.5005, and 73.5006.