policy requires all networks requesting preemption flexibility to file a request with the Media Bureau by August 1 of each year. The request identifies the number of preemptions the network expects, when the program will be rescheduled, whether the rescheduled time is the program's second home, and the network's plan to notify viewers of the schedule change. Preemption flexibility requests are not mandatory filings. They are requests that may be filed by networks seeking preemption flexibility.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

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FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 14–252; GN Docket No. 12–268; WT Docket No. 12–269; DA 15–1129]

Guidance Regarding the Prohibition of Certain Communications During the Incentive Auction, Auction 1000

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The *Auction 1000 Prohibited Communications Guidance PN* addresses the application of the Federal Communications Commission (Commission) rules prohibiting certain communications during the broadcast television spectrum incentive auction and related Auction 1000 issues. This document also clarifies certain aspects of the rules that apply to applicants in both the reverse and the forward auctions.

FOR FURTHER INFORMATION CONTACT: Wireless Telecommunications Bureau, Auctions and Spectrum Access Division: Erik Salovaara at (202) 418–0660 or *Erik.Salovaara@fcc.gov* for informal guidance on the applicability of the prohibited communications rules.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction 1000 Prohibited Communication Guidance Pubic Notice (PN),* AU Docket No. 14–252, GN Docket No. 12–268, WT Docket No. 14–252, DA 15–1129, released on October 6, 2015. The complete text of this document is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. ET Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC's Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The complete text is also available on the Commission's Web site at *http://wireless.fcc.gov,* or by using the search function on the ECFS Web page at *http://www.fcc.gov/cgb/ecfs/.*

I. Introduction

1. The Auction 1000 Prohibited Communications Guidance PN addresses the application of the Commission's rules prohibiting certain communications during the broadcast television spectrum incentive auction, Auction 1000, and related issues. The rules apply to applicants in both the reverse and the forward auction. In response to numerous questions on this topic, the Commission's Wireless Telecommunications Bureau (Bureau) also takes this opportunity to clarify certain aspects of the rules. Finally, the Bureau discusses the applicability of the antitrust laws and administrative issues.

II. The Reverse Auction Rule Prohibiting Certain Communications

A. Background

2. 47 CFR 1.2205(b) provides that, subject to specified exceptions, ''beginning on the deadline for submitting applications to participate in the reverse auction and until the results of the incentive auction are announced by public notice, all full power and Class A broadcast television licensees are prohibited from communicating directly or indirectly any incentive auction applicant's bids or bidding strategies to any other full power or Class A broadcast television licensee or to any forward auction applicant.'' For purposes of the rule, a full power or a Class A broadcast television licensee includes all controlling interests in the licensee, and all officers, directors, and governing board members of the licensee. With respect to the bids and bidding strategies that are the focus of the rule, ''an incentive auction applicant'' is the party identified as the applicant in an application to participate in either the reverse or forward auction. A forward auction applicant includes all controlling interests in the entity applying to participate in the forward auction, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application, and all officers and directors of that entity. Generally, a party that submits an application becomes an applicant under this rule at the deadline for submitting applications to participate in the reverse auction, and for purposes of the rule that party's status does not change based on subsequent developments during the auction process. The prohibition on communicating directly or indirectly includes public disclosures as well as private communications.

3. 47 CFR 1.2205(b) applies solely to communications that directly or indirectly communicate an incentive auction applicant's bids or bidding strategies. The Commission has emphasized that the rule is limited in scope and only prohibits disclosure of information that affects, or has the potential to affect, bids and bidding strategies. Business discussions and negotiations that are *unrelated* to bids and bidding strategies and that do not convey information about bids and bidding strategies are not prohibited by the rule.

4. There are three exceptions to 47 CFR 1.2205(b) under which communications regarding bids or bidding strategies are permissible. Under the first, such communications between covered broadcast licensees are permissible if the licensees share a common controlling interest, director, officer, or governing board member as of the deadline for submitting applications to participate in the reverse auction. The second exception permits such communications between a broadcast licensee and a forward auction applicant if a controlling interest, director, officer or governing board member of the broadcast licensee is also a controlling interest, director, officer, or holder of any 10 percent or greater ownership interest in the forward auction applicant as of the deadline for submitting application to participate in the reverse auction. The third exception permits such communications between broadcast licensees that are parties to a channel sharing agreement that was executed prior to the deadline for submitting applications to participate in the reverse auction and that was disclosed on an application to participate in the reverse auction.

B. Discussion

5. Overview. The Commission has previously explained that the rule prohibiting certain communications should result in minimal intrusion into broadcasters' routine business practices, since covered television licensees may structure their business practices to avoid violations. The Bureau recognizes that broadcast licensees engage in a myriad of business arrangements with one another, or with affiliated entities, that are not directly related to bids and bidding strategies in the incentive auction. Such arrangements include, but are not limited to, network affiliation

agreements, retransmission consent agreements, and syndicated exclusivity arrangements, as well as tower sharing or other agreements related to shared physical facilities. Broadcasters also routinely engage in financial undertakings that may be affected by their auction activities, such as raising funds from lenders or, in the case of noncommercial broadcasters, from the public or underwriters. The Bureau provides guidance regarding the applicability of the reverse auction rule prohibiting certain communications during the ''quiet period'' covered by the rule to enable broadcasters to carry on business as usual to the fullest extent possible during the quiet period while complying with the rule.

6. Communicating Merely Whether a Licensee Has or Has Not Applied to Participate Does Not Violate the Rule. Communicating directly or indirectly that a licensee has or has not filed an application to participate in the reverse auction does not constitute communication regarding an applicant's bids or bidding strategies and therefore does not violate the reverse auction rule prohibiting certain communications. Filing an application is a prerequisite to bidding in the reverse auction, but the mere fact that an application has been filed does not require the applicant to bid, nor does it reveal an applicant's specific bids or bidding strategies, *e.g.,* the applicant's selected bid options, an applicant's decision to switch bid options during the course of the bidding, or an applicant's decision to drop out of the bidding.

7. Accordingly, a licensee may explain in the course of its business communications that it has applied to participate in the auction, for example, as the basis for seeking a short-term extension of an agreement rather than a full term renewal or in communications with legislators. Alternatively, a licensee seeking a multi-year contract may state that it has not applied. Noncommercial broadcasters may refer to their decision to apply or not to apply to participate in the auction when engaging in fundraising activities, including public pledge drives and private discussions with existing and potential donors. Such communications would not violate the rule. Moreover, while another broadcast licensee or forward auction applicant might attempt to infer specific bids or bidding strategies based solely on a licensee's status as an applicant, such an inference without more support does not constitute a communication regarding the applicant's bids or bidding strategies.

8. Communicating How a Licensee Will Participate in the Auction Is Prohibited by the Rule. In contrast to communications solely about whether or not a licensee has applied to participate in the auction, communications regarding the specific nature of a licensee's participation, including without limitation the bid options or bidding actions that have been or will be selected or taken, may convey bids and bidding strategy and are therefore prohibited by the rule after the quiet period commences. Unlike the submission of an application, such communications convey information about specific bids or bidding strategies; some of these may represent irrevocable obligations or commitments by an applicant. The rule prohibits such communications whether direct or indirect, express or implied. An applicant that communicates details regarding its application or bidding actions, such as indicating which option or options it has selected or stating that it has dropped out of bidding, may be disclosing its bids and bidding strategy in violation of the rule. A communication concerning the existence or details of a channel sharing agreement during the quiet period is also potentially a disclosure in violation of the rule. The Commission recognizes that broadcasters will continue operations during the auction and any broadcaster, regardless of its bids or bidding strategies, may need to do so indefinitely after the auction. Accordingly, a broadcaster communicating that it will continue broadcasting does not thereby disclose any bids or bidding strategies, whether or not it is an applicant. For instance, a noncommercial station that states that it has applied to participate in the incentive auction and subsequently undertakes a pledge drive could lead others to draw an inference that the station intends to either channel share or move to a new band, or perhaps anticipates that it will not accept the prices ultimately offered in the auction. Merely undertaking the pledge drive does not, however, create a clear or reliable inference with respect to its particular strategy, and in connection with the pledge drive the station may state publicly that it will continue broadcasting after the auction.

9. Although communications regarding whether or not a broadcaster has applied to participate in the auction are permissible under the rule, licensees should take care when communicating about their applicant or non-applicant status that their communications does not convey or appear to convey information about specific bids or bidding strategies. For example, a communication that a broadcaster ''is not bidding'' in the auction, in contrast to ''is not an applicant,'' could constitute an apparent violation of the rule—and create issues with respect to any failure to make a violation report.

10. Routine Business Communications Do Not Violate the Rule if They Do Not Convey Bids or Bidding Strategies. If no prohibited communications occur during normal course transactions, other information communicated in the course of such transactions would not be considered communications regarding an applicant's bids or bidding strategies. Absent express statements of bids or bidding strategies, communications regarding legitimate, non-auction-related business topics are unlikely to support reliable inferences by other covered entities regarding bids or bidding strategies. While another broadcaster or forward auction applicant might attempt to infer bids or bidding strategies based on communications regarding a licensee's decision whether or not to apply to bid in the auction, circumstances make it unlikely that anyone will be able to reliably infer a covered broadcast licensee's detailed bids or bidding strategies from communications on other topics. While a bidder cannot control what inferences another covered entity may draw from the bidder's communication regarding whether or not it has applied to bid in the auction, *the bidder's* use of inferences or other indirect communication to convey information regarding bids or bidding strategy could constitute an apparent violation of the rule. So, for example, an applicant's statements or actions premised on continuing broadcast operations do not necessarily support an inference about the licensee's bids or bidding strategies in the auction. Conversely, a licensee might consider near term operational changes for any of several reasons, including auction-related ones (such as bidding to go off-air and cease operations, bidding to go off air to share a channel, changing its current operations to host another station), or for other reasons completely unrelated to the auction (such as plans to sell the station or change programming).

11. Moreover, no one can know with certainty what the outcome of the auction will be. Accordingly, no licensee can count on a bid being accepted, whether the bid is to go off-air and cease operations, to go off-air to share a channel, or to move to a new band. Non-applicants can count, of

course, on the fact that they will not relinquish spectrum usage rights in the auction. But even non-applicants may be subject to channel reassignment in the repacking process and cannot rule out the possibility of a sale or other transfer of their license in the wake of the auction. Consequently, a covered broadcaster that takes care not to communicate expressly about its bids or bidding strategies should be able to communicate with another covered party as needed for non-auction-related business purposes, even during the prohibition period, without violating the rule.

12. Communications With Third Parties. The prohibited communications rule prohibits only communications among covered parties (that is, eligible broadcast television licensees and forward auction applicants), not necessarily communications to third parties. During the period the prohibition on certain communications is in effect, covered parties may want or need to communicate bids or bidding strategies to third parties such as counsel, consultants or lenders. The rule does not prohibit such communications, provided that the covered entity takes any steps necessary to prevent the third party from becoming a conduit for communicating bids or bidding strategies to other covered parties.

13. Commission precedent provides guidance for how a covered party can guard against a third party becoming a conduit for prohibited communications to other covered parties. For instance, a licensee might require a third party, such as a lender, to sign a non-disclosure agreement before the licensee communicates any information regarding bids or bidding strategy to the third party. This approach might be useful where the third party needs to know the licensee's bids or bidding strategies but will not be advising other covered parties about bids or bidding strategies. For third parties that may advise multiple licensees on bids or bidding strategies, such as attorneys or auction consultants, firewalls and other compliance procedures should be implemented to help prevent such third parties from becoming conduits for the communication of bids or bidding strategies of one covered party to another.

14. Information firewalls or equivalent procedures are not an absolute defense against an alleged violation of the prohibited communications rule. As the Bureau has explained, however, such procedures are strongly encouraged because demonstrating that precautionary actions were taken places the respondent to claims of a violation in a stronger legal position. At the very least, claims of negligent ignorance of the situation can be rejected with some dispatch. In the *Nevada Wireless* case, for example, the parties did not certify in their application what measures had been taken to prevent communications between two attorneys in the same firm when each was listed as an authorized bidder by two different applicants. *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. After a claim was made that the applicants engaged in prohibited communications, an investigation was conducted. The parties produced sworn testimony, including a statement that a ''Chinese Wall'' was constructed between relevant attorneys at the firm. In addition, there was undisputed testimony that the attorney for one of the applicants was listed as a bidder solely in the event of emergency and in fact never learned any bidding information from the applicant. Even with such a record, the Bureau also looked at the bidding patterns in the auction before concluding that the parties did not coordinate their bidding.

15. Based in part on the foregoing precedent, the Mass Media Practice Committee (MMPC) of the Federal Communications Bar Association contends that an individual attorney or law firm may be informed of bids and bidding strategies by multiple clients covered by the reverse auction rule without becoming a conduit for prohibited communications so long as those attorneys do not reveal such information provided by one client to another client. The MMPC further asserts that the canons of ethics applicable to attorneys should provide the Commission with sufficient comfort that the effectiveness of its anti-collusion rule would not be compromised by attorneys possessing bids or bidding strategy information with respect to more than one client. The Bureau disagrees with MMPC's suggestion that the fact that an individual or law firm is subject to a canon of ethics should be sufficient, without more, to demonstrate that no violation has occurred. Other professionals also have raised this issue. *See, e.g., Ex Parte Filing of Terence P. Dunn, GN Docket 12–268 (filed Sept. 22, 2015).* This guidance applies to those other professionals as well. Other suggestions, *e.g.,* to revise the prohibited communication rule, delay the start of the auction, and hold a second auction for non-commercial stations, would require Congressional or Commission action and, therefore, exceed the scope of this Public Notice. For the same reasons, the Bureau declines proposals by J.H. Snider to revise the rules in various ways, *e.g.,* requiring additional personal certifications from chief officers of licensees and banning any and all communications among stations in the same local TV market. *See J.H. Snider Comments, AU Docket No. 14–252, at 1 (filed Feb. 24, 2015).* Under Commission precedent, the fact that an individual or law firm is subject to a canon of ethics will not, by itself, suffice to demonstrate that no violation has occurred or could have occurred. The Bureau notes that while a law firm taking appropriate precautions may represent more than one covered licensee that has bids or bidding strategies, in the case of an individual the objective precautionary measure of a firewall is not available. Thus, an individual possessing information regarding the bids and bidding strategies of more than one covered party could provide advice to another covered party that is influenced by the information he or she possesses, perhaps unintentionally, thereby resulting in a violation of the rule. The canons of ethics would not necessarily prevent this from happening. Whether a prohibited communication has taken place in a given case will depend on all of the facts pertaining to the case, including who possessed what information, what information was conveyed to whom, and the course of bidding in the auction. The Bureau cautions that an individual practitioner that holds bids or bidding information of more than one covered party presents a greater risk of engaging in such a communication.

16. Disclosures Required by Other Laws. Representatives of some potential reverse auction applicants have raised the concern that legal obligations to disclose information could result in a violation of the prohibited communications rule. For example, they have raised the concern that a non-commercial broadcaster might be required by state or local sunshine laws to publicly disclose its decision making, financial status, or operational plans, all of which might include reverse auction bids or bidding strategies. Given the limited duration of the prohibition period imposed by the rule and the customary sunshine law exemptions with respect to sensitive business information, however, such concerns may not be realized. If a licensee can

avoid communications that might violate the rule, it should refrain from those communications. In the event that a licensee believes that a particular disclosure required by law or regulation in fact will result in a violation of the rule, the Commission strongly encourage applicants to consult with the Commission staff in the Auctions and Spectrum Access Division before making the disclosure.

17. Reporting by the News Department of a Broadcast Licensee. As part of its operations, broadcast licensees often report news to the public. In that role, a licensee's reporter-employee might obtain information regarding the licensee's or another covered party's bids and bidding strategies to be used in a news story. The Bureau will not automatically impute a reporter's dissemination of the licensee's bids and bidding strategy, or the bids or bidding strategies of other incentive auction applicants, to the licensee. In determining whether to impute to the licensee the reporter's dissemination of such information, the Bureau will consider all of the facts and circumstances, including the existence of separation between a licensee's management and editorial decision-making functions. Covered entities can limit their potential risk by undertaking careful and comprehensive compliance education for their employees in advance of the auction, particularly for those employees with access to information about bids and bidding strategies, and establish internal safeguards to limit the availability of this information to those with a need to know. This approach provides some certainty to covered entities and is consistent with First Amendment objectives.

18. Communicating Pursuant to Exceptions to the Prohibition. Licensees that may communicate with one or more other covered parties under the exceptions to the reverse auction rule prohibiting certain communications must take care that their communications related to bids or bidding strategies with particular parties fall within the scope of the exception. Thus, consistent with the Commission's intent in establishing the exception that channel sharing partners should be able to fully engage as various options are presented during the auction process, bidding-related communications are permitted solely between the specific licensees covered by a particular channel sharing arrangement (CSA) that is submitted with one of the licensee's auction applications, and only with regard to the stations involved in the arrangement. A broadcast licensee owning multiple licenses must execute separate CSAs for each of its stations that will be channel sharing with a different, not commonly owned, licensee. Further, the channel sharing exception does not permit coordination across multiple markets. Permissible communication between unaffiliated (*i.e.,* non-commonly-owned or -controlled) parties under the channel sharing exception will be limited to DMA-specific bidding, *i.e.,* to the bidding of prospective channel partners under a particular channel sharing arrangement. Similarly, communications among parties that are commonly owned must be confined to the commonly owned parties.

19. The exceptions are not cumulative. Accordingly, the parent of multiple stations may be informed of the bids and bidding strategies of all of its stations, as well as the terms and conditions of any CSAs its stations entered into before the auction. However, the licensee that entered into a CSA may not communicate to its parent or other commonly owned licensees the bids and bidding strategies of the channel sharing station's channel sharing partner(s). Similarly, while parties to a channel sharing agreement disclosed on an auction application may communicate about the bids or bidding strategies of the stations covered by their agreement, they may not communicate regarding the bids or bidding strategies of any commonly owned stations of a party to the agreement that are not subject to the agreement.

20. A covered licensee that is permitted to communicate with more than one other covered licensee under the exceptions to the rule must take precautions to prevent the prohibited communication of bids or bidding strategies with other licensees. A covered party might implement information firewalls to prevent the inadvertent sharing of information regarding bids or bidding strategies among parties that are not covered by the same exception. Such firewall might, for example, take the form of separate teams informed of bids and bidding strategies for stations that are involved in a particular channel sharing agreement disclosed in an auction application, but are not informed of the bids and bidding strategies for other, commonly owned stations that are involved in a different channel sharing agreement. As an alternative to establishing separate teams of personnel and information firewalls, a covered party might instead share a bidder with a prospective channel sharing partner, possibly the other licensee, or a corporate affiliate, to execute bids in accordance with instructions developed prior to the application deadline. In such a case, the party using a shared bidder in place of a firewall would be precluded from communicating with the bidder during the prohibition period.

21. License Assignments and Transfers of Control. Licensees that file an application to bid in the auction or that have information regarding another applicant's bids or bidding strategies must take care not to communicate such information in any context, including the negotiation or execution of license assignments or transfers of control. Thus, after the auction application deadline, the negotiations necessary to reach agreement between or among covered licensees regarding a transaction for the assignment of any such licenses that are the subject of an auction application or the transfer of control of the applicant could create the risk of a violation of the prohibited communications rule. The Bureau emphasizes, however, that the rule does not *per se* preclude the negotiation or execution of sales agreements even when a license subject to the sales agreement is in the auction. For example, an entity that owns a license could apply to participate in the auction and have one team of personnel informed of and handling auction activities, including bids and bidding strategies, while another team of personnel engage in negotiations with respect to the assignment of that license, or the acquisition of another license.

22. Separate and apart from the prohibited communications rule, the Commission's auction application rules require that the applicant on a reverse auction application must be the broadcast licensee that would relinquish spectrum usage rights if it becomes a winning bidder in the auction. In addition, the rules bar changes in control of an applicant after the auction application filing deadline if such changes would constitute an assignment or transfer of control. These rules could effectively prevent a licensee from changing hands after the application is filed until after the auction is over.

23. The Bureau *sua sponte* waives the bar in the auction rules on the assignment of licenses or transfer of control of an applicant in the reverse auction, provided that the assignment or transfer application (1) has been accepted for filing with the Commission as of the deadline to submit an application to participate in the reverse auction, and (2) includes the express representation that the party that will hold the license(s) upon consummation agrees to be bound by the original

applicant's actions in the auction with respect to the license(s). While the parties to the transaction may continue to communication regarding the transaction during the auction, they may not communicate regarding their respective bids or bidding strategies during the quiet period unless one of the exception to the rule applies. In contrast to the forward auction, for which parties may create bidding entities that are insulated from a transaction involving existing wireless licenses, an assignment or transfer of control affecting broadcast licenses would result in a change in control of the very licenses that are the subject of bids in the reverse auction. Consequently, the bar on the assignment of a station subject to an auction application or transfer of control of a reverse auction applicant would have a greater preclusive effect on potential transactions among broadcast licensees than the similar bar necessarily does for parties with an interest in the forward auction. Moreover, while licenses offered in the forward auction may become available after the auction in the well-established secondary market for wireless licenses, there is no additional incentive auction contemplated in which the Commission would acquire a broadcaster's spectrum usage rights for later auction. Finally, application of the bar on the assignment of the station involved in the reverse auction, or the transfer of control of its licensee, might discourage broadcasters from participating in the auction, contrary to the Commission's policy of facilitating such participation in order to promote its goals for the incentive auction.

24. For all of these reasons, the Bureau waives the bar on assignments of a license subject to an auction application or transfers of control of reverse auction applicants during the incentive auction. The waiver is limited to those instances in which the transaction resulting in the assignment of license or transfer or control of the licensee, has been accepted for filing with the Commission at the deadline for submitting reverse auction applications. This preserves in the reverse auction one of the safeguards of the underlying rule by assuring that all relevant parties are identified to the Commission prior to the auction. Furthermore, the Commission limits the waiver to transactions in which the party that will hold the licenses upon consummation of the transaction agrees, in the agreement filed with the application, to be bound by the original applicant's actions in the auction with respect to the licensee. This assures that the application, and all attendant representations and certifications, remain effective and enforceable notwithstanding the transaction.

III. The Forward Auction Rule Prohibiting Certain Communications

A. Background

25. 47 CFR 1.2105(c) provides that, subject to specified exceptions, after the deadline for filing applications to participate in the forward auction ''all applicants are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other or any nationwide provider [of communications services] that is not an applicant, or, if the applicant is a nationwide provider, any non-nationwide provider that is not an applicant, in any manner the substance of their own, or each other's, or any other applicants' bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after the down payment deadline.'' In addition, beginning at the ''application filing deadline for the forward auction and until the results of the incentive auction are announced by public notice, all forward auction applicants are prohibited from communicating directly or indirectly any incentive auction applicant's bids or bidding strategies to any full power or Class A broadcast television licensee.''

26. ''Applicant'' for purposes of this rule includes the officers and directors of the applicant, all controlling interests in the entity applying to participate in the forward auction, as well as all holders of interests amounting to 10 percent or more of the entity. As with the reverse auction, a party that submits an application becomes an ''applicant'' under the rule at the application deadline and that status does not change based on subsequent developments.

27. The forward auction rule prohibiting certain communications does not apply to an applicant's communications regarding any arrangement relating to the licenses being auctioned that is excluded from the prohibition on joint bidding, provided such arrangement is disclosed on the applicant's auction application. Arrangements expressly excluded from the rule prohibiting joint bidding include solely operational agreements relating to roaming, spectrum leasing and other spectrum use arrangements, or device acquisition. Similarly, the Commission expressly noted that agreements solely for funding purposes, and not with regard to bids, bidding strategies, or post-auction market structure relating to the licenses being auctioned, are not prohibited arrangements. Permissible arrangements also include agreements to form consortia or joint ventures that will become the applicant in the auction. Additionally, they include agreements for assignment or transfer of licenses, provided that any such agreement does not both relate to the licenses at auction and address or communicate directly or indirectly bidding at auction (including prices) or bidding strategies (including the specific licenses on which to bid) or post-auction market structure. The forward auction rule also provides an exception for communications between forward auction applicants and covered broadcast licensees that have certain ownership interests or management officials in common, mirroring the exception to the reverse auction rule.

28. The Commission expressly requires that an applicant establish internal controls to preclude any person or entity with a disclosable interest in more than one applicant in a spectrum license auction from possessing information about the bids or bidding strategies of more than one applicant and from communicating information that it has about one applicant to another applicant.

B. Discussion

29. Overview. In the course of providing service, wireless service providers engage in a wide variety of communications and business arrangements with one another, or with affiliated entities, that are not directly related to licenses offered in pending auctions and auction bids or bidding strategies or post-auction market structure. Such arrangements range from industry-wide matters, such as technical standards setting for spectrum bands, to matters concerning particular service providers, such as tower-siting and use arrangements.

30. In the *Incentive Auction R&O,* 79 FR 48411, August 15, 2014, the Commission stressed that ''business discussions and negotiations that are *unrelated* to bids and bidding strategies or to post-auction market structure are not prohibited by the rule,'' in response to Verizon's contentions regarding uncertainties about the scope of the rule. Verizon argued in later comments on auction procedures that the rule should be modified to apply only to qualified bidders in the incentive auction, rather than all applicants. *See Verizon Comments, AU Docket No. 14–252, at 20–21 (filed Feb. 20, 2015).* Verizon's suggestion would require Commission action and therefore

exceeds the scope of this Public Notice. The Commission also explained that consistent with the approach it has taken in spectrum license auctions generally, forward auction applicants may continue to communicate with covered television licensees and competing forward auction applications regarding matters wholly unrelated to the incentive auction. Furthermore, the Commission emphasized that the rule is limited in scope and only prohibit[s] disclosure of information that affects, or has the potential to affect, bids and bidding strategies.

31. More recently, the Commission clarified in the *Part 1 R&O,* 80 FR 56764, September 18, 2015, the types of arrangements and communications that do not present concerns in Commission auctions. The Bureau now provides further guidance in order to enable wireless service providers to comply with the rule and continue conducting operations and providing service to the fullest extent possible during the time period covered by the rule.

32. Permissible Communications. The Commission's recently adopted provisions banning joint bidding, and the relevant exceptions, help clarify the scope of the ''applicant's bids or bidding strategies (including post-auction market structure)'' that are the subject of the prohibition on communications in 47 CFR 1.2105(c). In the *Part 1 R&O,* the Commission revised the forward auction rule prohibiting certain communications to expressly allow communications that fall within the scope of a variety of pre-existing agreements to which an applicant may be party, provided that such agreements are disclosed as required on the applicant's auction application. Only agreements relating to licenses in the auction must be disclosed, and the required disclosure is limited to the parties to the agreement and a brief description of the agreement. This removes uncertainty that the prohibition might disrupt existing operational agreements and transactions where such arrangements do not violate the ban on joint bidding. The ban on joint bidding spells out that the ban applies only to understandings of any kind relating to the licenses being auctioned that address or communicate, directly or indirectly, bidding at auction (including specific prices to be bid) or bidding strategies (including the specific licenses on which to bid or not to bid), or post-auction market structure. Thus, bid or bidding strategies or post-auction market structure must relate to the licenses being auctioned to be subject to the ban.

33. The Bureau further clarifies that the communication of ''bids or bidding strategies (including post-auction market structure)'' prohibited by 47 CFR 1.2105(c) must relate to the licenses being auctioned, as does the prohibition on joint bidding agreements in 47 CFR 1.2105(a)(2). In that regard, agreements, arrangements, or understandings not subject to the prohibition on joint bidding arrangements under 47 CFR 1.2105(a)(2)(ix) similarly are not subject to the prohibition on communications in 47 CFR 1.2105(c). As the Commission noted in the *Incentive Auction R&O,* past application of the rule prohibiting communications has never required total suspension of essential ongoing business.

34. The Bureau also clarifies that a forward auction applicant may negotiate new agreements after the application deadline, provided that the communications involved do not relate both to the licenses being auctioned and to bids or bidding strategies or post-auction market structure. Such agreements include, for example, agreements addressing operational aspects of providing a mobile service, including but not limited to agreements for roaming, device acquisition, and spectrum leasing and other spectrum use arrangements that do not otherwise involve prohibited communications. Other such agreements could include spectrum partitioning and disaggregation and interconnection agreements. The standard for evaluating whether an agreement is exempt from the prohibited communications rule hinges on whether the agreement relates to (1) the licenses being auctioned; and (2) bids or bidding strategies or post-auction market structure. Under the rules, forward auction applicants that enter into any such agreements during the auction would be subject to the same disclosure obligations as they would for agreements existing at the deadline for filing the application.

35. In addition, the Bureau clarifies that, absent communication both relating to the licenses being auctioned and communicating or addressing bids or bidding strategies or post-auction market structure, broad industry discussions regarding setting technical standards for the spectrum band for which licenses will be auctioned do not constitute communications prohibited by 47 CFR 1.2105(c). Though the technical standards may be applied to the licenses after the auction, such discussion does not by itself raise post-auction market structure issues within the rule's concern in the absence of discussion relating to which parties may or may not obtain particular licenses through the auction. Likewise, discussions in connection with the First Responder Network Authority (FirstNet) draft request for proposals for construction of the Nationwide Public Safety Broadband Network that may involve discussions of post-auction market structure will not violate the rule so long as they do not relate to the licenses being auctioned in the incentive auction.

36. Ongoing discussions between broadcast licensees and wireless service providers that become forward auction applicants with respect to voluntary relocation of the broadcasters out of channel 51 also may continue, so long as the discussions do not communicate ''an incentive auction applicant's bids or bidding strategies.'' Discussions involving forward auction applicants and broadcast licensees are subject to similar provisions of the forward auction and reverse auction rules, which prohibit only communication of ''an incentive auction applicant's bids or bidding strategies.'' The fact that the channel 51 license is in the reverse auction would not be itself preclude such discussions. A channel 51 licensee may communication whether or not it applied to participate in the reverse auction without violating the rule.

37. Of course, participants in the discussions can take additional steps to help prevent these discussions from becoming a forum for prohibited communications by, for example, utilizing different personnel for auction operations and for other discussions, such as technical standards settings, FirstNet discussions, or channel 51 relocation arrangements.

38. Application Requirements and Additional Precautions May Help Prevent Potential Violations of the Prohibition on Certain Communications. Certain arrangements and relationships that may facilitate the communication of bids and bidding strategies through conduits are specifically addressed by the revised rule. For example, with limited exceptions relating to specified rural partnerships, no party may have a controlling interest in more than one application in a spectrum license auction such as the forward auction. Consistent with the ban on most joint bidding agreements in spectrum license auctions, the revised rule also expressly bars an individual from serving as an authorized bidder for more than one auction applicant. This bar does not apply to the reverse auction and there may be circumstances in which reverse auction applicants might share the same bidder.

39. As in the past, forward auction applicants must take care to avoid unintentional communication of bids and bidding strategies in the course of

other communications. In contrast to the reverse auction, in which every licensee must prepare for a wide range of potential outcomes regardless of its bids and bidding strategies, forward auction applicants may be at greater risk of disclosing bids and bidding strategies through other communications. For example, the Commission consistently has cautioned 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, but only to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly.

40. As with any communication, all of the surrounding facts and circumstances must be considered when determining whether a particular communication violates the rule. As an initial matter, the communication must be to another party covered by the rule for it to constitute a violation. In other words, confidential communications within the applicant or to a third party source of funding would not violate the rule, unless it created a conduit for communication to a covered party. Thus, for instance, a capital call that does not expressly communicate bids or bidding strategies and that, after consideration of all the facts and circumstances, does not strongly support an inference of specific bids or bidding strategies likely would not violate the rule. On the other hand, the Commission has found a violation of 47 CFR 1.2105(c) 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, 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.

41. Forward auction applicants should use caution in their dealings with third parties, such as members of the press, financial analysts, or others who might become conduits for the prohibited communication of regarding bids or bidding strategies. For example, when bidding eligibility information is not public, an applicant's statement to the press that it has lost bidding eligibility or intends to stop bidding in the auction could give rise to a finding of a 47 CFR 1.2105(c) violation. Similarly, once it has filed an application to participate and the prohibition period has begun, an applicant's public statement of intent not to bid could also violate the rule, as it would disclose the bidding strategy of a party covered by the rule. Public disclosure of information relating to bidder interests and bidder identities that has not yet been made public by the Commission at the time of disclosure may violate the forward auction rule that prohibits certain communications.

42. In addition, when submitting its application to participate, each applicant should avoid any statements or disclosures that may violate 47 CFR 1.2105(c). Specifically, an applicant should avoid including any information in its short-form applications that might convey information regarding its license selection, such as using applicant names that refer to licenses being offered, referring to certain licenses or markets in describing bidding agreements, or including any information in attachments that may otherwise disclose the applicant's license selections.

IV. Applicability of Antitrust Laws

43. The prohibited communications rule does not supplant the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. For instance, a violation of the antitrust laws could arise out of actions taking place before the deadline for auction applications, which is the start of the prohibition period under the Commission's rules. In addition, compliance with the rule does not insulate parties from the antitrust laws. Where specific instances of collusion in the competitive bidding process are alleged, the Commission may conduct an investigation or refer such complaints to the Department of Justice for investigation.

44. Parties that violate the antitrust laws or related Commission rules are subject to severe sanctions. These may include, but are not limited to, forfeiture of reverse auction winning bid incentive payments and revocation of licenses, where applicable, forfeiture of forward auction upfront payments, or forward auction winning bid down or final payments, where applicable. Furthermore, parties may be barred from participating in future Commission auctions, and Commission licensees may be subject to revocation of their license(s).

V. Administering the Reverse Auction and Forward Auction Rules Prohibiting Certain Communications

45. Prohibition Period. The prohibition has a limited duration. Pursuant to both the rule for the reverse auction and the rule for the forward auction, the prohibition on certain communications begins with the deadline for filing applications to participate. Thus, the prohibition period under the reverse auction rule commences with the reverse auction application filing deadline, and the prohibition period under the forward auction rule commences with the forward auction application filing deadline. Under the reverse auction rule, the prohibition period ends with the announcement of the incentive auction results. For communications between forward auction applicants and broadcast television licensees, the mirroring forward auction rule prohibition period likewise ends with the announcement of the results of the incentive auction in the *Channel Reassignment Public Notice.* For communications between forward auction applicants and related parties, by contrast, the prohibition period continues until the post-auction deadline for making down payments on winning bids. The ultimate duration of the prohibition period will depend on the length of the auction.

46. Duty to Report. The rules require covered parties to report violations to the Commission. For Auction 1000, reports must be filed with Margaret W. Wiener, the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available. Any such report should be submitted by email to Ms. Wiener at the following email address: *auction1000@fcc.gov.* Any report in hard copy must be delivered only to Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. Failure to make a timely report under the rule constitutes a continuing violation of the rule, with attendant consequences.

47. Any party subject to either the reserve or forward auction rule should take special care in circumstances where their employees or subsidiaries may receive information directly or indirectly relating to any incentive auction applicant's bids or bidding strategies. Precedent has not addressed a situation where non-principals of a party subject to the rule (*i.e.,* those who are not officers or directors, and thus not considered to be the party) receive information regarding bids or bidding strategies. Nor has it addressed whether that information should be presumed to be communicated to the party. The more attenuated the relationship between the recipient of the information and the party subject to the rule, of course, the less likely there is to be any presumptive communication. For

example, without additional information, there is no apparent reason that a corporate affiliate not within the control of an applicant or an applicant's direct owner should be presumed to share information with the applicant. Nevertheless, the corporate affiliate, much like a third party, must take care not to become a conduit for a prohibited communication.

48. Compliance Education. All eligible broadcast television licensees are subject to the reverse auction rule and all forward auction applicants are subject to the forward auction rule. Accordingly, all these parties should become familiar with the relevant rule in advance of the auction application process. The Bureau reiterates that the rules apply only with respect to communications regarding bids and bidding strategies of incentive auction applicants. The rules should not impose any significant burden on full power and Class A television broadcasters that neither participate in the auction nor have information regarding bids or bidding strategies of any applicants. The main burden of the reverse auction rule will fall on broadcasters that apply to participate in the auction, or that may possess information regarding the bids and bidding strategies of others that do. These broadcasters and forward auction applicants also should become familiar with the Commission precedent regarding application of the prohibition of communications regarding bids and bidding strategies. These precedents apply slightly different rules in the context of past Commission auctions, and the details of the rules applied have changed over time. Nevertheless, the purpose underlying the prohibition reflected in all versions of the rule has remained consistent, making the precedents a potentially helpful resource for parties with respect to particular circumstances.

49. Parties also should educate employees and agents regarding compliance, particularly those employees and agents with access to bids and bidding strategy information. Limiting such access to persons with a definite need will both strengthen and simplify compliance.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

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FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0405 and 3060–0009]

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before December 18, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0405.

Title: Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station, FCC Form 349.

Form Number: FCC Form 349.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit; State, Local or Tribal Government; Not-for-profit institutions.

Number of Respondents and Responses: 1,200 respondents; 2,400 responses.

Estimated Time per Response: 1–1.5 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Total Annual Burden: 4,500 hours.

Total Annual Cost: $4,598,100.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Needs and Uses: FCC Form 349 is used to apply for authority to construct a new FM translator or FM booster broadcast station, or to make changes in the existing facilities of such stations.

Form 349 also contains a third party disclosure requirement, pursuant to Section 73.3580. This rule requires stations applying for a new broadcast station, or to make major changes to an existing station, to give local public notice of this filing in a newspaper of general circulation in the community in which the station is located. This local public notice must be completed within 30 days of the tendering of the application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. In addition, a copy of this notice must be placed in the station's public inspection file along with the application, pursuant to Section 73.3527. This recordkeeping information collection requirement is contained in OMB Control No. 3060–0214, which covers Section 73.3527.

OMB Control Number: 3060–0009.

Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License or Transfer of Control of Corporation Holding Broadcast Station Construction Permit or License, FCC Form 316.

Form Number: FCC Form 316.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit