

## Federal Communications Commission

## § 1.2105

and (c)(3)), or for any other determination required by the Commission's rules or procedures.

[59 FR 44293, Aug. 26, 1994, as amended at 63 FR 2341, Jan. 15, 1998; 65 FR 52344, Aug. 29, 2000; 68 FR 42995, July 21, 2003; 71 FR 6226, Feb. 7, 2006; 79 FR 48529, Aug. 15, 2014; 80 FR 56809, Sept. 18, 2015]

### **§ 1.2105 Bidding application and certification procedures; prohibition of certain communications.**

(a) *Submission of Short-Form Application (FCC Form 175).* In order to be eligible to bid, an applicant must timely submit a short-form application (FCC Form 175), together with any appropriate upfront payment set forth by Public Notice. All short-form applications must be filed electronically.

(1) All short-form applications will be due:

(i) On the date(s) specified by public notice; or

(ii) In the case of application filing dates which occur automatically by operation of law, on a date specified by public notice after the Commission has reviewed the applications that have been filed on those dates and determined that mutual exclusivity exists.

(2) The short-form application must contain the following information, and all information, statements, certifications and declarations submitted in the application shall be made under penalty of perjury:

(i) Identification of each license, or category of licenses, on which the applicant wishes to bid.

(ii)(A) The applicant's name, if the applicant is an individual. If the applicant is a corporation, then the short-form application will require the name and address of the corporate office and the name and title of an officer or director. If the applicant is a partnership, then the application will require the name, citizenship and address of all general partners, and, if a partner is not a natural person, then the name and title of a responsible person should be included as well. If the applicant is a trust, then the name and address of the trustee will be required. If the applicant is none of the above, then it must identify and describe itself and its principals or other responsible persons; and

(B) Applicant ownership and other information, as set forth in § 1.2112.

(iii) The identity of the person(s) authorized to make or withdraw a bid. No person may serve as an authorized bidder for more than one auction applicant;

(iv) If the applicant applies as a designated entity, a certification that the applicant is qualified as a designated entity under § 1.2110.

(v) Certification that the applicant is legally, technically, financially and otherwise qualified pursuant to section 308(b) of the Communications Act of 1934, as amended;

(vi) Certification that the applicant is in compliance with the foreign ownership provisions of section 310 of the Communications Act of 1934, as amended. The Commission will accept applications certifying that a request for waiver or other relief from the requirements of section 310 is pending;

(vii) Certification that the applicant is and will, during the pendency of its application(s), remain in compliance with any service-specific qualifications applicable to the licenses on which the applicant intends to bid including, but not limited to, financial qualifications. The Commission may require certification in certain services that the applicant will, following grant of a license, come into compliance with certain service-specific rules, including, but not limited to, ownership eligibility limitations;

(viii) Certification that the applicant has provided in its application a brief description of, and identified each party to, any partnerships, joint ventures, consortia or other agreements, arrangements or understandings of any kind relating to the licenses being auctioned, including any agreements that address or communicate directly or indirectly bids (including specific prices), bidding strategies (including the specific licenses on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls as defined in paragraph (a)(4) of this section or is controlled by the applicant, is a party.

(ix) Certification that the applicant (or any party that controls as defined in paragraph (a)(4) of this section or is

controlled by the applicant) has not entered and will not enter into any partnerships, joint ventures, consortia or other agreements, arrangements, or 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 with: any other applicant (or any party that controls or is controlled by another applicant); with a nationwide provider that is not an applicant (or any party that controls or is controlled by such a nationwide provider); or, if the applicant is a nationwide provider, with any non-nationwide provider that is not an applicant (or with any party that controls or is controlled by such a non-nationwide provider), other than:

(A) Agreements, arrangements, or understandings of any kind that are solely operational as defined under paragraph (a)(4) of this section;

(B) Agreements, arrangements, or understandings of any kind to form consortia or joint ventures as defined under paragraph (a)(4) of this section;

(C) Agreements, arrangements or understandings of any kind with respect to the transfer or assignment of licenses, provided that such agreements, arrangements or understandings do not both relate to the licenses at auction and 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.

(x) Certification that if applicant has an interest disclosed pursuant to § 1.2112(a)(1) through (6) with respect to more than one short-form application for an auction, it will implement internal controls that preclude any individual acting on behalf of the applicant as defined in paragraph (c)(5) of this section from possessing information about the bids or bidding strategies (including post-auction market structure), of more than one party submitting a short-form application or communicating such information with respect to a party submitting a short-form application to anyone possessing

such information regarding another party submitting a short-form application.

(xi) Certification that the applicant is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency.

(xii) A certification indicating whether the applicant has ever been in default on any Commission license or has ever been delinquent on any non-tax debt owed to any Federal agency. For purposes of this certification, an applicant may exclude from consideration as a former default any default on a Commission license or delinquency on a non-tax debt to any Federal agency that has been resolved and meets any of the following criteria:

(A) The notice of the final payment deadline or delinquency was received more than seven years before the short-form application deadline;

(B) The default or delinquency amounted to less than \$100,000;

(C) The default or delinquency was paid within two quarters (*i.e.*, 6 months) after receiving the notice of the final payment deadline or delinquency; or

(D) The default or delinquency was the subject of a legal or arbitration proceeding that was cured upon resolution of the proceeding.

(xiii) For auctions required to be conducted under Title VI of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96) or in which any spectrum usage rights for which licenses are being assigned were made available under 47 U.S.C. 309(j)(8)(G)(i), certification under penalty of perjury that the applicant and all of the person(s) disclosed under paragraph (a)(2)(ii) of this section are not person(s) who have been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant. For the purposes of this certification, the term “person” means an individual, partnership, association, joint-stock company, trust, or corporation, and the term “reasons of national security” means matters relating to the national defense and foreign relations of the United States.

(3) *Limit on filing applications.* In any auction, no individual or entity may file more than one short-form application or have a controlling interest in more than one short-form application. In the case of a consortium, each member of the consortium shall be considered to have a controlling interest in the consortium. In the event that applications for an auction are filed by applicants with overlapping controlling interests, pursuant to paragraph (b)(1)(ii) of this section, both applications will be deemed incomplete and only one such applicant may be deemed qualified to bid. This limit shall not apply to any qualifying rural wireless partnership and individual members of such partnerships. A qualifying rural wireless partnership for purposes of this exception is one that was established as a result of the cellular B block settlement process established by the Commission in CC Docket No. 85-388 in which no nationwide provider is a managing partner or a managing member of the management committee, and partnership interests have not materially changed as of the effective date of the Report and Order in WT Docket No. 14-170, FCC 15-80. A partnership member for purposes of this exception is a partner or successor-in-interest to a partner in a qualifying partnership that does not have day-to-day management responsibilities in the partnership and holds 25% or less ownership interest, and provides a certification in its short-form application that it will implement internal controls to insulate itself from the bidding process of the cellular partnership and any other members of the partnership, except that it may, prior to the deadline for resubmission of short-form applications, express to the partnership the maximum it is willing to spend as a partner.

(4) *Definitions.* For purposes of the certifications required under paragraph (a)(2) of this section:

(i) The term *controlling interest* includes individuals or entities with positive or negative *de jure* or *de facto* control of the applicant. *De jure* control includes holding 50 percent or more of the voting stock of a corporation or holding a general partnership interest in a partnership. Ownership interests

that are held indirectly by any party through one or more intervening corporations may be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain meets or exceeds 50 percent or represents actual control, it may be treated as if it were a 100 percent interest. *De facto* control is determined on a case-by-case basis. Examples of *de facto* control include constituting or appointing 50 percent or more of the board of directors or management committee; having authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or playing an integral role in management decisions. In the case of a consortium, each member of the consortium shall be considered to have a controlling interest in the consortium.

(ii) The term *consortium* means an entity formed to apply as a single applicant to bid at auction pursuant to an agreement by two or more separate and distinct legal entities that individually are eligible to claim the same designated entity benefits under § 1.2110, provided that no member of the consortium may be a nationwide provider;

(iii) The term *joint venture* means a legally cognizable entity formed to apply as a single applicant to bid at auction pursuant to an agreement by two or more separate and distinct legal entities, provided that no member of the joint venture may be a nationwide provider;

(iv) The term *solely operational agreement* means any agreement, arrangement, or understanding of any kind that addresses 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, so long as the agreement does not both relate to the licenses at auction and 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.

NOTE TO PARAGRAPH (a): The Commission may also request applicants to submit additional information for informational purposes to aid in its preparation of required reports to Congress.

(b) *Modification and Dismissal of Short-Form Application (FCC Form 175)*. (1) (i) Any short-form application (FCC Form 175) that does not contain all of the certifications required pursuant to this section is unacceptable for filing and cannot be corrected subsequent to the applicable filing deadline. The application will be deemed incomplete, the applicant will not be found qualified to bid, and the upfront payment, if paid, will be returned.

(ii) If:

(A) An individual or entity submits multiple applications in a single auction; or

(B) Entities commonly controlled by the same individual or same set of individuals submit applications for any set of licenses in the same or overlapping geographic areas in a single auction; then only one of such applications may be deemed complete, and the other such application(s) will be deemed incomplete, such applicants will not be found qualified to bid, and the associated upfront payment(s), if paid, will be returned.

(2) The Commission will provide bidders a limited opportunity to cure defects specified herein (except for failure to sign the application and to make certifications) and to resubmit a corrected application. During the resubmission period for curing defects, a short-form application may be amended or modified to cure defects identified by the Commission or to make minor amendments or modifications. After the resubmission period has ended, a short-form application may be amended or modified to make minor changes or correct minor errors in the application. Major amendments cannot be made to a short-form application after the initial filing deadline. Major amendments include changes in ownership of the applicant that would constitute an assignment or transfer of control, changes in an applicant's size which would affect eligibility for designated entity provisions, and changes

in the license service areas identified on the short-form application on which the applicant intends to bid. Minor amendments include, but are not limited to, the correction of typographical errors and other minor defects not identified as major. An application will be considered to be newly filed if it is amended by a major amendment and may not be resubmitted after applicable filing deadlines.

(3) Applicants who fail to correct defects in their applications in a timely manner as specified by public notice will have their applications dismissed with no opportunity for resubmission.

(4) Applicants shall have a continuing obligation to make any amendments or modifications that are necessary to maintain the accuracy and completeness of information furnished in pending applications. Such amendments or modifications shall be made as promptly as possible, and in no case more than five business days after applicants become aware of the need to make any amendment or modification, or five business days after the reportable event occurs, whichever is later. An applicant's obligation to make such amendments or modifications to a pending application continues until they are made.

(c) *Prohibition of certain communications*. (1) After the short-form application filing deadline, all applicants are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other or any nationwide provider 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, unless such communications are within the scope of an agreement described in paragraphs (a)(2)(ix)(A) through (C) of this section that is disclosed pursuant to paragraph (a)(2)(viii) of this section.

(2) Any party submitting a short-form application that has an interest disclosed pursuant to § 1.2112(a)(1) through (6) with respect to more than

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one short-form application for an auction must implement internal controls that preclude any individual acting on behalf of the applicant as defined for purposes of this paragraph from possessing information about the bids or bidding strategies of more than one party submitting a short-form or communicating such information with respect to a party submitting a short-form application to anyone possessing such information regarding another party submitting a short-form application. Implementation of such internal controls will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted.

(3) An applicant must modify its short-form application to reflect any changes in ownership or in membership of a consortium or a joint venture or agreements or understandings related to the licenses being auctioned.

(4) A party that makes or receives a communication prohibited under paragraphs (c)(1) or (6) of this section shall report such communication in writing immediately, and in any case no later than five business days after the communication occurs. A party's obligation to make such a report continues until the report has been made. Such reports shall be filed as directed in public notices detailing procedures for the bidding that was the subject of the reported communication. If no public notice provides direction, the party making the report shall do so in writing to the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available, including electronic transmission such as email.

(5) For purposes of this paragraph:

(i) The term *applicant* shall include all controlling interests in the entity submitting a short-form application to participate in an auction (FCC Form 175), 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. In the case of a consortium, each member of the con-

sortium shall be considered to have a controlling interest in the consortium; and

(ii) The term *bids* or *bidding strategies* shall include capital calls or requests for additional funds in support of bids or bidding strategies.

*Example:* Company A is an applicant in area 1. Company B and Company C each own 10 percent of Company A. Company D is an applicant in area 1, area 2, and area 3. Company C is an applicant in area 3. Without violating the Commission's Rules, Company B can enter into a consortium arrangement with Company D or acquire an ownership interest in Company D if Company B certifies either:

(1) That it has communicated with and will communicate neither with Company A or anyone else concerning Company A's bids or bidding strategy, nor with Company C or anyone else concerning Company C's bids or bidding strategy, or

(2) that it has not communicated with and will not communicate with Company D or anyone else concerning Company D's bids or bidding strategy.

(6) Prohibition of certain communications for the broadcast television spectrum incentive auction conducted under section 6403 of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96).

(i) For the purposes of the prohibition described in paragraphs (c)(6)(ii) and (iii) of this section, the term *forward auction applicant* is defined the same as the term *applicant* is defined in paragraph (c)(5) of this section, and the terms *full power broadcast television licensee* and *Class A broadcast television licensee* are defined the same as those terms are defined in § 1.2205(a)(1).

(ii) Except as provided in paragraph (c)(6)(iii) of this section, in the broadcast television spectrum incentive auction conducted under section 6403 of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96), beginning on the short-form 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.

(iii) The prohibition described in paragraph (c)(6)(ii) of this section does not apply to communications between a forward auction applicant and a full power or Class A broadcast television licensee if 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 short-form applications to participate in the forward auction, is also a controlling interest, director, officer, or governing board member of the full power or Class A broadcast television licensee, as of the deadline for submitting applications to participate in the reverse auction.

NOTE 1 TO PARAGRAPH (c): For the purposes of paragraph (c), "controlling interests" include individuals or entities with positive or negative *de jure* or *de facto* control of the licensee. *De jure* control includes holding 50 percent or more of the voting stock of a corporation or holding a general partnership interest in a partnership. Ownership interests that are held indirectly by any party through one or more intervening corporations may be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain meets or exceeds 50 percent or represents actual control, it may be treated as if it were a 100 percent interest. *De facto* control is determined on a case-by-case basis. Examples of *de facto* control include constituting or appointing 50 percent or more of the board of directors or management committee; having authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or playing an integral role in management decisions.

NOTE 2 TO PARAGRAPH (c): The prohibition described in paragraph (c)(6)(ii) of this section applies to controlling interests, directors, officers, and holders of any 10 percent or greater ownership interest in the forward auction applicant as of the deadline for submitting short-form applications to participate in the forward auction, and any additional such parties at any subsequent point prior to the announcement by public notice of the results of the incentive auction. Thus, if, for example, a forward auction applicant appoints a new officer after the short-form

application deadline, that new officer would be subject to the prohibition in paragraph (c)(6)(ii) of this section, but would not be included within the exception described in paragraph (c)(6)(iii) of this section.

[80 FR 56809, Sept. 18, 2015]

**§ 1.2106 Submission of upfront payments.**

(a) The Commission may require applicants for licenses subject to competitive bidding to submit an upfront payment. In that event, the amount of the upfront payment and the procedures for submitting it will be set forth in a Public Notice. Any auction applicant that, pursuant to § 1.2105(a)(2)(xii), certifies that it is a former defaulter must submit an upfront payment equal to 50 percent more than the amount that otherwise would be required. No interest will be paid on upfront payments.

(b) Upfront payments must be made by wire transfer in U.S. dollars from a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation and must be made payable to the Federal Communications Commission.

(c) If an upfront payment is not in compliance with the Commission's Rules, or if insufficient funds are tendered to constitute a valid upfront payment, the applicant shall have a limited opportunity to correct its submission to bring it up to the minimum valid upfront payment prior to the auction. If the applicant does not submit at least the minimum upfront payment, it will be ineligible to bid, its application will be dismissed and any upfront payment it has made will be returned.

(d) The upfront payment(s) of a bidder will be credited toward any down payment required for licenses on which the bidder is the high bidder. Where the upfront payment amount exceeds the required deposit of a winning bidder, the Commission may refund the excess amount after determining that no bid withdrawal penalties are owed by that bidder.

(e) In accordance with the provisions of paragraph (d), in the event a penalty is assessed pursuant to § 1.2104 for bid withdrawal or default, upfront payments or down payments on deposit