

**Exhibits for the Auction
No. 58 Short-Form Application
and Related Issues**

Disclaimer

These slides are provided by Bureau staff for informational purposes only. Nothing herein is intended to supersede any provision of the Commission's rules or public notices. These slides should not be used as a substitute for a prospective applicant's review of the Commission's relevant orders, rules, and public notices. Prospective applicants must familiarize themselves thoroughly and remain current with the Commission's rules relating to the broadband personal communications service, rules relating to application and auction procedures, and the procedures, terms and conditions contained in the Auction No. 58 public notices.

Introduction

- Review of Exhibits for the short-form application (FCC Form 175).
- How the Rules and Exhibits work together.
- Provide additional helpful insights.

Notes Regarding Exhibits

- Rules listing the required information for exhibits are contained in Sections 1.2105 and 1.2112 of the Commission's Rules, and Section 1.2110.
- Rules governing broadband PCS are contained in Part 24.
- General guidelines are contained in Attachment D to the "Broadband PCS Spectrum Auction Scheduled for January 12, 2005," *Public Notice*, DA 04-3005 (rel. September 16, 2004).

Notes Regarding Exhibits

- No particular format for exhibits.
- However, exhibits must be complete.
- Refer to Section 1.2105(b) concerning modification and dismissal of applications.
 - Only minor modifications permitted (Section 1.2105(b)).
- Refer often to the Procedures Public Notice.

Notes Regarding Exhibits

- All applicants must include Exhibits A and E.
- Some applicants **must** include additional exhibits
 - Exhibit B (bidding agreements)
 - Exhibit C (entrepreneur eligibility to participate in closed bidding), and/or
 - Exhibit D (bidding credit eligibility).

Exhibit A - Applicant Identity and Ownership Information

- Under Section 1.2105(a)(2)(ii), each applicant is required to disclose all real parties in interest, including persons or entities directly or indirectly controlling or owning the applicant.
- List all parties having a 10 percent or greater interest in the applicant (name, address, and citizenship).
- List all FCC-regulated entities of which the applicant or its owners own 10 percent or more.
 - Include a description of each entity's principal business and its relationship to the applicant.

Exhibit A (continued)

- *Corporation*: corporate name and address; and the name, title & citizenship of a responsible officer or director (Section 1.2112(a)).
- *General Partnership*: name, address & citizenship of all partners and their interest (Section 1.2112(a)(3)).
- *Limited Partnership*: name, address & citizenship of all partners whose interest is 10 percent or more (Section 1.2112(a)(2)).

Exhibit A (continued)

- *Limited Liability Company*: name, address & citizenship of all members whose interest is ten percent or greater (Section 1.2112(a)(5)).
- *If None of the Above*: name, citizenship, title or other relation to the applicant; and address of a principal or other responsible person.

Exhibit A (continued)

- *Other Requirements:* Applicants seeking bidding credits or applying to participate in closed bidding must provide **additional** ownership information (Section 1.2112(b)).
 - Names, addresses, and citizenship of all officers, directors, and other controlling interests as defined by Section 1.2110.

Exhibit B - Agreements with Other Parties and Joint Bidding Arrangements

- Anti-Collusion Rule: Unless properly disclosed, communications concerning bids, bidding strategies, or settlement agreements (including post-auction market structures) *generally* are prohibited among applicants that bid for licenses in any of the same geographic areas (Section 1.2105(c)).
- Prohibition period begins at the short-form deadline and ends at the down payment deadline (Section 1.2105(a)(2)(ix)).
- To be in compliance, applicants must certify under penalty of perjury that they have not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties other than those they have identified regarding the amount of their bids, bidding strategies or particular licenses on which they will or will not bid.

Exhibit B - (continued)

- For the anti-collusion rule, “applicant” includes controlling interests, ownership interests, and officers and directors.
- Applicants must identify all parties with whom they have entered into agreements of any kind relating to the licenses being auctioned, including post-auction market structure (Section 1.2105(a)(2)(viii)).
- The Anti-Collusion Rule has been amended (*see the Part 1 Seventh Report and Order, FCC 01-270, rel. September 27, 2001*).

Exhibit B - (continued)

- The rule prohibits an auction applicant from discussing a competing applicant's bids or bidding strategies even if the first applicant does not discuss its own bids or bidding strategies.
- The rule requires auction applicants that make or receive a prohibited communication of bids or bidding strategies to report the communication immediately to the Commission in writing.
- Attachment G of the Procedures Public Notice lists Commission and Bureau documents addressing application of the anti-collusion rule.
- Auctions Website has an anti-collusion page with links to the same documents.

Exhibit C - Entrepreneur Eligibility

To participate in closed bidding, an applicant must qualify as an “entrepreneur” under Section 24.709(a)(1), i.e., the applicant, together with its affiliates and persons or entities that hold interests in the applicant, and their affiliates —

- must have had gross revenues of less than \$125 million in *each* of the last two years and
- must have total assets of less than \$500 million at the Form 175 filing deadline.

Exhibit C - (continued)

- The controlling interest standard determines which interests must be attributed to the applicant.
- In some cases, a rural telephone cooperative applicant may exclude the gross revenues and total assets of the affiliates of its officers and directors.
- The following exceptions to the attribution rules no longer apply:
 - control groups
 - publicly traded corporations with widely disbursed voting power
 - grandfathering.

Exhibit D - Bidding Credit Eligibility

Small and very small businesses can obtain a bidding credit (a payment discount) on C and F block licenses won in *open* bidding. To qualify, the applicant, together with its affiliates, its controlling interests, and the affiliates of its controlling interests, must have had average gross revenues for the preceding 3 years that meet the following limits:

- *Small Businesses* – attributed average gross revenues of not more than \$40 million – receive a 15 percent bidding credit.
- *Very Small Businesses* – attributed average gross revenues of not more than \$15 million – receive a 25 percent bidding credit.

Exhibit D (continued)

- The controlling interest standard determines which interests must be attributed to the applicant.
- In some cases, a rural telephone cooperative applicant may exclude the gross revenues of the affiliates of its officers and directors.

Exhibit E - Prior Defaulters

- A statement is required indicating whether the applicant has ever been in default on any FCC license or has ever been delinquent on any non-tax debt owed to any Federal agency.
- For the statement, “applicant” includes applicant’s affiliates, controlling interests, and affiliates of the controlling interests.
- Statement made under penalty of perjury.

Red Light Rule

- Effective November 1, 2004, the Commission will implement the use of its Red Light Display System (RDL) to indicate those entities that currently have outstanding debts owed to the Commission.
- Auction applicants must comply with section 1.2105 of the Commission's rules by certifying that they are not in default or delinquent on non-tax debt. Alternatively, an applicant may seek a rule waiver.
- Section 1.2105 pre-empts the Commission's Red Light Rule, which otherwise prohibits processing of applications when filers have outstanding debts. See 1.1910(b)(3)(ii). Accordingly, a Red Light may not automatically stop the processing of a Auction No. 58 short-form application. A recent Public Notice describes the relationship between the Red Light Display System and short-form applications. Applicants must comply with Section 1.2105's requirements or their applications will be rejected.

Additional Exhibits

- Exhibit F, “Information Requested on Designated Entities”
 - Applicants may choose to attach an exhibit regarding designated entity status.

- Exhibit G, “Miscellaneous Information”
 - Provide any additional information on this exhibit.
 - If waiver requests are filed, applicants should provide as much information as possible.

Some Last Key Points

- Remember that applications will be available to the public after release of the status public notice.
 - Therefore, do not list any taxpayer identification numbers (TINs) on the FCC Form 175.
- Carefully read all the FCC Form 175 certifications
 - Submission of the FCC Form 175 is a representation that its contents are true and correct.
 - You must certify that you are legally, technically, financially and otherwise qualified to participate in the auction.
 - Submission of a false certification may result in penalties.

Finally. . .

An electronic copy of any filings that are submitted to the Commission related to Auction No. 58, including filings made with the Commission's Office of the Secretary, should also be submitted by electronic mail to the following address:

auction58@fcc.gov