



# PUBLIC NOTICE

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## AUCTION OF FM BROADCAST CONSTRUCTION PERMITS

### 456 Bidders Qualified to Participate in Auction No. 37

#### Report No. AUC-04-37-O (Auction No. 37)

In this *Public Notice*, the Federal Communications Commission (“FCC” or “Commission”) identifies 456 applicants found to be qualified to bid in the upcoming auction for 288 FM broadcast construction permits (“Auction No. 37”). Auction No. 37 is scheduled to begin on Wednesday, November 3, 2004. In addition, this *Public Notice* contains bidding instructions and other important information regarding Auction No. 37.

**Attachment A** lists each of the 456 qualified bidders, their upfront payments, and maximum eligibility in bidding units.

**Attachment B** lists the construction permits selected on each qualified bidder’s short-form application (FCC Form 175).

**Attachment C** lists the applicants that submitted an FCC Form 175 application, but did not qualify to bid in this auction.

**Attachment D** lists the split eligibility markets.

**Attachment E** describes how to participate in the mock auction.

**Attachment F** provides information on how to monitor the FCC auctions on-line, and round results file formats for use during the auction.

In order to participate effectively in the auction, qualified bidders should again familiarize themselves with the auction rules, procedures, and other information contained in the *Auction No. 37 Procedures Public Notice* and subsequent public notices.<sup>1</sup> This *Public Notice* and other documents related to Auction

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<sup>1</sup> See “Auction of FM Broadcast Construction Permits; Scheduled for November 3, 2004, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures,” *Public Notice*, 19 FCC Rcd 10570 (MB/WTB 2004) (“*Auction No. 37 Procedures Public Notice*”); see also “Supplemental Notice Concerning Status of FCC Form 175 Applications to Participate in Auction No. 37; Auction of FM Broadcast Construction Permits,” DA 04-3043 (rel. September 22, 2004).

No. 37 are available on the Commission's auctions website, <http://wireless.fcc.gov/auctions/>. The following information provides additional guidance.

To assist in analyzing Auction No. 37, a file will be made available to the public on the Auction No. 37 web site. This file will list each construction permit each qualified bidder in Auction No. 37 selected on their FCC Form 175. The file, titled "QB\_Licenses\_selected", will be located under the subheading "General Information" on the Auction No. 37 web site (<http://wireless.fcc.gov/auctions/37>).

**Registration.** Qualified bidders have been automatically registered for the auction. For security reasons, the Commission will confirm registration through two separate mailings of registration materials. Both mailings will be sent to the bidder's contact person at the contact address identified in the bidder's FCC Form 175. Upon receipt of both mailings, each bidder should be in possession of the following information:

- Bidder Identification Number
- At least two SecurID key fobs
- Automated Auction System Bidder's Guide
- FCC Telephonic Bidding phone number

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

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

Any qualified bidder listed in Attachment A of this *Public Notice* that has not received both registration mailings **by noon on Wednesday, October 27, 2004**, must contact the Auctions Hotline directly at (717) 338-2888. Receipt of both registration mailings is critical to participating in both the mock auction and the actual auction event, and it is the responsibility of each qualified bidder to ensure that all registration information has been received.

**Registration Material Replacement.** Lost bidder identification numbers or SecurID key fobs can be replaced only by appearing in person at the FCC Headquarters, located at 445 12<sup>th</sup> Street, SW, Washington, DC. Only an authorized bidder, the contact person or the certifying official, as designated on the applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a government-issued photo identification) in order to receive replacements. Qualified bidders requiring replacements must call technical support – **(202) 414-1250 (V) or (202) 414-1255 (TTY)** - prior to arriving at the FCC.

If a bidder receives a damaged fob(s), the bidder's contact person should call Technical Support to request a replacement. Technical Support will verify that the fob is unusable, and a new fob will be sent by Federal Express along with a self-addressed stamped envelope for returning the damaged fob(s).

**Bidding.** As stated in the *Broadcast First Report and Order*, all pending mutually exclusive applications for broadcast services must be resolved through a system of competitive bidding.<sup>2</sup> When two or more

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<sup>2</sup> Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, GC Docket No. 92-52 and

short-form applications are accepted for filing within a mutually exclusive group (MX Group), mutual exclusivity exists for auction purposes.<sup>3</sup> Once mutual exclusivity exists for auction purposes, even if only one applicant within an MX Group submits an upfront payment, that applicant is required to submit a bid in order to obtain the construction permit.<sup>4</sup>

The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. As a contingency plan, bidders may also dial in to the FCC Wide Area Network. Qualified bidders are permitted to bid telephonically or electronically. In either case, **each authorized bidder** must have its own Remote Security Access SecurID key fob, which the FCC will provide at no charge. Each applicant with only one authorized bidder will be issued two SecurID key fobs, while applicants with two or three authorized bidders will be issued three fobs. For security purposes, the SecurID key fobs and the instructions for using them are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID key fob is tailored to a specific auction. SecurID key fobs issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 37. The telephonic bidding telephone number will be supplied in the first mailing along with the confidential bidder identification number.

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

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

In their registration materials, all qualified bidders will be supplied with a telephone number for telephonic bidding. Bidders choosing to bid telephonically are required to use this telephone number to place bids. Electronic bidders may use this telephone number as an alternate method of bidding in the event they are unable to submit their bids electronically. **Telephonic bidders are reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round.**<sup>5</sup>

**Minimum Opening Bids.** There will be a minimum opening bid for each construction permit in Auction No. 37, calculated in accordance with the potential value of the spectrum, including the type of service and class of the facility offered, market size, population covered by the proposed FM broadcast facility,

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GEN Docket No. 90-264, *First Report and Order*, 13 FCC Rcd 15920, 15923-25, ¶¶ 7-12 (1998) (“*Broadcast First Report and Order*”).

<sup>3</sup> *Broadcast First Report and Order*, 13 FCC Rcd at 15978-80, ¶¶ 149-154. See also Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-252, *Second Report and Order*, 9 FCC Rcd 2348, 2376, ¶ 165 (1994).

<sup>4</sup> Any applicant that submits a short-form application that is accepted for filing but fails to timely submit an upfront payment will retain its place in the MX Group but, having purchased no bidding eligibility, will not be eligible to bid.

<sup>5</sup> The length of a call to place a telephonic bid may vary; please allow a minimum of 10 minutes.

industry cash flow data and recent broadcast transactions.<sup>6</sup> The minimum opening bid amount is subject to reduction at the discretion of the Commission. However, bidders should be aware that the Commission will not entertain requests to lower minimum opening bids. The agency will exercise its discretion, if at all, independent of any communications from bidders.

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

**Bidding Schedule.** The bidding schedule for Wednesday, November 3, 2004, and continuing until further notice, will be:

Bidding Period	9:00 a.m.	-	11:00 a.m. ET
Bidding Period	1:30 p.m.	-	3:30 p.m. ET

Round results will be provided approximately 15 minutes after the close of each round. The FCC will set the pace of the auction based upon its monitoring of the bidding and its assessment of the auction's progress. All subsequent schedule changes will be made by announcement during the course of the auction.

**Bidder Questions during the Auction.** FCC auction officials and Technical Support staff will be available during the course of the auction to answer questions from authorized bidders. Bidders should identify themselves as a bidder with time sensitive auction questions when calling any number. Help can be obtained through the following telephone numbers:

FCC Bidder Line (telephonic bidding, auction conduct questions)	Use telephonic bid number supplied in registration mailing
FCC Technical Support Hotline (all technical questions, software and hardware)	(202) 414-1250
FCC Auctions and Spectrum Access Division (legal questions)	(202) 418-0660
FCC Media Bureau (service rules and legal questions)	(202) 418-2700

**Monitoring Round Results.** Attachment F (How to Monitor the FCC Auctions On-Line) of this *Public Notice* provides instructions for reviewing and downloading round results, as well as other material related to Auction No. 37, that will be released by the Commission during the course of the auction.

**Auction Tracking Tool (ATT).** The FCC has developed a tool for tracking the results of its auctions. The ATT is a stand-alone application that runs on Windows 95, 98, 2000, ME, NT, and XP operating systems. It does not require any other software, although some advanced features require Microsoft Excel. The tool will allow users to import round result files and analyze bidding results after each round of the auction. For installation and user instructions, see the README file, the ATT User Manual, or the on-line help system that accompanies the ATT.

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<sup>6</sup> *Auction No. 37 Procedures Public Notice*, 19 FCC Rcd at 10590. Attachment A of the *Auction No. 37 Procedures Public Notice* sets forth the minimum opening bids for each construction permit offered in Auction No. 37.

The ATT version specifically designed for Auction No. 37 is available for downloading and should be used for both the mock auction and the actual auction. The ATT is located at the auctions web site, <http://wireless.fcc.gov/auctions/>. From the options on the left, select **Tracking Tools**.

The ATT, provided to bidders free of charge, is an additional means of analyzing the auction round results. Bidders should have a back up strategy in place, which may be quickly implemented, should they experience technical difficulties with the ATT.

**ATT User Requirements.** This software is designed to be used by a wide range of users. For the most effective use of the tool, users should be familiar with:

- Microsoft Windows 95, 98, NT, 2000, ME or XP
- Microsoft Excel 97 or higher
- The FCC simultaneous multiple-round auction format

***Amendments to FCC Form 175 Applications.*** Applicants are responsible for maintaining the accuracy and completeness of information furnished in their FCC Form 175 and exhibits.<sup>7</sup> Applicants should amend their applications as promptly as possible, but no later than 10 business days from the occurrence of a reportable change. Changes that cause a loss of or reduction in eligibility for a new entrant bidding credit should be reported immediately. Filers must make modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: [auction37@fcc.gov](mailto:auction37@fcc.gov). A separate copy of the letter should be faxed to Lynne Milne, Auctions and Spectrum Access Division, (202) 418-1159. Questions about changes should be directed to Lynne Milne at (202) 418-0660.

As described in the Commission's rules, applicants may make only minor corrections to their FCC Form 175 applications (*e.g.*, authorized bidder, fax number).<sup>8</sup> Major modifications (*e.g.*, changing the markets applied for, changing control of the applicant, changing the certifying official) will not be accepted.<sup>9</sup> Bidders are reminded that any changes affecting eligibility for the new entrant bidding credit, insofar as it results in the diminishment or loss of the new entrant bidding credit claimed on the Form 175 application, must be clearly stated in the bidder's amended material and in the summary letter referenced above. In such cases, the Commission will make appropriate adjustments in the new entrant bidding credit prior to the computation of down and final payment amounts due from any affected winning bidders.<sup>10</sup>

***Due Diligence.*** Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the broadcast construction permits being offered in this auction. The FCC makes no representations or warranties about the use of this spectrum for particular services. Potential bidders are strongly encouraged to conduct their own research prior to Auction No. 37 in order to determine the existence of any pending administrative or judicial proceedings that might affect their decisions regarding participation in the auction. Potential bidders are also strongly encouraged to review all underlying Commission orders, such as the specific *Report and Order* amending the FM Table of Allotments and allotting the FM channel(s) on which they

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<sup>7</sup> 47 C.F.R. § 1.65.

<sup>8</sup> 47 C.F.R. § 1.2105(b).

<sup>9</sup> *Id.*

<sup>10</sup> 47 C.F.R. §§ 73.5007; 73.5008.

plan to bid.<sup>11</sup> Bidders are also responsible for reviewing all pending rulemaking petitions and open proceedings, as well as reconsideration petitions or waiver requests, that might affect the FM allotment(s) on which they plan to bid. Additionally, potential bidders should perform technical analyses sufficient to assure them that, should they prevail in competitive bidding for a given FM allotment, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements. Participants in Auction No. 37 are strongly encouraged to continue such research throughout the auction.

**Potential bidders are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses available in Auction No. 37.** For further details regarding due diligence, please refer to Section I.B.3 of the *Auction No. 37 Procedures Public Notice*.<sup>12</sup>

***Pending Matters Relating to Start of Auction No. 37:*** The Commission has before it an Application for Review filed July 12, 2004 by the Minority Media and Telecommunications Council ("MMTC"). MMTC seeks review of the *Auction No. 37 Procedures Public Notice*, announcing procedures for the upcoming auction of FM Broadcast construction permits. On July 19, 2004, MMTC also filed a motion for stay of Auction No. 37. MMTC requests a stay of Auction No. 37 until the Commission addresses the issues raised in its Application for Review of the *Auction No. 37 Procedures Public Notice*. The Commission will respond to these filings separately.

***Mock Auction.*** The FCC will conduct a mock auction on Thursday and Friday, October 28-29, 2004, which will allow qualified bidders to familiarize themselves with the FCC Automated Auction System. Only qualified bidders will be permitted to participate in the mock auction. The Bureau will conduct this auction over the Internet, and telephonic bidding will be available as well. As a contingency plan, bidders may also dial in to the FCC Wide Area Network. Qualified bidders that wish to place bids telephonically should use the telephone number supplied in the Auction No. 37 registration materials.

The mock auction will include all Auction No. 37 construction permits, and will follow the rules governing the actual auction. **The mock auction will be identified as Auction No. 74. The program will assume that each bidder applied for all construction permits. The program will reflect the actual upfront payment submitted by the bidder, which will determine the initial (maximum) eligibility (as measured in bidding units).** The mock auction will simulate the start of the auction, and all bidders will be required to be active on 100 percent of their current bidding eligibility. A bidder not meeting this requirement will have a waiver automatically applied (if the bidder has any waivers available), or its current eligibility will be permanently reduced (if the bidder has no waivers remaining), possibly eliminating the bidder from the auction.

Electronic bidders participating in the mock auction are advised to review the Bidding System User Manual provided in the second mailing. Attachment E to this *Public Notice* provides instructions for accessing the FCC Mock Auction site.

The mock auction bidding schedule for Thursday, October 28, 2004, will be:

Round 1 Bidding Period	9:00 a.m.	-	11:00 a.m. ET
Round 2 Bidding Period	1:30 p.m.	-	3:30 p.m. ET

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<sup>11</sup> See 47 C.F.R. § 73.202.

<sup>12</sup> See *Auction No. 37 Procedures Public Notice*, 19 FCC Rcd at 10577-79.

The mock auction bidding schedule for Friday, October 29, 2004, will be:

Round 1 Bidding Period	9:00 a.m.	-	10:00 a.m. ET
Round 2 Bidding Period	11:00 a.m.	-	12:00 p.m. ET
Round 3 Bidding Period	1:30 p.m.	-	2:00 p.m. ET
Round 4 Bidding Period	2:30 p.m.	-	3:00 p.m. ET

## OTHER IMPORTANT INFORMATION

**Prohibition of Collusion.** Applicants are reminded that Sections 1.2105(c) and 73.5002(d) of the Commission's rules prohibit applicants for any of the same geographic license areas from communicating with each other during the auction about bids, bidding strategies, or settlements unless they have identified each other as parties with which they have entered into agreements under Section 1.2105(a)(2)(viii).<sup>13</sup> The "geographic license area" is the market designation of the particular service.<sup>14</sup> For the FM service, the market designation is the particular vacant FM allotment (*e.g.*, Bethel, Alaska Channel 252C3, Market FM001). In Auction No. 37, the rule applies to applicants bidding for any of the same FM allotments. Therefore, applicants that have applied to bid for an FM construction permit for the same allotment have been precluded from engaging in prohibited communications after the FCC Form 175 short-form application deadline. In addition, even if auction applicants are each eligible to bid on only one common FM allotment, they may not discuss with each other their bids or bidding strategies relating to any FM allotment on which either is eligible to bid. For Auction No. 37, this prohibition became effective at the short-form application filing deadline on Friday, August 6, 2004, and will end on the post-auction down payment deadline, which will be announced in a future public notice.<sup>15</sup> **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.**<sup>16</sup> For purposes of this prohibition, Section 1.2105(c)(7)(i) defines applicant as including all controlling interests in the entity submitting a short-form application to participate in the 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.<sup>17</sup> If parties had agreed in principle on all material terms of a bidding agreement(s), those parties must have been identified on the short-form application under Section 1.2105(c), even if the agreement had not been reduced to writing. If parties had not agreed in principle by the filing deadline, an applicant should not have included the names of those

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<sup>13</sup> 47 C.F.R. §§ 1.2105(a)(2)(viii), 1.2105(c)(1), 73.5002(c). *See also Auction No. 37 Procedures Public Notice*, 19 FCC Rcd at 10575-77, for a discussion of the anti-collusion rules in Auction No. 37 and the application of geographic license areas to the FM broadcast service. *See also* Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Seventh Report and Order*, 16 FCC Rcd 17546 (2001) (*Part 1 Seventh Report and Order*); *id.*, *Fifth Report and Order*, 15 FCC Rcd 15293, 15297-98 ¶¶ 7-8 (2000).

<sup>14</sup> *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17549 n.12.

<sup>15</sup> 47 C.F.R. § 1.2105(c)(1).

<sup>16</sup> *See, e.g.*, Letter to Robert Pettit, Esquire, from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 16 FCC Rcd 10080 (WTB 2000) (declining to except an applicant's controlling interest from coverage by the anti-collusion rule, even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder).

<sup>17</sup> 47 C.F.R. § 1.2105(c)(7)(i).

parties on its application, and must not have continued negotiations or communications prohibited by the anti-collusion rule.<sup>18</sup>

The Bureaus have encouraged applicants competing for construction permits in any of the same designated markets not to use the same individual as an authorized bidder.<sup>19</sup> A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he or she is authorized to represent in the auction. A violation could similarly occur if the authorized bidders are different individuals employed by the same organization (e.g., law firm or consulting firm). In such a case, at a minimum, applicants should take precautionary steps to prevent communication between authorized bidders.<sup>20</sup>

In addition, Section 1.65 of the Commission's rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission of any substantial change that may be of decisional significance to that application.<sup>21</sup> Thus, Section 1.65 requires auction applicants that engage in communications of bids or bidding strategies that result in a bidding agreement, arrangement or understanding not already identified on their short-form applications to promptly disclose any such agreement, arrangement or understanding to the Commission by amending their pending applications. In addition, Section 1.2105(c)(6) requires all auction applicants to report prohibited discussions or disclosures regarding bids or bidding strategy to the Commission in writing immediately, but in no case later than five business days after the communication occurs, even if the communication does not result in an agreement or understanding regarding bids or bidding strategy that must be reported under Section 1.65.<sup>22</sup>

Applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in all bidding consortia, joint ventures, partnerships, and other arrangements entered into relating to the competitive bidding process.<sup>23</sup> Any applicant found to have violated the anti-collusion rule may be subject to sanctions.<sup>24</sup> In addition, applicants are reminded that they are subject to the antitrust laws, which are designed to prevent anti-competitive behavior in the marketplace. If an applicant is found to have violated the antitrust laws or the Commission's anti-collusion rule in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions.<sup>25</sup>

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<sup>18</sup> See "Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules," *Public Notice*, 11 FCC Rcd 9645 (1995).

<sup>19</sup> See *Auction No. 37 Procedures Public Notice*, 19 FCC Rcd at 10576.

<sup>20</sup> See *In re Application of Nevada Wireless for a License to Provide 800 MHz Specialized Mobile Radio Service in the Farmington, NM-CO Economic Area (EA-155) Frequency Band A*, *Memorandum Opinion and Order*, 13 FCC Rcd 11973, 11977, ¶ 11 (1998) ("Nevada Wireless").

<sup>21</sup> 47 C.F.R. § 1.65. See also *supra* at 5.

<sup>22</sup> 47 C.F.R. § 1.2105(c)(6); see also *Part I Seventh Report and Order*, 16 FCC Rcd at 17555 ¶ 17.

<sup>23</sup> 47 C.F.R. § 1.2107(d).

<sup>24</sup> See 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

<sup>25</sup> 47 C.F.R. § 1.2109(d).

***Long-Form Applications.*** Within thirty days after release of the auction closing public notice, winning bidders must electronically submit a properly completed long-form (FCC Form 301, Application for FM Construction Permit) application, including required exhibits, for each construction permit won through Auction No. 37.<sup>26</sup> The electronic submission of FCC Form 301 must be accompanied by the applicable filing fee. Winning bidders that are claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit.<sup>27</sup> Further filing instructions will be provided to the auction winners at the close of the auction.

For additional information regarding this *Public Notice*, please contact Linda Sanderson, Auctions Project Manager, at (717) 338-2888; Jeff Crooks, Auctions Analyst, at (202) 418-0660; Lynne Milne, Attorney Advisor, Auctions and Spectrum Access Division, at (202) 418-0660; or Lisa Scanlan, Assistant Chief, Audio Division, or Thomas Nessinger, Attorney Advisor, Audio Division, at (202) 418-2700.

Technical questions about software or hardware should be directed to Technical Support at (202) 414-1250 (V) or (202) 414-1255 (TTY).

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<sup>26</sup> 47 C.F.R. § 73.5005.

<sup>27</sup> 47 C.F.R. §§ 1.2112(b), 73.5005, 73.5007. *See also* Instructions for Form 301, Application for Construction Permit for Commercial Broadcast Station, Instructions for Section I: General Information, paragraph G: Item 10: Auction Authorization for auction-related exhibit filing requirements.