

for investigating and evaluating all technical and marketplace factors that may have a bearing on the bids it submits in the reverse auction.

(8) Certification that the applicant agrees that the bids it submits in the reverse auction are irrevocable, binding offers by the applicant.

(9) Certification that the individual submitting the application to participate and providing the certifications is authorized to do so on behalf of the applicant, and if such individual is not an officer, director, board member, or controlling interest holder of the applicant, evidence that such individual has the authority to bind the applicant.

(10) Certification that the applicant is in compliance with all statutory and regulatory requirements for participation in the reverse auction, including any requirements with respect to the license(s) identified in the application to participate.

(11) Such additional information as may be required.

(d) *Application processing.* (1) Any timely submitted application to participate will be reviewed for completeness and compliance with the Commission's rules. No untimely applications to participate shall be reviewed or considered.

(2) Any application to participate that does not contain all of the certifications required pursuant to this section is unacceptable for filing, cannot be corrected subsequent to the application filing deadline, and will be dismissed with prejudice.

(3) Applicants will be provided a limited opportunity to cure specified defects and to resubmit a corrected application to participate. During the resubmission period for curing defects, an application to participate may be amended or modified to cure identified defects or to make minor amendments or modifications. After the resubmission period has ended, an application to participate may be amended or modified to make minor changes or correct minor errors in the application to participate. Minor amendments may be subject to a deadline specified by public notice. Major amendments cannot be made to an application to participate after the initial filing deadline. Major amendments include, but are not

limited to, changes in ownership of the applicant that would constitute an assignment or transfer of control, changes to any of the required certifications, and the addition or removal of licenses identified on the application to participate for which the applicant intends to submit reverse auction bids. Minor amendments include any changes that are not major, such as correcting typographical errors and supplying or correcting information as requested to support the certifications made in the application.

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

(5) 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 to participate. 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 to participate continues until they are made.

(e) *Notice to qualified and non-qualified applicants.* Each applicant will be notified as to whether it is qualified or not qualified to participate in the reverse auction.

EFFECTIVE DATE NOTE: At 79 FR 48530, Aug. 15, 2014, § 1.2204 was added. Paragraphs (a), (c), (d)(3) and (d)(5) contain information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

**§ 1.2205 Prohibition of certain communications.**

(a) *Definitions.* (1) For the purposes of this section, a *full power broadcast television licensee*, or a *Class A broadcast television licensee*, shall include all controlling interests in the licensee, and

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all officers, directors, and governing board members of the licensee.

(2) For the purposes of this section, the term *forward auction applicant* is defined the same as the term *applicant* is defined in § 1.2105(c)(7).

(b) *Certain communications prohibited.*

(1) Except as provided in paragraph (b)(2) of this section, in the broadcast television spectrum incentive auction conducted under section 6403 of the Spectrum Act, 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.

(2) The prohibition described in paragraph (b)(1) of this section does not apply to the following:

(i) Communications between full power or Class A broadcast television licensees if they share a common controlling interest, director, officer, or governing board member as of the deadline for submitting applications to participate in the reverse auction;

(ii) 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; and

(iii) Communications regarding reverse auction applicants' (but not forward auction applicants') bids and bidding strategies between parties to a channel sharing agreement executed prior to the deadline for submitting applications to participate in the reverse auction and disclosed on a reverse auction application.

(c) *Duty to report potentially prohibited communications.* A party that makes or receives a communication prohibited under paragraph (b) 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.

(d) *Procedures for reporting potentially prohibited communications.* Reports under paragraph (c) of this section shall be filed as directed in public notices detailing procedures for bidding in the incentive auction. 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.

(e) *Violations.* A party who is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, in addition to any other applicable sanctions, may be subject to forfeiture of its winning bid incentive payment and revocation of its licenses, where applicable, and may be prohibited from participating in future auctions.

NOTE 1 TO § 1.2205: References to "full power broadcast television licensees" and "Class A broadcast television licensees" are intended to include all broadcast television licensees that are or could become eligible to participate in the reverse auction, including broadcast television licensees that may be parties to a channel sharing agreement.

NOTE 2 TO § 1.2205: For the purposes of this section, "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

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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 3 TO § 1.2205: The prohibition described in § 1.2205(b)(1) applies to controlling interests, officers, directors, and governing board members of a full power or Class A broadcast television licensee as of the deadline for submitting applications to participate in the reverse 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 full power or Class A broadcast television licensee appoints a new officer after the application deadline, that new officer would be subject to the prohibition in § 1.2205(b)(1), but would not be included within the exceptions described in §§ 1.2205(b)(2)(i) and (ii).

EFFECTIVE DATE NOTES: 1. At 79 FR 48530, Aug. 15, 2014, § 1.2205 was added. Paragraphs (c) and (d) contain information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

2. At 80 FR 56816, Sept. 18, 2015, § 1.2205 was amended by revising paragraph (a)(2), effective Nov. 17, 2015. For the convenience of the user, the revised text is set forth as follows:

### § 1.2205 Prohibition of certain communications.

(a) \* \* \*

(2) For the purposes of this section, the term forward auction applicant is defined the same as the term applicant is defined in § 1.2105(c)(5).

\* \* \* \* \*

### § 1.2206 Confidentiality of Commission-held data.

(a) The Commission will take all reasonable steps necessary to protect all Confidential Broadcaster Information for all reverse auction applicants from the time the broadcast television licensee applies to participate in the reverse auction until the reassignments and reallocations under section 6403(b)(1)(B) of the Spectrum Act become effective or until two years after public notice that the reverse auction is complete and that no such reassign-

ments and reallocations shall become effective.

(b) In addition, if reassignments and reallocations under section 6403(b)(1)(B) of the Spectrum Act become effective, the Commission will continue to take all reasonable steps necessary to protect Confidential Broadcaster Information pertaining to any unsuccessful reverse auction bid and pertaining to any unsuccessful application to participate in the reverse auction until two years after the effective date.

(c) Notwithstanding paragraphs (a) and (b) of this section, the Commission may disclose Confidential Broadcaster Information if required to do so by law, such as by court order.

(d) *Confidential Broadcaster Information* includes the following Commission-held data of a broadcast television licensee participating in the reverse auction:

(1) The name of the applicant licensee;

(2) The licensee's channel number, call sign, facility identification number, and network affiliation; and

(3) Any other information that may reasonably be withheld to protect the identity of the licensee, as determined by the Commission.

### § 1.2207 Two competing participants required.

The Commission may not enter into an agreement for a licensee to relinquish spectrum usage rights in exchange for a share of the proceeds from the related forward auction assigning new spectrum licenses unless at least two competing licensees participate in the reverse auction.

### § 1.2208 Public notice of auction completion and auction results.

Public notice shall be provided when the reverse auction is complete and when the forward auction is complete. With respect to the broadcast television spectrum incentive auction conducted under section 6403 of the Spectrum Act, public notice shall be provided of the results of the reverse auction, forward auction, and repacking,