

Part 1 Rules Webinar



Part 1 Report and Order
Revised Competitive
Bidding Rules

Ex Parte Information

- Attending and/or participating in this webinar regarding the rule changes in the *Part 1 Competitive Bidding Report and Order* will not require a filing under the Commission's rules governing *ex parte* communications.
- See *Updating Part 1 Competitive Bidding Rules*, Report and Order, Order on Reconsideration of the First Report and Order, Third Order on Reconsideration of the Second Report and Order, and Third Report and Order, 30 FCC Rcd 7493 (2015) (*Part 1 R&O*).

Agenda

- Overview of General Part 1 Rule Changes
 - Joint Bidding
 - Prohibited Communications
 - Commonly Controlled Entities
 - Former Defaulter Rule
- Overview of Designated Entity Rule Changes
 - DE Eligibility
 - Rural Service Provider Bidding Credit
 - Cap on Total Amount of Bidding Credit
- Q&A
 - Submit questions to: WTBQuestions@fcc.gov

General Part 1 Rule Changes

- Adopted rules prohibiting joint bidding arrangements with limited exceptions, and made related updates to our rule on prohibited communications.
- Adopted rules prohibiting the same individual or entity and entities with common controlling interests from becoming qualified to bid on the basis of more than one FCC Form 175, with a limited exception for certain rural wireless partnerships and individual members of such partnerships.
- Revised the former defaulter rule, consistent with the waiver the Commission granted in Auction 97.

Prohibition on Joint Bidding

- Joint bidding arrangements between applicants are prohibited.
- Certain joint bidding arrangements between applicants and non-applicants are also prohibited.
 - Prohibition against joint bidding between nationwide providers extends to bidding arrangements in which one (or more) of the nationwide providers is not itself an applicant in an auction.
 - Arrangements between nationwide and non-nationwide providers are prohibited, where any one of the parties is an applicant.

Joint Bidding Definition

- “Joint bidding arrangements” include arrangements relating to the licenses being auctioned that address or communicate, directly or indirectly, bidding at the auction, bidding strategies, including arrangements regarding price or the specific licenses on which to bid, or the post-auction market structure.

Operational Agreements

- The prohibition on joint bidding does not include agreements that solely address operational aspects of providing a mobile service.
- For example:
 - Roaming agreements;
 - Spectrum leasing and other spectrum use arrangements;
 - Device acquisition;
 - Spectrum partitioning/disaggregation and interconnection agreements;
 - Industry discussions regarding setting technical standards;
 - Discussions regarding FirstNet request for proposals;
 - Channel 51 voluntary relocation discussions.

License Assignment or Transfer

- The prohibition on joint bidding does not 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 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.

Consortia and Joint Ventures

- Eligible non-nationwide providers may enter into agreements to form either a consortium or a joint venture. Specifically,
 - DEs may continue to form and use consortia
 - Non-nationwide providers may use a joint venture to pool resources
- Non-nationwide providers may participate in only one joint venture in an auction, which shall be the exclusive bidding vehicle for its members.
- A DE can participate in only one consortium in an auction, which shall be the exclusive bidding vehicle for its members.
- A joint venture between a nationwide and non-nationwide provider is not permitted to participate in an auction.

Prohibited Communications

- Auction applicants are prohibited from communicating or disclosing, in any manner, the substance of any applicants' bids or bidding strategies (including post-auction market structure).
 - Applies to communications among all auction applicants, regardless of licenses selected.
 - Applies to communications by applicants with nationwide providers and, if the applicant is a nationwide provider to communications with non-nationwide providers.
- Eliminated exception for communications in connection with joint bidding agreements.
- Communications relating to post-auction market structure are prohibited.
- Pre-existing operational agreements do not violate the rule.
- An individual is prohibited from serving as an authorized bidder for more than one auction applicant.
 - Certification required for parties holding a disclosable interest in more than one applicant in an auction.

Prohibited Communications

- Only communications that **both** relate to licenses being auctioned **and** communicate bids or bidding strategies or post-auction market structure may violate the rule.
 - Similar to scope of joint bidding agreement ban.
 - Communication on many topics related to post-auction market structure are unaffected, if they are not related to the licenses in the auction.

Commonly Controlled Applicants

- An entity or individual may only participate in a Commission spectrum auction through a single bidding entity.
 - Codifies long-standing prohibition on the filing of more than one auction application by the same individual or entity.
 - Prohibits the filing of applications by entities controlled by the same individual or set of individuals.
- Prohibition applies without regard to the licenses or geographic areas selected.
- Determinations of control will be made consistent with controlling interest principle in section 1.2105(a)(4)(i)
 - A “controlling interest” includes individuals or entities with positive or negative *de jure* or *de facto* control of the licensee.

Exception to Prohibition of Commonly Controlled Applicants

- For qualifying rural wireless partnerships, the partnership and its individual members may participate separately in an auction.
 - A “qualifying rural wireless partnership” is one that:
 - Established by the cellular B block settlement process;
 - Has no nationwide provider as 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 *Part 1 R&O*
 - A “qualifying partnership member” is one that:
 - Has no day-to-day management responsibilities of partnership;
 - Holds a 25% or less ownership interest; and
 - Certifies that it will insulate itself from the bidding process of partnership and other members

Applicants With Common Non-Controlling Disclosable Interests

- An applicant that has a disclosable non-controlling interest holder in another applicant may participate separately in an auction provided each applicant certifies that it has established internal control procedures.
 - Cannot possess or communicate information about the bids or bidding strategies of one applicant to another applicant.

Former Defaulter Rule

- New rule excludes any cured default on a Commission license or delinquency on a non-tax debt owed to a Federal agency for which any of the following criteria are met:
 - The notice of the final payment deadline or delinquency was received more than seven years before the relevant short-form application deadline;
 - The default or delinquency amounted to less than \$100,000;
 - The default or delinquency was paid within two quarters (i.e., six months) after receiving the notice of the final payment deadline or delinquency; or
 - The default or delinquency was the subject of a legal or arbitration proceeding and was cured upon resolution of the proceeding.
- Rule is limited to the applicant and its controlling interests as defined in section 1.2105(a)(4)(i).

Overview of DE Rule Changes

- Revised small business eligibility rules based on the controlling interest standard, and a two-pronged standard for evaluating eligibility for small business benefits
- Adopted a 15% Bidding Credit for eligible Rural Service Providers (RSP)
 - Bidding credits are not cumulative—an applicant is permitted to claim a small business bidding credit or an RSP bidding credit, but not both
- Increased gross revenue thresholds to qualify as a small business
- Adopted a cap for the total amount of bidding credits that can be won in any auction

Designated Entity Eligibility

- Commission eliminated attributable material relationship (AMR) rule and concluded DEs need not provide primarily facilities-based service on each license
- Two-Pronged Standard:
 - Attributes the revenues of the applicant, its controlling interests, its affiliates, and the affiliates of its controlling interests to determine whether applicant:
 - Meets the applicable small business size standard; and
 - Retains control over the spectrum associated with the individual licenses for which it seeks benefits.
 - Evaluates eligibility on a license-by-license basis to ensure that the small business makes independent decisions about its business operations.
 - An applicant need not be eligible for benefits on each of the spectrum licenses it holds in order to demonstrate its overall eligibility for benefits.

Designated Entity Eligibility

- The Commission also adopted a new attribution rule, which limits the amount of spectrum that a non-controlling disclosable interest holder (DIH) of a DE – such as an investor – can use through leasing or any other type of spectrum use agreement during the unjust enrichment period.
 - DIH: any entity that holds 10% or > interest in applicant
- Under the new rule, an applicant must disclose and attribute the revenues (or subscribers for RSPs) of any DIH that has an agreement to use more than 25% of the spectrum capacity for any license(s) acquired with bidding credits, on a license-by-license basis.
 - Exception: An RSP may have a use agreement with a DIH, without having to attribute the DIH's subscribers, if the DIH is independently eligible for a RSP credit and the use agreement is otherwise permissible under the rules.

Rural Service Provider Bidding Credit

- For the first time, the Commission adopted a 15% bidding credit for eligible RSPs.
- Eligibility Criteria for RSP Bidding Credit:
 - Provide commercial communications services to < 250,000 combined wireless, wireline, broadband, and cable subscribers; and
 - Serves predominantly rural areas.
- Applies general DE attribution standard to evaluate eligibility, with some exceptions.

Rural Service Provider Bidding Credit

Exceptions to general DE attribution standard to evaluate RSP eligibility:

- Exception for existing rural partnerships
 - Must have been providing service as of July 16, 2015
 - Partnership eligible if each individual member would otherwise qualify as an RSP
- Exception for rural consortia
 - Consortium eligible if each individual member would otherwise qualify as an RSP
 - Consistent with existing rules, if consortium wins, an individual member or new legal entity comprising two or more individual members must apply for the license(s).

Increased Revenues for Small Business Bidding Credits

- Taking into account the passage of time, inflation and the rapidly evolving nature of the wireless industry, the Commission adjusted the gross revenue thresholds used to determine eligibility for small business bidding credits.
- More small businesses will qualify for larger bidding credits.
 - New thresholds will be implemented in the incentive auction.
- Increased revenue thresholds to qualify as a small business:
 - Not Exceeding \$4 million - 35% credit (Not available for the Incentive Auction)
 - Not Exceeding \$20 million - 25% credit
 - Not Exceeding \$55 million - 15% credit

DE Bidding Credit Cap

- The Commission implemented an overall cap on the total amount of bidding credits a DE applicant may receive in an auction.
- Cap will be determined on an auction-by-auction basis, subject to certain minimums:
 - \geq \$25 million for small businesses
 - \geq \$10 million for rural service providers
 - May also adopt a market-based cap

DE Bidding Credit Cap – Incentive Auction

Incentive Auction Bidding Credit Caps:

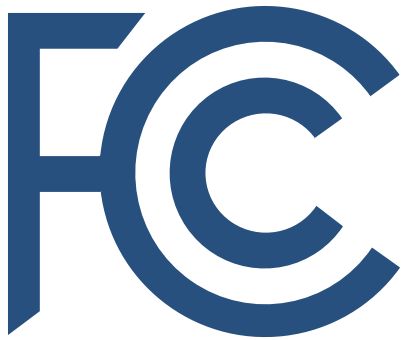
- \$150 million cap for small businesses
- \$10 million cap for rural service providers
- \$10 million market-based cap for smaller markets
 - Partial Economic Areas (PEAs) with 500,000 pops or less (PEAs 118-416, except for 412)
 - If small business does not claim full \$10 million in bidding credits in the smaller markets, it may apply remaining balance to its winning bids on larger licenses, up to the aggregate \$150 million cap.

Contacts

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Questions?

To submit questions after the
webinar, e-mail

auction1002@fcc.gov

Additional Resources

FCC Releases:

Part 1 Order: FCC 15-80 (rel. 7/21/15), 30 FCC Rcd 7493.

Prohibited Communications PN: DA 15-1129 (rel. 10/6/15), 80 FR 63215.

Application Procedures PN: DA 15-1183 (rel. 10/15/15).

FCC Incentive Auction Web Page (includes links to relevant IA-related releases): <http://www.fcc.gov/auctions/1000>

FCC Subject Matter Experts:

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