



Broadcasters Should Take Steps Now to Prepare for Reverse Auction Application Deadline

October 20, 2015

Updated to reflect revised FCC schedule.

Broadcasters interested in participating in the reverse auction will have until 6:00 p.m. Eastern Time on January 12, 2016, to file their initial applications to participate in the reverse auction. This important deadline, along with several other critical details for how broadcasters can participate in the auction, was released late last week as part of the Federal Communications Commission’s (FCC or Commission) [Application Procedures Public Notice](#) (and updated in a subsequent [Public Notice](#)). In a separate [Public Notice](#), the FCC also announced the opening bid prices for all auction-eligible full power and Class A television stations.

Filing the reverse auction application, known as FCC Form 177, does not obligate the licensee to participate in the auction; however, it is mandatory for any broadcaster that might want to participate. Licensees that are even considering the auction should familiarize themselves with the FCC’s procedures now so they are prepared to file when the Commission begins accepting applications on December 8.

The following is the updated schedule for reverse auction applicants:

Date	Event
Dec. 8, 2015 (1:00 p.m. ET)	FCC Public Workshop – Reverse Auction Application Process
Dec. 8, 2015 (noon ET) – Jan. 12, 2016 (6:00 p.m. ET)	Form 177 Filing Window
Feb. 29, 2016	Bidding and Post-Auction Process Tutorial (available online)
Mar. 29, 2016 (6:00 p.m. ET)	Initial Commitment Deadline
Three to four weeks after initial commitment deadline	Initial Clearing Target and Band Plan Announced
TBD	Mock Auction(s)
TBD	Bidding in Clock Rounds Begins

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Under this schedule, the quiet period during which broadcast licensees cannot communicate regarding bids or bidding strategies will begin at 6:00 p.m. ET on January 12, 2016.

Initial Applications (Form 177)

Applicants must submit their Form 177 applications online. The Application Procedures Public Notice includes a warning to licensees to: (1) protect their FRN and password, including through regular changes to the password; and (2) monitor the auction filing system to make sure that no unauthorized applications are filed on their behalf. ***If you do change the password associated with your FRN, please immediately let us know so we can continue to file any required applications on your behalf, whether or not related to the incentive auction.***

The Form 177 will include four main components: (i) general information about the licensee and the participating stations; (ii) bidding options; (iii) information about channel sharing; and (iv) required certifications.

- **General Information About Licensee and Participating Stations.** Each licensee must file its own application for the reverse auction. Thus, while a parent company cannot file an application for multiple licensees, a licensee can place each of its stations on a single application. The person signing the application should be an officer, director, board member or controlling interest holder of the applicant or otherwise be able to demonstrate that such individual has the authority to bind the applicant.

The application will seek the following information:

- **Identifying information:** information about the applicant, including the applicant's name and address (if an individual); the name and address of the corporate office and the name and title of an officer or director (if a corporation); the name, citizenship, and address of all general partners or the responsible person, if a general partner is not a natural person (if a partnership); the name and address of the trustee (if a trust); or a general description of the entity and its principals or other responsible persons (if none of the above). Non-profit entities must also list the name, address, and citizenship of each member of the governing board and of any educational institution or governmental entity with a controlling interest in the applicant, if applicable.
- **Stations:** information about which station(s) are included on the application. The FCC may pre-fill information on Form 177, such as a station's facility identification number, call sign, and Designated Market Area (DMA). However, each applicant is responsible for reviewing this information and correcting any information that is inaccurate.
- **Authorized bidders:** the applicant must identify between one and three persons authorized to place bids in the auction.
- **Ownership information:** each applicant will be required to provide information about the real party- or parties-in-interest and the ownership structure of the applicant, including both direct and indirect ownership interests of 10 percent or more.

- **NCE information:** if the applicant is the licensee of a noncommercial educational station, it must specify whether the station operates on a reserved or non-reserved channel.
- **Post-auction license holdings:** applicants selecting the “off-air” bidding option must indicate whether or not they will hold any other broadcast license if all of their bids to go off the air are accepted.
- **License status:** applicants must indicate for each license identified in the application whether such license is subject: (1) to a non-final revocation order; or (2) has expired or been cancelled and is subject to a final cancellation order. Licensees of Class A stations must indicate whether their stations are subject to a non-final downgrade order.
- **Bidding Options.** For each station included on the application, the applicant may select one or more of three bidding options: (i) go off-air (available to all stations); (ii) move to low-VHF (available only to UHF and high-VHF stations); and (3) move to high-VHF (available only to UHF stations). This is not a binding commitment to any option; however, an applicant must elect each option that it *may* want to bid during the auction. Accordingly, applicants should select all available options on the Form 177 unless they are absolutely sure that they do not want to bid a specific option.

For bidding purposes, a station that intends to relinquish spectrum to channel share will bid to go off the air. However, stations must provide additional information about channel sharing, as described below.

- **Channel Sharing.** Applicants intending to channel share must also provide additional information, depending on whether they have signed a channel sharing agreement prior to the application deadline or if they intend to consider channel sharing after the auction.
 - A licensee that has entered into a channel sharing agreement (CSA) before the reverse auction filing deadline must submit an executed, unredacted copy of the CSA with its application. The sharee station must also identify on the application all parties to the CSA (including the host station, any other sharees, and the channel on which they will share).
 - A licensee that has not entered into a pre-auction CSA may only enter into a CSA after the auction if it indicates on Form 177 that it has a present intent to find a channel sharing partner after the auction. This is a non-binding statement of intent. Accordingly, any applicant that is considering a bid to go off the air may want to consider indicating an intent to channel share to preserve post-auction flexibility. Even applicants that submit pre-auction CSAs may indicate an intent to channel share to preserve the option to seek a different sharing partner after the auction.
 - A licensee that is only looking to serve as a channel sharing host will not need to file its own application; however, it will be required to provide certain certifications in connection with the sharee’s application, as explained below.
- **Certifications.** Applicants will be required to provide a number of certifications, under penalty of perjury, depending on the bidding options selected and the nature of the applicant. ***It is critical that applicants make all required certifications.*** The FCC will not permit applicants to correct a failure to

make a required certification; rather, the application will be dismissed and the applicant will not be permitted to participate in the auction.

- **All applicants** will be required to certify to the following:
 - **Due diligence:** certification that the applicant has the sole responsibility for investigating and evaluating all technical and marketplace factors that may have a bearing on the bids it submits in the reverse auction.
 - **Non-reliance on FCC-provided information:** certification that any information provided by the Commission's outside contractors is for informational purposes only and neither the Commission nor its contractors make any representations or warranties with respect to such information and shall have no liability to the applicant in connection therewith.
 - **Binding nature of the bid:** certification that any bid submitted is an irrevocable, binding offer to relinquish the relevant spectrum at the offered price.
 - **National security certification:** certification that the applicant and all of the related individuals or entities required to be disclosed on the application 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, and who are thus statutorily prohibited from participating in the auction.
- **Applicants that will hold another broadcast license after the auction** must certify that they will remain subject to any license renewal, as well as any enforcement action, pending at the time of the auction application deadline against the station that may go off the air as a result of the auction.
- **Applicants that may not hold another broadcast license after the auction** must certify that: (1) the Commission may withhold a portion of the share of auction proceeds for the station, if any, pending a final determination of any outstanding FCC liabilities and that the FCC may apply the withheld amounts toward such liabilities; and (2) the applicant remains subject to the Commission's jurisdiction and authority notwithstanding the surrender of its license for the station.
- A licensee with a station **subject to a revocation order, cancellation order, or downgrade order** must certify that it agrees with the FCC's announced procedures to withhold all of any incentive payment for the station pending the final outcome of the proceeding.
- A licensee applying on behalf of a **Class A station** must certify that it will remain in compliance with the ongoing statutory eligibility requirements to remain a Class A station.
- **Applicants filing a pre-auction CSA** with the Commission will be required to make the following certifications:

- **General FCC rules:** certification that the CSA is consistent with all Commission rules and policies and that the applicant accepts any risk that it may not be feasible to implement the CSA.
 - **Multiple ownership:** certification that the CSA will not trigger a new combination that violates the FCC's multiple ownership rules based on the facts at the time the application is submitted.
 - **DMA:** certification that operation from the shared facilities will not result in a change to the sharee station's DMA.
 - **Community of license coverage:** certification that either the station: (i) can meet the community of license coverage requirement from the shared channel facilities; (ii) if not, that the new community of license meets the same or higher allotment priority as its current community; or (iii) if no community meets this criteria, that it provides the next highest priority.
- **Potential host (sharer) stations** identified in a CSA filed with the Commission pre-auction must make the first two certifications above, regarding compliance with general FCC rules and multiple ownership, as well as a certification that the CSA submitted by the applicant is a true, correct, and complete copy of the CSA between the parties. A host (sharer) station that is a Class A station must also certify that it will remain in compliance with the ongoing statutory eligibility requirements to remain a Class A station. The host (sharer) must provide a signed certification to the sharee station(s) to upload into their auction application(s).

Following the application deadline, the FCC will send confidential letters by overnight mail to each applicant informing them: (1) whether the application is complete, has been rejected, or is incomplete or deficient because of minor defects that may be corrected; (2) of the deadline for resubmitting a corrected application (if necessary); and (3) of any potential FCC liabilities that cannot be resolved before the initial commitment deadline as well as the amount that the FCC will withhold should the applicant relinquish its license(s) in the auction. Applicants must correct any defects prior to the deadline or their applications will be dismissed with no opportunity for recertification. After the filing deadline, applicants will be limited to minor modifications of their application (*e.g.*, changes in authorized bidders, revision of addresses and telephone numbers, and changes from electronic to telephonic bidding). Major modifications, including changes to the stations identified for relinquishment, the bidding options selected, details of the CSA, or a change in control of the applicant will not be permitted (except for changes in control submitted for FCC approval prior to the application deadline and consistent with other requirements).

After the resubmission filing deadline, the FCC will send a confidential letter to the contact person for each applicant to notify such person about the final status of its application and, if such application is complete, to provide details about the process for submitting an initial commitment for the applicant's qualified station(s).

Initial Commitment

To participate in the clock round of the auction, all applicants that timely submitted a Form 177 must also commit, no later than 6 p.m. ET on March 29, 2016, to a preferred relinquishment option for each station that

they intend to bid for in the reverse auction. The FCC has released the opening prices for each station, which can be [accessed here](#). The initial commitment constitutes an irrevocable offer to relinquish the associated spectrum usage rights at the specified price. Stations electing one of the “move to VHF” options may also specify a fallback option if moving to VHF is not feasible.

The FCC will establish an initial clearing target for the auction based on the initial commitments that it receives. It will then send a confidential letter to each reverse auction applicant to inform it of its status for the clock rounds of the reverse auction. For each station, the Commission will indicate either that: (1) the station is qualified to participate in the clock round; (2) the station is not qualified because no initial commitment was made; (3) the commitment that the station made cannot be accommodated; or (4) the station is not needed to meet the initial or any subsequent clearing target. In the event of any of the latter three options, the FCC is obligated to repack the station in its pre-auction band.

The confidential letter will also inform each qualified bidder of the date of the mock auction to which it has been assigned. The FCC expects to conduct at least two mock auctions to accommodate all of the broadcasters it is expecting to qualify to bid in the reverse auction.

Bidding

Applicants will have the option to bid over the Internet or by telephone. In either instance, the bidder will need a SecureID token, which the FCC will provide for each designated authorized bidder.

Post-Auction Procedures

Once both the reverse auction and the forward auction are complete, the FCC will issue a Channel Reassignment Public Notice, which will announce the results of the incentive auction and the repacking process.

Successful bidders will be required to submit an incentive payment form to facilitate the distribution of their incentive payments. The FCC will make incentive payments on a rolling basis, as license applications filed by winning forward auction bidders are ready to be granted.

Next Steps

The FCC recently released the [Application Instructions](#) that accompany FCC Form 177, the reverse auction application. You can view [screenshots of the application here](#). In addition to the application itself, there is also: (1) [a form](#) for channel sharing hosts to submit their certifications; and (2) [a form](#) with additional certifications for Class A channel sharing hosts. The FCC also launched an [interactive tutorial](#) to walk potential applicants through the application process.

Licenses interested in participating in the auction should: (1) continue to evaluate the various participation options for each station; (2) finalize any pre-auction CSAs (which must be filed with the FCC by the January 12, 2016 initial application deadline); and (3) begin to assemble the required information for the initial application.

If you have any questions about the initial application process or the auction, more broadly, please contact the Wiley Rein attorney who handles your FCC matters or one of the attorneys listed on this client alert.

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