

		Title
FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554		Communicating Spectrum Auction Events that have Financial Recording and Reporting Impact
FCC DIRECTIVE	Directive Number	Effective Date
	FCCINST 1059.5	March, 2021

1. **PURPOSE:**

To provide guidance, policy and procedures concerning the communication of spectrum auction events that have a financial impact and (or) result in the recording of a financial transaction.

2. **BACKGROUND:**

Since its enactment in 1993, Section 309(j) of the Communications Act of 1934, as amended, has authorized the Commission to use competitive bidding to assign initial licenses for which it has accepted two or more mutually exclusive applications. The Act requires the Commission to use auctions to resolve mutually exclusive applications for initial licenses or construction permits, unless the Commission finds that it is in the public interest not to do so, or unless certain exemptions apply, including exemptions for licenses issued for certain public safety radio services, digital television licenses given to terrestrial broadcast licensees or construction permits to replace their analog television licenses, and non-commercial educational and public broadcast stations. Since 1994, the Commission has conducted auctions of licenses for electromagnetic spectrum. These auctions are open to any eligible entity or individual that timely submits an application and upfront payment and is found to be a qualified bidder by the Commission under the rules applicable to the auction in question.

Congress has extended and expanded the Commission's auction authority over the years. In 2012, Congress enacted the Middle Class Tax Relief and Job Creation Act of 2012, which authorized the Commission to conduct incentive auctions to encourage existing licensees to voluntarily relinquish their spectrum usage rights, in order to permit the assignment by auction of new initial licenses subject to flexible-use service rules, in exchange for a portion of the resulting auction proceeds.

3. **CANCELLATION:**

This instruction supersedes FCCINST 1059.4, Communicating Spectrum Auction Events that have Financial Recording and Reporting Impact, dated March 2, 2016.

4. **SCOPE:**

This directive, including Appendix A (Pre-Auction Procedures and Timeline), applies to all Bureaus and Offices involved in the spectrum auction and post-auction licensing processes.

5. AUTHORITY:

The Communications Act of 1934, as amended, per 47 U.S.C. § 309.

6. POLICY:

- A. The Office of Economics and Analytics (OEA) will notify the Office of Managing Director - Financial Operations - Revenue and Receivables Operations Group (OMD-FO-RROG), in a timely manner, any time an auction is scheduled or of any auction-related actions that may have a financial impact, including the rescheduling of an auction, refunds, default and withdrawal liabilities, proposed auction rule changes, receipt of upfront payments, deposits, and payments, and payment due dates. OEA will also notify OMD-FO-RROG of any information relevant to any obligation (under the Commercial Spectrum Enhancement Act or otherwise) to use auction proceeds to pay for relocation of or sharing by incumbents or for other purposes. OEA, or when appropriate, the relevant licensing Bureau, will notify OMD-FO-RROG of unjust enrichment payment obligations, license defaults and proposed licensing rule changes,
- B. Bureaus and Offices will seek OMD's advice and concurrence on any issues they believe may have a financial impact or result in the recording of a financial transaction.

7. ROLES and RESPONSIBILITIES:

- A. Except as otherwise noted below as the responsibility of a licensing Bureau, OEA is responsible for:
 - (1) Advising OMD-FO-RROG of planned auction events and dates;
 - (2) Notifying OMD-FO-RROG of applicants qualified to participate in the auction;
 - (3) Providing OMD-FO-RROG with each qualified applicant's FCC Registration Number (FRN) and its claimed bidding credit eligibility;
 - (4) Issuing the Public Notice announcing the winning bidders and any bid withdrawal payment obligations;
 - (5) OEA is responsible for providing OMD-FO-RROG a draft copy of the *Qualified Bidders and Closing Public Notices*. The relevant licensing Bureau is responsible for providing OMD-FO-RROG the *Prepared to Grant* and/or *Grant Public Notices*, including a list of those licenses being granted;
 - (6) OEA is responsible for providing OMD-FO-RROG with detailed information concerning the winning bidders, withdrawal payments, down payments, final payments, including any applicable incentive payments that reduce the payment required for winning bids, and/or refunds, and requests for auction rule waivers that may have a financial impact or result in the recording of a financial transaction. The relevant licensing Bureau is responsible for providing OMD-FO-RROG with FCC Forms 301, 346, 349, 601, and 602 filing requirements as appropriate, post-auction requests for rule waivers that may have a financial impact or result in the recording of a financial transaction, and licensing matters that may have a financial impact or result in the recording of a financial transaction;
 - (7) OEA, or as appropriate, the relevant licensing Bureau, is responsible for notifying OMD-FO-RROG of any unjust enrichment obligations;
 - (8) The relevant licensing Bureau is responsible for maintaining an inventory of available spectrum that is subject to auction;

- (9) Providing OMD-FO-RROG with information on the status of applicants that are subject to higher upfront payment obligations applied to former defaulters in accordance with 47 CFR §1.2106; and
 - (10) Issuing demand letters for interim or final withdrawal or default payments in coordination with OMD-FO-RROG.
- B. The Office of Managing Director - Financial Operations - Revenue and Receivables Operations Group (OMD-FO-RROG) is responsible for:
- (1) Managing the day-to-day operations of the financial and accounting functions as they relate to auctions;
 - (2) Coordinating all auction accounting activities, including financial accounting activities associated with individual auctions and those related to the ongoing activity associated with reviewing and managing auction-related policies and procedures;
 - (3) Serving as expert advisor in financial accounting matters to the Bureaus and Offices;
 - (4) Providing qualified applicants instructions for making payment and for completing the FCC Form 159.
 - (5) Accounting for upfront payments received from potential bidders, notifying OEA and the relevant licensing Bureau that all upfront payments received have been recorded in the FCC's financial system;
 - (6) Processing refunds to eligible auction participants during an auction only after coordination with OEA and the relevant licensing Bureau;
 - (7) Processing refunds to eligible auction participants after an auction;
 - (8) Maintaining delinquent debtor records;
 - (9) Providing access to and information on delinquent debtor accounts;
 - (10) Accounting for down payments and final payments received from winning bidders;
 - (11) Accounting for withdrawal payments and default payments received from bidders;
 - (12) Collection or compromise of auction-related debts pursuant to Part 1, Subpart O of the Commission's rules, including Sections 1.1914 and 1.1915;
 - (13) Providing reports/information from the FCC's financial system (Genesis) for purposes of determining the red light status of applicants and their affiliates, and conducting research on the red light status of applicants and their affiliates;
 - (14) Coordinating with OEA concerning requests for waiver of payment obligations and/or payment deadlines; and
 - (15) Providing OEA and the relevant licensing Bureau with information on the status of payments relating to auction obligations.

8. REPORTS:

Once the auction is completed, reports and information regarding spectrum auction events that have a financial impact or result in the recording of a financial transaction will be forwarded by OEA to OMD-FO-RROG.

9. EFFECTIVE DATE and IMPLEMENTATION:

This directive is effective immediately and shall be implemented promptly upon distribution.

Mark Stephens
Managing Director

APPENDIX A

Pre-Auction Procedures and Timeline

Purpose:

To summarize the general framework of the policy and procedures for spectrum auctions. Listed below is the timeline that is generally followed, unless circumstances require changes, by all Offices and Bureaus that are involved in spectrum auction-related activities that have a financial impact or result in the recording of a financial transaction.

A. Comment Public Notice (Approximately 4-6 months prior to auction).

A public notice is released in accordance with the requirements of the Budget Act of 1997, seeking comment on auction procedures such as activity rules, upfront payment amounts, minimum opening bids and/or reserve prices.

B. Procedures Public Notice (Approximately 3-5 months prior to auction).

A public notice is released providing potential participants with the procedures, terms, and conditions for the auction.

C. Tutorial (Approximately 60-75 days prior to auction).

An on-line tutorial is provided to introduce potential auction applicants to the auction rules, pre-auction processes and bidding procedures. The tutorial is housed on the Auctions Internet site and can be viewed on a 24/7 basis.

D. Short-Form Application (FCC Form 175) Filing Deadline (Approximately 45-60 days prior to auction).

This is the first deadline faced by potential participants. The short-form application, which must be filed electronically, collects basic information, including the applicant's ownership structure and the items on which it wants to be able to bid during the auction. If an individual or entity does not submit its short-form application by the established deadline, it will not be able to participate in the auction.

E. Short-Form Application Status Public Notice (Approximately 30-40 days prior to auction).

After the deadline for filing, staff reviews all timely-filed short-form applications and deems them complete, incomplete, or rejected. This public notice announces the status of the applications.

The FCC sends the public notice in an overnight package to each applicant's contact person listed on the short-form application. For an applicant whose application has been deemed incomplete, a letter is included that includes a brief explanation of the omissions or deficiencies that gave rise to the "incomplete" designation. This letter also includes the name of an FCC contact person in case the applicant requires further explanation.

F. Short-Form Application Resubmission Deadline (Approximately 3-4 weeks prior to auction).

Short-form applications that were deemed "incomplete" or otherwise deficient must be corrected and refiled by this deadline, which often coincides with the upfront payment deadline.

G. Upfront Payment Deadline (Approximately 3-4 weeks prior to auction).

Potential bidders must submit a refundable deposit that is used to purchase the eligibility (bidding units) required to place bids in the auction.

H. Qualified Bidders Public Notice (Approximately 10-14 days prior to auction).

This public notice lists the bidders qualified to participate in the auction, each bidder's FCC Registration Number, and its claimed bidding credit eligibility. For some auctions, this public notice also lists each bidder's bidding unit eligibility and which items it selected on its FCC Form 175. This public notice also contains information about the mock auction, the bidding schedule for the first day of the auction, and other auction-specific details. The FCC sends this public notice to each applicant's contact person in an overnight package along with registration materials as listed below.

I. Qualified Bidders Registration (Approximately 7 days prior to auction).

Shortly after the release of the Qualified Bidders Public Notice, an overnight mailing is sent to the applicant's contact person. This mailing includes the Qualified Bidders Public Notice, RSA SecurID® tokens for logging into the FCC Auction System, the Auction Bidder Line phone number, and other materials needed to participate in the auction.

J. Mock Auction (Approximately 2-5 days prior to auction).

To ensure bidders understand the auction process, the FCC conducts a mock auction as a service to qualified bidders. The mock auction allows bidders to familiarize themselves with the bidding process and become comfortable with the rules and conduct of the auction.

K. Auction Begins.

L. Auction Closes (Approximately 2-5 business days after an auction closes).

Closing Public Notice is released. This public notice announces winning bidders and long-form application filing deadlines. This public notice also announces the deadlines and procedures for submission of down payments and final payments. In the case of winning bidders that are "designated entities," the payment requirements are net of bidding credits for which the bidders may qualify. Licenses will not be awarded until the relevant licensing Bureau determines the bidder is qualified to hold the license and for any bidding credit, as applicable. That determination may be delayed by the need to address any petitions to deny that may be filed against the winning bidder's long-form application.

M. Post-Auction Auction Payment Assessments

As appropriate, participants in spectrum auctions may be assessed interim and/or final bid withdrawal payments or default payments.