



**April 2009**

## **FCC Sets Dates, Procedures for Auction 79**

The Commission is hustling to get Auction 79 ready to roll – the agency has already followed up its preliminary request for comments (issued at the end of February) with the issuance of a formal “Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 79” (Auction 79 Notice). With the Auction 79 Notice the auction process shifts into high gear.

The Auction 79 Notice contains few surprises. It addresses and resolves a small number of proposed tweaks to its auction processes, but for the most part adheres to the procedures which have been used for broadcast auctions over the years. If you (a) are interested in participating in the auction but (b) are not familiar with those procedures, you should start now to get a handle on how FCC broadcast auctions work. The system is not always intuitively obvious, and unwary (and unknowing) bidders are at a very distinct disadvantage when the action starts.

There are at least two notable changes from the past.

With respect to the interaction of the Commission’s standard ownership attribution rules and eligibility for bidding credit (as an “eligible entity”), the Auction 79 Notice reminds would-be participants that the definition of “eligible entity” was revised in the Commission’s 2008 Diversity Order. Under the revised “equity-debt plus” aspect of that definition,

the holder of an equity or debt interest in the applicant [is permitted] to exceed the . . . 33 percent threshold without triggering attribution provided (1) the combined equity and debt in the “eligible entity” is less than 50 percent; or (2) the total debt in the “eligible entity” does not exceed 80 percent of the asset value, and the interest holder does not hold any equity interest, option, or promise to acquire an equity interest in the “eligible entity” or any related entity.

This may give rise to some additional opportunities for some applicants and investors.

On the purely procedural side, the Wireless Telecommunications and Media Bureaus (who administer auctions) have given themselves the power to impose alternative “stopping rules” if they deem such rules to be appropriate. Historically, the Bureaus have

used a “simultaneous stopping rule” approach under which all CPs would remain available for bidding until bidding closes on all CPs simultaneously. As a practical matter, that meant that, even after the vast majority of bidding battles had been wrapped up, bidding was still technically “open” as long as even one CP was still being actively contested. While the Bureaus intend to adhere to this standard “simultaneous stopping rule” to start out with in Auction 79, they indicate in the Auction 79 Notice that they may opt to use alternative versions of the stopping rule, with or without prior announcement during the auction, if they think that doing so is appropriate.

And one other auction-related policy that *always* warrants a reminder: the anti-collusion rules. The Commission is ruthless in enforcing those rules, which impose an iron-clad Cone of Silence between competing applicants from the filing of their respective short-form Form 175 applications until the deadline for down payments by successful bidders. Note that the prohibition on *any* auction-related communications with potential competing bidders applies to you even if, after you file a Form 175, you decide not to participate in the auction at all. And “auction-related communications” can include a host of matters that you might not ordinarily think to be prohibited. Extreme caution is in order.

Anyone who has any potential interest in participating in Auction 79 should review the notice in detail. Time is running short. Here are the important dates established in the notice:

***June 16, 2009 – 12:00 noon ET*** - Short-Form Application (FCC Form 175) Filing Window Opens

***June 25, 2009 – prior to 6:00 p.m. ET*** - Short-Form Application (FCC Form 175) Filing Window Deadline

***July 31, 2009 – 6:00 p.m. ET*** - Upfront Payments (via wire transfer)

***September 1, 2009*** - Auction Begins

The Commission is also offering an auction seminar on June 16, 2009, for newbies or folks who want to re-gain their auction chops. Additionally, the Commission will conduct a “mock auction” on August 28, 2009, again to permit folks to dust off any cobwebs and be ready to jump right in when the bidding starts for real on September 1.