

to transfer that license within six years of the initial license grant, to file, together with its application for FCC consent to the transfer, the associated contracts for sale, option agreements, management agreements, or other documents disclosing the total consideration received in return for the transfer of its license. Thus, the information submitted should include not only a monetary purchase price, but also any future, contingent, in-kind, or other consideration. Any competitive concerns raised by the possible disclosure of sensitive information can be addressed by the provisions in Sections 0.457 and 0.459 of the Commission's rules, 47 CFR §§ 0.457, 0.459, providing for the nondisclosure of information.

Performance Requirements. In implementing auction procedures, the Commission is required under Section 309(j) to include performance requirements "to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services." 47 U.S.C. § 309(j)(4)(B). The Commission concludes that the performance requirements adopted as part of the DBS service rules are sufficient to achieve these goals, and it is unnecessary to adopt any further performance rules in connection with auction procedures.

Rules Prohibiting Collusion. The Commission adopts the anti-collusion rules proposed in the NPRM with one modification, as explained below. Under these rules, bidders must identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the competitive bidding process. Bidders are also required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bid, bidding strategies or the particular properties on which they will or will not bid. In the NPRM, the Commission proposed that after short-form applications are filed, and prior to the time the winning bidder has submitted the balance of its bid, all applicants should be prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies with other applicants for construction permits serving the same or overlapping

geographic areas, unless such bidders are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application. The Commission adopts this prohibition, but extends it only until the winning bidder has submitted its 20 percent down payment, and not until the winning bidder has submitted the balance of its bid. Even when an applicant has withdrawn its application after the short-form filing deadline, the applicant may not enter into a bidding agreement with another applicant bidding on the same or overlapping geographic areas from which the first applicant withdrew. In addition, once the short-form application has been filed, a party with an attributable interest in one bidder may not acquire a controlling interest in another bidder bidding for construction permits in any of the same or overlapping geographic areas.

DBS applicants may (1) modify their short-form applications to reflect formation of consortia or changes in ownership at any time before or during an auction, provided that such changes do not result in a change in control of the applicant, and provided that the parties forming consortia or entering into ownership agreements have not applied for construction permits for channels that may be used to cover the same or overlapping geographic areas; and (2) make agreements to bid jointly for construction permits after the filing of short-form applications, provided that the parties to the agreement have not applied for construction permits that may be used to serve the same or overlapping geographic areas. In addition, the holder of a non-controlling attributable interest in an entity submitting a short-form application may acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for construction permits that may be used to serve the same or overlapping geographic areas after the filing of short-form applications, provided that (1) the attributable interest holder certifies to the Commission that it has not communicated and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has a consortium or joint bidding arrangement, and which have applied for construction permits that may be used to serve the same or overlapping geographic areas, and (2) the arrangements do not result in any change in control of an applicant.

Winning bidders are required to submit a detailed explanation of the terms and conditions and parties involved in any bidding consortia, joint venture, partnership or other agreement or arrangement they have entered into relating to the competitive bidding process prior to the close of bidding. Such arrangements must have been entered into prior to the filing of short-form applications as provided in the Order.

In adopting these rules, the Commission reminds potential bidders for DBS construction permits that allegations of collusion in a petition to deny may be investigated by the Commission or referred to the U.S. Department of Justice for investigation. Bidders who are found to have violated the antitrust laws or the Commission's rules while participating in an auction may be subject to forfeiture of their down payment or their full bid amount, as well as revocation of their license, and may be prohibited from participating in future auctions.

F. Designated Entities

Because of the extremely high implementation costs associated with satellite-based services, the Commission tentatively concluded in the NPRM that no special provisions should be made for designated entities—i.e., small businesses, rural telephone companies, and businesses owned by members of minority groups and women—for the channels currently available at 110° and 148°. The Commission noted, however, that the expeditious implementation of DBS service at the two orbital locations in question might indirectly benefit designated entities by providing new opportunities for them to supply programming and equipment. Having reviewed the comments submitted in this proceeding, the Commission concludes that competition in the delivery of DBS service requires auction rules that will allow expedient assignment of the channels at 110° and 148°. Given the fact that these channels offer enough capacity to provide full DBS service in competition with current video providers, auction rules that put these two construction permits in the hands of entities that can quickly provide competition are in the public interest. No commenters assert that small businesses could attract the capital necessary to provide service on all the channels available at either 110° or 148°.

Accordingly, the Commission will not adopt special provisions for designated entities in the DBS auction for the channels at 110° and 148°, and will not set aside spectrum in this auction for